

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empowers families: The bill empowers families and protects persons with developmental disabilities by providing additional criteria to deny, revoke or suspend licenses for residential homes. The bill also tightens the exception criteria for background screening of persons who work with persons with developmental disabilities.

B. EFFECT OF PROPOSED CHANGES:

Background

The Agency for Persons with Disabilities (APD) is responsible for providing services to persons with developmental disabilities in Florida. A developmental disability is defined in chapter 393, F.S. as “a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.”¹ Children who are at high risk of having a developmental disability and are between the ages of 3 and 5 are also eligible for services.²

Services to Persons with Developmental Disabilities

APD provides an array of home and community based services through contract providers, as well as services in Developmental Disabilities Institutions and Forensic program services. APD administers home and community based services through 14 area offices that are responsible for day to day operations and report to central office. As of February 2008, APD was serving over 52,000 persons with developmental disabilities.³ The majority of people APD serves receive their services through one of three home and community based Medicaid waiver programs operated by the agency. The Developmental Disabilities Home and Community-Based Services Medicaid waiver is the largest source of funding to the agency and serves 25,118 people.⁴ The Family and Supported Living (FSL) waiver makes services available to children and adults who live with their family or in their own home and currently serves 6,060 people.⁵ The Consumer-Directed Care Plus program, is the third Medicaid waiver operated by APD. This waiver offers people greater control and choice in the selection of services and providers. APD serves approximately 974 individuals in this program.⁶ APD also provides services to people who are not eligible or funded by Medicaid through the Individual and Family Supports program.

As of January 2008, there were 16,446 people on the APD waitlist for Medicaid waiver services. This waitlist increased by over 2,500 people during the previous 12 months.⁷

The 2007 Legislature directed APD to eliminate some services, revise others and establish a four-tier waiver system to replace the current waiver program. The purpose of the tier system is to create a predictable spending model for the program and help control over utilization of services which has lead to significant program deficits in recent years. The four-tier waiver system has recently received federal approval and APD is in the process of implementing the new program.

¹ s. 393.063(9), F.S.

² “High-risk child” is defined in s. 393.063(19) F.S.

³ Susan Chen, APD. March 4,2008 email

⁴ Agency for Persons with Disabilities Quarterly Report, Second Quarter 2007-2008, February 2008.

⁵ Ibid

⁶ Ibid

⁷ 399 Report for January 2008, Agency for Persons with Disabilities

Developmental Disabilities Institutions

The Developmental Disabilities Institutions (DDIs), provide residential services for 866 people under an Intermediate Care Facility license and 236 forensic residents in secure settings for a total of 1,102 individuals. These facilities provide services with 3,067 staff and a \$147.8 million operating budget. Most people who reside in a Developmental Disabilities Institution have significant medical and/or behavioral needs. These facilities provide 24-hour support for personal care, habilitation, developmental and health services⁸.

Forensic Services Background

APD operates four secure forensic facilities for individuals with developmental disabilities committed by the courts. These facilities include 234 forensic beds that are located at the Mentally Retarded Defendant Program in the Florida State Hospital at Chattahoochee, Tacachale Developmental Disability Institution in Gainesville and Sunland Center in Marianna. The agency reports that the 234 forensic beds remain full and the agency maintains a waitlist for people to enter the program.

When individuals alleged to have committed a felony are found to have mental retardation or autism, the court may determine them either competent to proceed to trial or incompetent to proceed due to their developmental disability. Those found to be competent to proceed to trial will move through the criminal justice system and have their day in court. However, if the court determines that an individual is incompetent to proceed to trial and requires a secure treatment setting, the court will commit the individual to the Agency for Persons with Disabilities for competency restoration training. The Agency must place the individual in an appropriate facility within fifteen days in accordance with Chapter 916, F.S.⁹ Most individuals are held in local jails prior to their commitment to APD. The average number of people committed to APD for competency training over the past 3 years is 111 individuals. The Mentally Retarded Defendant program in Chattahoochee is the primary receiving facility for these commitments.

If APD clinical staff determine that an individual has regained competency or no longer meets the requirements for continued commitment, a report is sent to the court to request a competency hearing. The individual is then transported by the Sheriff to the jail where they will await the court hearing.

Licensure of Residential Facilities

APD is authorized in s.393.067, F.S. to set standards and license group homes, foster homes, residential habilitation centers and comprehensive transitional education programs. Individuals can apply for a license to operate a home through an APD area office. The agency currently licenses 1,539 of these homes or centers and one comprehensive transitional education program. On average 84 new homes are licensed each year.¹⁰ APD serves approximately 6,000 people with developmental disabilities in licensed residential settings and most receive services in group homes. The 2006 Legislature granted the agency authority to access the records of abuse, neglect and exploitation maintained by DCF which may be used by APD in the licensure application review process.

Effects of the Proposed Bill

Developmental Disabilities Centers

The bill changes the name of the Developmental Disabilities *Institutions* to Developmental Disabilities *Centers*. During the 1970s, Florida Statutes defined these facilities as "Sunland Centers." In 1981, the

⁸ APD Resource Manual 2007

⁹ S.916.107(1)(a)

¹⁰ Tom Rice, APD, March 4, 2008 email.

definition title was changed to “major state retardation facility” and in 1989, changed again to “Developmental Services Institution.” The latest change to the statute was in 2004, when the definition title was changed to “Developmental Disabilities Institution.” The meaning of the definition has not substantively changed over the years. Each of the current facilities uses a working title; e.g. Tacachale in Gainesville was formerly known as Sunland Gainesville, Gulf Coast Center was formerly called Sunland Fort Myers and Sunland Marianna’s name remains the same. APD requests the name change in statute to eliminate use of the term “institution” and rename the facilities Developmental Disabilities Centers to better reflect the spirit of progress being made in these facilities and to maintain the dignity of the residents¹¹.

Definition of Retardation

The bill clarifies the definition of retardation in statute. Prior to 2006, the definition of Retardation in statute (chapters 393 F.S. and 916 F.S.) provided that the condition was manifested during the period from conception to 18 years of age. This language was removed from the definition during the 2006 session and placed in the definition of Developmental Disability (retardation is a developmental disability). The proposed definition of retardation in this bill restores the pre-2006 language (“that manifests before the age of 18”) and incorporates some of the definition of developmental disability (“can reasonably be expected to continue indefinitely”) into the revised definition. The effect of this bill is to clarify the definition of retardation. This does not alter current policy or application of this definition.

Background Screening

The bill revises the background screening requirement in Chapter 393, F.S. to exempt persons who have been screened in the previous 12 months as long as they have not been continuously unemployed for more than 90 consecutive days since the previous screening occurred. This language makes the screening requirement for service providers to persons with developmental disabilities consistent with other statutes and programs. A similar provision is currently required in statute for service providers of mental health and substance abuse programs,¹² and teachers¹³. This revision to statute is restoring a provision which was removed in 2006 for APD.

Licensure

The bill adds criteria to the statute which would allow APD to deny, revoke, or suspend a license or impose an administrative fine if the licensure applicant or licensee has:

- Been verified by DCF to be a caregiver responsible for abuse, neglect or abandonment of a child or abuse, neglect, or exploitation of an adult, or
- Previously had a license revoked by APD, the Agency for Health Care Administration or the Department of Children and Families.

APD reports that between 70 and 90 percent of persons with developmental disabilities will be the victims of abuse, neglect or exploitation at some point during their lifetimes.¹⁴ The current statute does not give APD clear authority to deny a license to an applicant who may meet one or both of the above criteria. The effect of this bill would be to clarify current language and give APD authority to deny licenses when the above circumstances exist.

¹¹ 2008 APD Legislative Proposals Tab O.

¹² s. 394.4572(3),F..S. and s.397.451(3),F.S.

¹³ S.402.3057,F.S.

¹⁴ Valenti-Hein & Schwartz, The sexual abuse interview for those with developmental disabilities. James Stanfield Company.

Chapter 916 Forensic Services

Appointment of Experts: The bill clarifies that at least two experts, one of which is a psychologist are required in court ordered evaluations of a person with autism or retardation. This clarification is made by adding a conjunctive “and” between s.916.301(2)(a) and (b), F.S. The evaluation is to determine if a person who has been charged with a felony crime meets the definition of autism or retardation and whether the defendant is incompetent to proceed due to their developmental disability. The current law is not clear as to whether one or two experts are required to perform the evaluation. This lack of clarity occurred after 2006 revisions to this section of statute. Prior to this time, two experts were clearly required in law. The requirement of two experts for the evaluation of persons with autism or retardation is consistent with the requirement for two experts to determine mental illness in Part II of Chapter 916 for the Mentally Ill.

Competency Hearings

The bill requires a 15 day timeframe for the Sheriff to transport a defendant back to jail to await hearing and a 30 day timeframe for a competency hearing to be scheduled by the court. This would occur after the administrator of a facility where the defendant has been committed submits a report to the court that the defendant is competent to proceed or no longer meets the criteria for continued commitment. Current statute does not require a timeframe for transporting an individual back to jail or scheduling the hearing. However, Florida Rules of Criminal Procedure¹⁵ requires the court to hold a hearing to determine if the defendant continues to be incompetent within 30 days of the receipt of a report from the administrator. When delays occur in the transporting of defendants and the scheduling of competency hearings, the agency is unable to make these forensic beds available to new defendants who have been committed by the court and are waiting on placement. The effect of this new provision in statute would timely move defendants out of treatment facilities and back to the court system. The new provision would also help the agency avoid waiting lists for forensic beds and assist them to meet the Chapter 916, F.S. requirement¹⁶ for a committed person to be admitted to a forensic facility within 15 days of the court order.

C. SECTION DIRECTORY:

Section 1. Amends s. 287.155, F.S., relating to motor vehicles

Section 2. Amends s. 393.063, F.S., relating to definitions

Section 3. Amends s. 393.064, F.S., relating to prevention

Section 4. Amends s. 393.0651, F.S., relating to family or individual support plan

Section 5. Amends s. 393.0657, F.S., relating to person not required to be fingerprinted or rescreened

Section 6. Amends s. 393.066, F.S., relating to community services and treatment

Section 7 Amends s. 393.0673, F.S., relating to denial, suspension or revocation of license

Section 8 Amends s. 393.135, F.S., relating to sexual misconduct

Section 9 Amends s. 393.066, F.S., relating to financial commitment to community services programs

¹⁵ Florida Rules of Criminal Procedure 3.212(c)(5)(A)

¹⁶ s.916.107(1)(a)

Section 10 Amends s. 393.066, F.S., relating to trust accounts

Section 11 Amends s. 393.506, F.S., relating to administration of medication

Section 12 Amends s. 400.063, F.S., relating to resident protection trust fund

Section 13 Amends s. 402.181, F.S., relating to state institutions claim program

Section 14 Amends s. 393.066, F.S., relating to education programs for students in residential care

Section 15 Amends s. 408.036, F.S., relating to projects subject to review

Section 16 Amends s. 435.03, F.S., relating to level 1 screening standards

Section 17 Amends s. 916.301, F.S., relating to appointment of experts

Section 18 Amends s. 916.302, F.S., relating to involuntary commitment of defendant

Section 19. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

While there would be no fiscal impact for APD, the impact to local government is indeterminate. Currently, defendants may not be moved to the county jails until shortly prior to a scheduled proceeding. Having to move the defendant within 15 days could result in a cost to a sheriff for the time the defendant would be in the county jail.

Based on current trends, APD notifies the court that competency has been restored in approximately 40 percent of the admissions. There are approximately 118 admissions yearly, indicating approximately 47

defendants that would be affected by the requirement to move the defendant within 15 days. For every defendant a sheriff transports from the program within 15 days, another defendant could be admitted, removing the defendant from the county jail. Based on this concept, the county would be replacing a defendant in the jail with one from the MRDP. This could result in the proposed language being cost neutral.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

N/A

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES