

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/HB 1087 Domestic Violence Services

**SPONSOR(S):** Children, Families & Seniors Subcommittee, Fernandez-Barquin and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1482

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**FINAL HOUSE FLOOR ACTION:** 117 Y's 0 N's

**GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/HB 1087 passed the House on February 20, 2020, as amended, and subsequently passed the Senate on February 26, 2020.

The Department of Children and Families (DCF) administers the statewide domestic violence program. The program protects adults and their children from domestic violence and helps victims develop ways to avoid further harm. DCF certifies, monitors, and oversees the funding of community-based domestic violence centers. In 2012, the Legislature amended statute to require DCF to contract with the Florida Coalition Against Domestic Violence (FCADV) to manage the domestic violence programs. While DCF retains overall authority to certify domestic violence centers, the FCADV is responsible for monitoring, evaluating, and distributing the state and federal funds to the state's domestic violence centers.

The express statutory requirement to contract with a specific provider has presented challenges to DCF in overseeing the state's domestic violence services, including DCF's inability to obtain desired contract provisions or conduct an audit regarding the organization's spending.

CS/HB 1087 removes the express requirement for DCF to contract with the FCADV. The bill does not prohibit DCF from contracting with FCADV or another, similar, coalition in the future.

Further, the bill amends various statutes to remove duties previously held by FCADV. All functions will now be under DCF, unless DCF chooses to contract for the provision of domestic violence services.

CS/HB 1087 has an indeterminate fiscal impact on DCF, and has no fiscal impact on local government.

The bill was approved by the Governor on February 27, 2020, ch. 2020-6, L.O.F., and became effective on that date.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

##### Domestic Violence Program

The Domestic Violence Program protects adults and their children from domestic violence and helps victims develop ways to avoid further harm. The Department of Children and Families (DCF) is statutorily responsible for the statewide domestic violence program, which certifies, monitors, and oversees funding of the state's domestic violence centers.<sup>1</sup> Domestic violence centers are community-based organizations that provide services to the victims of domestic violence. Florida has 42 certified domestic violence centers throughout the state, which are responsible for emergency shelter services and programs for survivors of domestic violence and their children.<sup>2</sup> Current law requires centers to provide the following minimum services:

- Information and referrals;
- Counseling and case management;
- Temporary emergency shelter for more than 24 hours;
- A 24-hour emergency hotline;
- Training for law enforcement and other professionals;
- Educational services for community awareness; and
- Assessment and appropriate referral of resident children.<sup>3</sup>

In addition to the services required by statute, the certified centers provide transportation, rent, utility assistance, transitional housing, legal and court advocacy, work skills and job-readiness training and placement, financial literacy and other training and educational programs.<sup>4</sup>

The program is funded by state general revenue and federal funding from the federal Administration on Children and Families at the United States Department of Health and Human Services. In FY 2019-20, the Legislature appropriated \$46,679,559 to the program (\$19,115,728 in state general revenue and \$27,563,831 in federal funds). During FY 2018-19, certified centers provided 646,971 nights of emergency shelter to 14,817 women, children, and men.<sup>5</sup>

##### *Florida Coalition Against Domestic Violence*

The Florida Coalition Against Domestic Violence (FCADV) is a nonprofit with the mission to work towards ending violence through public awareness, policy development and support for Florida's domestic violence centers.<sup>6</sup> DCF contracts with FCADV to monitor, evaluate, and distribute funds to the certified domestic violence centers.

As of February 2020, the FCADV board of directors had ten members:

- Tiffany Carr, CEO;
- Melody Keeth, Chair;
- Angela Diaz-Vidaillet, Vice-President, 1<sup>st</sup> Vice-Chair;

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<sup>1</sup> S. 39.903, F.S.

<sup>2</sup> Florida Coalition Against Domestic Violence, *Leading Florida Higher, Lifting Survivors Upward; Florida's Commitment to Ending Domestic Violence and Saving Lives*, <https://www.fcadv.org/sites/default/files/2019AnnualReportFinal.pdf> (last visited Jan. 15, 2020).

<sup>3</sup> S. 39.905(1)(c), F.S.

<sup>4</sup> *Supra* note 2.

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

<sup>6</sup> Florida Coalition Against Domestic Violence, <https://www.fcadv.org/> (last visited Jan. 15, 2020).

- Donna Fagan, Vice-President, 2<sup>nd</sup> Vice-Chair;
- Laurel Lynch, Director;
- Sherrie Schwab, Director;
- Lorna Taylor, Director;
- Penny Morrill, Director;
- Shandra Riffey, Treasurer; and
- Theresa Beachy, Secretary.

Most board members previously served or currently serve in leadership roles for certified domestic violence centers in Florida.<sup>7</sup>

### Certification of Domestic Violence Centers

Current law requires domestic violence centers to be certified by DCF to receive state funding.<sup>8</sup> DCF sets criteria for certification and sets minimum standards to ensure the health and safety of clients served.<sup>9</sup> To be eligible for certification as a domestic violence center, an applicant must apply to DCF and be a not-for-profit entity. A domestic violence center's primary mission must be to provide services to victims of domestic violence, defined as any assault, aggravated assault, battery, aggravated battery, sexual assault, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.<sup>10</sup>

An applicant may seek certification to serve an area that has an existing certified domestic violence center; however, the applicant must show there is an unmet need in the area.<sup>11</sup> An applicant can only apply if their domestic violence center has been providing services to victims for 18 consecutive months, including 12 months as an emergency shelter.<sup>12</sup> In addition to other requirements for certification, DCF requires an applicant to become a member of the FCADV and maintain membership as a condition of certification.<sup>13</sup> Failure to join the FCADV and maintain membership is grounds for revocation of certification.<sup>14</sup>

Certifications automatically expire on June 30 each year.<sup>15</sup> DCF will annually renew a domestic violence center's certification provided there is a favorable report from the FCADV.<sup>16</sup>

### Florida Coalition Against Domestic Violence Contract

In 2004, the Legislature directed DCF to contract with a statewide association for domestic violence to help with the delivery of domestic violence services. To implement this legislative directive, DCF contracted with FCADV. In 2012, the Legislature amended statute to require DCF to contract specifically with FCADV to monitor, evaluate, and fund the state's domestic violence centers.<sup>17</sup> This express directive means DCF cannot competitively procure the contract to find the best provider, but must contract with FCADV regardless of qualifications, so DCF has very little negotiating power.

Under current law, DCF and FCADV must work in collaboration to administer the state's domestic

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<sup>7</sup> See Florida Coalition Against Domestic Violence, *2018 Directory of Florida Certified Domestic Violence Centers*, <https://www.fcadv.org/sites/default/files/1.%20FCADV%20Hotline%20Info%20%28PAGE%206%20ONLY%29.pdf> (last visited Feb. 5, 2020).

<sup>8</sup> S. 39.905(6)(a), F.S.

<sup>9</sup> S. 39.903(9), F.S.; R. 65H-1, F.A.C.

<sup>10</sup> S. 741.28(2), F.S.

<sup>11</sup> R. 65H-1.012, F.A.C.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

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

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> S. 39.903, F.S., Ch. 2012-147, F.S.

violence program. While DCF retains overall authority to certify domestic violence centers, FCADV is responsible for monitoring, evaluating, and funding the centers. Under the contract, FCADV responsibilities include, but are not limited to:

- Administration of contracts and grants;
- Implementation of special projects;
- Provision of training and technical assistance to certified domestic violence centers; and
- Prevention, research, evaluation, and educational programs for professionals and the public.<sup>18</sup>

The FCADV is the sole recipient of the state's domestic violence money. It receives state and federal dollars and distributes the money to the community-based domestic violence centers. FCADV is also required to ensure the money is spent properly.<sup>19</sup>

FCADV receives funding from the federal and state government, as well from private donations. The 2019-20 General Appropriations Act appropriated \$46,679,559 to FCADV for domestic violence services. This included funding from the following sources:

- General Revenue Fund: \$11,164,596
- Domestic Violence Trust Fund: \$7,951,132
- Federal Grants Trust Fund (from federal grant awards to the state): \$19,813,831
- Welfare Transition Trust Fund (from the federal Temporary Assistance for Needy Families block grant): \$7,750,000<sup>20</sup>

FCADV's 2017 Form 990 IRS filing indicates total revenues of \$52,010,131 with 99.75 percent being public funds.<sup>21</sup> FCADV's 2016 Form 990 had total revenues of \$42,751,725.<sup>22</sup> According to DCF, it provided 89.13 percent (\$38,102,717) of the 2016 state funding and the Office of the Attorney General provided 7.9 percent (\$3,403,910).<sup>23</sup> Combined, at least 97.09 percent of FCADV's funding was received from the state during the 2016-17 fiscal year. The FCADV 2018-19 annual report lists total funding of \$43,942,812, though the report does not indicate the time period on which this is based.<sup>24</sup>

DCF operates as the main oversight body for FCADV. DCF's Inspector General reviews a third-party audit of FCADV's contract annually and conducts annual reviews to ensure funds are spent properly.<sup>25</sup>

According to DCF, the statutory requirement to contract with FCADV leaves DCF with little bargaining power in contractual negotiations leading to various disputes over background screening, records access, executive compensation, and broader compliance issues.<sup>26</sup> Despite these disputes, DCF is statutorily required to contract with FCADV. According to DCF it does not have leverage to seek anything more than what is currently in its contract with FCADV because it is not legally authorized to negotiate with any other vendor.

### *Background Screenings*

While DCF has requested FCADV to require coalition employees to be subject to DCF's background

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<sup>18</sup> Contract No. LN967

<sup>19</sup> S. 39.9035, F.S.

<sup>20</sup> Ch. 2019-115, L.O.F.

<sup>21</sup> Form 990, Return of Organization Exempt from Income Tax, 2017, Florida Coalition Against Domestic Violence, [https://pdf.guidestar.org/PDF\\_Images/2018/592/055/2018-592055476-1099952d-9.pdf](https://pdf.guidestar.org/PDF_Images/2018/592/055/2018-592055476-1099952d-9.pdf) (last viewed Jan. 28, 2020). This is the most recent Form 990 available.

<sup>22</sup> Form 990, Return of Organization Exempt from Income Tax, 2016, Florida Coalition Against Domestic Violence, [https://pdf.guidestar.org/PDF\\_Images/2017/592/055/2017-592055476-0f80825c-9.pdf](https://pdf.guidestar.org/PDF_Images/2017/592/055/2017-592055476-0f80825c-9.pdf) (last viewed Jan. 20, 2020).

<sup>23</sup> Florida Department of Children and Families, Agency Analysis of 2020 House Bill 1087.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Email from John Paul Fiore, Department of Children and Families, HB 1087 Questions and Analysis, (Jan. 21, 2020).

screening process, FCADV has refused to agree to require screenings.<sup>27</sup> Requiring background screenings would seem to promote a safer environment.<sup>28</sup> However, FCADV believes that background screenings could potentially harm potential employees, who may be victims of domestic violence themselves who had to commit crimes in order to satisfy or even escape their abuser.<sup>29</sup> FCADV believes that background screenings might disqualify these potential employees.<sup>30</sup>

### Executive Compensation

The present contract between DCF and FCADV does not place any limitation on executive salaries. There has been a federal investigation and a state audit of FCADV's funding and expenditures after media reports criticized the exorbitant salary of the FCADV executive director.

#### *Federal Investigation*

In 2018, Florida media outlets published reports alleging FCADV's executive director was receiving a high salary while domestic violence centers went understaffed and under-resourced.<sup>31</sup> For example, a Tampa Bay area domestic violence shelter was reported to have roaches and moldy food.<sup>32</sup> In response to these reports, the Family Violence Prevention and Services Act Program in the Family & Youth Services Bureau of the federal Administration of Children and Families (ACF) contacted FCADV expressing concerns about the executive director's reported compensation and requested specific documentation of her compensation.<sup>33</sup> Federal law limits the salary amount an executive level employee may receive if the organization receives federal funds to \$189,600.<sup>34</sup>

According to letters from ACF, unless it was satisfied that the executive director's salary complied with federal limits, ACF would take corrective action, including withholding payment and possible referral to the United States Department of Health and Human Services Inspector General.<sup>35</sup> The FCADV responded to the ACF requests stating that, according to information provided by FCADV, the executive director's base salary charged to the Family Violence Prevention and Services Act grants was \$137,562.<sup>36</sup>

#### *State Audit*

The DCF Secretary requested the DCF Inspector General to do an audit to determine the proportion of DCF's funding expended on administrative costs and executive compensation and to determine whether the actual funding expended on executive compensation agrees with information provided to DCF by FCADV.<sup>37</sup>

Between August 27, 2018, and November 7, 2019, DCF made at least four written requests to FCADV for documentation in relation to the audit.<sup>38</sup> Although FCADV provided some information to DCF, the Inspector General found the information incomplete.<sup>39</sup> FCADV refused to turn over documents relating

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<sup>27</sup> Interview by Florida House Public Integrity & Ethics Committee staff with Florida Department of Children and Families Office of General Counsel's office staff (Jan. 24, 2020).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> See Adiel Kaplan, 'That's... ridiculous.' Florida domestic violence chief is paid \$761,000 a year, Miami Herald (Jul. 25, 2018), <https://www.miamiherald.com/news/state/florida/article214972045.html> (last visited Jan. 15, 2020).

<sup>32</sup> Kylie McGivern, *Former residents call for action after roaches, moldy food found in domestic violence shelters*, (Aug. 14, 2019), <https://www.abcactionnews.com/news/local-news/i-team-investigates/former-residents-call-for-action-after-roaches-moldy-food-found-in-domestic-violence-shelters> (Jan. 21, 2020).

<sup>33</sup> *Supra* note 23.

<sup>34</sup> 30 U.S.C. § 962 (2011).

<sup>35</sup> *Supra* note 23.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

to compensation and personnel files of the president and chief executive office, chief operating officer, and chief financial officer, minutes for specified FCADV meetings, as well as information relating to dues collected from certified domestic violence centers.<sup>40</sup> Relying on its contract with DCF, FCADV believes it provided all information that was subject to the audit and did not need to provide information that it considers private in nature.<sup>41</sup>

### State Investigations and Legal Action

Because of FCADV's noncompliance with DCF's audit and increasing concerns of mismanagement of funds, the Florida House of Representatives' Public Integrity and Ethics Committee (Committee) initiated an investigation into the FCADV. The Committee requested information from FCADV on executive compensation and benefits, required membership dues, and other financial information.<sup>42</sup> On February 12, 2020, FCADV turned over 104,000 documents. After reviewing the documents, Committee staff found Tiffany Carr, FCADV's CEO, had been paid \$7.5 million in compensation over a three-year period, including nearly \$5 million in paid time off.<sup>43</sup> Because some documents were redacted in violation of the request, the Florida House voted to subpoena Tiffany Carr and the FCADV Board of Directors to testify in front of the Committee.<sup>44</sup>

Patricia Duarte (FCADV's CFO) and Sandara Barnett (FCADV's COO) testified to the Committee that Tiffany Carr directed them to spend unspent grant money so the money would not revert by to DCF at the end of the fiscal year.<sup>45</sup> This resulted in a scheme that allowed the top officials to accumulate paid time off and liquidate it before the end of the fiscal year. Although the Committee subpoenaed Tiffany Carr to provide certain records and testify to the Committee, she has not responded nor appeared as required. On March 12, 2020, the Florida House voted to require Tiffany Carr to show cause why she should not be held in contempt.<sup>46</sup>

In addition to the Committee investigation, DCF and the Attorney General have taken legal action against FCADV. DCF filed a complaint against FCADV, Tiffany Carr, and the board members alleging breach of contract, breach of implied duty of good faith and fair dealing, and breach of fiduciary duty.<sup>47</sup> The Attorney General filed a complaint against FCADV to appoint a receiver and preserve its assets and dissolve or reorganize it.<sup>48</sup> On March 12, 2020, the court ruled in favor of the Attorney General and appointed a receiver for the FCADV.<sup>49</sup>

### **Effect of the Bill**

CS/HB 1087 amends various statutes to remove the express requirement for DCF to contract with FCADV. The bill still allows DCF to contract for domestic violence services. It allows DCF more flexibility in determining with whom it contracts and what domestic violence services are covered by contract. It will potentially broaden the pool of providers with which DCF may contract, and increase DCF's negotiating power. This may increase transparency of the use of appropriated funds that pay for services that help victims of domestic violence.

The bill does not prohibit DCF from contracting in the future with FCADV if both parties choose to do

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<sup>40</sup> Letter from Javier A. Enriquez, General Counsel, Department of Children and Families (Nov. 7, 2019)

<sup>41</sup> *Supra* note 26.

<sup>42</sup> Letter from Representative Tom Leek, Chairman of the Public Integrity & Ethics Committee, Florida House of Representatives (Jan. 7, 2020).

<sup>43</sup> Fla. H.R., Comm. on Public Integrity & Ethics, Public Hearing on the Florida Coalition Against Domestic Violence, Feb. 24, 2020.

<sup>44</sup> Fla. H.R. Jour. 555-56 (Reg. Sess. 2020).

<sup>45</sup> Fla. H.R., Comm. on Public Integrity & Ethics, Public Hearing on the Florida Coalition Against Domestic Violence, Feb. 27, 2020.

<sup>46</sup> Fla. H.R. Jour. 1134-35 (Re. Sess. 2020).

<sup>47</sup> Fla. Dept. of Children and Families v. Fla. Coalition Against Domestic Violence, Inc., et al., No. 2020-CA-000431 (Fla. 2<sup>nd</sup> Cir. Ct. Mar. 3, 2020).

<sup>48</sup> Fla. Office of the Attorney General v. Fla. Coalition Against Domestic Violence, Inc., et al., No. 2020-CA-000437 (Fla. Cir. Ct. Mar. 4, 2020).

<sup>49</sup> Fla. Office of the Attorney General v. Fla. Coalition Against Domestic Violence, Inc., No. 2020-CA-000437 (Fla. Cir.Ct. Mar. 12, 2020) (order issued by the court appointing a receiver).

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The bill also amends statutes to shift duties previously held by FCADV to DCF. The bill removes FCADV as the named entity to perform any duties where it was so specified in statute, including:

- 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;
- Evaluating certified domestic violence centers to determine compliance with minimum certification standards;
- Having the right to enter and inspect the premises of certified domestic violence centers for monitoring purposes;
- Providing a report to the Legislature on the status of domestic violence in the state;
- Having the domestic violence centers provide the names of the domestic violence advocates employed at the centers who may claim privilege to refuse to disclose a confidential communication between a victim and the advocate;
- Requiring the contract between domestic violence centers and FCADV to contain provisions ensuring the available and geographic accessibility of services in the area and allowing the domestic violence centers to distribute funds through subcontractors with approval by FCADV; and
- Requiring the FCADV to monitor food services for domestic violence centers.

The bill also removes other FCADV duties from statute, including:

- Being a representative on the Statewide Guardian ad Litem training curriculum committee;
- Being a member of the State Child Abuse Death Review Committee and being required to provide training to local child abuse death review committee members on the impact of domestic violence;
- Administering the domestic violence fatality review teams;
- Requiring the Criminal Justice Standards and Training Commission to work with the FCADV on law enforcement domestic violence training; and
- Requiring the Florida Institute for Child Welfare to work with FCADV.

All these functions will now be under DCF unless DCF chooses to contract for the provision of domestic violence services.

The bill became effective upon approval by the Governor on February 27, 2020.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

Indeterminate. See fiscal comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If DCF and FCADV do not contract for the provision of domestic violence services in the future, the FCADV will lose the state funding it is provided through the contract for these services but will also no longer have the responsibilities that the contract funded.

### D. FISCAL COMMENTS:

Until decisions are finalized as to whether the domestic violence program's responsibilities will be fulfilled by DCF, through contract, or both, the fiscal impact on state government is indeterminate.