

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 7039 PCB CFS 21-01 Child Welfare

SPONSOR(S): Health & Human Services Committee and Children, Families & Seniors Subcommittee, Altman and others

TIED BILLS: IDEN./SIM. BILLS: CS/CS/CS 96

FINAL HOUSE FLOOR ACTION: 116 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 7039 passed the House on April 28, 2021, as CS/CS/SB 96 as amended. The Senate concurred in the House amendment to the Senate bill and subsequently passed the bill as amended on April 28, 2021.

The bill makes changes to the child welfare and mental health systems administered by the Department of Children and Families (DCF) to better protect children from abuse and neglect and to improve the state's system of community-based child welfare and mental health and substance abuse services.

The bill reorganizes and relocates statutes on reporting of child abuse, abandonment, and neglect and requires cross-reporting of child abuse and animal cruelty by child protective investigators (CPIs) and animal control officers. It requires suspension of an educator's certification for failing to report known child abuse under certain conditions and requires DCF to collect and analyze data on abuse that occurs at educational settings. The bill authorizes the Agency for Health Care Administration to receive child abuse and neglect reports and requires DCF to grant access to confidential and exempt records to a legislative committee within seven days, upon request.

The bill requires CPIs to continually evaluate the safety of children during investigations and requires root cause investigations of sexual abuse of a child in out-of-home care under certain circumstances.

The bill increases supports for caregivers and requires DCF and community-based care lead agencies (CBCs) to implement family finding and kinship navigator programs. It allows the Office of Criminal and Conflict and Civil Regional Counsels to establish a multidisciplinary legal representation model program to serve families in the dependency system.

The bill requires DCF to work with stakeholders to ensure children in foster care understand their rights. It authorizes district school boards to establish educational programs for students related to identifying and reporting child abuse, abandonment, and neglect.

The bill increases transparency regarding salaries, funding, and conflicts of interest of CBCs and mental health managing entities and requires them to identify themselves as DCF contractors. It increases transparency for case management performance and authorizes an alternative plan for community-based services where a CBC contract is infeasible.

The bill creates a Commission on Mental Health and Substance Abuse to examine the current provision of mental health and substance abuse services, as recommended by the grand jury convened after the Marjory Stoneman Douglas tragedy.

The bill aligns current law to new federal requirements regarding Title IV-E funding for child welfare.

The bill has an indeterminate, but likely negative, fiscal impact on DCF. The 2020-21 General Appropriations Act provides funding to implement provisions of the bill.

The bill was approved by the Governor on June 29, 2021, ch. 2021-170, L.O.F., the bill takes effect July 1, 2021 except as otherwise provided.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7039z1.CFS.DOCX

DATE: 7/6/2021

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Department of Children and Families

The Department of Children and Families (DCF) mission is to work in partnership with local communities to protect the vulnerable, promote strong and economically self-sufficient families, and advance personal and family recovery and resiliency.¹ DCF must develop a strategic plan to fulfill its mission and establish measureable goals, objectives, performance standards, and quality assurance requirements to ensure the department is accountable to taxpayers.²

Under s. 20.19(4), F.S., DCF must provide services relating to:

- Adult protection.
- Child care regulation.
- Child welfare.
- Domestic violence.
- Economic self-sufficiency.
- Homelessness.
- Mental health.
- Refugees.
- Substance abuse.

DCF administers the child welfare and behavioral health systems by contract through private providers.³ Local community-based care lead agencies (CBCs) and their contracted service agencies deliver child welfare services and regional managing entities (MEs) and their contracted providers deliver behavioral health services.

Florida's Child Welfare System

Chapter 39, F.S., creates the dependency system charged with protecting child welfare. Florida's child welfare system identifies children and families in need of services through reports to the central abuse hotline and child protective investigations. DCF and CBCs work with those families to address the problems endangering children, if possible. If the problems cannot be addressed, the child welfare system finds safe out-of-home placements for these children.

DCF's practice model is based on the safety of the child within the home by using in-home services, such as parenting coaching and counseling, to maintain and strengthen that child's natural supports in his or her environment.

A CBC is a single entity with which the department has a contract for the provision of care for children in the child protection and child welfare system. Services provided under these contracts include case management, out-of-home services, and related services.⁴ The outsourced provision of child welfare services is intended to increase local community ownership of service delivery and design. CBCs contract with a number of subcontractors for case management and direct care services to children and their families. There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.

¹ S. 20.19(1), F.S.

² *Id.*

³ *Id.*

⁴ S. 409.986(3)(d), F.S.

DCF remains responsible for a number of child welfare functions, including operating the central abuse hotline.⁵ Ultimately, DCF is responsible for program oversight and the overall performance of the child welfare system.⁶

The child welfare system includes the following key elements:

- A report to the central abuse hotline.
- A child protective investigation to determine the safety of the child.
- The court finding the child dependent, if the child is determined to need such protection.
- Case planning to address the problems resulting in the child's dependency.
- Reunification with the child's parent or another option to establish permanency, such as adoption.

Reporting Child Abuse, Abandonment, and Neglect

DCF operates the central abuse hotline (hotline), which accepts reports 24 hours a day, seven days a week, of known or suspected child abuse, abandonment or neglect.⁷ Statute mandates any person who knows or suspects that a child is abused, abandoned, or neglected to report such knowledge or suspicion to the hotline.⁸ A child protective investigation begins if the hotline determines the allegations meet the statutory definition of abuse, abandonment or neglect.⁹ A child protective investigator either verifies,¹⁰ does not substantiate,¹¹ or finds no indicators of abuse or neglect after a child protective investigation.¹² When a report made to the hotline does not allege abuse, neglect, or abandonment, DCF refers the reporter to other organizations that may better resolve the reporter's concerns. The following graphic displays the total number of hotline reports, how many reports were accepted for an investigation and how many children were served, either in-home or out-of-home, after an investigation during FY 2019-20.¹³

⁵ Office of Program Policy and Government Accountability, Child Welfare System Performance Mixed in First Year of Statewide Community-Based Care, Report 06-50, June 1, 2006.

⁶ *Id.*

⁷ S. 39.201(5), F.S.

⁸ S. 39.201(1)(a), F.S.

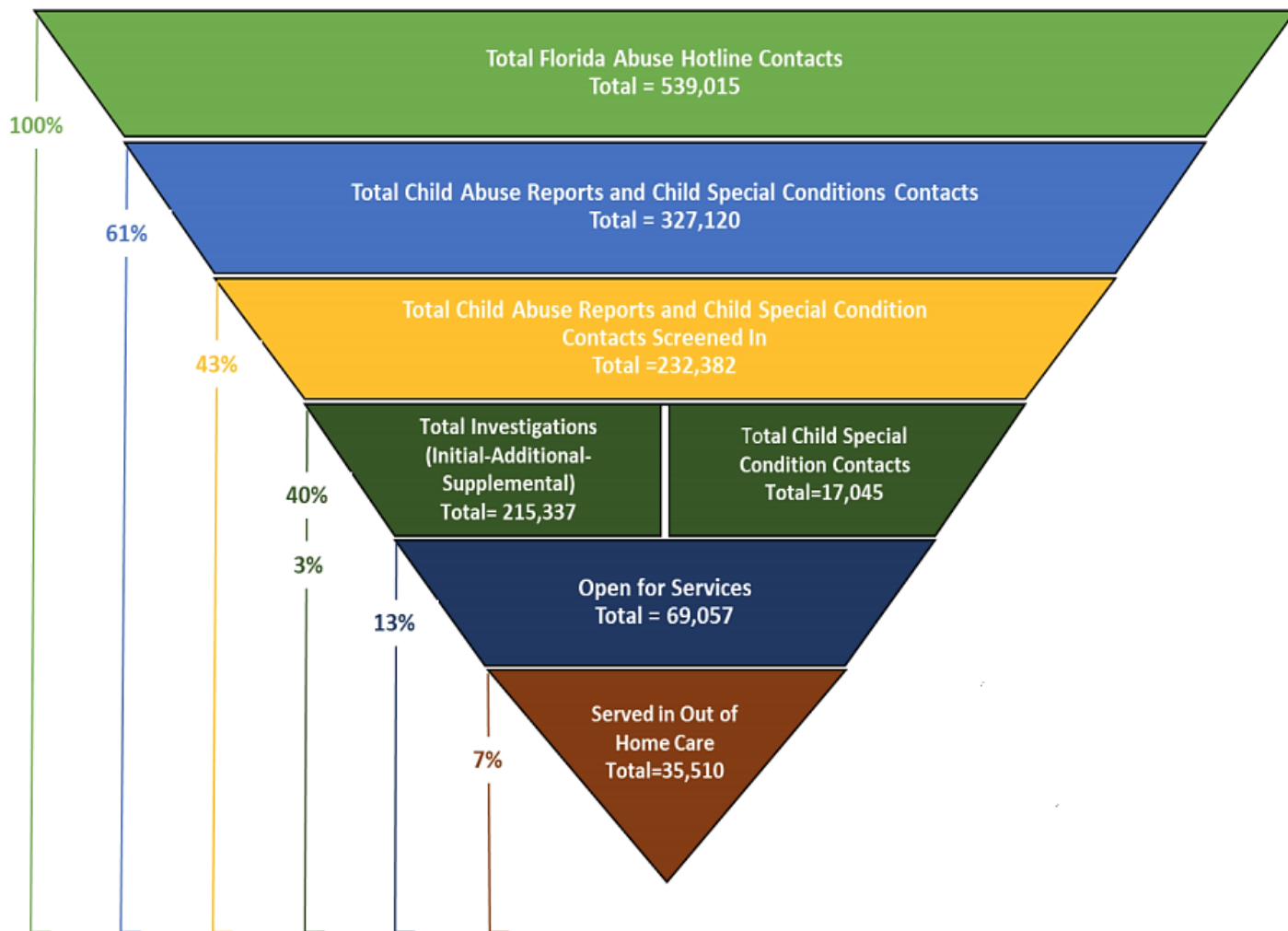
⁹ S. 39.201(2)(a), F.S.

¹⁰ "Verified" findings are when a preponderance of the evidence results in a determination the specific harm or threat of harm was the result of abuse, abandonment or neglect. These findings require the investigator to take action to protect the child. See Florida Department of Children and Families, CF Operating Procedure No. 170-5.

¹¹ "Not substantiated" findings result from an investigation when there is credible evidence which does not meet the standard of being a preponderance to support that the specific harm was the result of abuse, abandonment, or neglect. See Florida Department of Children and Families, CF Operating Procedure No. 170-5.

¹² "No indicators" findings result when there is no credible evidence to support the allegations of abuse, abandonment, or neglect. See Florida Department of Children and Families, CF Operating Procedure No. 170-5.

¹³ Florida Department of Children and Families, *Child Welfare Key Indicators Monthly Report* (Feb. 2021), http://centerforchildwelfare.fmhi.usf.edu/qa/cwkeyindicator/KI_Monthly_Report_Feb%202021.pdf (last visited Mar. 11, 2021).



The hotline must operate in a manner that allows DCF to:

- Immediately identify prior cases or reports.
- Monitor and evaluate the effectiveness of DCF's reporting and investigation program through the development and use of statistical and other information.
- Track critical steps in the investigative process to ensure compliance with all reporting requirements.
- Collect, analyze, and produce statistical reports, including an aggregate report on patterns of child abuse, abandonment, and neglect, including child-on-child sexual abuse.
- Prepare separate reports, as required under s. 39.201(4)(d), F.S., of child abuse and sexual abuse which are reported from or occurred on the campus of any Florida College System institution,¹⁴ state university,¹⁵ or nonpublic college, university, or school, as defined in ss. 1000.21 and 1005.02, F.S.
- Provide resources for the evaluation, management, and planning of preventive and remedial services for children who are or have been subject to abuse, abandonment, or neglect.

¹⁴ S. 1000.21(3), F.S., defines "Florida College System institution" to include a list of specified public postsecondary educational institutions in the Florida College System and any branch campuses, centers, or other affiliates of the institution, except as otherwise specifically provided.

¹⁵ S. 1000.21(6), F.S., provides "State University", includes a list of specified institutions and any branch campuses, centers, or other affiliates of the institutions, except as otherwise specifically provided.

- Initiate and enter into agreements with other states to gather and share information contained in reports on child maltreatment.¹⁶

Information received by the hotline may not be used for employment screening except in specified instances.¹⁷ As part of DCF's quality assurance program, it must review hotline reports to analyze when there are three or more unaccepted reports to identify patterns and initiate a case for investigation, if warranted.¹⁸

Current law requires an individual to make a report to the hotline if he or she knows or has reasonable cause to suspect that:

- A child has been abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare or that a child has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care;¹⁹
- A child has been abused by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare;²⁰ or
- A child is the victim of childhood sexual abuse or the victim of a known or suspected juvenile sexual offender.²¹

Florida law provides exceptions to reporting requirements in specified circumstances:²²

- A professional who is hired or contracted with DCF to provide treatment or counseling services to a child that is the subject of a report of his abuse, abandonment, or neglect;²³
- An officer or employee of the judicial branch when the child is currently being investigated, is the subject of an existing dependency case, or the matter has previously been reported to DCF;²⁴ or
- An officer or employee of law enforcement when the incident under investigation was reported to law enforcement by the hotline.²⁵

Chapter 39, F.S., does not require a reporter to disclose his or her identity to the hotline, but hotline personnel receive training in encouraging them to do so.²⁶ However, there are specified reporters who must disclose their names, including:

- Physicians, osteopathic physicians, medical examiners, chiropractic physicians, nurses, or hospital personnel engaged in the admission, examination, care, or treatment of persons.
- Health or mental health professionals other than those listed above.
- Practitioners who rely solely on spiritual means for healing.
- School teachers or other school officials or personnel.
- Social workers, day care center workers, or other professional childcare, foster care, residential, or institutional workers.
- Law enforcement officers.
- Judges.²⁷

DCF is required to have technology which allows it to obtain the number from which the reporter calls or faxes the report, or the internet protocol address from which the report is made.²⁸ Reporter names and

¹⁶ S. 39.201(4)(a)-(f), F.S.

¹⁷ S. 39.201(6), F.S.

¹⁸ S. 39.201(7), F.S.

¹⁹ S. 39.201(1)(a), F.S.

²⁰ S. 39.201(1)(b), F.S.

²¹ S. 39.201(1)(c), F.S.

²² S. 39.201(1)(g), F.S., provides that nothing in ch. 39, F.S., may be construed to remove or reduce any person's reporting requirement, including any employee of a community-based care lead agency provider.

²³ S. 39.201(1)(e), F.S.

²⁴ S. 39.201(1)(g), F.S.

²⁵ S. 39.201(1)(h), F.S.

²⁶ S. 39.201(2)(h), F.S.

²⁷ S. 39.201(1)(d), F.S.

²⁸ S. 39.201(2)(h), F.S.

numbers are entered into the record of the report, but are held confidential.²⁹ Hotline counselors must inform reporters about these confidentiality provisions.³⁰

Any person who is required to report or investigate child abuse, abandonment, or neglect cases and who has reasonable cause to suspect that a child died as a result of such treatment must report his or her suspicion to the medical examiner, who must accept the report for investigation and report his or her findings to designated agencies.³¹ Autopsy reports are not subject to confidentiality requirements authorized in s. 39.202, F.S.³²

A report to the hotline is the first step in the safety assessment and investigation process.³³ The type of alleged abuse and whether the allegation is against a parent, legal custodian, caregiver, or other person responsible for the child's welfare will determine the steps that DCF must take.³⁴

When allegations are made against a parent, legal custodian, caregiver,³⁵ or other person responsible for the child's welfare,³⁶ the hotline counselor must assess whether the report meets the statutory definition of abuse, abandonment, or neglect.³⁷ If they do, the report is accepted for a protective investigation.³⁸ All reports made by an emergency room physician must be investigated.³⁹ At the same time, DCF makes a determination regarding the timeline for which a protective investigation must be initiated. An investigation must be commenced within 24 hours in all child abuse, abandonment, or neglect cases, unless it requires an immediate investigation.⁴⁰ An immediate investigation is required if:

- It appears the child's immediate safety or well-being is endangered;
- The family may flee or the child will be unavailable for purposes of conducting a child protective investigation; or
- The facts otherwise so warrant.⁴¹

In some instances, DCF must immediately refer the report to local law enforcement,⁴² and in other instances DCF must offer voluntary community services.⁴³ DCF has other specific requirements with respect to reports involving juvenile sexual abuse or a child who has exhibited inappropriate sexual behavior. For such reports, DCF must immediately electronically transfer the report to the appropriate county sheriff's office; conduct an assessment and assist the family with receiving appropriate services; submit a written report within 48 hours to county sheriff's office; and inform the court of the allegations if the child is in the custody or under the protective supervision of the DCF.

²⁹ *Id.* See also s. 39.202, F.S., which is discussed in more detail below. Section 39.201(2)(i), F.S., specifies that DCF must record all incoming and outgoing calls to the hotline, and must keep an electronic copy which must only be disclosed to law enforcement, state attorney, or the DCF for purposes of conducting investigations pursuant to s. 39.205, F.S., or s. 39.206, F.S., respectively.

³⁰ *Id.*

³¹ S. 39.201(3), F.S.

³² *Id.*

³³ S. 39.201(4), F.S.

³⁴ See s. 39.201(2)(a) and (b), F.S.

³⁵ S. 39.01(10), F.S., defines "caregiver" as the parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child's welfare as defined in subsection (54).

³⁶ S. 39.01(54), F.S., defines "other person responsible for a child's welfare" to include the child's legal guardian or foster parent; an employee of any school, public or private child day care center, residential home, institution, facility, or agency; a law enforcement officer employed in any facility, service, or program for children that is operated or contracted by the Department of Juvenile Justice, with exceptions of specified personnel working in their official capacity. Section 39.201(2)(f), F.S., requires reports of known or suspected institutional child abuse or neglect to be made in the same manner as other reports under s. 39.201, F.S.

³⁷ S. 39.201(2)(a), F.S.

³⁸ *Id.*

³⁹ S. 39.201(2)(l), F.S.

⁴⁰ S. 39.201(5), F.S.

⁴¹ *Id.*

⁴² See s. 39.201(2)(b) and (e), F.S., which requires that reports of abuse by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare, and reports involving impregnation of a child under 16 years old by a person 21 years of age or older, must be immediately reported to the appropriate county sheriff.

⁴³ See s. 39.201(2)(a), F.S., which permits the hotline to accept a call from a parent or legal custodian seeking assistance which does not meet one of these statutory definitions to prevent a future risk of harm to a child and the DCF to provide voluntary community services if a need for them exists.

Report Confidentiality

Current law requires DCF to keep confidential all records relating to any reports of child abuse, abandonment, or neglect, including any report made to the hotline and all records generated as a result of such report.⁴⁴ DCF and any entity granted access to such records are exempt from the public disclosure requirements in s. 119.07(1), F.S.

However, s. 39.202(2), F.S., authorizes DCF to disclose reports and records, except for the reporter's name and other identifying information, to the following entities or individuals:

- DCF employees and contracted providers, the Department of Health, the Agency for Persons with Disabilities, the Office of Early Learning, and certain county agencies.
- Criminal justice agencies of appropriate jurisdictions.
- The state attorney of the judicial circuit in which the child resides or in which the alleged abuse or neglect occurred.
- The parent or legal custodian of any child and their attorneys, including any attorney representing a child in a civil or criminal proceeding.
- Any person alleged to have caused the child's abuse, abandonment, or neglect.

Chapter 39, F.S., does not address whether legislative committees may have access to confidential reports or records. Section 11.143(2), F.S., however, provides that each committee has the right and authority to inspect and investigate the books, records, papers, documents, data, and operation of any public agency in Florida, including confidential information, to carry out its duty.

Penalties for Failing to Report

Current law subjects a person to penalties for failing to report known or suspected child abuse, abandonment, or neglect, or for willfully preventing another person from making such report.⁴⁵ Any person who violates this law commits a third degree felony.⁴⁶

Florida law also provides that a person who is 18 years of age or older and lives in the same house as a child who is known or suspected to be a victim of child abuse, neglect, or aggravated child abuse, and knowingly and willfully fails to report the child abuse commits a third degree felony, unless the court finds that the person is a victim of domestic violence or that other mitigating circumstances exist.⁴⁷

Educational entities, including Florida College System institutions, state universities, or nonpublic colleges, universities or schools, and their administrators, are also subject to penalties for failing to report child abuse, neglect or abandonment.⁴⁸ These schools or their administrators who knowingly and willfully, upon receiving information from faculty, staff, or other institution employees, fail to report known or suspected child abuse, abandonment, or neglect committed on the property of the school or during an event sponsored by the school, or who knowingly and willfully prevent another person from doing so, are subject to fines of \$1 million for each such failure.⁴⁹

Current law grants the Education Practices Commission (EPC) authority to discipline specified

⁴⁴ S. 39.202(1), F.S.

⁴⁵ S. 39.205(1), F.S.

⁴⁶ S. 39.205(1), F.S. A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

⁴⁷ S. 39.205(2), F.S.

⁴⁸ S. 39.205(3), F.S.

⁴⁹ *Id.* Current law also states that any Florida College System institution, state university, or nonpublic college, university, or school, as defined in s. 1000.21 or s. 1005.02, whose law enforcement agency fails to report known or suspected child abuse, abandonment, or neglect committed on the property of such schools or during an event sponsored by such schools are subject to fines of \$1 million for each such failure to report. Section 39.205(4), F.S.

instructional personnel⁵⁰ and school administrators⁵¹ in various circumstances.⁵² The EPC may, for instance, suspend the educator certificates of such individuals for up to 5 years, which would deny the right to teach or be employed in any capacity by a district school board or public school that would require direct contact with students for that time period.⁵³ There are a number of circumstances that are grounds for suspending an educator certificate.⁵⁴

Florida law is currently does not specifically address whether the EPC must suspend the certificate of instructional personnel or a school administrator for failing to report child abuse, abandonment, or neglect as required under s. 39.201, F.S.

Child Abuse and Animal Cruelty

Recent studies suggest a link between animal abuse and harm to other persons:⁵⁵

- Animal abusers are five times as likely to harm humans.⁵⁶
- Sixty percent of families under investigation for child abuse, and 88 percent for physical child abuse, reported animal cruelty.⁵⁷
- Children who abuse animals are 2-3 times more likely to have been abused themselves.⁵⁸

The National School Safety Council, the U.S. Department of Education, the American Psychological Association, and the National Crime Prevention Council agree that animal cruelty is a warning sign for at-risk youth.⁵⁹

In 1983, a study found parallels between the potential origins of violence to children and to animals.⁶⁰ A six-year “gold standard” study conducted in 11 cities found that pet abuse is one of four predictors of domestic violence.⁶¹ More than 50 percent of women entering domestic violence shelters reports that their partners abused or killed a family pet.⁶²

Several states have adopted cross-reporting laws that require officials investigating child abuse to report animal abuse and officials investigating animal abuse to report child abuse.⁶³ At least 28 states have counseling provisions in their laws relating to animal cruelty.⁶⁴ Four of these states require a

⁵⁰ S. 1012.01(2), F.S., defines “instructional personnel” as any K-12 staff member whose function includes the provision of direct instructional services to students. Instructional personnel also includes K-12 personnel whose functions provide direct support in the learning process of students. Instructional personnel include a specified list of personnel of K-12 schools.

⁵¹ S. 1012.01(3)(c), F.S., states that “school administrators” includes school principals or school directors who are staff members performing the assigned activities as the administrative head of a school and to whom have been delegated responsibility for the coordination and administrative direction of the instructional and noninstructional activities of the school. This classification also includes career center directors and assistant principals who are staff members assisting the administrative head of the school. This classification also includes assistant principals for curriculum and administration.

⁵² S. 1012.795(1), F.S.

⁵³ *Id.*

⁵⁴ See s. 1012.795(1), F.S., for a list of circumstances.

⁵⁵ See Animal Legal Defense Fund, *The Link Between Cruelty to Animals and Violence Toward Humans*, <https://aldf.org/article/the-link-between-cruelty-to-animals-and-violence-toward-humans-2/> (last visited May 10, 2021).

⁵⁶ *Id.*

⁵⁷ The National Sheriffs’ Association, *Animal Cruelty and Child Abuse*, <https://www.sheriffs.org/Animal-Cruelty-and-Child-Abuse> (last visited May 10, 2021).

⁵⁸ Lardeiri, A., U.S. News and World Report, *Juvenile Animal Abusers More Likely to Have Been Abused Themselves*, <https://www.usnews.com/news/national-news/articles/2018-07-16/juvenile-animal-abusers-more-likely-to-have-been-abused-themselves> (last visited May 10, 2021).

⁵⁹ The Humane Society of the United States, *Animal Cruelty and Human Violence*, <https://www.humanesociety.org/resources/animal-cruelty-and-human-violence-faq> (last visited May, 10, 2021).

⁶⁰ DeViney, E., Dickert, J., & Lockwood, R., *The Care of Pets within Child Abusing Families*, *International Journal for the Study of Animal Problems*, 4(4), 321-329, 328.

⁶¹ *Supra* note 59.

⁶² *Id.*

⁶³ American Veterinary Medical Association, *Cross-Reporting of Animal and Child Abuse*, April 2018, <https://www.avma.org/advocacy/state-local-issues/cross-reporting-animal-and-child-abuse> (last visited May 10, 2021).

⁶⁴ *Supra* note 59.

person convicted of animal cruelty to participate in psychological counseling and six of them mandate counseling for juveniles convicted of animal cruelty.⁶⁵

Florida law is silent on cross-reporting of known or suspected child abuse, abandonment, or neglect and instances of animal cruelty.

Animal Control Ordinances

Government municipalities have the authority to enact ordinances relating to animal control or cruelty within certain specified restrictions or criteria.⁶⁶ If a person violates a duly enacted ordinance, a citation⁶⁷ may be issued by an officer,⁶⁸ including an animal control officer.

An animal control officer is any person employed or appointed by a county or municipality who is authorized to investigate, on public or private property, civil infractions relating to animal control or cruelty⁶⁹ and to issue citations.⁷⁰ Animal control officers are required to complete a 40-hour minimum standards training course, which must cover specified topics, and 4 hours of post-certification every 2 years thereafter.⁷¹ Animal control officers are not currently required to receive training on child abuse, abandonment, or neglect.

Child Protective Investigations

DCF conducts a child protective investigation if a hotline report meets the statutory definition of child abuse, abandonment, or neglect. The child protective investigator assesses the safety and perceived needs of the child and family, and if services are needed, whether the child should receive in-home or out-of-home services.

Institutional Child Abuse, Abandonment, and Neglect

Institutional child abuse or neglect includes situations of known or suspected child abuse in which the person allegedly perpetrating the child abuse or neglect is an employee of a public or private school, public or private day care center, residential home, institution, facilitator, or agency or any other person at such institution responsible for the child's welfare.⁷² Under current law, DCF must conduct a child protective investigation of any report of institutional child abuse, abandonment, or neglect.⁷³ Upon receipt of such report, DCF must initiate an investigation within the time provided in s. 39.201(5), F.S., and must notify the state attorney, law enforcement agency, and licensing agency that must conduct a joint investigation, unless independent investigations are more feasible.⁷⁴

DCF must give each agency who is conducting a joint investigation full access to the information it has gathered and provide an oral and written report to the state attorney.⁷⁵ The state attorney must also

⁶⁵ *Id.*

⁶⁶ S. 828.27(2), F.S.

⁶⁷ S. 828.27(1)(f), F.S., defines "citation" as a written notice, issued to a person by an officer, that the officer has probable cause to believe that the person has committed a civil infraction in violation of a duly enacted ordinance.

⁶⁸ S. 828.27(1)(e), F.S., defines "officer" as any law enforcement officer defined in s. 943.10, F.S., or any animal control officer. Section 943.10(1), F.S., defines "law enforcement officer" to mean any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws.

⁶⁹ S. 828.27(1)(d), F.S., defines "cruelty" as any act of neglect, torture, or torment that causes unjustifiable pain or suffering to an animal.

⁷⁰ S. 828.27(1)(b), F.S.

⁷¹ S. 828.27(4)(a), F.S.

⁷² S. 39.01(37), F.S.

⁷³ S. 39.302(1), F.S.

⁷⁴ *Id.*

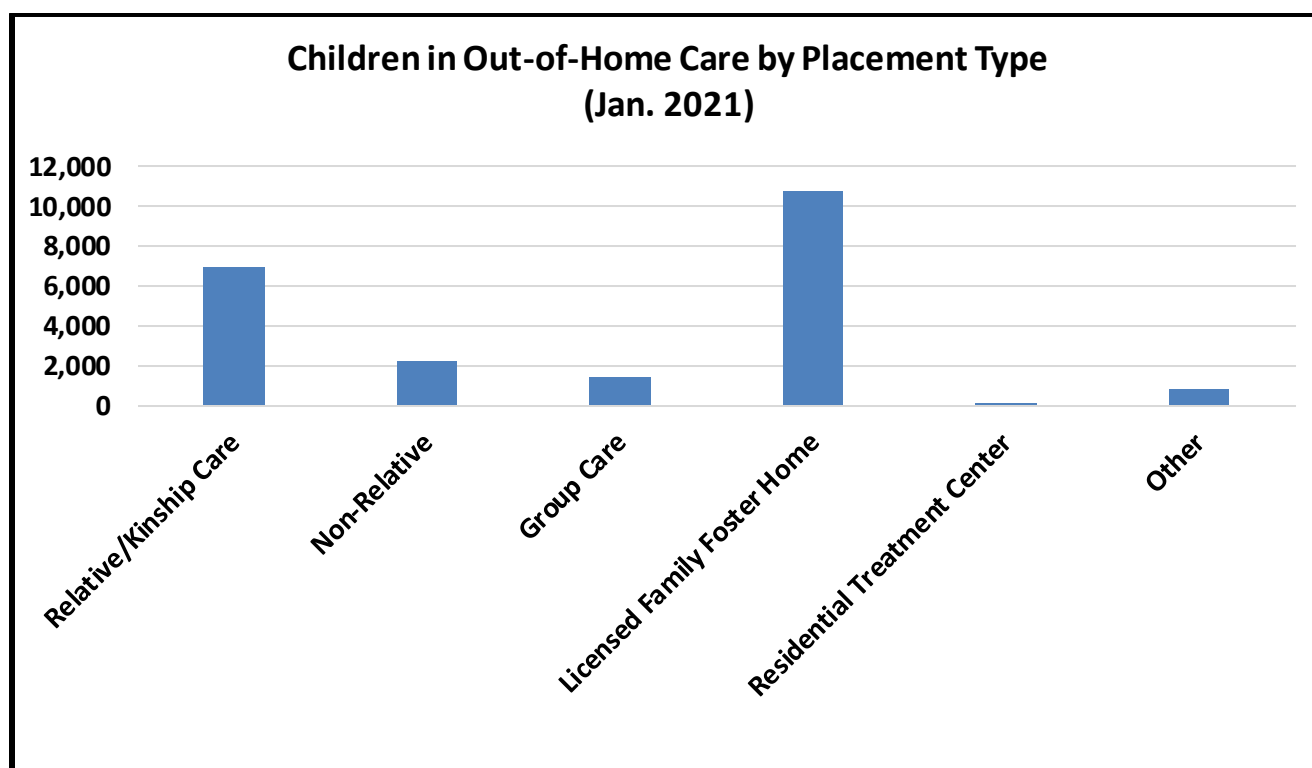
⁷⁵ *Id.*

provide DCF with a copy of its report and conclusion on whether prosecution is justified and appropriate within 15 days after the investigation is completed.⁷⁶

If the person who is the subject of the report constitutes a threatened harm to the welfare of children by continued contact with them, DCF may restrict his or her access by the least restrictive means necessary to ensure the children's safety which may be effective, for no more than 90 days without a judicial review.⁷⁷ The subject may petition the court for a judicial review, and the court would be required to make specified findings.⁷⁸ Upon completion of its protective investigation, DCF may motion the court to continue the restrictive action against the subject to ensure the children's safety.⁷⁹

Out-of-Home Placements

When children cannot safely remain at home with parents, Florida's child welfare system finds safe out-of-home placements for children. As of January 21, 2021, there were 22,473 children in out-of-home care.⁸⁰ After a placement assessment to determine the most appropriate out-of-home placement, a child may be placed with a relative, fictive kin⁸¹, licensed foster parent, in a group home or residential setting.⁸² The graph below provides information on the out-of-home placements of children in the child welfare system.⁸³



Family-Finding Programs

Section 39.4015, F.S., creates the framework for Florida's family finding program that serves as a

⁷⁶ S. 39.302(1), F.S.

⁷⁷ S. 39.302(2)(b), F.S.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Supra* note 13, p. 31.

⁸¹ S. 39.01(29) defines "fictive kin" as a person unrelated by birth, marriage, or adoption who has an emotionally significant relationship, which possesses the characteristics of a family relationship, to a child.

⁸² R. 65C-28.004, F.A.C.

⁸³ Department of Children and Families, *Children & Young Adults in Out-of-Home Care - Statewide*, <https://www.myflfamilies.com/programs/childwelfare/dashboard/c-in-ooh.shtml> (last visited May 12, 2021).

resource for DCF and CBCs to identify and engage potential relatives and fictive kin caregivers who could be caregivers for children entering out-of-home care. DCF and CBCs are authorized to establish formal family-finding programs. If implemented, family finding begins as soon as a child is taken into custody by DCF and throughout the duration of the dependency case to find and engage with as many family members and fictive kin as possible.⁸⁴ Strategies of engagement may include, but are not limited to, asking the identified relatives and fictive kin to:

- Participate in a family group decisionmaking conference, family team conferencing, or other family meetings aimed at developing or supporting the family service plan.
- Attend visitations with the child.
- Assist in transportation of the child.
- Provide respite or child care services.
- Provide actual kinship care.

If implemented, the family finding program must use diligent efforts in family finding, must continue efforts until multiple relatives and fictive kin are identified, and must go beyond basic searching tools by exploring alternative tools and methodologies.⁸⁵

Kinship Navigator Programs

Kinship navigator programs assist relative caregivers and fictive kin by providing access to a broad range of services and supports that help meet the needs of children in their care. They help caregivers navigate the services available to them by offering general information, referrals to specialists, and eligibility requirements for certain benefits. Kinship navigator programs are intended to be a “one stop shop” for relatives seeking accurate and up-to-date information about the benefits, services, supports, and programs available for kinship caregivers.⁸⁶

Section 39.5086, F.S., authorizes CBCs to establish kinship navigator programs but does not require them to do so. The programs help relative caregivers and fictive kin navigate the broad range of services available to them and the children in their care from public, private, community, and faith-based organizations.

The Florida Institute for Child Welfare at the Florida State University conducted a study in 2019 to determine the availability of kinship caregiver services in each CBC area.⁸⁷ The quantitative measures for the study included document review and CBC leadership and provider surveys that asked participants to identify which of the 42 best-practice kinship caregiver services⁸⁸ considered essential to kinship navigator programs were available in their service area.⁸⁹ Only seven of the 17 CBCs who participated in the survey reported having at least 32 of the 42 best-practice services.⁹⁰ The results of the study found that kinship caregivers needed increased access to respite care, support for kinship caregivers, navigation, and funding.⁹¹

Licensed Family Foster Homes

Children who are receiving care out-of-home can be placed in a foster home with foster parents licensed by CBCs or their subcontractors. As part of the licensure process, all prospective caregivers

⁸⁴ S. 39.4015(3)(a), F.S.

⁸⁵ S. 39.4015(3)(b), F.S.

⁸⁶ American Bar Association, *Kinship Care Navigator Programs: An overview of Existing Programs and a Look to the Future*, https://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/navigator_program/authcheckdam/pdf (last visited May 10, 2021).

⁸⁷ Florida Institute of Child Welfare, *Inventory of Kinship Care Services in Florida*, (Sep. 30, 2010), http://centerforchildwelfare.fmhi.usf.edu/kb/RelCaregivers/FL_Kinship%20Care%20Services_Inventory_FICW_09302019.pdf (last visited May 12, 2021).

⁸⁸ *Id.* at pg. 50 (a complete list of the 42 best-practice kinship care services).

⁸⁹ *Supra* note 87.

⁹⁰ *Id.*

⁹¹ *Id.*

must complete criminal background checks before a child is placed in their care.⁹² As of January 2021, there were 8,493 licensed foster homes in Florida.⁹³

Foster parents care for the children placed in their home and serve as role models for the biological parents working to reunify with their children. To qualify as a potential foster parent, applicants must go through a rigorous interview process, complete a training program, and participate in a home inspection and background check.⁹⁴

Section 409.1415, F.S., requires parenting partnerships between caregivers and birth or legal parents when children are in out-of-home care so caregivers provide quality support and encourage reunification. DCF and CBCs are required to support parenting partnerships when it is safe and in the child's best interest by taking specific steps to facilitate, develop plans for, and support contact between caregivers and birth or legal parents.⁹⁵ Section 409.1415(2)(b), F.S., requires DCF, CBCs, caregivers, and birth or legal parents to work cooperatively and comply with specified requirements.

Section 409.1453, F.S., requires DCF in collaboration with the Florida Foster and Adoptive Parent Association (FAPA)⁹⁶ and the Quality Parenting Initiative (QPI)⁹⁷ to design training for caregivers on life skills necessary for youth in out-of-home care. This section of law was enacted in 2013 as part of the bill establishing extended foster care and postsecondary services and supports programs.

In September 2020, DCF launched Florida's Foster Information Center. It is staffed by current or former foster parents to answer questions and provide guidance to individuals interested in becoming foster parents. By the end of October 2020, 747 individuals inquired about fostering, and of those, 413 prospective foster parents were connected with their local licensing specialist to discuss next steps.⁹⁸

Section 409.175, F.S., limits the total number of children who can be placed in each licensed family foster home. The total number of children placed in each home is based on the recommendation of DCF or CBC considering the:

- Needs of each child in care.
- Ability of the foster family to meet the individual needs of each child, including any adoptive or biological children or young adults remaining in foster care living in the home.
- Amount of safe physical plant space.
- Ratio of active and appropriate adult supervision.
- Background, experience, and skills of the family foster parents.⁹⁹

⁹² S. 39.0138, F.S.

⁹³ Florida Department of Children and Families, *Child Welfare, Placement in Out-of-Home Care Data*, <https://www.myflfamilies.com/programs/childwelfare/placement.shtml#2> (last visited Mar. 11, 2021).

⁹⁴ Florida Department of Children and Families, *How Do I Become a Foster Parent*, <https://www.myflfamilies.com/service-programs/foster-care/how-do-i.shtml> (last visited May 12, 2021).

⁹⁵ S. 409.1415(2)(a), F.S.

⁹⁶ FAPA is a membership organization for foster, adoptive, and other caregivers in Florida. Its aim is to educate caregivers and parents, and promote a spirit of cooperation of all entities involved in the child welfare system. FAPA provides support and resources to caregivers to help develop healthy families. Florida Department of Children and Families, *Foster Care*, <https://www.myflfamilies.com/service-programs/foster-care/support-fostering.shtml>. Florida FAPA, About Florida FAPA, <http://floridafapa.org/about-us/> (all sites last visited March 10, 2021).

⁹⁷ The QPI is a national movement for foster care change which focuses on creating a system that gives parents the tools to provide excellent parenting every day. The QPI system requires the support and involvement of birth families, relative caregivers, foster families, young people, and others in the child welfare system. It consists of a network of states, including Florida, as well as counties and private agencies that are committed to ensuring all children in care have excellent parenting and lasting relationships so they can thrive and grow. Florida implemented this program as a pilot in 2008. The QPI, *What is QPI*, Jan. 2021, <https://www.qpi4kids.org/what-is-qpi/>; The QPI Florida, *No Place Like Home*, October 22, 2010, <http://centerforchildwelfare.fmhi.usf.edu/qpi1/docs/ReviewOfQPI2011.pdf>. Florida Department of Children and Families, *Independent Living, The Quality Parenting Initiative, Frequently Asked Questions*, <https://www.myflfamilies.com/service-programs/independent-living/myfuturemychoice-fp-fags.shtml> (all sites last visited March 10, 2021).

⁹⁸ Email from Florida Department of Children and Families, *DCF Secretary Chad Poppell Outlines Transformative Successes Achieved Under Governor Ron DeSantis' Leadership in 2020* (Dec. 23, 2020) (on file with the Children, Families, and Seniors Subcommittee staff).

⁹⁹ S. 409.175(3)(a), F.S.

If the total number of children in a family foster home will exceed five, including the family's own children, an assessment of each child to be placed in the home must be completed and approved prior to placement of any additional children in the home.¹⁰⁰ Federal law allows for six children to be placed in a family foster home, excluding the foster parents own children, prior to being considered for an over-capacity assessment.¹⁰¹ Federal law permits a home to exceed its capacity only to allow:

- A parenting youth in foster care to remain with the child of the parenting youth.
- Siblings to remain together.
- A child with an established meaningful relationship with the family to remain with the family.
- A family with special training or skills to provide care to a child who has a severe disability.¹⁰²

Residential Group Care

DCF licenses residential group care (RGC) placements as residential child-caring agencies¹⁰³ that provide staffed 24-hour care for children in facilities maintained for that purpose.¹⁰⁴ These include maternity homes, runaway shelters, group homes, and emergency shelters.¹⁰⁵ As of January 2021, 1,406 children were in a RGC placement.¹⁰⁶

An employee of a residential group home must meet the same background screening requirements under s. 39.0138, F.S., and the level 2 screening standards for screening under ch. 435, F.S.¹⁰⁷ An employee of a residential group home who works directly with a child as a caregiver must meet, at minimum, the same education, training, background, and other screening requirements as caregivers in family foster homes.¹⁰⁸

The Children's Bureau within the United States Department of Health and Human Services conducted a technical assistance review of DCF in November 2018, showing that several cases failed the review due to a lack of complete background screenings of employees in group homes.¹⁰⁹ If the review would have been an actual audit, the assessed penalties would have been approximately \$2 million.¹¹⁰ In response, DCF developed a corrective action plan.¹¹¹ One requirement for foster parents' background screening entails "911 calls to service" (report on the number of times law enforcement responds to a call) to a foster parent's home. Children in group care settings are not located at the employee's home; therefore, their home is not a safety factor like it would be in a foster home.

A decrease in workload for law enforcement and delays in completing the requested checks could result by eliminating the "911 calls to service" for group care providers. In addition, DCF could increase compliance with employee screening of group homes.

Residential Treatment Centers

¹⁰⁰ S. 409.175(3)(b), F.S.

¹⁰¹ 42 U.S.C. §672(c)(1)(A)(III).

¹⁰² 42 U.S.C. §(c)(1)(B).

¹⁰³ S. 409.175, F.S.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Supra* note 13, p. 31.

¹⁰⁷ S. 409.1415(2)(c), F.S.

¹⁰⁸ *Id.*

¹⁰⁹ Florida Department of Children and Families, *2021 Agency Bill Analysis* (July 17, 2020)(on file with the Children, Families, and Seniors Subcommittee).

¹¹⁰ *Id.*

¹¹¹ *Id.*

Residential Treatment Centers (RTCs) are licensed by the Agency for Health Care Administration (AHCA) under s. 394.875, F.S., and include hospitals licensed under ch. 395, F.S., that provide residential mental health treatment.

Section 39.407(6), F.S., authorizes DCF to place a child who is in its custody in an RTC or a hospital for residential mental health treatment under certain circumstances and allows the court to place the child in an RTC or a hospital for residential mental health treatment. Before admittance, the child must be assessed for suitability for residential treatment by a qualified evaluator appointed by AHCA. The qualified evaluator must do personal examination and assessment. As of January 2021, 189 children were in a RTC placement.

Section 409.202(2), F.S., does not provide AHCA the capability to complete child abuse and neglect record checks for employees who work in direct contact with children placed by DCF in facilities licensed by AHCA.

Rights of and Goals for Children in Foster Care

The U.S. and Florida Constitutions provide rights to individuals, including children in foster care, as do certain federal and state laws. Examples include basic rights and a right to privacy under Article I, §2 and Article I, §23 of the Florida Constitution, the right to high quality education under Article IX of the Florida Constitution, and due process rights under the U.S. Constitution.

When a state takes a child into custody, it accepts responsibility for the child's safety.¹¹² Courts have found that foster children have a constitutional right to be free from unnecessary pain and a fundamental right to physical safety.¹¹³ When a state fails to meet that obligation, it deprives the child of a liberty interest under the Fourteenth Amendment.¹¹⁴

Section 39.4085, F.S., sets forth goals¹¹⁵ for the delivery of services to children in shelter or foster care, including that services should be directed by the principle that the health and safety of children should be of paramount concern and children in shelter or foster care should:

- Receive a copy of these goals and have the goals fully explained to them when they are placed in the custody of DCF.
- Enjoy individual dignity, liberty, pursuit of happiness, and the protection of their civil and legal rights as a person while in the custody of the state.
- Have their privacy protected, have their personal belongings secure and transported with them, and unless otherwise ordered by the court, have uncensored communication, including receiving and sending unopened communications and having access to a telephone.
- Have personnel providing services who are sufficiently qualified and experienced to assess the risks children face prior to removal from their home and to meet the needs of the children once they are in DCF's custody.
- Remain in the custody of their parents or legal custodians unless and until there has been a determination by a qualified person exercising competent professional judgment that removal is necessary to protect their physical, mental, or emotional health or safety.
- Have a full risk, health, educational, medical, and psychological screening, and, if needed, assessment and testing upon adjudication into foster care; and to have their photograph and fingerprints included in their case management file.

¹¹² *Ray v. Foltz*, 370 F.3d 1079, 1082 (11th Cir. 2004)(citing *Taylor v. Ledbetter*, 818 F.2d 791-95 (11th Cir. 1987).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ The provisions of s. 39.4085, F.S., establish goals, not rights. The section does not require the delivery of any particular service or level of service in excess of existing appropriations. A person does not have a cause of action against the state or any of its subdivisions, agencies, contractors, subcontractors, or agents, based upon the adoption of or failure to provide adequate funding for the achievement of these goals by the Legislature. The section does not require the expenditure of funds to meet the goals except funds specifically appropriated for such purpose.

- Be referred to and receive services, including necessary medical, emotional, psychological, psychiatric, and educational evaluations and treatment, as soon as practicable after identification of the need for such services by the screening and assessment process.
- Be placed in a home with no more than one other child, unless part of a sibling group.
- Be placed away from other children known to pose a threat of harm to them, either because of their own risk factors or those of the other child.
- Be placed in a home where the shelter or foster caregiver is aware of and understands the child's history, needs, and risk factors.
- Be the subject of a plan developed by the counselor and the shelter or foster caregiver to deal with identified behaviors that may present a risk to the child or others.
- Be involved and incorporated, where appropriate, in the development of the case plan, to have a case plan that will address their specific needs, and to object to any of the provisions in the case plan.
- Receive meaningful case management and planning that will quickly return the child to the family or move the child on to other forms of permanency.
- Receive regular communication with a case manager, at least once a month, which includes meetings with the child alone and conferring with the caregiver.
- Enjoy regular visitation, at least once a week, with their siblings unless the court orders otherwise.
- Enjoy regular visitation with parents, at least once a month, unless the court orders otherwise.
- Receive a free and appropriate education, minimal disruption to their education, and retention in their home school, if appropriate; referral to the child study team; all special educational services, including, where appropriate, the appointment of a parent surrogate; the sharing of all necessary information between the school board and DCF, including information on attendance and educational progress.
- Be able to raise grievances with DCF over the care they are receiving from their caregivers, case managers, or other service providers.
- Be heard by the court, if appropriate, at all review hearings.
- Have a guardian ad litem appointed to represent, within reason, their best interests and, where appropriate, an attorney ad litem appointed to represent their legal interests. Their guardian ad litem and attorney ad litem must have immediate and unlimited access to the children they represent.
- Have all their records available for review by their guardian ad litem and attorney ad litem if they deem such review is necessary.
- Organize as a group for purposes of ensuring they receive the services and living conditions to which they are entitled and to provide support for one another while in DCF's custody.
- Be afforded prompt access to all available state and federal programs.

In accordance with s. 39.4091, F.S., caregivers for children in out-of-home care must use the "reasonable and prudent standard". This means that the caregiver must use sensible parental decision-making that maintains the child's health, safety, and best interests while at the same time encourages the child's emotional and developmental growth when determining whether to allow a child in out-of-home care to participate in extracurricular, enrichment, and social activities.¹¹⁶

The federal Preventing Sex Trafficking and Strengthening Families Act requires that as part of case planning beginning at age 14, children in foster care must be given a document describing their rights with respect to safety, exploitation, education, health, visitation, and court participation.¹¹⁷ They must also be informed of their rights to be provided certain specific documents such as copies of consumer credit reports. Children are to sign an acknowledgement that they received these documents.¹¹⁸

¹¹⁶ Florida Department of Children and Families, *CFOP 170-11, Ch. 6* (Sept. 2020), <https://www.myflfamilies.com/admin/publications/cfops/CFOP%20170-xx%20Child%20Welfare/CFOP%20170-11%20%20Placement/CFOP%20170-11,%20%20%20%20Placement.pdf> (last visited May 12, 2021).

¹¹⁷ 42 U.S.C. §675(1)(B).

¹¹⁸ Florida Department of Children and Families, *2021 Agency Bill Analysis for HB 1093* (March 7, 2021).

Child Abuse, Abandonment and Neglect and Mental Health Educational Programs

Section 39.001(9), F.S., requires the Office of Adoption and Child Protection, within the Governor's Office, to establish a comprehensive statewide approach for, in part, the prevention of child abuse, abandonment, and neglect.¹¹⁹ The Office of Adoption and Child Protection works in partnership with DCF, the Department of Education (DOE), and the Department of Health (DOH) to develop ways to inform and instruct appropriate district personnel in all school districts in the detection of child abuse, abandonment, and neglect, and the proper action to be taken if there is a suspicion of child abuse, abandonment, or neglect.

The Office of Adoption and Child Protection, DCF, DOE, and DOH must also work together to develop curriculum materials to assist personnel in providing instruction through a multidisciplinary approach on the identification, intervention, and prevention of child abuse, abandonment, and neglect.¹²⁰ The curriculum materials are geared toward a sequential program of instruction at the four progression levels (K-3, 4-6, 7-9, and 10-12).¹²¹ All school districts are encouraged to utilize the curriculum.

Beginning with the 2018-19 school year, DOE established an evidence-based youth mental health awareness and assistance training program to help school personnel identify and understand the signs of emotional disturbance, mental illness, and substance use disorders, and provide such personnel with the skills to help a person who is developing or experiencing an emotional disturbance, mental health, or substance use problem.¹²²

A school safety specialist, who is a certified youth mental health awareness and assistance trainer, ensures that all school personnel within the school district receive youth mental health awareness and assistance training.¹²³ The training program includes:

- An overview of mental illness and substance use disorders and the need to reduce the stigma of mental illness.
- Information on the potential risk factors and warning signs of emotional disturbance, mental illness, or substance use disorders, including, but not limited to, depression, anxiety, psychosis, eating disorders, and self-injury, as well as common treatments for those conditions and how to assess risks.
- Information on how to engage at-risk students with the skills, resources, and knowledge required to assess the situation, and how to identify and encourage the students to use appropriate professional help and other support strategies, including, but not limited to, peer, social, or self-help care.¹²⁴

The law requires school districts to provide a variety of programs for children in kindergarten through grade 12, including a health education program.¹²⁵ The health education program must address concepts of:

- Community health.
- Consumer health.
- Environmental health.
- Family life, including the awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy.
- Mental and emotional health.
- Injury prevention and safety.
- Internet safety.

¹¹⁹ S. 39.001(9), F.S.

¹²⁰ S. 39.001(10)(b)2., F.S.

¹²¹ S. 39.001(10)(b)5., F.S.

¹²² S. 1012.584(1), F.S.

¹²³ S. 1012.584(2), F.S.

¹²⁴ S. 1012.584(3), F.S.

¹²⁵ S. 1003.42(n), F.S.

- Nutrition.
- Personal health.
- Prevention and control of disease.
- Substance use and abuse.

In addition, the health education curriculum for students ages 7 through 12 must include a teen dating violence and abuse component that includes, but is not limited to, the definition of dating violence and abuse, the warning signs of dating violence and abusive behavior, the characteristics of healthy relationships, measures to prevent and stop dating violence and abuse, and community resources available to victims of dating violence and abuse.¹²⁶

There is currently no educational program required by law directly addressing the identification and reporting of child abuse, abandonment, or neglect.

Multidisciplinary Legal Representation

A dependency judge must inform parents involved in dependency proceedings of their right to counsel at each stage in the case.¹²⁷ The dependency judge appoints counsel to parents who are unable to afford counsel.¹²⁸ The Office of Criminal Conflict and Civil Regional Counsel (OCCRC) represents indigent parents in all dependency cases in Florida. While the traditional practice in the United States is to have a solo attorney represent the parent, an alternative model is the Multidisciplinary Legal Representation Model (MLRM) that uses a team of individuals, including social workers and parent advocates.¹²⁹

The OCCRC in the Fourth District of Florida includes a Social Services Unit (SSU) to enhance the legal representation of indigent parents in dependency cases.¹³⁰ The SSU includes a forensic social worker or forensic family advocate on the legal team to engage parents and guide them through the reunification process, and assists clients with tasks such as providing information to and interacting with providers.¹³¹ This type of representation is known as a MLRM.

Other states have adopted multidisciplinary legal representation models (MLRM) to represent indigent parents in child abuse and neglect cases, including Vermont, New York, and Michigan.¹³² A study by the Bronx Defenders that examined more than 28,000 New York dependency cases between 2007 and 2014 suggests that representation that utilized the multidisciplinary model was able to safely reunify children with their families 43% more often in their first year than solo practitioners, and 25% more often in the second year.¹³³

Critical Incident Rapid Response Teams

In 2014, the Legislature created critical incident rapid response teams (CIRRT) to identify root causes and to quickly determine any necessary changes needed to existing policies and practices related to

¹²⁶ *Id.*

¹²⁷ S. 39.013(1), F.S.

¹²⁸ *Id.*

¹²⁹ See Children's Bureau Express, *New Study Shows Providing Parents with Multidisciplinary Legal Representation in Child Welfare Cases Furthers Everyone's Interests*, July/August 2019, <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=208§ionid=2&articleid=5378> (last visited March 1, 2021).

¹³⁰ The OCCRC Fourth District of Florida, *Social Services Unit*, <http://www.rc-4.com/social-services.shtml> (last visited March 1, 2021).

¹³¹ *Id.*

¹³² The Children's Bureau Express, *Collaborating to Build Multidisciplinary, Family-Centered, Strengths-Based Courts*, May 2020, <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=216§ionid=17&articleid=5558> (last visited March 10, 2021).

¹³³ NYU Law, *Providing Parents with the Right Kind of Legal Representation in Child Welfare Cases Significantly Reduces the Time Children Stay in Foster Care, New Study Finds*, May 7, 2009, <https://www.law.nyu.edu/martin-guggenheim-interdisciplinary-parental-representation-child-welfare> (last visited May 12, 2021).

child protection and welfare.¹³⁴ The CIRRT must immediately investigate certain child deaths or other serious incidents.¹³⁵ The CIRRT is required to immediately respond to conduct an onsite investigation for any child deaths reported to DCF if the child or another child in the family was the subject of a verified report of suspected abuse or neglect during the previous 12 months.¹³⁶ DCF's secretary has the discretion to direct an immediate investigation for other cases involving death or serious injury to a child.¹³⁷

Florida law outlines the duties and composition of the teams, which require cooperative agreements with other entities and organizations to facilitate the teams' work.¹³⁸ DCF is required to develop guidelines and provide training to the CIRRT, and direct them to conduct a root-cause analysis for each incident.¹³⁹ In addition, DCF's secretary is directed to appoint an advisory committee to conduct an independent review of the CIRRT reports and submit quarterly reports to DCF's secretary, who is required to provide the reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives.¹⁴⁰ This section also requires that the reports of the team be published on the DCF website.¹⁴¹ In 2020, there were 20 CIRRT investigations of child deaths reported to the hotline.¹⁴²

Federal Title IV-E Funding for Child Welfare

While states bear primary responsibility for child welfare, Congress appropriates funds to states through a variety of funding streams for services to children who have suffered maltreatment. One of these funding streams is established in Title IV-E of the Social Security Act. Title IV-E provides federal reimbursement to states for a portion of the cost of foster care, adoption assistance, and (in states electing to provide this kind of support) kinship guardianship assistance on behalf of each child who meets federal eligibility criteria. Title IV-E authorizes funding to support services to youth who age-out of foster care or are expected to age-out without placement in a permanent family and for legal representation and advocacy for eligible children in foster care and their parents.¹⁴³

Family First Prevention Services Act

The Family First Prevention Services Act (FFPSA) was passed into law as part of the Bipartisan Budget Act on February 9, 2018.¹⁴⁴ The FFPSA reformed the federal child welfare funding streams. Unlike the previous Title IV-E provisions which primarily funded out-of-home care for families with very low incomes, the FFPSA gives states the ability to earn federal Title IV-E matching funds in support of certain prevention services provided on a time-limited basis that avoid an out-of-home placement for children without regard to family income. The services that states can be reimbursed for providing to children and their families meeting eligibility requirements address mental health, substance abuse, family counseling, and parent skills training. The FFPSA also introduces new limits on federal funding for placements in group homes.

Other requirements newly imposed by the FFPSA for states to receive reimbursement addressed capacity in foster homes and background screening of group home staff.

¹³⁴ S. 39.2015(1), F.S.

¹³⁵ *Id.*

¹³⁶ S. 39.2015(2), F.S.

¹³⁷ *Id.*

¹³⁸ S. 39.2015(7), F.S.

¹³⁹ S. 39.2015(10), F.S.

¹⁴⁰ S. 39.2015(11), F.S.

¹⁴¹ S. 39.2015(9), F.S.

¹⁴² Department of Children and Families, *Total Child Fatalities With A Critical Incident Rapid Response Team Response in 2020*, <https://www.myflfamilies.com/childfatality/cirtresults.shtml?minage=0&maxage=18&year=2020&cause=&prior12=&verified> (last visited May 12, 2021).

¹⁴³ U.S. Department of Health and Human Services, Administration for Children and Families, *ACYF-CB-IM-21-06*, p. 10-11, Jan. 14, 2021, <https://acf.hhs.gov/sites/default/files/documents/cb/im2106.pdf> (last visited May 11, 2021).

¹⁴⁴ H.R. 1862 of 2018. P.L. 115-123.

The FFPSA gave states the opportunity to delay implementation of select provisions of the law. Florida has opted to delay the effective date until October 2021.

Community-Based Care Organizations and Services

DCF remains responsible for providing child welfare and support services in accordance with federal and state law.¹⁴⁵ However, DCF contracts for the delivery, administration, or management of care for child welfare services.

CBCs provide foster care and related services, including, but not limited to, counseling, domestic violence services, substance abuse services, family preservation, emergency shelter, and adoption.¹⁴⁶ CBCs contract with a number of subcontractors for case management and direct care services to children and their families.¹⁴⁷ There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.¹⁴⁸

DCF typically enters into 5-year contracts with CBCs.¹⁴⁹ There are minimum requirements with which CBC's must comply to be eligible to contract with DCF, including:

- Being organized as a Florida corporation or a governmental entity.¹⁵⁰
- Having a board of directors or board committee with authority to approve the CBC's budget and hire a CBC executive director.¹⁵¹
- Demonstrating financial responsibility by having a plan for regular fiscal audits and securing a performance bond.¹⁵²

DCF must ensure contracts with CBCs:

- Provide for the services as required under s. 409.988, F.S.
- Provide relevant information to DCF related to the quality assurance program and the child welfare results-oriented accountability system.
- Include tiered interventions and graduated penalties for failure to comply with the contract or performance deficiencies.
- Require CBCs to provide current and accurate information about their activities related to case records in the statewide automated child welfare information system.
- Specify the procedures to resolve differences in interpreting the contract or to resolve a disagreement amongst the parties regarding compliance with the contract.¹⁵³

CBCs are obligated to perform several duties including to:

- Serve the children who are referred as a result of abuse, neglect, or abandonment reports to DCF's central abuse hotline.
- Provide DCF with accurate and timely information necessary for oversight by DCF pursuant to the child welfare results-oriented accountability system.
- Follow financial guidelines developed by DCF and provide for regular independent audits.
- Post its current budget, including the salaries, bonuses and other compensation paid to the agency's chief executive officer, chief financial officer, and chief operating officer, or their equivalents, on the CBC's website.
- Prepare and file all necessary court documents and attend dependency court proceedings.

¹⁴⁵ S. 409.996, F.S.

¹⁴⁶ S. 409.145(1), F.S.

¹⁴⁷ *Id.*

¹⁴⁸ Florida Department of Children and Families, *Community-Based Care Lead Agency Map*, <http://www.myflfamilies.com/service-programs/community-based-care/cbc-map> (last visited Mar. 10, 2021).

¹⁴⁹ S. 409.987(3), F.S.

¹⁵⁰ S. 409.987(4)(a), F.S.

¹⁵¹ S. 409.987(4)(b), F.S.

¹⁵² S. 409.987(4)(c), F.S.

¹⁵³ S. 409.996(1)(a), F.S.

- Ensure all individuals providing care to dependent children receive training and specified information and meet employment requirements.
- Maintain eligibility to receive all available federal child welfare funds.
- Maintain written agreements with Healthy Families Florida entities in its service area.
- Comply with federal and state statutory requirements and agency rules in the provision of contractual rules.
- Use authority to subcontract for the provision of services provided CBCs contribute to services and meet specified criteria.
- Post information regarding case management services on its website.¹⁵⁴

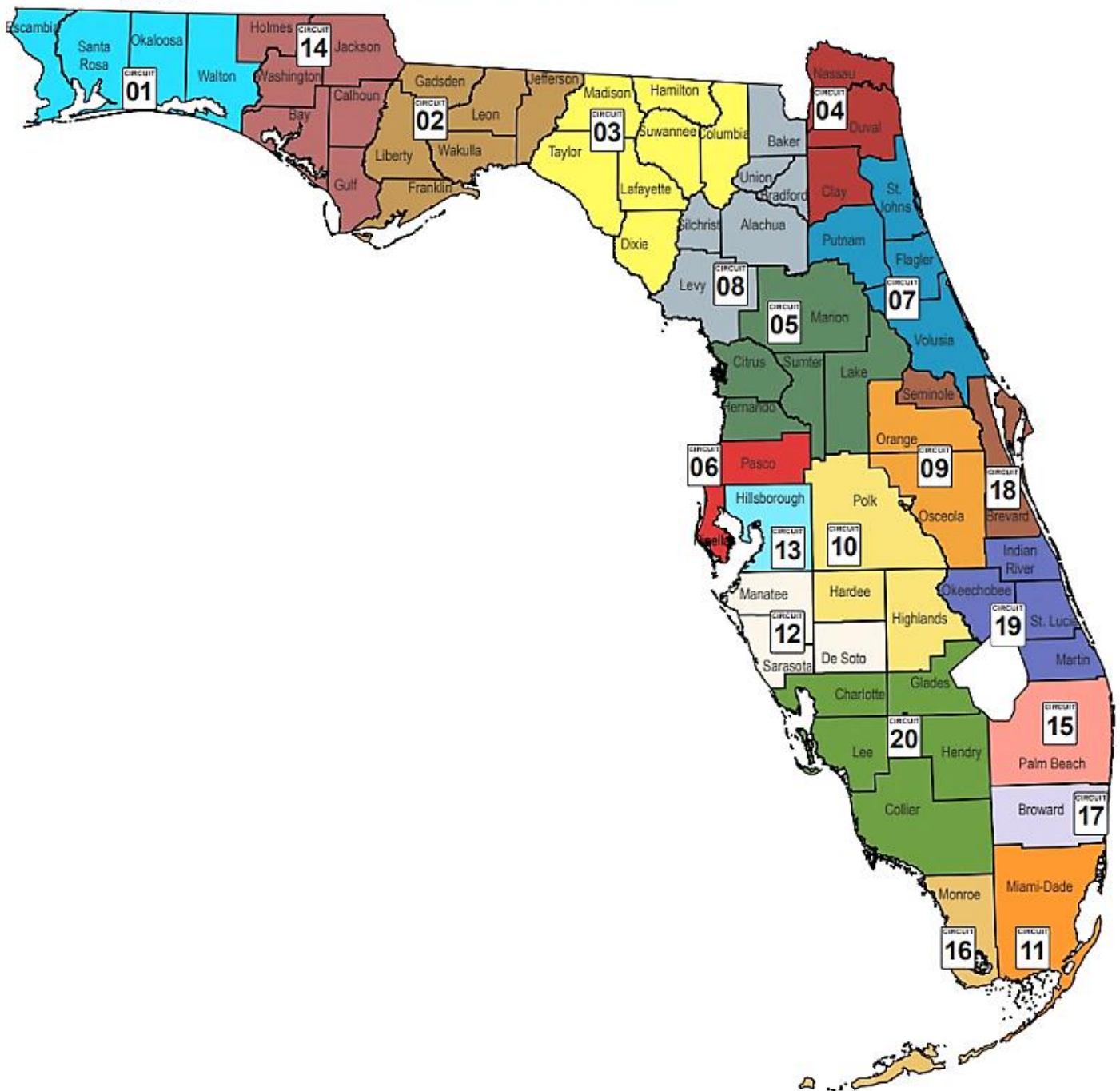
DCF contracts with the following CBCs as illustrated in the following table and map:¹⁵⁵

Lead Agency	Judicial Circuit(s)
Lakeview Center, Families First Network	1
Big Bend Community Based Care, Inc.	2 & 14
Partnership for Strong Families	3 & 8
Family Support Services of North Florida, Inc.	4 (Duval and Nassau)
Kids First of Florida, Inc.	4 (Clay)
Kids Central, Inc.	5
Eckerd Community Alternatives	6 and 13
St Johns County Board of County Commissioners	7 (St Johns)
Community Partnership for Children, Inc.	7 (Flagler, Volusia, Putnam)
Embrace Families	9 and 18 (Seminole)
Heartland for Children	10
Citrus Family Care Network	11 and 16
Safe Children Coalition	12
ChildNet Inc.	15 and 17
Brevard Family Partnership	18 (Brevard)
Communities Connected for Kids	19
Children's Network of SW Florida	20

¹⁵⁴ S. 409.988(1), F.S. Further, s. 409.988(1)(k), F.S., provides that CBCs and subcontracted case management providers must disclose the average caseload of case managers for filled positions, the turnover rate for case managers and their supervisors for the previous 12 months, the percentage of required home visits completed, and performance on outcome measures required under s. 409.997, F.S., for the previous 12 months.

¹⁵⁵ *Supra* note 148.

Regions, Circuits, Counties, and CBC Lead Agencies



DCF must develop and maintain written policies and procedures for monitoring compliance with the services CBCs provide under their contracts. DCF is required to evaluate each CBC's programmatic, operational, and fiscal operations at least once annually.¹⁵⁶

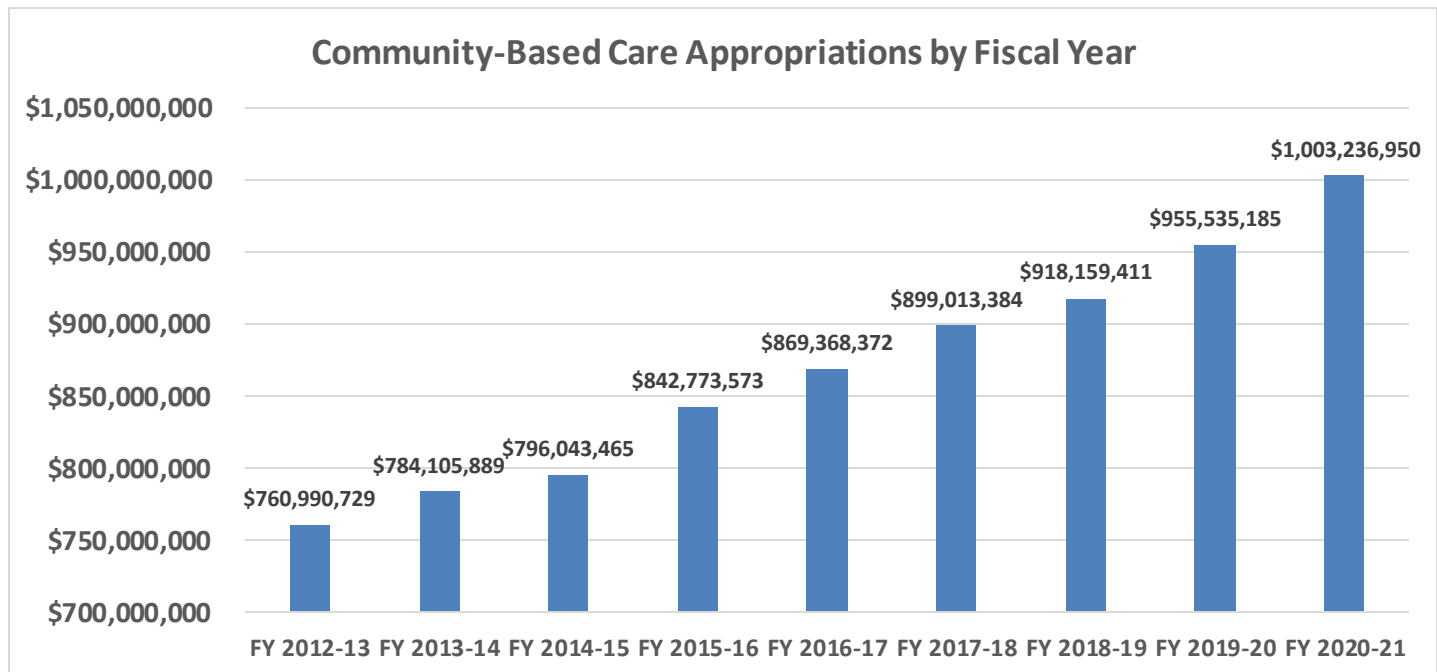
Funding

Section 409.990, F.S., requires that a contract between DCF and CBC be funded through general revenue or other applicable state or federal funding sources.¹⁵⁷ DCF allocates funding to CBCs

¹⁵⁶ S. 409.996(19)(a), F.S.

¹⁵⁷ S. 409.990, F.S.

according to a statutory formula, which considers the proportion of child population, child abuse hotline workload, and children in care.¹⁵⁸ The following graph provides information on total CBC funding by fiscal year.



Some CBCs have operated at a deficit and accessed special risk pool funding appropriated by the Legislature. CBCs apply to DCF for risk pool funding. A committee including the DCF secretary and three nonapplicant CBC representatives reviews the risk pool applications.¹⁵⁹ DCF may authorize risk pool funding to address:

- Significant changes in the number or composition of clients eligible to receive services.
- Significant changes in the services that are eligible for reimbursement.
- Continuity of care in the event of failure, discontinuance of service, or financial misconduct by a CBC.
- Significant changes in the mix of available funds.

Once the DCF secretary approves a risk pool application, DCF can request funds from the risk pool from the Legislative Budget Commission.¹⁶⁰

CBC Executive Compensation

CBC expenditures must comply with financial guidelines developed by DCF and comply with federal and state law and follow good business practices.¹⁶¹ The Internal Revenue Code sets the rules governing compensation at public nonprofits, including those known as 501(c)(3) organizations, and specifies that no part of the net earnings of a section 501(c)(3) organization may inure to the benefit of any private shareholder or individual.¹⁶² However, the Internal Revenue Service (IRS) gives each nonprofit's board of directors latitude in determining how much to pay top employees. The IRS requires

¹⁵⁸ S. 409.991, F.S., specifies that recurring core services funding is based on the previous year's funding. Any new funding is distributed based on the degree to which a CBC is underfunded compared to other CBCs, considering hotline workload, child population, and children in care. See s. 409.991, F.S.

¹⁵⁹ S. 409.990(7)(a), F.S.

¹⁶⁰ S. 216.181(1), F.S.

¹⁶¹ S. 409.992(1), F.S.

¹⁶² 26 U.S.C. §501. Exemption from tax on corporations, certain trusts, etc. Subject to some exemptions, corporations and other eligible entities that are organized and operate exclusively for religious, charitable, scientific and other specified purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise conducting exempted activities, are exempt from taxation.

a nonprofit board to have an objective process for setting executives' salaries, including use of comparisons with salaries paid by similar organizations for similar services. However, a nonprofit that normally pays no taxes may be taxed for paying excess benefits to an insider.¹⁶³

In 2015, during an operational audit of CBCs, the Florida Auditor General found instances where salary payments, including bonuses and leave balances, did not appear to be properly supported or calculated in accordance with established CBC policy or state law.¹⁶⁴ During the 2017, CS/CS/HB 1121 was passed and signed into law, which limited the CBCs' administrative employees' salaries to 150 percent of the annual salary paid to DCF's Secretary from state-appropriated funds.¹⁶⁵ The term "administrative employees" is not defined in s. 409.992(3), F.S.

In a January 2019 operational audit, the Florida Auditor General conducted a new independent audit and followed up on the findings noted in the 2015 report related to CBCs. The 2019 report stated that as of March 31, 2017, which is prior to the implementation of CS/CS/HB 1121 (2017), CBCs' executive officer annual salaries, before bonuses, averaged \$210,863, and the average allocated to DCF contracts with CBCs was \$160,000.¹⁶⁶ The only finding related to CBCs on compensation benefits stated that two of the DCF's subcontracted entities did not require salaried employees to record annual leave used in increments of less than 8 hours.¹⁶⁷

CBC Procurement: Community Alliances

DCF is required to establish community alliances to serve as a catalyst for community resource development and promote prevention and early intervention, among other obligations.¹⁶⁸ Each community alliance may encompass more than one county when such arrangement is determined to provide for more effective representation.¹⁶⁹

Community Alliances include local stakeholders and representatives in each county to encourage and maintain community participation and oversight of CBCs.¹⁷⁰ Community alliances are composed of representatives from:

- DCF.
- the county government.
- the school district.
- the county United Way.
- the county sheriff's office.
- the circuit court corresponding to the county.
- the county children's board, if one exists.
- a faith-based organization involved in efforts to prevent child maltreatment, strengthen families, and promote adoption.¹⁷¹

The community alliance must adopt bylaws and may increase the membership of the alliance if such increase is necessary to adequately represent the diversity.¹⁷² The additional members may include

¹⁶³ *Id.*

¹⁶⁴ The Office of the Auditor General, *Department of Children and Families and Selected Community-Based Care Lead Agencies Oversight of Foster Care and Related Services*, Report No. 2015-156, p. 1 (March 2015) https://flauditor.gov/pages/pdf_files/2015-156.pdf (last visited March 10, 2021).

¹⁶⁵ Ch. 2017-151, s. 31, L.O.F. (amending s. 409.992, F.S., effective July 1, 2017).

¹⁶⁶ The Office of the Auditor General, *Department of Children and Families Oversight and Administration of Community-Based Care Lead Agencies and Behavioral Health Managing Entities and Selected Department Administrative Activities*, Report No. 2019-111, p. 6 and 54-55 (Jan. 2019) https://flauditor.gov/pages/pdf_files/2019-111.pdf (last visited March 10, 2021).

¹⁶⁷ *Id.* at p. 3.

¹⁶⁸ S. 20.19(5)(b), F.S.

¹⁶⁹ S. 20.19(5)(a), F.S. .

¹⁷⁰ *Id.*

¹⁷¹ S. 20.19(5)(d), F.S.

¹⁷² S. 20.19(5)(e), F.S.

state attorneys, public defenders, their designees, or individuals from funding organizations, community leaders or individuals who have knowledge of community-based service issues.¹⁷³

DCF's procurement team for CBC contracts must include individuals from the community alliance in the area to be served under the contract.¹⁷⁴

Prior to 2014, s. 409.1671(1)(d), F.S., allowed DCF to develop an alternative plan to outsource services in an area if it was impossible or not feasible to competitively contract with a CBC.¹⁷⁵ DCF was required to develop a plan in collaboration with the local community alliance.¹⁷⁶ It was required to detail how the community would implement community-based care through local providers, and to ensure control over management and administration of services.¹⁷⁷ A plan developed under this former provision had to include best business practices, including some form of public and private partnerships.¹⁷⁸

Since July 1, 2011, DCF has conducted 19 CBC procurements; for 11 of these procurements, only one entity submitted a bid for the contract.¹⁷⁹

Child Advocacy Centers

A children's advocacy center (CAC) is a community-based, child-focused facility where children alleged to be victims of abuse or neglect are interviewed and receive medical exams, therapy, and other critical services as necessary in a non-threatening, child-friendly environment. A CAC uses a multidisciplinary team model that brings together an array of professionals to confer and conduct investigations, treatment, and prosecution of child abuse cases. The primary goal of a CAC is to minimize the level of trauma experienced by child victims, improve prosecution, and provide efficient and thorough provision of necessary services to the child victim and the child's family.¹⁸⁰

Florida's CACs provide services including, but not limited to:

- Forensic interviews.
- Crisis intervention and support services.
- Medical evaluations.
- Multidisciplinary review of cases.
- Evidence-based prevention and intervention programs.
- Professional training and community education.¹⁸¹

CACs must meet specified statutory criteria to become eligible for membership in the Florida Network of Children's Advocacy Centers, Inc. (FNCAC),¹⁸² a statewide nonprofit membership organization.¹⁸³ A CAC must:

- Be a private, nonprofit incorporated agency or a governmental entity.
- Be a child protection team,¹⁸⁴ or by written agreement incorporate the participation and services of a child protection team, with established community protocols which meet all of the requirements of the National Network of Children's Advocacy Centers, Inc.

¹⁷³ *Id.*

¹⁷⁴ S. 409.987(5), F.S.

¹⁷⁵ Ch. 2014-224, s. 46, L.O.F.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ Email from John Paul Fiore, Legislative Specialist, Department of Children and Families, re: Follow-up questions for OCW staff, (Apr. 5, 2021)(on file with the Children, Families, and Seniors Subcommittee).

¹⁸⁰ The FNCAC, *What is a CAC*, available at <https://www.fncac.org/what-cac> (last visited March 10, 2021).

¹⁸¹ *Id.*

¹⁸² S. 39.3035(1), F.S.

¹⁸³ The FNCAC, *About Us*, <https://www.fncac.org/about-us> (last visited Mar. 10, 2021).

¹⁸⁴ The Children's Medical Services Program in the Department of Health (DOH) coordinates Child Protection Teams (CPTs). DCF and DOH oversee CPTs through an interagency agreement. CPTs supplement the assessment and protective supervision activities of DCF in child abuse cases. CACs contract with DOH because a CAC must be a CPT or incorporate the participation and services of a CPT.

- Have a neutral, child-focused facility where joint DCF and law enforcement interviews take place with children in appropriate cases of suspected child sexual abuse or physical abuse.
- Have a minimum designated staff that is supervised and approved by the local board of directors or governmental entity.
- Have a multidisciplinary case review team that meets on a regular scheduled basis or as the caseload of the community requires. The team must consist of representatives from the Office of the State Attorney, DCF, the child protection team, mental health services providers, law enforcement, and the CAC staff.
- Track child abuse cases and collect relevant information on children served.
- Provide referrals for medical exams and mental health therapy.
- Provide child abuse training in the community.
- Have an interagency commitment covering those aspects of agency participation in a multidisciplinary approach to the handling of child sexual abuse and serious physical abuse cases.¹⁸⁵

In addition, CAC staff must be trained and meet background screening requirements in accordance with s. 39.001(1), F.S.,¹⁸⁶ with which the FNCAC must ensure compliance.¹⁸⁷ State and federal funding of these centers is contingent on their meeting the eligibility criteria and the staff receiving the necessary training and screening. Florida law includes minimum requirements for allocation of funds to the centers.¹⁸⁸ CACs must submit annual reports with specified information to the FNCAC, which sends a compilation of the reports to the President of the Senate and the Speaker of the House of Representatives annually in August.¹⁸⁹

The FNCAC is an accredited state chapter of the National Children's Alliance and represents all local CACs in Florida.¹⁹⁰ It reports that there are 27 CACs that together serve 85 percent of the children and families in Florida.¹⁹¹ The 27 CACs are shown in the map below and summarized as follows:¹⁹²

- Nancy J. Cotterman Center and Embrace Families Solutions (dark blue).
- Children's Advocacy Center of Southwest Florida, Lake/Sumter Children's Advocacy Center, and Gulf Coast Children's Advocacy Center (light blue).
- Suncoast Center, Inc. and Children's Home Society of Florida North Central Division (maroon).
- University of Florida Child Advocacy Center, Children's Advocacy Center of Hernando County, and Santa Rosa Kids' Home, Inc. (purple).
- Children's Home Society of Florida's Greater Lakeland, Children's Advocacy Center of Brevard County, Gulf Coast Kid's House, Inc., and Children's Home Society of Florida Children's Advocacy Center (green).
- Pasco Kids First, Inc., Children's Advocacy Center of Collier County, and Emerald Coast Children's Advocacy Center, Inc. (pink).
- Kristi House, Inc., Kimberly's Center for Child Protection, and Manatee Children's Services, Inc. (red).
- Mary Lee's House, Child Advocacy Center, Inc., and Howard Phillips Center for Children & Families (orange).
- Jessie's Place, First Coast Child Protection Team, and Child Protection Center, Inc. (yellow).

¹⁸⁵ S. 39.3035(1), F.S.

¹⁸⁶ Employees must complete a level 2 background screening pursuant to ch. 435, F.S.

¹⁸⁷ S. 39.3035(2), F.S.

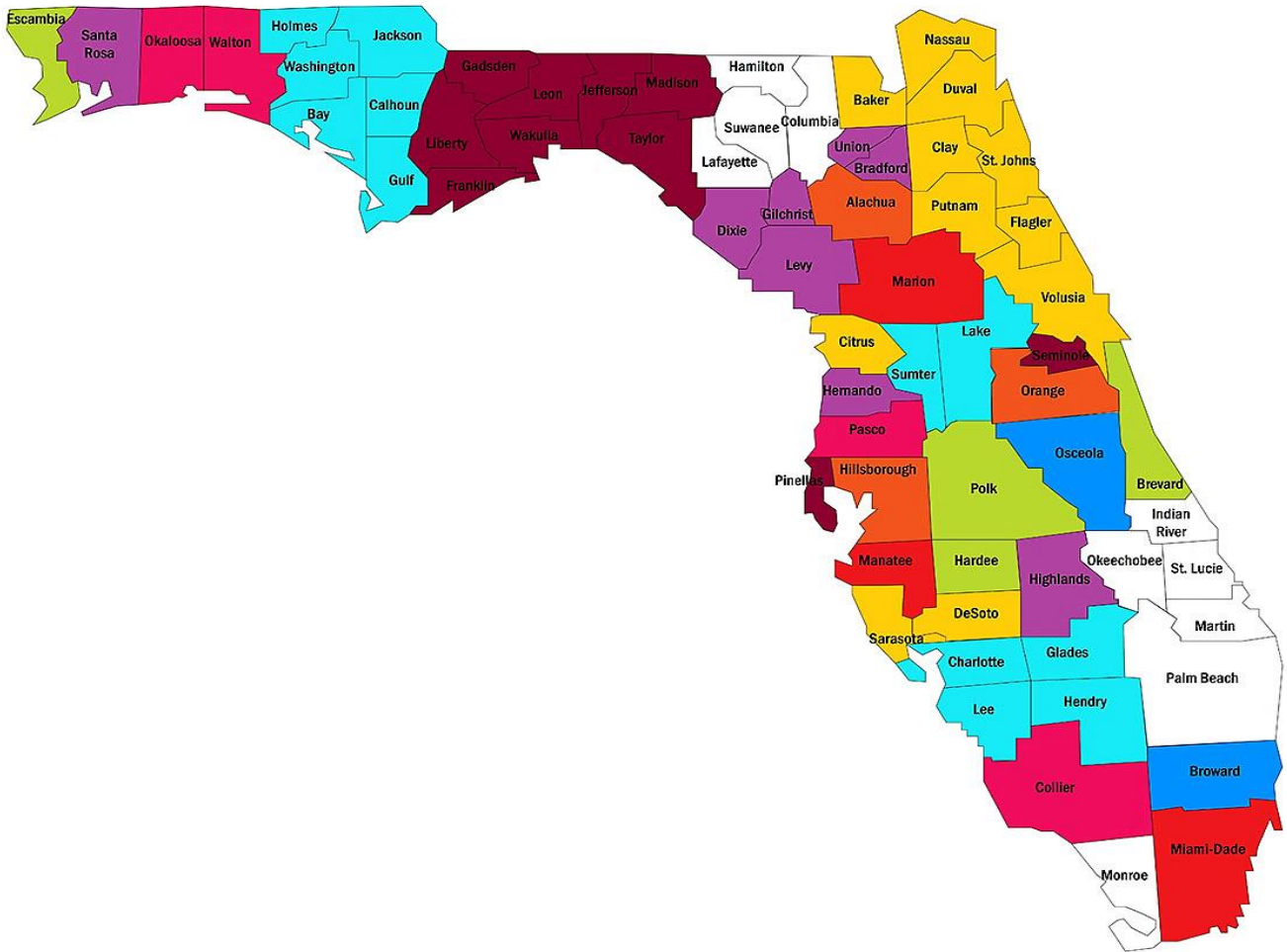
¹⁸⁸ S. 39.3035(3)(a) and (b), F.S.

¹⁸⁹ S. 39.3035(3)(c), F.S.

¹⁹⁰ *Supra* note 183.

¹⁹¹ *Id.*

¹⁹² FNCAC, *County Coverage Map*, <https://www.fncac.org/county-coverage-map> (last visited Mar. 10, 2021). There is currently no child advocacy center serving a county if that county is unshaded.



In 2018, Florida’s CACs served over 34,000 children who were victims of child abuse and neglect as follows:

- 20,259 received therapy services;
- 17,297 received crisis intervention services;
- 11,120 received medical evaluations; and
- 10,675 had forensic/specialized interviews.¹⁹³

An analysis conducted by the National Children’s Advocacy Center in 2015 suggests that the children’s advocacy center model saves approximately \$1,000 per case in services during the course of a child abuse investigation.¹⁹⁴

Mental Health and Substance Abuse Services

Mental Illness and Mental Health Services

Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community.¹⁹⁵ The primary indicators used to evaluate an individual’s mental health are:¹⁹⁶

¹⁹³ FNCAC, *Impact of Children’s Advocacy Centers on Child Abuse and Neglect*, <https://www.fncac.org/impact-childrens-advocacy-centers-child-abuse-and-neglect> (last visited Mar. 10, 2021).

¹⁹⁴ *Id.*

¹⁹⁵ World Health Organization, *Mental Health: Strengthening Our Response*, <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response> (last visited Apr. 12, 2021).

¹⁹⁶ Centers for Disease Control and Prevention, *Learn About Mental Health*, <http://www.cdc.gov/mentalhealth/basics.htm> (last visited Apr. 12, 2021).

- **Emotional well-being-** Perceived life satisfaction, happiness, cheerfulness, peacefulness.
- **Psychological well-being-** Self-acceptance, personal growth including openness to new experiences, optimism, hopefulness, purpose in life, control of one’s environment, spirituality, self-direction, and positive relationships.
- **Social well-being-** Social acceptance, beliefs in the potential of people and society as a whole, personal self-worth and usefulness to society, sense of community.

Mental illness is collectively all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.¹⁹⁷ Thus, mental health refers to an individual’s mental state of well-being whereas mental illness signifies an alteration of that well-being.

Mental illness affects millions of people in the United States each year. Nearly one in five adults (51.5 million people) live with a mental illness.¹⁹⁸ An estimated 13.1 million adults aged 18 or older have a serious mental illness.¹⁹⁹ Many people are diagnosed with more than one mental illness. For example, people who suffer from a depressive illness (major depression, bipolar disorder, or dysthymia) tend to co-occur with substance abuse and anxiety disorders.²⁰⁰

According to a 2019 assessment by the U.S. Department of Housing and Urban Development, 567,715 people were homeless on a given night in the United States.²⁰¹ At a minimum, 116,179, or 20%, of these people were severely mentally ill.

DCF administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults under chs. 394 and 397, F.S. SAMH programs include a range of prevention, acute interventions (e.g. crisis stabilization or detoxification), residential treatment, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations and delivered through community-based providers.²⁰²

Substance Abuse Treatment

In 1970, the Legislature enacted ch. 397, F.S., governing the treatment and rehabilitation of drug dependents.²⁰³ The following year, the Legislature enacted ch. 396, F.S., titled the “Myers Act” as the state’s comprehensive alcoholism prevention, control, and treatment act, modeled after the federal Hughes Act.²⁰⁴ In 1993, legislation combined ch. 396 and ch. 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act (“the Marchman Act”).²⁰⁵ The Marchman Act supports substance abuse prevention and remediation through a system of prevention, detoxification, and treatment services to assist individuals at risk for or affected by substance abuse.

¹⁹⁷ *Id.*

¹⁹⁸ National Institute on Mental Health, *Mental Illness*, <https://www.nimh.nih.gov/health/statistics/mental-illness.shtml>, (last visited Apr. 12, 2021).

¹⁹⁹ *Id.*

²⁰⁰ Johns Hopkins Medicine, *Mental Health Disorder Statistics*, <https://www.hopkinsmedicine.org/health/wellness-and-prevention/mental-health-disorder-statistics> (last visited Apr. 12, 2021).

²⁰¹ U.S. Department of Housing and Urban Development, *2019 CoC Homeless Populations and Subpopulations Report – All States, Territories, Puerto Rico, and DC*, <https://www.hudexchange.info/programs/coc/coc-homeless-populations-and-subpopulations-reports/> (last visited Apr. 12, 2021).

²⁰² See chs. 394 and 397, F.S.

²⁰³ Department of Children and Families, *Marchman Act User Reference Guide 2003*, <https://www.myflfamilies.com/service-programs/samh/crisis-services/docs/marchman/marchmanacthand03p.pdf>, (last visited Apr. 12, 2021).

²⁰⁴ *Id.*

²⁰⁵ Ch. 93-39, s. 2, Laws of Fla., codified in ch. 397, F.S.

DCF provides treatment for substance abuse through a community-based provider system that offers detoxification, treatment and recovery support for adolescents and adults affected by substance misuse, abuse or dependence.²⁰⁶

- **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.²⁰⁷
- **Treatment Services:** Treatment services²⁰⁸ 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. Some of these services may also be offered to family members of the individual in treatment.²⁰⁹
- **Recovery Support:** Recovery support services, including transitional housing, life skills training, parenting skills, and peer-based individual and group counseling, are offered during and following treatment to further assist individuals in their development of the knowledge and skills necessary to maintain their recovery.²¹⁰

DCF regulates substance abuse treatment by licensing individual treatment components under ch. 397, F.S., and rule 65D-30, F.A.C. Licensed service components include a continuum of substance abuse prevention,²¹¹ intervention,²¹² and clinical treatment services.²¹³

Clinical treatment is a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-free lifestyle.²¹⁴ “Clinical treatment services” include, but are not limited to, the following licensable service components:²¹⁵

- Addictions receiving facility.
- Day or night treatment.
- Day or night treatment with community housing.
- Detoxification.
- Intensive inpatient treatment.
- Intensive outpatient treatment.
- Medication-assisted treatment for opiate addiction.
- Outpatient treatment.
- Residential treatment.

Managing Entities

²⁰⁶ Department of Children and Families, *Treatment for Substance Abuse*, <https://www.myflfamilies.com/service-programs/samh/substance-abuse.shtml>, (last visited Apr. 12, 2021).

²⁰⁷ *Id.*

²⁰⁸ *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 protection system, employment, increased earnings, and better health.

²⁰⁹ *Supra* note 206.

²¹⁰ *Id.*

²¹¹ S. 397.311(26)(c), F.S. Prevention is a process involving strategies that are aimed at the individual, family, community, or substance and that preclude, forestall, or impede the development of substance use problems and promote responsible lifestyles. See also, Department of Children and Families, *Substance Abuse: Prevention*, <https://www.myflfamilies.com/service-programs/samh/prevention/index.shtml>, (last visited April 12, 2021). Substance abuse prevention is best accomplished through the use of ongoing strategies such as increasing public awareness and education, community-based processes and evidence-based practices. These prevention programs are focused primarily on youth, and, in recent years, have shifted to the local level, giving individual communities the opportunity to identify their own unique prevention needs and develop action plans in response. This community focus allows prevention strategies to have a greater impact on behavioral change by shifting social, cultural and community environments.

²¹² S. 397.311(26)(b), F.S. Intervention is structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related problems.

²¹³ S. 397.311(25), F.S.

²¹⁴ *Id.*

²¹⁵ S. 397.311(25)(a), F.S.

In 2001, the Legislature authorized DCF to implement behavioral health managing entities (MEs) as the management structure for the delivery of local mental health and substance abuse services.²¹⁶ The implementation of the ME system initially began on a pilot basis and, in 2008, the Legislature authorized DCF to implement MEs statewide.²¹⁷ Full implementation of the statewide ME system occurred in 2013, and all geographic regions are now served by a ME.²¹⁸

DCF must:

- Contract and conduct readiness reviews before any new MEs assume responsibilities.
- Specify data reporting requirements and use of shared data systems.
- Define the priority populations that will benefit from receiving care coordination.
- Support the development and implementation of a coordinated system of care.
- Contract to support efficient and effective administration and ensure accountability for performance.²¹⁹
- Periodically review contract and reporting requirements and reduce costly, duplicative, and unnecessary administrative requirements.²²⁰

The MEs are to:

- Maintain a governing board.
- Promote and support care coordination.²²¹
- Develop a comprehensive list of qualified providers.
- Monitor network providers' performance.
- Manage and allocate funds for services in accordance with federal and state laws, rules, regulations and grant requirements.
- Operate in a transparent manner, providing access to information, notice of meetings, and opportunities for public participation in ME decision making.²²²

DCF contracts with seven MEs as shown in the map below:

- North West Florida Health Network (blue).
- Lutheran Services Florida (yellow).
- Central Florida Cares Health System (orange).
- Central Florida Behavioral Health Network, Inc. (red).
- Southeast Florida Behavioral Health (pink).
- Broward Behavioral Health Network, Inc. (purple).
- South Florida Behavioral Health Network, Inc. (beige).²²³

²¹⁶ Ch. 2001-191, L.O.F.

²¹⁷ Ch. 2008-243, L.O.F.

²¹⁸ Florida Tax Watch, *Analysis of Florida's Behavioral Health Managing Entity Models*, p. 4 (Mar. 2015)

<https://floridataxwatch.org/Research/Full-Library/ArtMID/34407/ArticleID/15758/Analysis-of-Floridas-Behavioral-Health-Managing-Entities-Model> (last visited Mar. 9, 2021).

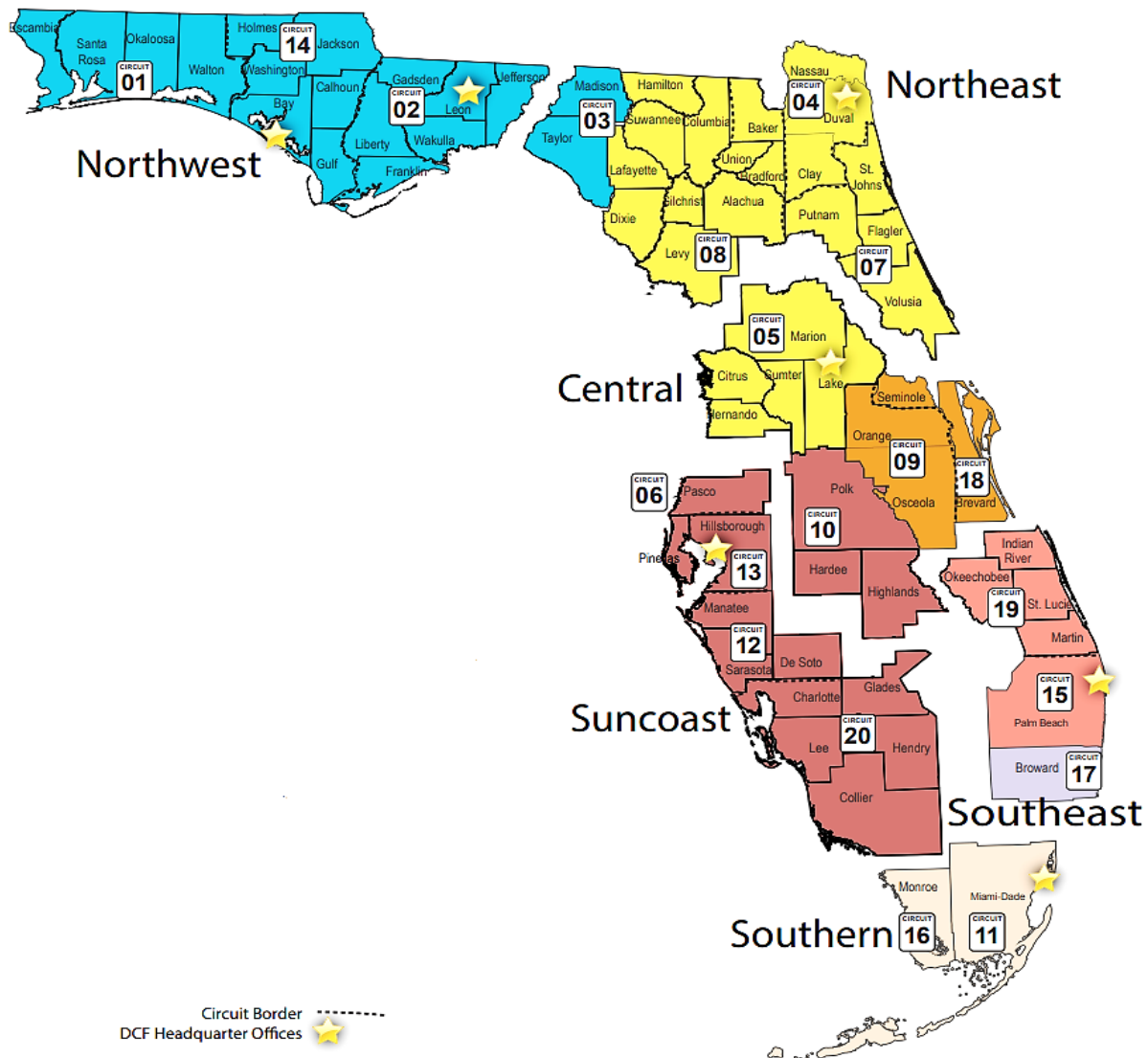
²¹⁹ S. 394.9082(7), F.S., details the performance measurements and accountability requirements of MEs.

²²⁰ S. 394.9082(3), F.S.

²²¹ S. 394.9082(6), F.S., sets out the network accreditation and systems coordination agreement requirements.

²²² S. 394.9082(5), F.S.

²²³ Florida Department of Children and Families, *Managing Entities*, <https://www.myflfamilies.com/service-programs/samh/managing-entities/> (last visited Mar. 10, 2021).



The MEs in turn contract with local service providers for the delivery of mental health and substance abuse services.²²⁴ In FY 2018-19, the network service providers under contract with the MEs served 339,093 individuals.²²⁵

Coordinated System of Care

MEs are required to promote the development and implementation of a coordinated system of care with statutorily defined elements²²⁶ and a full array of behavioral and related services²²⁷ in a region or community offered by all service providers, participating either under contract with a ME or by another method of community partnership or mutual agreement.²²⁸ A community or region provides a

²²⁴ MEs create and manage provider networks by contracting with service providers for the delivery of substance abuse and mental health services.

²²⁵ Florida Department of Children and Families, *Substance Abuse and Mental Health Triennial Plan Update for Fiscal Year*, (Dec. 6, 2019) <https://www.myflfamilies.com/service-programs/samh/publications/docs/SAMH%20Services%20Plan%202018%20Update.pdf> (last visited Mar. 10, 2021).

²²⁶ S. 394.9082(5)(d), F.S.

²²⁷ S. 394.495(4), F.S., requires a coordinated system of care to include, but not be limited to, prevention services, home-based services, school-based services, family therapy, family support, respite services, outpatient treatment, crisis stabilization, therapeutic foster care, residential treatment, inpatient hospitalization, case management, services for victims of sex offenses, transitional services, and trauma-informed services for children who have suffered sexual exploitation.

²²⁸ S. 394.4573(1)(c), F.S.

coordinated system of care through a no-wrong-door model to the extent allowed by available resources.

MEs provide specialty services to families involved in the child welfare system, including Community Action Treatment Teams and Family Intensive Treatment (FIT). Community Action Treatment Teams are multidisciplinary clinical teams that provide comprehensive, intensive community-based treatment to families with youth and young adults, ages 11 up to 21, who are at risk of out-of-home placement due to a mental illness or co-occurring disorder and related complex issues for whom traditional services are not or have not been adequate. FIT is a program that provides intensive team-based, family-focused, comprehensive services to families where there is parental substance abuse. The program serves families that have been determined to be unsafe which have children under the age of ten. Referrals for services can be made by a child welfare professional, including the child protective investigator or child welfare case manager, or CBC.

Managing Entity Funding and Expenses

Contracts with MEs are funded with general revenue, other qualifying state funds, and applicable federal funding.²²⁹

In 2015, during an operational audit of the MEs, the Florida Auditor General found instances where some salary payments for leave used and ME employee leave balances did not appear to be supported or calculated accurately.²³⁰

A January 2019 operational audit by the Auditor General reported that as of March 31, 2017, the MEs' chief executive officer annual salaries, before bonuses, averaged \$226,216, and the average allocated to DCF contracts with the MEs was \$170,905.²³¹ The 2019 report also found that bonus payments of one ME did not appear reasonable and necessary to the performance of the ME's duties.²³² The Auditor General recommended DCF amend ME contracts to require compliance with statutory provisions restricting state-funded bonus payments under the contract.²³³

Florida law does not currently require MEs to publish salary information for any administrative employees.

Mental Health Commissions

At various times, the Legislature and the Executive Branch have established commissions to examine mental health services and make recommendations for policy changes.

2001 Commission

In 1999, the Legislature created the Florida Commission on Mental Health and Substance Abuse (Commission) to review and evaluate the state's mental health and substance abuse system and make recommendations for change.²³⁴ The Commission was made up of 23 professionals from throughout the state, including university professors, service providers, law enforcement, health care professionals, legislators, and state employees. The Commission found that the state's mental health and substance abuse service system is complex and diffuse, that diagnosis and treatment of disorders have improved

²²⁹ S. 394.9082(9), F.S.

²³⁰ The Office of the Auditor General, *Department of Children and Families and Selected Behavioral Health Managing Entities*, Report No. 2015-155, p. 1-2 (March 2015) https://flauditor.gov/pages/pdf_files/2015-155.pdf (last visited March 10, 2021).

²³¹ 2019 Audit Report, at p. 6 and 57.

²³² *Id.* at p. 3.

²³³ *Id.* at p. 28.

²³⁴ Florida Commission on Mental Health and Substance Abuse, *Final Report* (January 2001).

substantially, and no one governmental entity is responsible for leading the overall system. The Commission recommended:²³⁵

- Establishing a statewide Coordinating Council for Mental Health and Substance Abuse (Council) in the Executive Office of the Governor that will coordinate with the Governor's Office of Drug Control to lead an overall system for mental health and substance abuse services.
- That the Council, in an effort to reduce stigma, should provide and coordinate a range of prevention and education activities to inform the public of the signs and symptoms of mental health and substance abuse disorders and the availability of effective treatment.
- Adequate emergency response capacity should be uniformly available across the state to assure services are available and accessible.
- That DCF should develop criteria for identifying individuals with ongoing need for mental health and substance abuse services and implement a process to enroll such individuals in continuing care services.
- The Council should initiate special studies to better understand the needs of individuals who are inadequately served by the mental health and substance abuse system and develop solutions to meet those needs.
- The Council should place emphasis on individuals served in the law enforcement, corrections, and court systems and divert such individuals from incarceration into treatment whenever possible.
- DCF and the Council should focus on access and choice in mental health and substance abuse services.
- The Council should promote the development of post-secondary educational programs to provide state-of-the-art knowledge for the state's professional and para-professional service providers that is responsive to the environments in which they will practice.

2006 Work Group

In 2006, DCF's Assistant Secretary for Substance Abuse and Mental Health appointed a workgroup to address the plans and business models for substance abuse and mental health services in the state. The group included members from DCF service districts, substance abuse and mental health providers, consultants, and professional associations. The workgroup developed several recommendations to improve the substance abuse and mental health system in this state:²³⁶

- Define DCF's substance abuse and mental health covered populations by establishing program eligibility criteria.
- Support an effective and orderly transition to Medicaid reform.
- Support several approaches to service management and managing entities depending on the characteristics of service districts.
- Align statutes and state policy in the areas of eligibility, enrollment, case rates, and authorizations of the managing entities.
- Improve the data management and payment systems so they can support flexible, prospective-payment systems such as case rates and provide the more refined utilization data needed by service districts and managed entities.

As a result, in 2008, the Legislature authorized DCF to contract with managing entities to manage the day-to-day operational delivery of behavioral health services through an organized system of care.²³⁷

The Marjory Stoneman Douglas High School Public Safety Commission

In response to the shooting at Marjory Stoneman Douglas High School on February 14, 2018, the Florida Legislature passed SB 7026, the Marjory Stoneman Douglas High School Public Safety Act

²³⁵ *Id.*

²³⁶ Department of Children and Families, *Managing Substance Abuse and Mental Health Services Workgroup* (October 2006).

²³⁷ Ch. 2008-243, Laws of Fla.

(Act).²³⁸ The Act's provisions addressed school safety and security by creating the Office of Safe Schools (OSS) within the Florida Department of Education (DOE) and requiring increased coordination among state and local agencies serving students with or at-risk of mental illness, among other provisions.

The Act created the Marjory Stoneman Douglas High School Public Safety Commission (MSD Commission), composed of 16 members, to investigate system failures in the Marjory Stoneman Douglas High School shooting and prior mass violence incidents and develop recommendations for system-wide improvements. The MSD Commission submitted its initial report on January 2, 2019, which contained numerous school safety and security recommendations²³⁹ that the Legislature addressed in SB 7030 (2019), Implementation of Legislative Recommendations of the Marjory Stoneman Douglas High School Public Safety Commission.²⁴⁰ The MSD Commission's second report, submitted on November 1, 2019, provided recommendations related to safe-school officers, threat assessments, juvenile diversion programs, and mental health, among other recommendations.²⁴¹ The MSD Commission is authorized to issue annual reports and is scheduled to sunset on July 1, 2023.²⁴²

In February 2019, Governor Ron DeSantis requested, and the Florida Supreme Court convened, a grand jury to study systemic school safety failures. The grand jury was tasked with investigating whether specific public entities failed to act or committed fraud that undermined the school safety activities that the Act and subsequent legislation required.²⁴³ The Grand Jury's third and most recent report, issued in December 2020, included an analysis of the state's mental health infrastructure and found systemic problems are impacting mental health:²⁴⁴

- The current mental health system is underfunded leading to an inability to diagnose and properly treat mental health problems;
- The system is too decentralized with national, state, and local entities providing parallel and duplicative resources with little to no coordination;
- Many of the entities involved work for different agencies with different goals; and
- DCF is not currently equipped or empowered to exercise the degree of leadership and control necessary to correct problems in the system.

To address such problems, the Grand Jury recommended the Legislature appoint a commission to specifically examine the provision of mental health services in the state.²⁴⁵ The Legislature should ensure that relevant stakeholders have an opportunity to participate in and provide knowledge to the commission. The commission should consider how to best provide and facilitate services in dual diagnosis²⁴⁶ cases. Additionally, the commission should be charged with structuring and staffing a permanent, agency-level entity to manage mental health, behavioral health, and substance abuse and addiction services throughout the state.²⁴⁷ Lastly, a cabinet-level agency should be created and funded to administer disparate sources of funding and services relating to the state's mental health system.²⁴⁸

²³⁸ Ch. 2018-3, L.O.F.

²³⁹ Marjory Stoneman Douglas High School Public Safety Commission, *Initial Report* (Jan. 2, 2019), <http://www.fdle.state.fl.us/MSDHS/CommissionReport.pdf> (last visited Apr. 12, 2021).

²⁴⁰ Ch. 2019-22, L.O.F.

²⁴¹ Marjory Stoneman Douglas High School Public Safety Commission, *Second Report* (Nov. 1, 2020), <http://www.fdle.state.fl.us/MSDHS/MSD-Report-2-Public-Version.pdf> (last visited Apr. 12, 2021).

²⁴² Section 943.687(9), F.S.

²⁴³ Ron DeSantis, Governor of Florida, *Petition for Order to Impanel a Statewide Grand Jury*, (Feb. 13, 2019), https://efactscc-public.flcourts.org/casedocuments/2019/240/2019-240_petition_72393_e83.pdf (last visited Apr. 12, 2021); *In re Statewide Grand Jury #20*, No. SC19-240, 2019 WL 908518 (Fla. Feb. 25, 2019), https://efactscc-public.flcourts.org/casedocuments/2019/240/2019-240_disposition_145442_d04i.pdf (last visited Apr. 12, 2021).

²⁴⁴ Statewide Grand Jury # 20, *Third Interim Report of the Twentieth Statewide Grand Jury*, (Dec. 10, 2020), https://efactscc-public.flcourts.org/casedocuments/2019/240/2019-240_miscdoc_365089_e20.pdf (last visited Apr. 12, 2021).

²⁴⁵ *Id.* at p. 21

²⁴⁶ The Grand Jury describes "dual diagnosis" cases as cases that lie at the nexus of mental health, substance abuse, and law enforcement interests.

²⁴⁷ *Supra* note 244 at p. 23.

²⁴⁸ *Id.* at p. 24.

Contracted Services Accountability: Conflicts of Interest

The outsourced nature of many DCF services, such as child welfare and mental health and substance abuse services, requires DCF to engage in contract management functions focused on accountability. One area of possible lack of accountability is conflicts of interest between a CBC or ME member, officer or relative and a CBC or ME subcontractor.

Several Florida statutes address transactions or other situations in which a conflict of interest exists or may exist,²⁴⁹ applicable to varying types of conflicts of interest.²⁵⁰

Corporations

Florida laws on corporations define “director’s conflict of interest transaction” as a transaction between a corporation and one or more of its directors, or another entity in which one or more of the corporation’s directors is directly or indirectly a party to the transaction, other than being an indirect party as a result of being a shareholder of the corporation, and has a direct or indirect material financial interest or other material interest.²⁵¹ If a director’s conflict of interest transaction is fair to the corporation at the time it is authorized, approved, effectuated, or ratified:

- Such transaction is not void or voidable.
- The fact that the transaction is a director’s conflict of interest transaction is not grounds for any equitable relief, an award, or other sanctions.²⁵²

If proceedings challenging the validity of a director’s conflict of interest transaction or proceedings seeking equitable relief, damages, or other sanction are brought, the person challenging the director’s conflict of interest transaction has the burden to prove the lack of fairness of the transaction in specified situations.²⁵³

Nonprofit Organizations

Chapter 617, F.S., governs corporations not for profit and addresses conflicts of interest by exempting certain conflicts from voidness. It specifies that no contract or other transaction between a corporation and one of its directors or other corporation in which one or more directors have an interest shall be void or voidable because of the relationship or interest, or because the interested director is present at the meeting which authorizes or ratifies such contract if:

- The relationship is disclosed or known to the other directors who authorize or ratify the transaction by a vote which is sufficient to approve the transaction without the interested director’s vote;²⁵⁴
- The relationship is known or disclosed, and the members entitled to vote authorize or ratify it by vote or written consent;²⁵⁵ or
- The contract or transaction is fair and reasonable to the operation at the time it is authorized by the board, a committee, or the members.²⁵⁶

²⁴⁹ See ss. 112.312, 605.04092, 607.0832, and 617.0832, F.S.

²⁵⁰ See ss. 112.312, and 605.0492, F.S.

²⁵¹ S. 607.0832, F.S.; see also s. 605.0492(1)(g), F.S., with respect to limited liability companies which defines “member’s conflict of interest” as a transaction between a limited liability company and one or more of its members, or another entity in which one or more of the limited liability company’s members is directly or indirectly a party to the transaction, other than being an indirect party as a result of being a member of the limited liability company, and has a direct or indirect material financial interest or other material interest.

²⁵² S. 607.0832(2), F.S. This is the case when because of the relationship or interest, because such director is present at the meeting in which the transaction was authorized, or because his or her votes are counted for such purpose.

²⁵³ S. 607.0832(3), F.S. The presence of or a vote cast by a director with an interest does not affect the validity of an action if specified conditions are met.

²⁵⁴ S. 617.0832(1)(a), F.S. The presence of a vote cast by a director having a relationship or interest does not affect the validity of any action taken under paragraph (1)(a) if the transaction is otherwise authorized or ratified in this paragraph.

²⁵⁵ S. 617.0832(1)(b), F.S.

²⁵⁶ S. 617.0832(1)(c), F.S.

The transactions must be approved by a majority vote of the members.²⁵⁷

Public Officers and Employees

Public officers and employees must comply with standards of conduct outlined in s. 112.313, F.S. Chapter 112, F.S., restricts the type of business transactions that public officers and employees of an agency may have with a business entity in which the officer, employee, or the officer's or employee's specified family has a material interest.²⁵⁸ Public officers and employees of agencies are also prohibited from having conflicting employment or contractual relationships with any business entity or regulation.²⁵⁹ Section 112.312(8), F.S., defines "conflict" or "conflict of interest" as a situation in which regard for a private interest tends to lead to disregard of a public duty or interest.

Effect of the Bill

Child Welfare System

Reporting Child Abuse, Abandonment, and Neglect

The bill reorganizes and relocates current s. 39.201, F.S., by:

- Creating s. 39.101, F.S., to contain provisions related to the hotline's operation and maintenance, timelines for initiating an investigation, use of information received by the hotline, and quality assurance.
- Amending current s. 39.201, F.S., to only contain provisions related to reporting, including required reporting; exceptions to reporting; additional circumstances relating to reporting; reports of child abuse, neglect, or abandonment by a parent or caregiver; reports of sexual abuse of a child, juvenile sexual abuse, or a child who has exhibited inappropriate sexual behavior; and mandatory reports of a child death.

In addition to incidents that occur at a Florida College System institution or a state university, the bill adds to the list of schools or school events regarding which DCF must collect and analyze data, and include in separate statistical reports, as follows:

- On school premises;
- On school transportation;
- At school-sponsored off-campus events;
- At any school readiness program provider determined to be eligible under s. 1002.88, F.S.;
- At a private prekindergarten provider or a public school prekindergarten provider;
- At a public K-12 school;
- At a private school; or
- At any school.

The bill amends s. 39.201(2)(c), F.S., relating to reports of juvenile sexual abuse or a child who has exhibited inappropriate sexual behavior and relocates the law to a new s. 39.201(5), F.S., and requires DCF to comply with new requirements, including:

- Providing services in the least restrictive environment possible and must include, but are not limited to, child advocacy center services pursuant to s. 39.3035, F.S., and sexual abuse treatment programs developed and coordinated by the Children's Medical Services Program pursuant to s. 39.303, F.S.
- Conducting a protective investigation for allegations of childhood sexual abuse or juvenile sexual abuse which occur on or at the schools or school events listed in the newly created s. 39.101(3)(f)2., F.S., and requires that the investigation include an interview with the child's parent or legal guardian.

²⁵⁷ S. 617.0832(2) and (3), F.S.

²⁵⁸ S. 112.313(3), F.S.

²⁵⁹ S. 112.313(7), F.S.

- Notifying the Department of Education, the law enforcement agency having jurisdiction over the municipality or county in which the school is located and, as appropriate, the superintendent of the school district where the school is located, the administrative officer of the private school, or the owner of the private school readiness or pre-kindergarten provider.
- Preparing written report to the law enforcement agency within 3 working days after making the oral report. Any criminal investigation must be coordinated with DCF's child protective investigation, whenever possible. Any interested person who has relevant information relating to the abuse may forward a statement to DCF.

The bill adds animal control officers defined in s. 828.27, F.S., or agents appointed under s. 828.03, F.S., to those who must disclose their names when making reports to the hotline.

Report Confidentiality

The bill amends s. 39.202(2), F.S., to include the Agency for Health Care Administration (AHCA) as an agency permitted to receive reports of abuse and neglect. This will allow AHCA to complete child abuse and neglect record checks for employees who work in direct contact with children placed by DCF in facilities licensed by AHCA. This brings the state in compliance with FFPSA provisions requiring such checks.

The bill creates s. 39.202(7), F.S., to grant access to confidential and exempt records to a legislative committee pursuant to s. 11.143, F.S., within seven business days if requested within that timeframe.

Penalties for Failing to Report

The bill amends s. 1012.795, F.S., requiring the Education Practices Commission (EPC) to suspend for at least one year the educator certificate of instructional personnel or a school administrator if DCF finds that knowing failure to report child abuse pursuant to s. 39.201, F.S., and the EPC has issued a final order in accordance with ch. 120, F.S., for a previous instance of such failure by the individual.

Child Abuse and Animal Cruelty

The bill states that animal cruelty is a type of interpersonal violence which frequently co-occurs with child abuse and other forms of violence and that early detection of animal cruelty provides an important tool to safeguard children from abuse and neglect. The bill creates s. 39.208, F.S., establishing cross-reporting requirements where child protective investigators (CPIs) are required to report known or suspected animal cruelty, and animal control officers are required to report known or suspected child abuse, abandonment, or neglect, or any child who is without parental or caregiver supervision.

CPIs are required to report known or suspected incidents of animal cruelty within 72 hours to a supervisor for submission to a local animal control agency. The report must include:

- A description of the animal and animal cruelty.
- The name and address of the animal's owner or keeper, if available.
- Any other available information that might assist in determining the cause of the animal cruelty and the manner in which it occurred.

A CPI who makes a report of animal cruelty is presumed to be acting in good faith, and if the CPI cooperates in an investigation, that individual is immune from civil or criminal liability or administrative penalty or sanction. A CPI who knowingly and willfully fails to report known or suspected animal cruelty under new s. 39.208, F.S., commits a second degree misdemeanor.

The bill also requires animal control officers to immediately report known or suspected child abuse, abandonment, or neglect immediately. An animal control officer who knowingly and willfully fails to report known or suspected child abuse, abandonment, or neglect under new s. 39.208, F.S., is subject to the penalties imposed in s. 39.205, F.S.

The bill requires DCF, in consultation with animal welfare associations, must develop or adapt and use already available training materials for CPIs and animal control officers on the accurate and timely identification and reporting of child abuse, abandonment, or neglect or animal cruelty and the interconnectedness of such abuse, abandonment, or neglect.

Child Protective Investigations

The bill amends s. 39.301, F.S., to require DCF or the sheriff providing child protective services to continually evaluate the safety of children during child protective investigations. Further, during an investigation of alleged sexual abuse in an out-of-home placement, the bill requires child protective investigators to assess and take appropriate protective actions to address the safety of any children who are not the subject the investigation of sexual abuse but are in the same placement or are accessible to the same perpetrator.

Institutional Child Abuse, Abandonment, and Neglect

In revising reporting statutes, the bill relocates current law to s. 39.202, F.S., regarding conducting institutional investigations. It addresses representation of alleged perpetrators by attorneys, specifying that the absence of such person does not prevent DCF from proceeding with other aspects of the investigation. If the institution is not operational and the child is unable to be located, the bill requires the investigation to be commenced immediately upon the institution reopening. The bill requires DCF to provide copies of all investigative reports regarding institutional investigations to a state attorney or law enforcement agency upon request.

Special Investigations of Critical Incidents and Sexual Abuse

Critical Incident Rapid Response Teams

The bill requires CIRRT teams to include a representative from a child advocacy center who has specialized training in sexual abuse, if sexual abuse of the child who is the subject of the report is alleged, or a combination of specialists from a child advocacy center, if appropriate.

Investigations of Sexual Abuse in Out-of-Home Care

The bill amends s. 39.2015, F.S., to require DCF to conduct additional investigations of reports of sexual abuse of children in out-of-home care. The purpose of such investigations is to identify root causes and policy and procedure improvements to prevent and address sexual abuse of children while in out-of-home care. At a minimum, DCF must investigate a report of verified sexual abuse of a child in out-of-home care if the child was the subject of a verified report of abuse or neglect during the previous six months. The investigation must be initiated as soon as possible but no later than 2 business days after a child protective investigator determines there are verified findings of sexual abuse. However, if a case has been open for 45 days, the investigation must be initiated immediately. Only one investigation must be initiated for an allegation of sexual abuse that is based on the same act, criminal episode, or transaction regardless of the number of reports made about the allegations to the hotline.

Each sexual abuse report investigation must be conducted by, at a minimum, a trained DCF employee and one or more professionals who are employees of another organization and who are involved in conducting CIRRT investigations. The investigation may be conducted remotely. A preliminary report on each case must be provided to DCF's secretary no later than 45 days after the investigation begins.

Out-of-Home Placements

The bill amends ss. 39.4015 and 39.5086, F.S., to require DCF and CBCs to establish family-finding and kinship navigator programs rather than authorizing the establishment of such programs based on available funding.

Family Foster Homes

The bill amends s. 409.175, F.S., to increase the number of foster children who may be placed in a licensed foster home. The bill increases the number from five children, including the foster parents' own children, to six dependent children or eight *total* children (dependent children and the foster family's own children). If DCF is considering placing more children in a home that has reached the capacity limits, the bill requires DCF to conduct an over-capacity waiver assessment first. DCF must assess each child and whether each child's needs will be met by the placement. DCF cannot place another child in the home without expressly waiving the capacity limit after the assessment. This change gives DCF more flexibility when placing children in family foster homes and is within the requirements set by the FFPSA, which allows a child welfare agency to place six children in a licensed family foster home, excluding the foster parents' own children, prior to being considered over-capacity.

The bill amends s. 39.4087, F.S., to relocate language that a caregiver must maintain the confidentiality of any information required by law from s. 39.4087(1)(c), F.S., to new s. 39.4087(c)2., F.S. The bill also amends s. 39.4087(1)(l), F.S., to consider a caregiver as a placement option if a child who was formerly placed with the caregiver re-enters out-of-home care only if the caregiver agrees to such placement.

The bill repeals s. 409.1453, F.S., which requires DCF to design and disseminate training for caregivers on life skills, and relocates it to s. 409.1415(2)(b)15., F.S.

Foster Information Center

The bill amends s. 409.1415(2)(b)6., F.S., to specify that the services and supports provided to caregivers are addressed in a new subsection created in s. 409.1415(3), F.S. The new subsection requires DCF to establish the Foster Information Center to connect current and former foster parents, known as foster parent advocates, to prospective and current foster parents in order to provide information and services, including, but not limited to:

- Navigating the application and approval process, including timelines for each, preparing for transitioning from approval for placement to accepting a child into the home, and learning about and connecting with any available resources in the prospective foster parent's community.
- Accessing available resources and services, including but not limited to, those from the Florida Foster and Adoptive Parent Association, for any current foster parents who need additional assistance.
- Providing information specific to a foster parent's individual needs.

This expands the purpose of the Foster Information Center that DCF currently operates by adding responsibilities related to current foster parents, not just prospective foster parents.

The bill also addresses supports to kinship caregivers by requiring CBCs to provide a kinship caregiver with resources and supports that are available and discuss whether the caregiver meets any eligibility criteria. If the caregiver is unable to access resources and supports beneficial to the well-being of the child, the CBC or case management agency must assist the caregiver in initiating access to resources by:

- Providing referrals to kinship navigation services, if available.
- Assisting with linkages to community resources and completion of program applications.
- Scheduling appointments.
- Initiating contact with community service providers.

The CBC must provide each caregiver with a telephone number to call during normal working hours whenever immediate assistance is needed and the child's case manager is unavailable. The telephone

number must be staffed and answered by individuals possessing knowledge and authority to assist caregivers. This may provide kinship caregivers greater access to resources, which will enable them to better care for the children living with them.

Rights of and Goals for Children in Foster Care

The bill requires the design and delivery of child welfare services to be directed by the principle that the health and safety of children, including the freedom from abuse, abandonment, or neglect, is of paramount concern. It requires DCF to operate with the understanding that the rights of children in shelter or foster care are critical to their safety, permanency, and well-being and to work with all stakeholders to help such children become knowledgeable about their rights

It requires case managers or other staff to provide verbal and written instructions to a child entering shelter or foster care in an understandable manner on how to identify and report child abuse, abandonment, or neglect. The case manager or other staff must review this information with a child every six months and upon every placement change until the child leaves shelter or foster care. The case manager must document in court reports and case notes the date the child received the information.

The bill also authorizes and encourages district school boards to establish an educational program for students ages 5 through 18 relating to the process for identifying and reporting abuse, abandonment, or neglect. This program may be provided in conjunction with the youth mental health awareness and assistance training program required under s. 1012.584, F.S., any other mental health education program offered by the school district, or any of the educational instruction programs required under s. 1003.42(2), F.S.²⁶⁰

Multidisciplinary Legal Representation

The bill creates s. 39.4092, F.S., to allow each Office of Criminal Conflict and Civil Regional Counsel (OCCRC) to establish a multidisciplinary legal representation model program to serve families who are in the dependency system. DCF must collaborate with the OCCRC to determine and execute any necessary documentation for approval of federal matching funding. DCF must submit such documentation as promptly as possible upon establishment of the program and execution of necessary agreements to ensure the program accesses available federal matching resources for the program. If an OCCRC establishes a multidisciplinary legal representation model program, it must meet the following requirements:

- Use a team that consists of a lawyer, a forensic social worker, and a parent-peer specialist. For purposes of the section, a “parent-peer” specialist means a person who has:
 - A child who was placed in out-of-home care.
 - Been successfully reunified with that child for more than 2 years.
 - Received specialized training to become a parent-peer specialist.
- Comply with any necessary cost-sharing or other agreements to maximize financial resources and enable access to available federal matching funds.
- Provide specialized training and support for attorneys, social workers, and parent-peer specialists involved in the model program.
- Collect uniform data on each child whose parent is served by the program and ensure that reporting of data is conducted through the child’s unique identification number in DCF’s child welfare case tracking system.
- Develop consistent operational program policies and procedures throughout each region that establishes the model program.

²⁶⁰ Examples of such programs include the history and content of the Declaration of Independence, flag education, the elementary principles of agriculture, and comprehensive health education.

- Obtain agreements with universities relating to approved placements for social work students to ensure the placement of social workers in the program.
- Execute conflict of interest agreements with each team member.

Each OCCRC that establishes a multidisciplinary legal representation model program must provide an annual report to the Office of Program Policy Analysis and Government Accountability (OPPAGA). The annual report must use the uniform data collected on each individual child whose parents are served by the program and must detail, at a minimum, all of the following:

- Reasons for the original involvement of the family in the dependency system.
- Length of time it takes to achieve a permanency goal for the children whose parents are served by the program.
- Frequency of each type of permanency goal achieved by children whose parents are served by the program.
- Rate of re-abuse or re-removal of children whose parents are served by the program.
- Any other relevant factors that tend to show the impact of the program on the outcomes for children in the dependency system, provided each region that has established such a program agrees to uniform additional factors and how to collect data on such additional factors in the annual report.

By October 1, 2022, and annually thereafter through October 1, 2025, each OCCRC must submit its annual report to OPPAGA. The bill requires OPPAGA to compile the results of such reports and conduct an analysis comparing the reported outcomes from the multidisciplinary legal representation model to known outcomes of children in the dependency system whose parents are not served by the program. OCCRC's must provide any additional information or data requested by OPPAGA for its analysis. By December 1, 2022, and annually thereafter through December 1, 2025, OPPAGA must submit its analysis in a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Community-Based Care Organizations

The bill amends s. 409.988, F.S., to require CBCs to adhere to all best child welfare practices pursuant to:

- s. 39.4087, F.S., related to treating caregivers with respect and ensuring delivery of child welfare services is focused on the child's best interest.
- s. 39.523, F.S., related to the placement of children in out-of-home care. Such placement must be in the least restrictive, most family-like setting available in close proximity to the child's home, and the placement must meet the child's needs.
- s. 409.1415, F.S., related to providing supports to caregivers and birth or legal parents in order for them to build strong relationships that lead to more successful reunifications and stability for children.
- s. 409.145, F.S., related to empowering caregivers for children placed in foster care so children receive quality parenting while in out-of-home placement.

Further, the bill amends s. 409.996, F.S., to require CBC contracts with DCF to include information that specifies how the CBC will adhere to these requirements.

The bill amends s. 409.996, F.S., to require DCF to annually conduct a comprehensive, multi-year review of the revenues, expenditures, and financial position of all CBC agencies that covers the most recent two consecutive fiscal years. The review must include a comprehensive system-of-care analysis. All CBCs must develop and maintain plans to achieve financial viability; these accompany DCF's submission. The bill requires DCF to submit its review to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 of each year. This report is currently required in the 2020-2021 General Appropriations Act.

The bill amends s. 409.988, F.S., removing the requirement for CBCs to post specified budget information, including certain information on CBC salaries. Instead, it requires DCF to collect, publish on its website, and annually update certain information for each CBC. DCF must publish the compensation for any employee, or person compensated through a contract for, serving in the role of chief executive, chief administrator, or other chief officer of a business or corporation, whose compensation is from state appropriated funds in excess of 150 percent of the annual salary of DCF's secretary.²⁶¹ In addition, DCF must publish and annually update all the findings from the CBC annual reviews.

The bill amends s. 409.988(1)(k), F.S., to include the number and percent of case managers who have 25 or more cases on their caseloads in the information CBCs are required to publish on their websites by the 15th day of each month.

The bill amends s. 409.990, F.S., to require a CBC to fund the increased costs incurred by subcontracted providers if the subcontracted providers must provide services that are beyond the contract limits due to increased client need or caseload.

The bill also requires CBCs to identify themselves as DCF contractors on their documents and promotional literature. This ensures all clients served by CBCs, and the general public, will be aware of the contractual relationship with DCF.

CBC Procurement: Community Alliances

The bill amends s. 409.987, F.S., to allow DCF to collaborate with the local community alliance to establish an alternative approach to providing community-based child welfare services in communities where conditions make it infeasible to competitively contract with a CBC. The bill requires DCF and the local community alliance to develop a plan that details how the community will continue to implement community-based care. The plan must ensure local control over the management and administration of service provision. The bill requires the plan to describe, at a minimum:

- The reason for DCF's inability to contract competitively for CBC services.
- The proposed alternative approach to providing CBC services.
- The entities that will be involved in service provision.
- How local control will be maintained.
- How services will be managed to ensure that federal and state requirements are met and child welfare outcome goals under s. 409.986, F.S., are achieved.
- Recommendations for increasing the ability of DCF to contract with a CBC in that area.

DCF must provide the plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives prior to implementation. DCF must provide quarterly updates about the plan's implementation to the Governor, the President of the Senate, and the Speaker of the House of Representatives until two years after full implementation of the plan.

Child Advocacy Centers

The bill codifies the current functions of CACs. It amends s. 39.3035(1), F.S., to specify that child advocacy centers are facilities that offer multidisciplinary services in a community-based, child-focused environment to children who are alleged to be victims of abuse or neglect, including, but not limited to, sexual abuse or severe physical abuse. Additionally, the bill specifies that the centers bring together, often in one location, child protective investigators, law enforcement, prosecutors, and medical and

²⁶¹ In FY 2020-21, DCF's secretary salary was \$146,822.52. Email from Michael Wickersheim, Director of Legislative Affairs, Department of Children and Families, re: DCF Secy. Salary, (Apr. 21, 2021)(on file with the Children, Families, and Seniors Subcommittee).

mental health professionals to provide a coordinated, comprehensive response to victims and their caregivers. This is consistent with how CACs currently operate.

Mental Health and Substance Abuse Services

Managing Entities

The bill imposes similar transparency requirements on MEs as it does for CBCs.

It amends s. 394.9082, F.S., to require DCF to collect and publish on its website, and annually update, information for each ME under contract with DCF. DCF must publish the compensation for any employee, or person compensated through a contract for, serving in the role of chief executive, chief administrator, or other chief officer of a business or corporation, whose compensation is from state appropriated funds in excess of 150 percent of the annual salary of DCF's secretary.²⁶² In addition, DCF must publish and annually update the form 990 and related IRS documentation, auditor reports, and annual reports from the last three years for each ME.

The bill also requires MEs to identify themselves as DCF contractors on their documents and promotional literature. This ensures all clients served by MEs and the general public will be aware of the contractual relationship with DCF.

Commission on Mental Health and Substance Abuse

The bill creates the Commission on Mental Health and Substance Abuse (Commission) adjunct to DCF. DCF is required to provide administrative staff and support services for the Commission.

The purpose of the Commission is to:

- Examine the current methods of providing mental health and substance abuse services in the state.
- Improve the effectiveness of current practices, procedures, programs, and initiatives in providing such services.
- Identify any barriers or deficiencies in the delivery of such services.
- Recommend changes to existing laws, rules, and policies necessary to implement the Commission's recommendations.

The bill requires the Commission to have 19 members, including the secretaries of AHCA and DCF.

The Governor must appoint seven members, including:

- A psychologist licensed under ch. 490, F.S., practicing within the mental health delivery system;
- A mental health professional licensed under ch. 491, F.S.;
- A representative of mental health courts;
- An emergency room physician;
- A representative from the field of law enforcement;
- A representative from the criminal justice system; and
- A representative of a child welfare agency involved in the delivery of behavioral health services.

The President of the Senate must appoint five members, including:

- A member of the Senate;
- A person living with a mental health disorder;
- A family member of a consumer of publicly funded mental health services;
- A representative of the Louis de la Parte Mental Health Institute within the University of South Florida; and

²⁶² *Id.*

- A representative of a county school district.

The Speaker of the House of Representatives must appoint five members, including:

- A member of the House of Representatives;
- A representative of a treatment facility;
- A representative of a managing entity;
- A representative of a community substance abuse provider; and
- A psychiatrist licensed under chs. 458 or 459, F.S., practicing within the mental health delivery system.

The Governor appoints the commission chair from among its members. Appointments must be made by August 1, 2021, and members serve at the pleasure of the officer who appointed the member. A vacancy on the Commission is required to be filled in the same manner as the original appointment.

The Commission is required to convene no later than September 1, 2021, and must meet monthly or upon the call of the chair. Meetings are authorized to be held via teleconference or other electronic means.

The duties of the Commission include:

- Conducting a review and evaluation of the management and functioning of existing publicly supported mental health and substance abuse systems in DCF, AHCA, and all other relevant state departments;
 - At a minimum, such review must include a review of current goals and objectives, current planning, service strategies, coordination management, purchasing, contracting, financing, local government funding responsibility, and accountability mechanisms.
- Considering the unique needs of people who are dually diagnosed;
- Addressing access to, financing of, and scope of responsibility in the delivery of emergency behavioral health care services;
- Addressing the quality and effectiveness of current service delivery systems and professional staffing and clinical structure of services, roles, and responsibilities of public and private providers;
- Addressing priority population groups for publicly funded services, identifying the comprehensive delivery systems, needs assessment and planning activities, and local government responsibilities for funding services;
- Reviewing the implementation of ch. 2020-107, Laws of Fla.;²⁶³
- Identifying gaps in the provision of mental health and substance abuse services;
- Providing recommendations on how managing entities may promote service continuity;
- Making recommendations about the mission and objectives of state-supported mental health and substance abuse services and the planning, management, staffing, financing, contracting, coordination, and accountability mechanisms best suited for the recommended mission and objectives; and
- Evaluating and making recommendations regarding the establishment of a permanent, agency-level entity to manage mental health, behavioral health, substance abuse, and related services statewide, including the:
 - Duties and organizational structure;
 - Resource needs and possible sources of funding;
 - Impact on access to and the quality of services;

²⁶³ Ch. 2020-107, L.O.F., requires managing entities to implement a coordinated system of mental health care for children and expands the use of mobile response teams (MRTs) across the state. It requires the Florida Mental Health Institute within the University of South Florida to develop a model protocol for school use of MRTs. The bill also requires AHCA and DCF to identify children and adolescents who are the highest users of crisis stabilization services and take action to meet the needs of such children. Lastly, the bill requires AHCA to continually test the Medicaid managed care provider network databases to ensure behavioral health providers are accepting enrollees and confirm that enrollees have access to behavioral health systems.

- Impact on individuals with behavioral health needs, and their families, who are currently receiving services and those who are in need of services; and
- Relation to and integration with service providers, managing entities, communities, state agencies, and provider systems.

The bill requires state departments and agencies to provide assistance in a timely manner if requested by the Commission.

The Commission is required to submit an initial report by September 1, 2022, and a final report by September 1, 2023, to the Governor, President of the Senate, and Speaker of the House of Representatives on its findings and recommendations on how to best provide and facilitate mental health and substance abuse services.

The bill repeals the statute authorizing the Commission on September 1, 2023, unless saved through reenactment by the Legislature.

Contracted Services Accountability: Conflicts of Interest

The bill addresses conflicts of interest within MEs and CBCs.

It creates ss. 394.90825 and 409.987(7), F.S., establishing a process for disclosing and eliminating any transaction or activity that could reasonably be construed to be a conflict of interest for a member, officer, or relative of an ME or CBC. This requirement applies to situations in which a ME or CBC board member or an officer, or a relative within the third degree of consanguinity by blood or marriage of a member or officer:

- Enters into a contract or other transaction for goods or services with the ME or CBC.
- Holds a direct or indirect interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the ME or CBC or proposes to enter into a contract or other transaction with the ME or CBC.
- Knowingly obtain a direct or indirect personal, financial, professional, or other benefit as a result of the relationship with the ME or CBC.

Any activity that involves a contract for goods and services, a purchase of any real or tangible property, an agreement to engage with the ME or CBC for a benefit, or an in-kind contribution must be presented to the board of the ME or CBC for approval. If it is a new contract, it must be presented to the board on or after July 1, 2021, for approval. For any contract being considered for renewal between July 1, 2021, and January 1, 2022, a board member or officer must disclose any activity that may reasonably be construed to be a conflict of interest before such activity is initially considered and approved or renewed by the board. A rebuttable presumption of a conflict of interest exists if the activity was acted upon by the board without prior notice.

If a contract is not subject to renewal before January 1, 2022, the board member or officer must disclose any information that could reasonably be construed to be a conflict of interest by December 31, 2021.

Any proposed activity or existing contract which does give rise to a disclosure obligation must be listed on the meeting agenda for the next general or special meeting of the members, and copies of all contracts and relevant documents related to the transaction must be included. The meeting agenda must clearly state the potential conflict of interest. The board must be given an opportunity to approve or disapprove the conflict of interest by a vote of two-thirds of all other members present.

If the board votes against the proposed activity, the board member or officer must notify the board in writing of his or her intention, or the relative's intention, not to pursue the proposed activity or the board member or officer must resign. If the board finds an officer or member has violated this provision, the officer or member will be deemed removed from the office before the next scheduled board meeting. If

the board votes against the renewal of an existing contract which gives rise to a conflict of interest, the parties to the activity may opt to cancel the activity, or in the alternative, the member or officer must resign from the board before the next scheduled meeting. The bill provides for limitations on damages under existing contracts.

A board member, officer, or relative who has an interest in an activity that entails a possible conflict of interest may attend the meeting at which the activity is considered by the board, make a presentation, and then leave the meeting during any relevant discussion by the other board members. A member or officer who is a party to, or has an interest in, the activity must recuse himself or herself from the vote.

A contract entered into between a member, officer, or relative of a member or an officer in which there is a conflict of interest or potential conflict of interest, is voidable and terminates upon the filing of a written notice to the board which involves at least 20 percent of the voting interest of the CBC or ME.

The bill has an effective date of July 1, 2021, except for the provisions related to sexual abuse investigations, which are effective October 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill has an indeterminate, negative fiscal impact on DCF due to implementing family-finding programs and conducting sexual abuse investigations. The 2020-21 GAA provides a lump sum of \$30,000,000 (\$2,500,000 in nonrecurring funds) to implement these provisions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill requires CBC's to implement family-finding programs and kinship navigator programs. The 2020-21 GAA provides a lump sum of \$30,000,000 (\$2,500,000 in nonrecurring funds) to implement these and the other provisions of the bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.