

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

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BILL: CS/CS/SB 1650

INTRODUCER: Governmental Oversight and Accountability Committee; Children, Families and Elder Affairs Committee; and Senator Montford

SUBJECT: Child Abuse, Abandonment, and Neglect

DATE: February 14, 2018      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Caldwell</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1650 revises child dependency law to improve coordination and communication among parties in dependency proceedings and add accountability measures to remove barriers to, and expedite permanency for abused and neglected children. Specifically, the bill:

- Revises grounds for the termination of parental rights, changes notice to parents regarding termination proceedings, expedites service referrals, and increases the frequency of hearings.
- Requires a parent to notify the parties or the court of barriers to being able to comply with a case plan task soon after discovering the barrier. Once notified of the barrier, the Department of Children and Families (department) must provide parents with strategies to overcome it.
- Requires a parent to keep updated contact information and progress on completing the tasks of a case plan.
- Requires a new caseworker to timely and diligently notify a parent with updated contact information.
- Requires the department to make service referrals sooner and increase reporting to the court on case progress; limits continuances by the court's own motion; and requires more frequent permanency hearings after the child has been in out-of-home care for 12 months but has not achieved permanency.
- Requires the court to apply certain criteria in determining whether to amend a case plan and in ruling in a permanency hearing or a judicial review hearing.

Under the bill, the term “harm” is expanded to include certain instances in which a new child is born to a family that is currently subject to an open dependency case.

The bill also clarifies that the current public records exemption that applies to reports and records in cases of child abuse or neglect, applies to instructional personnel, school administrators, and educational support employees who have provided information as collateral contacts to child protective investigators, even if the individual was not the individual reporting the alleged maltreatment to the Hotline.

## II. Present Situation:

### Permanency for Children in the Child Welfare System

When children are placed in out-of-home care, it is critical that child welfare agencies find safe, permanent homes for them as quickly as possible. In most circumstances, children can be reunited with their families, but in some cases children find homes with relatives, fictive kin<sup>1</sup>, or adoptive families. Both federal and state laws provide requirements related to permanency for children.<sup>2</sup>

Many of the federal requirements related to the dependency process can be traced to the Adoption and Safe Families Act (ASFA) of 1997. The ASFA expanded the use of detailed case planning, while emphasizing the well-being of children at all critical points during the dependency case process. It further requires that states make timely decisions regarding permanency. The permanency goal is enforced primarily via a requirement that states terminate the parental rights of children who have spent 15 or more months of the past 22 months in foster care.<sup>3</sup>

Florida law requires the court to set at least one permanency goal for a child. If that goal is reunification with the child’s parent, the court may also set a second concurrent goal to provide greater options for the child. A “permanency goal” is defined as the living arrangement identified for the child to return to the family home or identified as the permanent living arrangement of the child.<sup>4</sup> Permanency goals available under this chapter, listed in order of preference, are:

- Reunification;
- Adoption, if a petition for termination of parental rights has been or will be filed;
- Permanent guardianship of a dependent child;
- Permanent placement with a fit and willing relative; and
- Placement in another planned permanent living arrangement.<sup>5</sup>

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<sup>1</sup> The term “fictive kin” is defined as people who are considered part of a family even though they are unrelated by blood or marriage. MOSBY’S MEDICAL DICTIONARY, 9th ed. (2009).

<sup>2</sup> U.S. Department of Health & Human Services, Administration for Children & Families, Children's Bureau, Child Welfare Information Gateway, *Achieving and Maintaining Permanency*, available at: <https://www.childwelfare.gov/topics/permanency/> (last visited Feb. 6, 2018).

<sup>3</sup> Adoption and Safe Families Act of 1997, P. L. No. 105-89, H.R. 867, 105th Cong. (1997), available at: <https://www.congress.gov/105/plaws/publ89/PLAW-105publ89.pdf>.

<sup>4</sup> Section 39.01(53), F.S.

<sup>5</sup> Section 39.621(3), F.S.

The goal of maintaining and strengthening the placement with the child's parent is also an option under certain circumstances, such as when the child has been reunified with a parent but the case is still under the court's jurisdiction. The court must hold hearings at least every 12 months to assess progress towards permanency.<sup>6</sup>

### **Reasonable Efforts**

Since passage of the Adoption Assistance and Child Welfare Act of 1980,<sup>7</sup> federal law has required states to show, except in certain circumstances such as where the parent committed an especially egregious act, that they have made "reasonable efforts" to provide assistance and services to prevent a child's removal or to reunify a child with his or her family prior to terminating parental rights. The Adoption and Safe Families Act of 1997 does provide, however, that the child's health and safety are the primary concern when assessing the degree to which a state has to go in demonstrating reasonable efforts.<sup>8</sup>

Under Florida law, the department's failure to make reasonable efforts to reunify the parent and child may excuse the parent's noncompliance with the case plan, thereby invalidating noncompliance as grounds for a termination of parental rights.<sup>9</sup> However, the department does not need to show reasonable efforts if the court finds that the parents have engaged in certain egregious conduct.<sup>10</sup>

### **Case Plans**

Throughout the dependency process, the department must develop and refine a case plan with input from all parties to the dependency case which details the problems being addressed as well as the goals, tasks, services, and responsibilities required to ameliorate the concerns of the state.<sup>11</sup> The case plan follows the child from the provision of voluntary services through dependency, or termination of parental rights. Once a child is found dependent, a judge reviews the case plan, and if the judge accepts the case plan as drafted, orders the case plan to be followed.<sup>12</sup> Specifically, the law provides for:

- The development of a case plan and who must be involved, such as the parent, guardian ad litem, and if appropriate, the child.<sup>13</sup>
- What must be included in the case plan, such as descriptions of the identified problems, the permanency goal, timelines, and notice requirements.<sup>14</sup>
- The types of tasks and services that must be provided to the parents as well as the type of care that must be provided to the child. Services must be designed to improve the conditions

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<sup>6</sup> Section 39.621(1), F.S.

<sup>7</sup> Adoption Assistance and Child Welfare Act of 1980, P. L. No. 96-272, H.R. 3434, 96th Cong. (1980), available at: <https://www.gpo.gov/fdsys/pkg/STATUTE-94/pdf/STATUTE-94-Pg500.pdf>.

<sup>8</sup> Adoption and Safe Families Act of 1997, *supra* note 3.

<sup>9</sup> Section 39.621(5)(c) and (8), F.S.

<sup>10</sup> Section 39.806(2), F.S.

<sup>11</sup> Sections 39.6011 and 39.6012, F.S.

<sup>12</sup> Section 39.521, F.S.

<sup>13</sup> Section 39.6011, F.S.

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

in the home, facilitate the child's safe return to the home, ensure proper care of the child, and facilitate permanency.<sup>15</sup>

When determining whether to place a child back into the home from which he or she was removed, or whether to move forward with another permanency option, the court must determine whether the circumstances that caused the out-of-home placement have been remedied to the extent that the safety, well-being, and health of the child are not endangered by an in-home placement.<sup>16</sup> To support the permanency goal, the court continues to monitor a parent's efforts to comply with the tasks assigned in the case plan.<sup>17</sup>

### **Parental Responsibilities and Terminations of Parental Rights**

Parents involved in the child welfare system have a number of responsibilities they must carry out in order to be reunified with their children, if permanency is a goal. A primary responsibility is to comply with the case plan. Parental lack of compliance with a case plan constitutes grounds for termination of parental rights. Specifically, noncompliance is shown if a parent fails to substantially comply for 12 months after the child's adjudication of dependency or if a child has been in care for 12 of the last 22 months, or a parent materially breaches the case plan such that noncompliance is likely before the expiration of time to comply. However, generally if noncompliance is due to the parent's lack of financial resources or the department's failure to make reasonable efforts, grounds for termination are not established.<sup>18</sup>

Section 39.6011, F.S., requires the case plan to contain a written notice that a parent's noncompliance with the case plan may lead to the termination of parental rights. This message is also delivered by the judge during the hearing on the child's placement in a shelter and<sup>19</sup> the adjudicatory hearing.<sup>20</sup>

### **State Specific Factors Affecting Permanency**

The federal Department of Health and Human Services, through the Children's Bureau, conducts periodic Child and Family Services Reviews (CFSR) in each state. As authorized by federal law, these reviews assess state compliance with the federal requirements for child welfare systems in Title IV-B and Title IV-E of the Social Security Act. In particular, the Children's Bureau examines whether desired child outcomes are being achieved and whether the child welfare system is structured appropriately and operates effectively. Reviews are done every 4 years.

The report summarizing Florida's results from the third round of reviews was issued in late 2016. The report indicated the following related to achieving permanency:

- Despite establishing timely and appropriate permanency goals, case review results found that agencies and courts struggle to make concerted efforts to achieve identified permanency goals in a timely manner.

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<sup>15</sup> Section 39.6012(1)(b), F.S.

<sup>16</sup> Section 39.522, F.S.

<sup>17</sup> Section 39.621, F.S.

<sup>18</sup> Section 39.806, F.S.

<sup>19</sup> Section 39.402 (18), F.S.

<sup>20</sup> Section 39.507(7)(c), F.S.

- Delays in achieving reunification and guardianship goals are affected by case plans not being updated timely to reflect the current needs of the family, delays in referral for services, and any failure to engage parents.
- The agency and court do not make concerted efforts to achieve the goal of adoption timely in nearly half of applicable cases.
- Barriers affecting timely adoptions include the lack of concurrent planning when a parent's compliance level is minimal, and providing parents additional time to work on case plan goals.
- In over half of applicable cases, the agency failed to make concerted efforts to provide services, removed children without providing appropriate services, or did not monitor safety plans and engage the family in needed safety-related services.<sup>21</sup>

The report also concluded that there are concerns with gaps in key services, long waiting lists, insurance barriers, and an inability to tailor services to meet the cultural needs of the diverse population. Substance abuse and domestic violence are the main reasons for agency involvement. The review found that substance abuse, in particular, contributes to various safety concerns for children. Stakeholders noted that there are major gaps in services to address both substance abuse and domestic violence in the non-metro areas of the state.<sup>22</sup>

### **Harm to a Child**

For the purposes of ch. 39, F.S., the term “harm” to a child’s health or welfare can occur when a person inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating a physical, mental, or emotional injury to a child: the age of the child; a prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Section 39.01(30), F.S., further defines and delineates examples of harm against a child.

### **Confidentiality of Records**

Section 39.202, F.S., makes confidential and exempt from public records disclosure all records held by the department concerning reports of child abandonment, abuse, or neglect, including reports made to the central abuse Florida Abuse Hotline (Hotline) and all records generated as a result of such reports<sup>23</sup>. The name of a person who reported the alleged abuse or neglect may not be released<sup>24</sup> without the written consent of the person reporting<sup>25</sup>.

### **Collateral Contacts**

Collateral contacts in a child abuse investigation include the referral source, other family members, community professionals who have contact with the family, or people in the

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<sup>21</sup> U.S. Department Of Health And Human Services, Children’s Bureau, Child and Family Services Reviews, *Florida Final Report, 2016*, available at: <http://centerforchildwelfare.org/qa/CFSRTools/2016%20CFSR%20Final%20Report.pdf>.

<sup>22</sup> *Id.*

<sup>23</sup> Section 36.202(1), F.S.

<sup>24</sup> Section 36.202(2), F.S.

<sup>25</sup> Section 36.202(5), F.S.

community with knowledge of the family situation. Collateral contacts may be able to provide identifying information, names, dates of birth/ages, addresses, parents' names and social security numbers, and family dynamics and relationships.

### **School Personnel**

School personnel, particularly teachers and school nurses can be excellent sources of corroborating information to help confirm or deny allegation being considered. They are often able to provide information on children's behaviors, have insight into the child's relationship with family members, or have observed medical or psychological conditions that might be associated with the allegations of abuse or neglect.

### **III. Effect of Proposed Changes:**

**Section 1.** Amends s. 39.001, F.S., relating to the purposes of the chapter, to recognize the responsibility of the parent of a child who has been placed into out-of-home care, the department and its community-based providers, and the court in achieving timely permanency for the child. It also provides that the guardian ad litem or attorney ad litem's name must be entered on all orders of the court so that a child will have the ability to contact his or her guardian ad litem, and requires parents to take action to comply with the case plan, including notifying the department and the court of barriers to case plan compliance.

**Section 2.** Amends s. 39.01, F.S., relating to definitions, adds to the definition of harm against a child the situation in which a new child is born into a family while an open dependency case is pending for which a parent or caregiver has been found to not have:

- Had protective capacity to safely care for the children in the home; and
- Substantially complied with the case plan toward successful reunification or conditions for return of the children.

**Section 3.** Amends s. 39.0136, F.S., relating to time limitations and continuances, to require the department to ensure that parents have accurate contact information for the caseworker, and that a court order granting a continuance include the new court date, consistent with the goal of expediting permanency.

**Section 4.** Amends s. 39.202, F.S., relating to confidentiality of reports, to clarify that the public records exemption that applies to protect the identity of persons found in reports and related records applies to instructional personnel, school administrators, and educational support employees who have provided information to child protective investigators.

**Section 5.** Amends s. 39.402, F.S., relating to placement in a shelter, to require the court order to specify the new court day for the continued hearing when a continuance or extension of time is granted. It also requires the court in plain language to advise the parents what is expected of them, so that reunification may occur promptly, and no longer than 1 year after the dependency process has begun. The parents must provide the attorney and the caseworker with updated contact information if their phone number, mailing address, or e-mail address changes. Parents must also notify the parties and the court of barriers to completing case plan tasks within a reasonable time after discovering the barriers.

**Section 6.** Amends s. 39.507, F.S., relating to adjudicator hearings and orders of adjudication, to require the parents to:

- Provide identification and location information of relatives identified as a potential placement for the child.
- Comply with the case plan so that reunification with the child happens within the shortest period of time possible.
- Update the attorney and the caseworker with contact information if a phone number, mailing address, or e-mail address changes.

**Section 7.** Amends s. 39.521, F.S., relating to disposition hearings and powers of disposition, to clarify current language related to the provision of copies of the case plan.

**Section 8.** Amends s. 39.522, F.S., relating to postdisposition change of custody, to provide that at any time before a child achieves the permanency option approved at the permanency hearing, a child may be brought before the court by the department or any additional interested person upon a filing of a motion alleging a need for a change in the conditions of protective supervision or in the placement.

**Section 9.** Amends s. 39.6011, F.S., relating to case plan development, to require parents to notify the parties of any barriers to completion of the case plan. It also requires the department to work with the parent to overcome any barrier to case plan completion and requires that service referrals be completed not more than 7 days after case plan approval, with exceptions.

**Section 10.** Amends s. 39.6012, F.S., relating to case plan tasks and services, to require the case plan to include strategies for overcoming barriers to case plan completion and to require parents to notify the parties if a new barrier is discovered. Additionally, parents must provide accurate contact information, including updates of contact information, to the department or the contracted case management agency. Parents must proactively contact the department or the contracted case management agency at least every 14 calendar days to provide information on the status of case plan task completion, barriers to completion, and plans towards reunification.

**Section 11.** Amends s. 39.6013, F.S., relating to case plan amendments, to require the court to consider the following in determining whether to amend the case plan:

- The length of time the case has been open;
- The level of parental involvement;
- The number of case plan tasks complied with;
- The child's type of placement and attachment; and
- The potential for successful reunification.

**Section 12.** Amends s. 39.621, F.S., relating to permanency determination by the court, to add as a factor for the court to consider in determining permanency at the permanency hearing whether the frequency, duration, manner, and level of engagement of the parent or legal guardian meets the case plan requirements. This language also provides that if the court determines that the child's goal is appropriate but the child will be in out-of-home care for more than 12 months before achieving permanency, in those cases where the goal is reunification or adoption, the

court shall hold permanency status hearings for the child every 60 days until the child reaches permanency or the court makes a determination that it is in the child's best interest to change the permanency goal.

**Section 13.** Amends s. 39.701, F.S., relating to judicial review, to provide that the court at the judicial review hearing must make written findings regarding the parent or legal guardian's compliance with the case plan and demonstrable change in parental capacity to achieve timely reunification. If concurrent planning is already being used, the department must file with the court, and serve on all parties, a motion to amend the case plan to reflect the concurrent goal as the child's primary permanency goal, document the efforts the department is taking to complete the concurrent goal, and identify any additional services needed to reach the permanency goal by a date certain. The court may allow the parties to continue to pursue a secondary goal if the court determines that is in the best interest of the child.

**Section 14.** Amends s. 39.806, F.S., relating to grounds for termination of parental rights, to clarify that a parent may materially breach a case plan by action or inaction.

**Section 15.** Amends s. 39.811, F.S., relating to powers of disposition and order of disposition, to require the court to enter a written order of disposition within 30 days after the conclusion of the hearing to terminate parental rights.

**Section 16.** Provides an effective date of July 1, 2018.

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

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

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

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

None.

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

None.

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

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

None.

**B. Private Sector Impact:**

Staff of contracted entities may incur additional workload related to expedited timeframes for referrals and attending the additional hearings mandated by the bill.

**C. Government Sector Impact:**

The bill has an indeterminate impact on the state court system due to the higher frequency of hearings regarding permanency.

The bill has an indeterminate impact on the department. To the extent expedited permanency for children results, a cost savings could be realized due to the shorter time in care. Alternatively, if a higher number of terminations of parental rights results rather than reunifications and children remain in care, costs could increase.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill substantially amends ss. 39.001, 39.01, 39.0136, 39.202, 39.402, 39.507, 39.521, 39.522, 39.6011, 39.6012, 39.6013, 39.621, 39.701, 39.806, and 39.811 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Governmental Oversight and Accountability on February 13, 2018:**

The CS:

- Adds to the definition of harm against a child the situation in which a new child is born into a family while an open dependency case is pending for which a parent or caregiver has been found to not have:
  - Had protective capacity to safely care for the children in the home; and
  - Substantially complied with the case plan toward successful reunification or conditions for return of the children.
- Requires a new caseworker to timely and diligently notify the parent with updated contact information.
- Requires parents to update contact information with the attorney and caseworker during various phases of the dependency process.
- Requires parents subject to a case plan to update at least every 14 calendar days the department or the contracted case management agency on progress and barriers to completing the case plan.

- Deletes language from the bill which authorized the court to deny a request for an extension of time to comply with a case plan task if the parent failed to notify the parties and the court within a reasonable time of discovering a barrier to completion of the task.
- Provides greater guidance for the court by:
  - Providing criteria for the court to consider in determining whether to amend a case plan.
  - Requiring the court in a permanency hearing to additionally determine whether the frequency, duration, manner, and level of engagement of the parent or legal guardian complies with the case plan.
  - Requiring the court in a judicial review hearing to issue specific, written findings on the parent or legal guardian's compliance with the case plan and demonstrable change in parental capacity.

**CS by Children, Families, and Elder Affairs on January 29, 2018:**

The CS:

- Makes a number of changes to ch. 39, relating to dependency proceedings for children, to improve coordination and communication among parties in dependency proceedings and add accountability measures to remove barriers to, and expedite permanency for, abused and neglected children.
- Revises grounds for termination of parental rights, changes notice to parents regarding these grounds, limits the continuances available, expedites service referrals, and increases the frequency of hearings.
- Adds the requirement that a parent notify the parties or the court of barriers to compliance with a case plan task soon after discovering the barrier. If a parent fails to do so, he or she cannot cite the barrier as a reason for noncompliance when the court is considering termination of his or her parental rights. Once notified of the barrier, DCF must provide parents with strategies to overcome them.
- Requires the department to make service referrals sooner and increase reporting to the court on case progress. It limits continuances by the court's own motion and requires more frequent permanency hearings after the child has been in out-of-home care for 12 months but has not achieved permanency.

B. Amendments:

None.