

**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 Committee on Children, Families, and Elder Affairs

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BILL: SB 130

INTRODUCER: Senator Rouson

SUBJECT: Mental Health and Substance Use Disorders

DATE: March 1, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AHS</u>	_____
3.	_____	_____	<u>AP</u>	_____

**I. Summary:**

SB 130 promotes the use of peer specialists to assist an individual’s recovery from substance use disorder or mental illness. Peer specialists are persons who have recovered from a substance use disorder or mental illness who support a person with a current substance use disorder or mental illness.

Specifically, the bill:

- Adds the use of peer specialists as an essential element of a coordinated system of care;
- Provides legislative findings and intent related to the use of peer specialists in the provision of behavioral health care;
- Requires the Department of Children and Families (the DCF) to develop a training program for peer specialists, giving preference to trainers who are certified peer specialists;
- Requires the DCF to certify peer specialists, directly or through the use of a third-party credentialing entity;
- Revises background screening requirements and codifies existing training and certification requirements for peer specialists;
- Adds offenses for which individuals seeking certification as a peer specialist may seek an exemption from eligibility disqualification;
- Allows for recovery support services to be reimbursed as a recovery service through the DCF, a behavioral health managing entity, or the Medicaid program.
- Provides that individuals certified as peer specialists by July 1, 2021, will be deemed to have met the requirements for certification under the bill.

The DCF’s Office of Administrative Services estimates there may be an indeterminate, negative fiscal impact on state government resulting from a potential increase in background screenings, and an indeterminate, positive fiscal impact on private sector providers offering certification. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

## II. Present Situation:

### Substance Abuse

Substance abuse is the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs. Substance use disorder (SUD) is determined based on specified criteria included in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).<sup>1</sup> According to the DSM-5, a diagnosis of SUD is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.<sup>2</sup> SUD occurs when an individual chronically uses alcohol or drugs, resulting in significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.<sup>3</sup> Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.<sup>4</sup> Imaging studies of brains belonging to persons with SUD reveal physical changes in areas of the brain critical to judgment, decision making, learning and memory, and behavior control.<sup>5</sup>

In 2018, approximately 20.3 million people aged 12 or older had a SUD related to corresponding use of alcohol or illicit drugs within the previous year, including 14.8 million people diagnosed with alcohol use disorder and 8.1 million people diagnosed with drug use disorder.<sup>6</sup> The most common substance abuse disorders in the United States are from the use of alcohol, tobacco, cannabis, opioids, hallucinogens, and stimulants.<sup>7</sup>

### *Substance Abuse Treatment in Florida*

In the early 1970s, the federal government enacted laws creating formula grants for states to develop continuums of care for individuals and families affected by substance abuse.<sup>8</sup> The laws resulted in separate funding streams and requirements for alcoholism and drug abuse. In response to the laws, the Florida Legislature enacted chs. 396 and 397, F.S., relating to alcohol and drug

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<sup>1</sup> The World Health Organization, *Mental Health and Substance Abuse*, available at <https://www.who.int/westernpacific/about/how-we-work/programmes/mental-health-and-substance-abuse> (last visited February 27, 2021); the National Institute on Drug Abuse (NIDA), *The Science of Drug Use and Addiction: The Basics*, available at <https://www.drugabuse.gov/publications/media-guide/science-drug-use-addiction-basics> (last visited February 21, 2021).

<sup>2</sup> The National Association of Addiction Treatment Providers, *Substance Use Disorder*, available at <https://www.naatp.org/resources/clinical/substance-use-disorder> (last visited February 21, 2021).

<sup>3</sup> The Substance Abuse and Mental Health Services Administration (The SAMHSA), *Substance Use Disorders*, <http://www.samhsa.gov/disorders/substance-use> (last visited February 21, 2021).

<sup>4</sup> The NIDA, *Drugs, Brains, and Behavior: The Science of Addiction*, available at <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction> (last visited February 21, 2021).

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

<sup>6</sup> The SAMHSA, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2018 National Survey on Drug Use and Health*, p. 2, available at <https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHNationalFindingsReport2018/NSDUHNationalFindingsReport2018.pdf> (last visited February 23, 2021).

<sup>7</sup> The Rural Health Information Hub, *Defining Substance Abuse and Substance Use Disorders*, available at <https://www.ruralhealthinfo.org/toolkits/substance-abuse/1/definition> (last visited February 23, 2021).

<sup>8</sup> The DCF, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5. (on file with the Senate Children, Families, and Elder Affairs Committee).

abuse, respectively.<sup>9</sup> Each of these laws governed different aspects of addiction, and thus had different rules promulgated by the state to fully implement the respective pieces of legislation.<sup>10</sup> However, because persons with substance abuse issues often do not restrict their misuse to one substance or another, having two separate laws dealing with the prevention and treatment of addiction was cumbersome and did not adequately address Florida's substance abuse problem.<sup>11</sup> In 1993, legislation was adopted to combine ch. 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).<sup>12</sup>

The Marchman Act encourages individuals to seek services on a voluntary basis within the existing financial and space capacities of a service provider.<sup>13</sup> However, denial of addiction is a prevalent symptom of SUD, creating a barrier to timely intervention and effective treatment.<sup>14</sup> As a result, treatment typically must stem from a third party providing the intervention needed for SUD treatment.<sup>15</sup>

The DCF administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults who are otherwise unable to obtain these services. Services are provided based upon state and federally-established priority populations.<sup>16</sup> The DCF provides treatment for SUD through a community-based provider system offering detoxification, treatment and recovery support for individuals affected by substance misuse, abuse or dependence.<sup>17</sup>

- **Detoxification Services:** Detoxification services use medical and clinical procedures to assist individuals and adults as they withdraw from the physiological and psychological effects of substance abuse.<sup>18</sup>
- **Treatment Services:** Treatment services<sup>19</sup> include a wide array of assessment, counseling, case management, and support that are designed to help individuals who have lost their abilities to control their substance use on their own and require formal, structured intervention and support.<sup>20</sup>
- **Recovery Support:** Recovery support services, including transitional housing, life skills training, parenting skills, and peer-based individual and group counseling, are offered during

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

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

<sup>12</sup> Chapter 93-39, s. 2, L.O.F., which codified current ch. 397, F.S.

<sup>13</sup> See s. 397.601(1) and (2), F.S. An individual who wishes to enter treatment may apply to a service provider for voluntary admission. Within the financial and space capabilities of the service provider, the individual must be admitted to treatment when sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider.

<sup>14</sup> Darran Duchene and Patrick Lane, *Fundamentals of the Marchman Act*, Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Programs, available at <http://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/> (last visited February 23, 2021).

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

<sup>16</sup> See chs. 394 and 397, F.S.

<sup>17</sup> The DCF, *Treatment for Substance Abuse*, available at <https://www.myflfamilies.com/service-programs/samh/substance-abuse.shtml> (last visited February 21, 2021).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* Research indicates that persons who successfully complete substance abuse treatment have better post-treatment outcomes related to future abstinence, reduced use, less involvement in the criminal justice system, reduced involvement in the child-protective system, employment, increased earnings, and better health.

<sup>20</sup> *Id.*

and following treatment to further assist individuals in their development of the knowledge and skills necessary to maintain their recovery.<sup>21</sup>

### Peer Specialists

Research has shown that social support provided by peers is beneficial to those in recovery from a SUD or mental illness.<sup>22</sup> A peer specialist is defined as “a person who has been in recovery from a SUD or mental illness for at least 2 years who uses his or her personal experience to provide services in behavioral health settings to support others in their recovery, or a person who has at least 2 years of experience as a family member or caregiver of an individual who has a SUD or mental illness. The term does not include a qualified professional or a person otherwise certified under chapter 394 or chapter 397.”<sup>23</sup>

There are four primary types of social support provided by peers:

- Emotional: where a peer demonstrates empathy, caring or concern to bolster a person’s self-esteem. (i.e., peer mentoring or peer-led support groups).
- Informational: where a peer shares knowledge and information to provide life or vocational skills training. (i.e., parenting classes, job readiness training, or wellness seminars).
- Instrumental: where a peer provides concrete assistance to help others accomplish tasks. (i.e., child care, transportation, and help accessing health and human services).
- Affiliational: where a peer facilitates contacts with other people to promote learning of social skills, create a sense of community, and acquire a sense of belonging. (i.e., recovery centers, sports league participation, and alcohol or drug free socialization opportunities).<sup>24</sup>

In Florida, the DCF and Medicaid<sup>25</sup> both allow reimbursement for peer support services but only if provided by certified peer specialists.<sup>26</sup>

An individual seeking to become a certified peer specialist must have either been in recovery from a SUD or mental illness for at least two years, or must have at least two years of experience as a family member or caregiver of an individual suffering from a substance use disorder or mental illness.<sup>27</sup> The DCF must approve one or more third-party credentialing entities for the purposes of certifying peer specialists, approving training programs for individuals seeking certification as peer specialists, approving continuing education programs, and establishing the

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

<sup>22</sup> Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, *What Are Peer Recovery Support Services?*, p. 1, available at <https://store.samhsa.gov/system/files/sma09-4454.pdf> (last visited February 23, 2021).

<sup>23</sup> Section 397.311(30), F.S.

<sup>24</sup> The DCF, *Florida Peer Services Handbook* at p. 4-5, 2016, available at <https://www.myflfamilies.com/service-programs/samh/publications/docs/peer-services/DCF-Peer-Guidance.pdf> (last visited February 23, 2021).

<sup>25</sup> Medicaid provides health coverage to millions of Americans, including eligible low-income adults, children, pregnant women, elderly adults and people with disabilities. Medicaid is administered by states, according to federal requirements. The program is funded jointly by states and the federal government. *See* Medicaid.gov, *Medicaid: 70.6 Million People Covered*, available at <https://www.medicaid.gov/medicaid/index.html> (last visited February 27, 2021).

<sup>26</sup> The DCF, *Agency Analysis for 2019 HB 369*, p. 2, February 8, 2019 (on file with the Senate Children, Families, and Elder Affairs Committee staff). Florida’s Medicaid program currently covers peer recovery services; the DCF allows the state’s behavioral health managing entities to reimburse for peer recovery services.

<sup>27</sup> Section 397.417(1), F.S.

minimum requirements and standards that applicants must achieve to maintain certification.<sup>28</sup> To obtain approval, the third-party credentialing entity must demonstrate compliance with nationally recognized standards for developing and administering professional certification programs to certify peer specialists.<sup>29</sup> All individuals providing DCF-funded recovery support services as a peer specialist must be certified, however an individual who is not currently certified may work as a peer specialist for a maximum of one year if they are working toward certification and are supervised by a qualified professional or by a certified peer specialist with at least three years of full-time experience as a peer specialist at a licensed behavioral health organization.<sup>30</sup>

The Florida Certification Board (FCB) is currently the only credentialing entity approved by the DCF for certifying peer specialists in the state.<sup>31</sup> The FCB credentials Certified Recovery Peer Specialist (CRPS) which assist in providing client directed care by helping individuals develop skills and relationships that will allow them to achieve and maintain recovery from SUDs and mental illness.<sup>32</sup> The FCB issues four endorsements demonstrating lived experience, which are added to the CRPS credential: Adult (CRPS-A), Family (CRPS-F), Veteran (CRPS-V), and Youth (CRPS-Y). Applicants must attest to at least one of the lived-experience endorsements upon application. The CRPS must also have demonstrated competency through training and experience in the performance domains of: Recovery Support, Advocacy, Mentoring and Professional Responsibilities. CRPS applicants must attest to having been in recovery for a minimum of two years.<sup>33</sup> The CRPS must also have demonstrated competency through training and experience in the performance domains of: Recovery Support, Advocacy, Mentoring, and Professional Responsibilities.<sup>34</sup> As of June 2020, 630 individuals maintain active CRPS certifications statewide.<sup>35</sup>

Individuals seeking certification must adhere to the CRPS credentialing standards and requirements, complete a background screening, and have completed all court-ordered sanctions related to any prior crimes committed for at least three years.<sup>36</sup> Prospective CRPS must also successfully complete training and a competency exam demonstrating proficiency in certain educational areas.<sup>37</sup>

### **Coordinated System of Care**

Managing entities<sup>38</sup> are required to promote the development and implementation of a coordinated system of care.<sup>39</sup> A coordinated system of care means a full array of behavioral and

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<sup>28</sup> Section 397.417(2), F.S.

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

<sup>30</sup> Section 397.417(3), F.S.

<sup>31</sup> The DCF, *Agency Analysis for SB 130*, p. 2, December 10, 2020 (on file with the Senate Children, Families, and Elder Affairs Committee staff) (hereinafter cited as, “The DCF Analysis”).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> The DCF Analysis, p. 2

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

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

<sup>38</sup> Section 394.9082(2)(e), F.S. “Managing entity” is defined as “a corporation selected by and under contract with DCF to manage the daily operational delivery of behavioral health services through a coordinated system of care.”

<sup>39</sup> Section 394.9082(5)(d), F.S.

related services in a region or community offered by all service providers, participating either under contract with a managing entity or by another method of community partnership or mutual agreement.<sup>40</sup> A community or region provides a coordinated system of care for those suffering from mental illness or substance abuse disorder through a no-wrong-door model.<sup>41</sup>

There are several essential elements which make up a coordinated system of care, including:

- Community interventions, such as prevention, primary care for behavioral health needs, therapeutic and supportive services, crisis response services, and diversion programs;
- A designated receiving system that consists of one or more facilities serving a defined geographic area and responsible for assessment and evaluation, both voluntary and involuntary, and treatment or triage of patients who have a mental health or substance use disorder, or co-occurring disorders;
- A transportation plan developed and implemented by each county in collaboration with the managing entity;
- Crisis services, including mobile response teams, crisis stabilization units, addiction receiving facilities, and detoxification facilities;
- Case management, defined as direct services to clients for assessing needs; planning; arranging services; coordinating service providers; linking the service system to a client; monitoring service delivery; and evaluating patient outcomes to ensure the client is receiving the appropriate services;
- Care coordination, defined as the implementation of deliberate and planned organizational relationships and service procedures that improve the effectiveness and efficiency of the behavioral health system by engaging in purposeful interactions with individuals who are not yet effectively connected with services to ensure service linkage;
- Outpatient services;
- Residential services;
- Hospital inpatient care;
- Aftercare and post-discharge services;
- Medication assisted treatment and medication management; and
- Recovery support, such as supportive housing, supported employment, family support and education, independent living skill development, wellness management, and self-care.<sup>42</sup>

## **Background Screening**

### ***Substance Use Disorder and Criminal History***

Certain individuals receiving substance abuse treatment may have a criminal or violent history: Research indicates that approximately 65 percent of the U.S. prison population has an active SUD.<sup>43</sup> Additionally, individuals who use illicit drugs are more likely to commit crimes, and it is common for many offenses, including violent crimes, to be committed by individuals who had used drugs or alcohol prior to committing the crime, or who were using at the time of the

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<sup>40</sup> Section 394.4573(1)(c), F.S.

<sup>41</sup> Section 394.4573(1)(c), F.S.

<sup>42</sup> Section 394.4573(2), F.S.

<sup>43</sup> The NIDA, *Criminal Justice DrugFacts*, available at <https://www.drugabuse.gov/publications/drugfacts/criminal-justice> (last visited February 26, 2021).

offense.<sup>44</sup> As a result, individuals who have recovered from a SUD or mental illness often have a criminal history which may disqualify them from employment in the substance abuse treatment industry due to Florida's background screening process.

### ***Background Screening Process***

Current law establishes standard procedures for criminal history background screening of prospective employees and ch. 435, F.S., outlines the screening requirements. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,<sup>45</sup> and may include criminal records checks through local law enforcement agencies.<sup>46</sup> A level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.<sup>47</sup>

Every person required by law to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening to his or her employer.<sup>48</sup> Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to the FDLE.<sup>49</sup>

For both level 1 and 2 screenings, the employer must submit the information necessary for screening to the FDLE within five working days after receiving it.<sup>50</sup> Additionally, for both levels of screening, the FDLE must perform a criminal history record check of its records.<sup>51</sup> For a level 1 screening, this is the only information searched, and once complete, the FDLE responds to the employer or agency, who must then inform the employee whether screening has revealed any disqualifying information.<sup>52</sup> For level 2 screening, the FDLE also requests the FBI to conduct a national criminal history record check of its records for each employee for whom the request is made.<sup>53</sup> The person undergoing screening must supply any missing criminal or other necessary information upon request to the requesting employer or agency within 30 days after receiving the request for the information.<sup>54</sup>

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<sup>44</sup> National Institute on Drug Abuse, *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide*, p. 12, available at [https://d14rmgtrwzf5a.cloudfront.net/sites/default/files/txcriminaljustice\\_0.pdf](https://d14rmgtrwzf5a.cloudfront.net/sites/default/files/txcriminaljustice_0.pdf) (last visited February 23, 2021).

<sup>45</sup> The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site, available at <https://www.nsopw.gov/> (last visited February 23, 2021).

<sup>46</sup> Section 435.03, F.S.

<sup>47</sup> Section 435.04, F.S.

<sup>48</sup> Section 435.05(1)(a), F.S.

<sup>49</sup> Section 435.04(1)(a), F.S.

<sup>50</sup> Section 435.05(1)(b)-(c), F.S.

<sup>51</sup> *Id.*

<sup>52</sup> Section 435.05(1)(b), F.S.

<sup>53</sup> Section 435.05(1)(c), F.S.

<sup>54</sup> Section 435.05(1)(d), F.S.

### *Disqualifying Offenses*

Regardless of whether the screening is level 1 or level 2, the screening employer or agency must make sure that the applicant has good moral character by ensuring that the employee has not been arrested for and is awaiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any of the following 52 offenses enumerated in s. 435.04(2), F.S., or under Florida law, or similar law of another jurisdiction:

- Section 393.135, F.S., relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- Section 394.4593, F.S., relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- Section 415.111, F.S., relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
- Section 777.04, F.S., relating to attempts, solicitation, and conspiracy to commit an offense listed in this subsection.
- Section 782.04, F.S., relating to murder.
- Section 782.07, F.S., relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- Section 782.071, F.S., relating to vehicular homicide.
- Section 782.09, F.S., relating to killing of an unborn child by injury to the mother.
- Chapter 784, F.S., relating to assault, battery, and culpable negligence, if the offense was a felony.
- Section 784.011, F.S., relating to assault, if the victim of the offense was a minor.
- Section 784.03, F.S., relating to battery, if the victim of the offense was a minor.
- Section 787.01, F.S., relating to kidnapping.
- Section 787.02, F.S., relating to false imprisonment.
- Section 787.025, F.S., relating to luring or enticing a child.
- Section 787.04(2), F.S., relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- Section 787.04(3), F.S., relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.
- Section 790.115(1), F.S., relating to exhibiting firearms or weapons within 1,000 feet of a school.
- Section 790.115(2)(b), F.S., relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- Section 794.011, F.S., relating to sexual battery.
- Former s. 794.041, F.S., relating to prohibited acts of persons in familial or custodial authority.
- Section 794.05, F.S., relating to unlawful sexual activity with certain minors.
- Chapter 796, F.S., relating to prostitution.
- Section 798.02, F.S., relating to lewd and lascivious behavior.
- Chapter 800, F.S., relating to lewdness and indecent exposure.
- Section 806.01, F.S., relating to arson.
- Section 810.02, F.S., relating to burglary.

- Section 810.14, F.S., relating to voyeurism, if the offense is a felony.
- Section 810.145, F.S., relating to video voyeurism, if the offense is a felony.
- Chapter 812, F.S., relating to theft, robbery, and related crimes, if the offense is a felony.
- Section 817.563, F.S., relating to fraudulent sale of controlled substances, only if the offense was a felony.
- Section 825.102, F.S., relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- Section 825.103, F.S., relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- Section 826.04, F.S., relating to incest.
- Section 827.03, F.S., relating to child abuse, aggravated child abuse, or neglect of a child.
- Section 827.04, F.S., relating to contributing to the delinquency or dependency of a child.
- Former s. 827.05, F.S., relating to negligent treatment of children.
- Section 827.071, F.S., relating to sexual performance by a child.
- Section 843.01, F.S., relating to resisting arrest with violence.
- Section 843.025, F.S., relating to depriving a law enforcement, correctional, or correctional probation officer of means of protection or communication.
- Section 843.12, F.S., relating to aiding in an escape.
- Section 843.13, F.S., relating to aiding in the escape of juvenile inmates in correctional institutions.
- Chapter 847, F.S., relating to obscene literature.
- Section 874.05, F.S., relating to encouraging or recruiting another to join a criminal gang.
- Chapter 893, F.S., relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.
- Section 916.1075, F.S., relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- Section 944.35(3), F.S., relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- Section 944.40, F.S., relating to escape.
- Section 944.46, F.S., relating to harboring, concealing, or aiding an escaped prisoner.
- Section 944.47, F.S., relating to introduction of contraband into a correctional facility.
- Section 985.701, F.S., relating to sexual misconduct in juvenile justice programs.
- Section 985.711, F.S., relating to contraband introduced into detention facilities.<sup>55</sup>

### ***Exemption from Disqualification***

If an individual is disqualified due to a pending arrest, conviction, plea of nolo contendere, or adjudication of delinquency to one or more of the disqualifying offenses, s. 435.07, F.S., allows the head of the appropriate agency (in the case of substance abuse treatment, the Secretary of the DCF) to exempt applicants from disqualification under certain circumstances.<sup>56</sup>

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<sup>55</sup> Section 435.04(2), F.S.

<sup>56</sup> See Section 435.07(1), F.S.

Receiving an exemption allows that individual to work despite the disqualifying crime in that person's past. However, an individual who is considered a sexual predator,<sup>57</sup> career offender,<sup>58</sup> or sexual offender (unless not required to register)<sup>59</sup> cannot ever be exempted from disqualification.<sup>60</sup>

Additionally, individuals employed, or applicants for employment, by treatment providers who treat adolescents 13 years of age and older who are disqualified from employment solely because of certain felony offenses may be exempted from disqualification from employment, without waiting for three years.<sup>61</sup> These crimes include certain offenses related to:

- Prostitution;
- Third degree burglary of a structure or conveyance;
- Third degree felony grand theft;
- Sale of imitation controlled substance;
- Forgery;
- Uttering or publishing a forged instrument;
- Sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver controlled substances (excluding drug trafficking);
- Use, possession, manufacture, delivery, transportation, advertisement, or sale of drug paraphernalia; and
- Any related criminal attempt, solicitation, or conspiracy.<sup>62</sup>

To seek exemption from disqualification, an employee of a substance use service provider must submit a request for an exemption from disqualification within 30 days after being notified of a pending disqualification, and the DCF must grant or deny the application within 60 days of the receipt of a completed application.<sup>63</sup>

To be exempted from disqualification and thus be able to work, the applicant must demonstrate by clear and convincing evidence that he or she should not be disqualified from employment.<sup>64</sup> Clear and convincing evidence is a heavier burden than the preponderance of the evidence standard but less than beyond a reasonable doubt.<sup>65</sup> This means that the evidence presented is credible and verifiable, and that the memories of witnesses are clear and without confusion. This evidence must create a firm belief and conviction of the truth of the facts presented and, considered as a whole, must convince DCF representatives without hesitancy that the requester will not pose a threat if allowed to hold a position of special trust relative to children, vulnerable

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<sup>57</sup> Pursuant to s. 775.261, F.S.

<sup>58</sup> Pursuant to s. 775.261, F.S.

<sup>59</sup> Pursuant to s. 943.0435, F.S.

<sup>60</sup> Section 435.07(4)(b), F.S.

<sup>61</sup> Section 435.07(2), F.S.

<sup>62</sup> *Id.*

<sup>63</sup> Section 397.4073(1)(f), F.S.

<sup>64</sup> Section 435.07(3)(a), F.S.

<sup>65</sup> The DCF, *CF Operating Procedure 60-18, Personnel: Exemption from Disqualification*, at p. 1, (Aug. 1, 2010), available at <https://www.myflfamilies.com/admin/publications/cfops/CFOP%20060-xx%20Human%20Resources/CFOP%2060-18,%20Exemption%20from%20Disqualification.pdf> (last visited February 23, 2021) (hereinafter, "The DCF Operating Procedure").

adults, or to developmentally disabled individuals. Evidence that may support an exemption includes, but is not limited to:

- Personal references.
- Letters from employers or other professionals.
- Evidence of rehabilitation, including documentation of successful participation in a rehabilitation program.
- Evidence of further education or training.
- Evidence of community involvement.
- Evidence of special awards or recognition.
- Evidence of military service.
- Parenting or other caregiver experiences.<sup>66</sup>

After the DCF receives a complete exemption request package from the applicant, the background screening coordinator searches available data, including, but not limited to, a review of records and pertinent court documents including case disposition and the applicant's plea in order to determine the appropriateness of granting the applicant an exemption.<sup>67</sup> These materials, in addition to the information provided by the applicant, form the basis for a recommendation as to whether the exemption should be granted.<sup>68</sup>

After all reasonable evidence is gathered, the background screening coordinator consults with his or her supervisor, and after consultation with the supervisor, the coordinator and the supervisor will recommend whether the exemption should be granted. The regional legal counsel's office reviews the recommendation to grant or deny an exemption to determine legal sufficiency; the criminal justice coordinator in the region in which the background screening coordinator is located also reviews the exemption request file and recommendation and makes an initial determination whether to grant or deny the exemption.<sup>69</sup>

If the regional criminal justice coordinator makes an initial determination that the exemption should be granted, the exemption request file and recommendations are forwarded to the regional director, who has delegated authority from the DCF Secretary to grant or deny the exemption.<sup>70</sup> After an exemption request decision is final, the background screener provides a written response to the applicant as to whether the request is granted or denied.<sup>71</sup>

If the DCF grants the exemption, the applicant and the facility or employer are notified of the decision by regular mail.<sup>72</sup> However, if the request is denied, notification of the decision is sent by certified mail, return receipt requested, to the applicant, addressed to the last known address and a separate letter of denial is sent by regular mail to the facility or employer.<sup>73</sup> If the application is denied, the denial letter must set forth pertinent facts that the background screening coordinator, the background screening coordinator's supervisor, the criminal justice coordinator,

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<sup>66</sup> *Id.* at p. 3-4.

<sup>67</sup> *Id.* at p. 5.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 5.

<sup>72</sup> *Id.* at 6.

<sup>73</sup> *Id.*

and regional director, where appropriate, used in deciding to deny the exemption request.<sup>74</sup> It must also inform the denied applicant of the availability of an administrative review pursuant to ch. 120, F.S.<sup>75</sup>

***Individuals Requiring Background Screening Under Ch. 397, F.S.***

Only certain individuals affiliated with substance abuse treatment providers require background screening. Section 397.4073, F.S., requires peer specialists who have direct contact<sup>76</sup> with individuals receiving services must undergo a level 2 background screening as provided under s. 408.809 and ch. 435.<sup>77</sup> Applicant peer specialists are required to pay the costs associated with such screenings.<sup>78</sup> Similarly, all owners, directors, chief financial officers, and clinical supervisors of service providers, as well as all service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services must also undergo level 2 background screening.

Other statutory provisions are tailored to facilitate individuals in recovery who have disqualifying offenses being able to work in substance abuse treatment. The DCF may grant exemptions from disqualification for an individual seeking certification as a peer specialist if at least three years have passed since the individual has completed, or been lawfully released from, any confinement, supervision, or nonmonetary condition imposed by a court for the individual's most recent disqualifying offense.<sup>79</sup> Similar to the conditional employment granted to other select applicants in s. 397.4073, certified peer specialists may work with adults with SUD until the DCF makes a final determination regarding the request for an exemption from disqualification if three years or more have elapsed since the most recent disqualifying offense.<sup>80</sup>

**III. Effect of Proposed Changes:**

**Coordinated System of Care**

The bill amends s. 394.4573, F.S., relating to coordinated systems of care, to add the use of peer specialists to assist in an individual's recovery from a substance use disorder or mental illness to the list of essential elements of a coordinated system of behavioral health care.

**Legislative Findings and Intent**

The bill amends s. 397.417, F.S., providing legislative findings and intent, as follows:

- The Legislature finds that the ability to provide adequate behavioral health services is limited by a shortage of professionals and paraprofessionals.

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<sup>74</sup> *Id.*

<sup>75</sup> All notices of denial of an exemption shall advise the applicant of the basis for the denial, that an administrative hearing pursuant to s. 120.57, F.S., may be requested, and that the request must be made within 21 days of receipt of the denial letter or the applicant's right to an appeal will be waived. *See* The DCF Operating Procedure at p. 6.

<sup>76</sup> Direct contact is not defined in ch. 397, F.S.

<sup>77</sup> Section 397.4073(1)(a)3., F.S.

<sup>78</sup> Section 408.809(5), F.S.

<sup>79</sup> Section 397.4073(4)(b)1.a., F.S.

<sup>80</sup> Section 397.4073(1)(g), F.S.

- The Legislature finds that the state is experiencing an increase in opioid addictions, many of which prove fatal.
- The Legislature finds that peer specialists provide effective support services because they share common life experiences with the persons they assist.
- The Legislature finds that peer specialists promote a sense of community among those in recovery.
- The Legislature finds that research has shown that peer support facilitates recovery and reduces health care costs.
- The Legislature finds that persons who are otherwise qualified to serve as peer specialists may have a criminal history that prevents them from meeting background screening requirements.
- It is the intent of the Legislature that the use of peer specialists be expanded as a cost-effective means of providing services.
- It is the intent of the Legislature to ensure that peer specialists meet specified qualifications and modified background screening requirements and are adequately reimbursed for their services.

### **Criteria for Becoming a Certified Peer Specialist**

The bill amends s. 397.417, F.S., codifying a number of criteria currently used by the FCB in the process of certifying peer specialists. Specifically, the bill requires that persons seeking certification as peer specialists:

- Be in recovery from a SUD or mental illness for the past two years, or be a family member or caregiver of an individual with a history of SUD or mental illness;
- Complete a training program developed under the bill by the DCF;
- Pass a competency exam developed under the bill by the DCF; and
- Undergo background screening as provided under the bill.

### **Duties of the DCF**

Currently, the FCB provides training and administers a competency exam for peer specialists seeking certification. Under the bill, the DCF is made statutorily responsible for:

- Creating a training program for peer specialists, giving preference to trainers who are certified peer specialists. The training program must coincide with a competency exam and be based on current practice standards; and
- Mandating that all individuals providing recovery support services become certified.
  - Individuals may practice as a peer specialist prior to becoming certified for up to one year if the individual is actively working toward certification and is supervised by a qualified professional<sup>81</sup> or a certified peer specialist with at least two years of full-time experience as a peer specialist at a licensed behavioral health organization.

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<sup>81</sup> Section 397.311(35) defines “qualified professional” to mean “a physician or a physician assistant licensed under chapter 458 or chapter 459; a professional licensed under chapter 490 or chapter 491; an advanced practice registered nurse licensed under part I of chapter 464; or a person who is certified through a department-recognized certification process for substance abuse treatment services and who holds, at a minimum, a bachelor’s degree.” A person who is certified in substance abuse treatment services by a state-recognized certification process in another state at the time of employment with a licensed substance abuse provider in this state may perform the functions of a qualified professional as defined in this chapter but must meet certification requirements contained in this subsection no later than 1 year after his or her date of employment.

These are the same standards currently required of prospective peer specialists applying to third party credentialing entities. Under the bill, the DCF may certify peer specialists directly or it may approve one or more credentialing entities to do so, as the FCB currently does.

The bill also modifies current criteria for certified peer specialists in s. 397.417, F.S., as follows:

- Eliminates the requirement that a family member or caregiver of an individual with a SUD or mental illness have at least two years of experience in order to attain certification as a peer specialist;
- Permits an individual with two years of full-time experience as a peer specialist to supervise an individual providing recovery support services and working toward certification (supervisory certified peer specialists currently must have at least three years of experience).

### **Background Screening**

The bill specifies revised background screening requirements, requiring applicants to submit a full set of fingerprints to the DCF, or to a vendor, entity, or agency<sup>82</sup> that has entered into an agreement with the FDLE. Fingerprints must then be forward to the FDLE for state processing and retention, and to the FBI for national processing and retention. This will enable the FDLE to conduct ongoing, fingerprint-based, state and national background checks on certified peer specialists. The bill mandates any arrest record discovered be reported to the DCF. The bill requires the applicant peer specialist to pay all fees<sup>83</sup> charged in connection with state and federal fingerprint processing and retention.

The bill authorizes the DCF or the Agency for Health Care Administration (the AHCA) to contract with vendors for electronic fingerprinting, provided that such contracts ensure the integrity and security of all personal identifying information obtained. Vendors who submit fingerprints on behalf of employees must:

- Meet the requirements of s. 943.053, F.S.;<sup>84</sup>
- Be capable of communicating electronically with the DCF or the AHCA;
- Be capable of accepting screening results from the FDLE; and
- Be capable of providing the applicant's:
  - Full first name, middle initial, and last name;
  - Social security number or individual taxpayer identification number;
  - Date of birth;
  - Mailing address;
  - Sex; and
  - Race.

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<sup>82</sup> Section 943.053(13), F.S., provides criteria which must be followed in order for the FDLE to accept fingerprint submissions from private vendors, entities, or agencies.

<sup>83</sup> This cost is already borne by the applicant under current law requiring level 2 background screening for certified peer specialists. *See* ss. 397.4073(1)(a)3. and 408.809(5), F.S.

<sup>84</sup> Section 943.053, F.S., provides, among other things, standards for vendors meant to ensure that all persons having direct or indirect responsibility for verifying identification, taking fingerprints, and electronically submitting fingerprints are qualified to do so and will ensure the integrity and security of all personal information gathered from the persons whose fingerprints are submitted.

The bill provides that a background screening of a peer specialist must ensure that a prospective peer specialist has not been arrested for and awaiting final disposition of, found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any felony within the past three years.

The bill also amends s. 394.417, F.S., specifying a list of enumerated offenses for which the applicant has not, at any time, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, which is modified from the list currently included in the level 2 background screening requirements under s. 435.04, F.S. The offenses included are:

- Section 393.135, F.S., relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- Section 394.4593, F.S., relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- Section 409.920, F.S., relating to Medicaid provider fraud, if the offense was a felony of the first or second degree.<sup>85</sup>
- Section 415.111, F.S., relating to abuse, neglect, or exploitation of vulnerable adults.
- Section 741.28, F.S., relating to domestic violence.
- Section 777.04, F.S., relating to attempts, solicitation, and conspiracy to commit an offense listed in this paragraph.
- Section 782.04, F.S., relating to murder.
- Section 782.07, F.S., relating to manslaughter, aggravated manslaughter of an elderly person or a disabled adult, aggravated manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.
- Section 782.071, F.S., relating to vehicular homicide.
- Section 782.09, F.S., relating to killing an unborn child by injury to the mother.
- Chapter 784, F.S., relating to assault, battery, and culpable negligence, if the offense was a felony.
- Section 787.01, F.S., relating to kidnapping.
- Section 787.02, F.S., relating to false imprisonment.
- Section 787.025, F.S., relating to luring or enticing a child.
- Section 787.04(2), F.S., relating to leading, taking, enticing, or removing a minor beyond state limits, or concealing the location of a minor, with criminal intent pending custody proceedings.
- Section 787.04(3), F.S., relating to leading, taking, enticing, or removing a minor beyond state limits, or concealing the location of a minor, with criminal intent pending dependency proceedings or proceedings concerning alleged abuse or neglect of a minor.
- Section 790.115(1), F.S., relating to exhibiting firearms or weapons within 1,000 feet of a school.
- Section 790.115(2)(b), F.S., relating to possessing an electric weapon or device, a destructive device, or any other weapon on school property.
- Section 794.011, F.S., relating to sexual battery.

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<sup>85</sup> A second degree felony is punishable by up to 15 years imprisonment and up to a \$10,000 fine. Sections 775.082 and 775.083, F.S.

- Former s. 794.041, F.S., relating to prohibited acts of persons in familial or custodial authority.
- Section 794.05, F.S., relating to unlawful sexual activity with certain minors.
- Section 794.08, F.S., relating to female genital mutilation.
- Section 796.07, F.S., relating to procuring another to commit prostitution, except for those offenses expunged pursuant to s. 943.0583, F.S.
- Section 798.02, F.S., relating to lewd and lascivious behavior.
- Chapter 800, F.S., relating to lewdness and indecent exposure.
- Section 806.01, F.S., relating to arson.
- Section 810.02, F.S., relating to burglary, if the offense was a felony of the first degree.<sup>86</sup>
- Section 810.14, F.S., relating to voyeurism, if the offense was a felony.
- Section 810.145, F.S., relating to video voyeurism, if the offense was a felony.
- Section 812.13, F.S., relating to robbery.
- Section 812.131, F.S., relating to robbery by sudden snatching.
- Section 812.133, F.S., relating to carjacking.
- Section 812.135, F.S., relating to home-invasion robbery.
- Section 817.034, F.S., relating to communications fraud, if the offense was a felony of the first degree.
- Section 817.234, F.S., relating to false and fraudulent insurance claims, if the offense was a felony of the first or second degree.
- Section 817.50, F.S., relating to fraudulently obtaining goods or services from a health care provider and false reports of a communicable disease.
- Section 817.505, F.S., relating to patient brokering.
- Section 817.568, F.S., relating to fraudulent use of personal identification, if the offense was a felony of the first or second degree.
- Section 825.102, F.S., relating to abuse, aggravated abuse, or neglect of an elderly person or a disabled adult.
- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or a disabled person.
- Section 825.103, F.S., relating to exploitation of an elderly person or a disabled adult, if the offense was a felony.
- Section 826.04, F.S., relating to incest.
- Section 827.03, F.S., relating to child abuse, aggravated child abuse, or neglect of a child.
- Section 827.04, F.S., relating to contributing to the delinquency or dependency of a child.
- Former s. 827.05, F.S., relating to negligent treatment of children.
- Section 827.071, F.S., relating to sexual performance by a child.
- Section 831.30, F.S., relating to fraud in obtaining medicinal drugs.
- Section 831.31, F.S., relating to sale, manufacture, delivery, possession with intent to sell, manufacture, or deliver of any counterfeit controlled substance, if the offense was a felony.
- Section 843.01, F.S., relating to resisting arrest with violence.
- Section 843.025, F.S., relating to depriving a law enforcement, correctional, or correctional probation officer of the means of protection or communication.
- Section 843.12, F.S., relating to aiding in an escape.

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<sup>86</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

- Section 843.13, F.S., relating to aiding in the escape of juvenile inmates of correctional institutions.
- Chapter 847, F.S., relating to obscenity.
- Section 874.05, F.S., relating to encouraging or recruiting another to join a criminal gang.
- Chapter 893, F.S., relating to drug abuse prevention and control, if the offense was a felony of the second degree or greater severity.
- Section 895.03, F.S., relating to racketeering and collection of unlawful debts.
- Section 896.101, F.S., relating to the Florida Money Laundering Act.
- Section 916.1075, F.S., relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- Section 944.35(3), F.S., relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- Section 944.40, F.S., relating to escape.
- Section 944.46, F.S., relating to harboring, concealing, or aiding an escaped prisoner.
- Section 944.47, F.S., relating to introduction of contraband into a correctional institution.
- Section 985.701, F.S., relating to sexual misconduct in juvenile justice programs.
- Section 985.711, F.S., relating to introduction of contraband into a detention facility.

The new screening requirements of the bill eliminate the following disqualifying offenses from current law for peer specialists:

- Misdemeanor assault or battery (Ch. 784, F.S.);
- Prostitution (Ch. 796, F.S.), with the exception of those offenses listed in s. 796.07, F.S., which have not been expunged;
- Second or third degree burglary (s. 810.02, F.S.);
- Lower level theft offenses (Ch. 812, F.S.);
- Third degree felony drug offenses (s. 817.563 and Ch. 893, F.S.);
- Credit card fraud (ss. 817.481, 817.60, and 817.61, F.S.); and
- Forgery (ss. 831.01, 831.02, 831.07 and 831.09, F.S.).

The new screening requirements of the bill add the following disqualifying offenses to the list of those currently enumerated in s. 435.04(2), F.S., for peer specialists:

- First degree Medicaid provider fraud (s. 409.920, F.S.);
- Second degree Medicaid provider fraud (s. 409.920, F.S.);
- Female genital mutilation (s. 794.08, F.S.);
- First degree communications fraud (s. 817.034, F.S.);
- First degree insurance fraud (s. 817.234, F.S.);
- Second degree insurance fraud (s. 817.234, F.S.);
- Fraudulently obtaining goods or services from a health care provider (s. 817.50, F.S.);
- False reporting of a communicable disease (s. 817.50, F.S.);
- Patient brokering (s. 817.505, F.S.);
- First degree fraudulent use of personal identification information (s. 817.568, F.S.);
- Second degree fraudulent use of personal identification information (s. 817.568, F.S.);
- Fraud in obtaining medicinal drugs (s. 831.30, F.S.); and
- Sale, manufacture, or delivery of a counterfeit controlled substance, or possession with intent to sell, manufacture, or deliver a counterfeit controlled substance (s. 831.30, F.S.)

The bill allows individuals who wish to become peer specialists but have a disqualifying offense in their background to request an exemption from disqualification pursuant to s. 435.07, F.S., from the DCF or the AHCA, as applicable.

The bill offers a grandfather clause to allow all peer specialists certified as of July 1, 2021 to be recognized as having met the requirements of the bill.

The bill is effective July 1, 2021.

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

##### **A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the State Constitution.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

None identified.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

The bill eliminates several disqualifying criminal offenses which often result in disqualification from certification eligibility, and as a result the DCF predicts that there may be additional revenues generated for certification providers from fees paid by a greater number of individuals seeking certification.<sup>87</sup>

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<sup>87</sup> The DCF Analysis at p. 6.

**C. Government Sector Impact:**

The DCF estimates there may be a negative impact to state government due to a potential increase in background screenings being conducted, and a possible increase in the number of exemptions from disqualification requested, leading to a heavier workload for the Background Screening Office.<sup>88</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 394.4573, 397.4073, and 397.417.

**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.

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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>88</sup> *Id* at p. 5.