

**STORAGE NAME:** h1221.flc

**DATE:** March 25, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
FAMILY LAW & CHILDREN  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 1221

**RELATING TO:** Families and Children

**SPONSOR(S):** Representative Wise

**STATUTE(S) AFFECTED:** Sections 39.001, 39.01, 39.012, 39.0145, 39.015, 39.038, 39.044, 39.39, 39.40, 39.052, 39.058, 39.061, 39.401, 39.402, 39.403, 39.4031, 30.4032, 39.4033, 39.404, 39.405, 39.4055, 39.407, 39.408, 39.409, 39.41, 39.4105, 39.415, 39.423, 39.437, 39.44, 39.441, 39.4451, 39.446, 39.447, 39.451, 39.452, 39.453, 39.454, 39.455, 39.459, 39.46, 39.461, 39.4612, 39.462, 39.465, 39.469, 39.471, 39.473, 232.19, 397.6758, 415.501, 415.5016, 415.50165, 415.5017, 415.50175, 415.5018, 415.50185, 415.502, 415.503, 415.504, 415.505, 415.5055, 415.507, 415.5081, 415.5084, 415.5086, 415.51, 415.5131, 415.516, 415.517, 415.519, 415.520, 415.521, 744.309, 784.075, 933.18, creating ss. 39.4015 and 415.50815, and repealing ss. 39.457, 415.5015, 415.506, and 415.5088.

**COMPANION BILL(S):** SB 0516 (Compare)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) FAMILY LAW & CHILDREN
- (2) CHILDREN & FAMILY EMPOWERMENT
- (3) HEALTH & HUMAN SERVICES APPROPRIATIONS
- (4)
- (5)

---

**I. SUMMARY:**

- The bill substantially revises the law pertaining to criteria, procedures and proceedings relating to a child alleged to be abused, neglected or abandoned. Among other things, it:
- changes the criteria by which a child alleged to be dependent may be taken into custody.
  - provides criminal penalties for making false statements in sworn affidavits and for improperly removing a child without a court order;
  - accelerates the time for hearings related to children taken into protective custody or for whom protective custody is sought;
  - increases the standard of proof in an adjudicatory hearing on dependency;
  - provides for the award of attorney fees and costs to parents in dependency proceedings;
  - requires that interviews with children be audio or video taped;
  - allows use of closed circuit television for juvenile detention hearings if specified access to legal representation is provided;
  - provides that the court can release the department's file on an allegation of child abuse to the alleged perpetrator under specified conditions;
  - allows dependent children to be found in contempt of court and placed in secure shelters under specified circumstances;
  - requires that juvenile dependency hearings be governed by the Florida Rules of Criminal Procedure, rather than the Florida Rules of Civil Procedure.
  - requires drug tests for any individual working with dependent children, including foster parents, department staff, and guardians ad litem; and

- removes sovereign immunity from Department of Children and Family Services (DCF).

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

**A. SHELTER PROVISIONS**

The procedures for taking a child alleged to be dependent into custody, determining the child's need for continued custody or release, and the placement of the child in a shelter when indicated are set out in ss. 39.40-39.402, F.S.

A child can be taken from the custody of his parents under the following circumstances only: 1) pursuant to an order of a circuit court based on sworn testimony; or 2) by a law enforcement officer or an authorized agent of DCF if such officer or agent has probable cause to support a finding of reasonable grounds for removal of the child from the home. s. 39.401, F.S. Reasonable grounds for removal include: that the child has been abused, neglected, or abandoned, or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment; that the custodian of the child has materially violated a condition of placement imposed by the court; or that the child has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care. *Id.*

A child can also be taken into protective custody by a physician or hospital when the circumstances are such, or the condition of the child is such, that continuing the child in the child's place of residence or in the care or custody of the parents, legal guardian, or legal custodian presents an imminent danger to the child's life or physical or mental health. s. 415.506, F.S. A law enforcement officer can take a child into protective custody when the officer discovers a child in imminent danger during a search conducted pursuant to a warrant. s. 933.18, F.S.

In all of these situations, the law provides that the child be placed in the custody of an authorized agent of DCF. DCF's legal staff must review the facts supporting the removal of the child from the home prior to the emergency shelter hearing. The purpose of the review is to determine if probable cause exists for the filing of an emergency shelter petition under s. 39.402(1), F.S. If the facts are sufficient to support the petition, and the child has not been returned to the custody of the parent or legal guardian, DCF must file the petition and schedule a hearing under s. 39.401, F.S., and the emergency shelter hearing must be held before the circuit court within 24 hours after the child's removal. While waiting for the emergency shelter hearing, DCF may place the child into the licensed shelter care or may release the child to a parent, guardian, legal custodian, responsible adult relative who must be given priority consideration over a non-relative placement or to a responsible adult approved by DCF.

A child may not be placed in a shelter prior to a court hearing unless there are reasonable grounds for removal and the removal is necessary to protect the child. s. 39.402, F.S.

There are no criminal penalties specifically available against an agent of DCF who inappropriately takes a child into custody. Further, agents of DCF have good faith

**STORAGE NAME:** h1221.flc

**DATE:** March 25, 1997

**PAGE 3**

immunity for their actions in the investigation and reporting of child abuse and neglect, including the taking of a child into protective custody. s. 415.111.

In cases where a child is taken into custody, DCF is required to notify the parents or legal guardian immediately and provide them with a summary of the dependency procedures and their right to obtain their own attorney. s. 39.402, F.S. Further, the parents or legal custodians of the child must be given actual notice of the date, time, and location of the emergency shelter hearing. *Id.* In those cases where these notification efforts were unsuccessful, the person providing or attempting to provide the notice must advise the court, either in person or by sworn affidavit, of their attempts to provide notice and the result of those attempts. *Id.* At the emergency shelter hearing, DCF must establish probable cause that reasonable grounds for removal of the child exist and that the provision of appropriate and available services will not eliminate the need for placement. The parents or legal custodians must be given an opportunity to be heard and to present evidence at the emergency shelter hearing. *Id.* Only parents who are found by the court to be indigent may have counsel appointed in dependency proceedings, including the emergency shelter hearing. s. 39.017, F.S.

Parents must be notified of all proceedings involving the child including shelter hearings. s. 39.405, F.S. The file is to be released upon request to the parent or guardian of a child involved in these proceedings no later than 30 days after DCF receives the report of abuse, neglect or abandonment. s. 415.51(2)(d), F.S. In addition, Rule 8.245, Florida Rules of Juvenile Procedure, addresses discovery in juvenile dependency cases. That rule requires that disclosure of "materials material to the cause." However, this disclosure is permitted only after the filing of a petition alleging a child to be a dependent child or of a petition for termination of parental rights. Since the law requires that a petition for dependency be filed within 7 days after the child is taken into custody, discovery is available to counsel for the parents within 7 days after the child is taken into custody.

According to the data from the Florida Abuse Hotline Information System, child protective investigators removed the child in 7.11 percent of the total cases investigated during FY 1993-94 and 6.61 percent of the cases investigated during FY 1994-95. The following table presents the number of child protective investigations and placements by DCF for fiscal years 1993-94, 1994-95 and 1995-96. The data includes, by fiscal year, the number of children not placed out of the home, the number of children placed in

emergency shelter, the number of children released to relatives with parental consent, and the number of children detained with relatives without parental consent:

Fiscal Year	Not Placed		Emergency Shelter		Detained With Relative		Placed With Relative		Total	
	#	%	#	%	#	%	#	%	#	%
1993-94	147,639	92.89%	5,619	3.54%	1,229	0.77%	4,453	2.80%	158,940	100.00%
1994-95	153,110	93.26%	5,388	3.28%	1,182	0.72%	4,489	2.73%	164,169	100.00%
1995-96	152,704	93.52%	5117	3.13%	1,122	0.69%	4349	2.66%	163,292	100.00%

Based on these figures, 10, 588 children were placed either with a relative or in emergency shelter pending an emergency shelter hearing.

According to the State Court Administrator's office, providing legal representation to all parents and guardians at the emergency hearing stage is expected to be among the recommendations of the Dependency Court Improvement Project currently examining the dependency courts of Florida under a multimillion dollar grant. This report is expected to be released during the summer of 1997. Currently, Broward County appoints an attorney for the parent or guardian of each child at an emergency shelter hearing.

**B. DEPENDENCY PROVISIONS**

The procedures for the filing of a petition for dependency are set out in s. 39.404, F.S. Dependency proceedings are initiated by the filing of a petition by either an attorney for DCF or a person who has knowledge of the alleged facts. *Id.* In cases where a child is taken into custody, a petition alleging dependency must be filed within 7 days after the child is taken into custody. s. 39.404(4), F.S. In all other cases, the petition must be filed within a reasonable time after the date the child was referred for a protective investigation under s. 39.403, F.S.

When a child has been detained by order of the court, an arraignment hearing must be held within 14 days from the date the child is taken into custody for the parent, guardian, or custodian to admit, deny, or consent to findings of dependency alleged in the petition. s. 39.408, F.S. If the parent, guardian, or custodian admits or consents to the findings in the petition, the court must proceed as set forth in the Florida Rules of Juvenile Procedure. If the parent, guardian, or custodian denies any of the allegations contained in the petition, the court must hold an adjudicatory hearing within 7 days from the date of the arraignment hearing unless a continuance is granted pursuant to s. 39.402(11), F.S.

Adjudicatory hearings are conducted by the judge without a jury, applying rules of evidence used in civil cases and adjourning the hearings from time to time as necessary. These proceedings are governed by the Florida Rules of Juvenile Procedure. In a hearing on a petition in which it is alleged that the child is dependent, a preponderance of evidence is required to establish the state of dependency. If the child named in the petition is not dependent, the case is dismissed. s. 39.409, F.S.

Dependency adjudicatory hearings may be delayed when a continuance is granted at the request of DCF's attorney because of the lack of evidence when the attorney has exercised "due diligence" to obtain evidence and there is reason to believe that evidence will be available within 30 days. If DCF is not prepared to present its case within 30 days, the parent or guardian may move for issuance of an order to show cause or the court on its own motion may impose appropriate sanctions which could include dismissal of the petition. A delay may be granted to allow the attorney for DCF additional time to prepare the case because of the exceptional circumstances of the case. The child's attorney or the parents' attorney may also request reasonable periods of delay. s. 39.402(10), F.S.

Currently, there is no authority for the child's parent or guardian to pursue an award of attorney fees or costs in a chapter 39 proceeding.

### **C. ABUSE HOTLINE**

Part IV of chapter 415, F.S., contains the provisions for Florida's comprehensive protective services for abused and neglected children. The law requires that reports of each abused and neglected child be made to the Department of Health and Rehabilitative Services (now, DCF) in an effort to prevent further harm to the child or any other children living in the home and to preserve the family life of the parents and children to the maximum extent possible by enhancing the parental capacity for adequate child care.

Any person who knows or has reason to believe that a child is an abused or neglected child must report that knowledge or belief to DCF. s. 415.504, F.S. DCF is required to establish and maintain a central abuse hotline which receives all reports of child abuse or neglect in writing or through a single toll-free (abuse hotline) telephone number 24 hours a day, 7 days a week. *Id.* Reports are received from persons who disclose their identity and those who wish to remain anonymous. Reporters in occupation categories designated in s. 415.504(1), F.S., must provide their names to the hotline staff when making a report. Hotline counselors must receive periodic training in encouraging reporters to provide their names when reporting abuse. Anyone reporting child abuse or neglect under ch. 415 who is acting in good faith is immune from liability. s. 415.511, F.S. However, anyone who knowingly and willfully makes a false report of child abuse or neglect or advises another to make a false report is guilty of a misdemeanor of the second degree punishable as provided in ss. 775.082 or 775.083, F.S. and, in addition, may be subject to an administrative fine by the department not to exceed \$1000 for each violation. ss. 415.53(4), F.S. and 415.5131(1) , F.S. respectively.

As required by law, DCF has installed electronic equipment which automatically provides to the hotline the number from which the call is placed. s. 415.504, F.S. The number is entered into the report and is confidential pursuant to s. 415.51(9), F.S.

The name of any person reporting child abuse, abandonment, or neglect may not be released to any persons other than DCF employees responsible for child protective services, the central abuse hotline, or the appropriate state attorney unless written consent is given by the reporter. s. 415.51(4), F.S. There is no provision for the alleged perpetrator to receive the name of the person reporting the alleged abuse. According to DCF, the federal Child Abuse Prevention and Treatment Act (CAPTA) expressly forbids such disclosure.

#### **D. AUDIO-RECORDING AND VIDEOTAPING OF INTERVIEWS**

There is no requirement that an interview with a child be audio or video taped. There is no prohibition against care givers audio or video taping interactions with DCF personnel, although it is a felony to audio or video tape a person without the consent of the person being recorded. s. 934.03, F.S.

#### **E. JUVENILE DETENTION HEARINGS**

There is no provision for conducting juvenile delinquency hearings by closed circuit television.

Section 39.043(2) provides that a child alleged to be dependent may not, under any circumstances, be placed into secure detention care.

#### **F. OTHER PROVISIONS**

Section 39.4105 provides that when grandparent visitation is awarded as the result of a child being removed from the custody of the parents in a dependency proceeding, that visitation will end upon return of the child to the custody of the grandparents.

There is no requirement that every person having contact with a dependent child be tested for the use of drugs.

Section 39.40(1) requires that all procedures, including petitions, pleadings, subpoenas, summonses, and hearings, in dependency cases be conducted according to the Florida Rules of Juvenile Procedure unless otherwise provided by law. This paragraph also requires that parents be informed by the court of their right to counsel in dependency proceedings at each stage of the dependency proceedings. Further, it requires that parents who are unable to afford counsel and who are threatened with criminal charges based on the facts underlying the dependency petition or a permanent loss of custody of their children must be appointed counsel.

Section 39.455 grants sovereign immunity to employees or agents of the social services agency when these employees or agents act in good faith but fail to provide of services required by a performance agreement or permanent placement plan, waiving that immunity only when failure results from bad faith or malicious purpose or occurs in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

### **B. EFFECT OF PROPOSED CHANGES:**

#### **A. SHELTER PROVISIONS**

The bill amends current law to state that the circumstances under which an agent of DCF or law enforcement officer may take a child into custody *without a court order* are:

1. a medical emergency, or
2. if, in the judgment of that official, the child is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment, or

3. if, in the judgment of that official, the child has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care; or
4. a belief that the child is a runaway or is truant from school (*law enforcement only*).

A person who takes a child into custody without a valid court order will be guilty of a misdemeanor of the first degree and subject to statutory penalties.

In situations that do not meet the criteria for taking a child into protective custody without a court order, DCF must petition the court for an emergency order to remove a child from the home. The petition must be accompanied by a sworn affidavit by the DCF's agent who has personal knowledge of the case and must contain an allegation that the child appears to have been abused, neglected, or abandoned and the basis for that allegation.

A person who knowingly makes or assists another person in making a false statement in a sworn affidavit stating that a child is in immediate danger will be guilty of a felony of the third degree and subject to statutory penalties.

The bill repeals the portion of s. 933.18, F.S., which currently permits a law enforcement officer to take a child into protective custody when the officer discovers a child in imminent danger during a search conducted pursuant to a warrant.

Consistent with current law, the bill requires that the court hold an emergency hearing 24 hours after the child is removed to determine if the emergency removal should continue and requires that the child's parents or guardian be given actual notice by agent of DCF of the date, time, and place of the hearing. The bill adds requirements that the notice to the parents about the shelter hearing must include a detailed explanation that contains the reasons for the child's removal from the home, a summary of the procedures involved in dependency cases, and their right to obtain an attorney or to have one appointed.

## **B. DEPENDENCY PROVISIONS**

The bill shortens from 7 days to 5 days the time within which a petition alleging dependency must be filed. It also shortens from 14 days to 7 days after the child is first taken into custody the time within which the arraignment hearing must be held. Because the adjudicatory hearing occurs 7 days after the date of the arraignment hearing, the time frame for the adjudicatory hearing is changed to 14 (rather than 21) days after the child is taken into custody.

This bill requires that the parents receive a copy of the dependency petition at least 48 hours before the arraignment hearing. The bill specifies that in an adjudicatory hearing on dependency, "clear and convincing" evidence will be required to establish the state of dependency, rather than the current "preponderance of the evidence" standard.

Statutory provisions that allow DCF to seek a continuance for additional time to prepare for the adjudicatory hearing because of the unavailability of evidence material to the case are retained by the bill, except the provision allowing additional time "because of an exceptional circumstance".

**C. ABUSE HOTLINE**

The bill provides that an alleged perpetrator can petition the court for the name of the reporter and a copy of the DCF file in child abuse cases. The file is to be released if the court determines that the release will present no danger to the child or the reporter.

**D. AUDIO-RECORDING AND VIDEOTAPING OF INTERVIEWS**

This bill requires that the department staff audio or video tape all interviews with the child that are conducted outside the presence of the child's parent or legal guardian.

When the investigator is denied access to a child, the bill amends current law to require the department to show cause to the court and obtain a court order prior to examining and interviewing the child. The interview must also be audio or video taped.

**E. JUVENILE DETENTION HEARING**

The bill allows detention hearings to be conducted by closed circuit television if the child has immediate access to his legal representative and is given the opportunity to confer privately with his legal representatives.

The bill allows placement of a dependent child in secure detention after a finding of contempt of court, and provides procedures relating to such placement.

The bill removes provisions ending grandparent visitation when a dependent child is returned to parental custody.

The bill requires drug testing for all individuals who work with dependent children, specifically including foster parents, DCF employees, and Guardians ad Litem.

**F. OTHER PROVISIONS**

**C. APPLICATION OF PRINCIPLES:**

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes



(3) any entitlement to a government service or benefit?

Yes

b. If an agency or program is eliminated or reduced:

The bill does not eliminate or reduce an agency or program.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

DCF, law enforcement, and the courts.

- (2) Who makes the decisions?

DCF, law enforcement, and the courts.

- (3) Are private alternatives permitted?

No.

- (4) Are families required to participate in a program?

Yes.

(5) Are families penalized for not participating in a program?

Yes.

b. Does the bill directly affect the legal rights and obligations between family members?

Yes.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

No.

(2) service providers?

No.

(3) government employees/agencies?

The department, law enforcement, and the courts.

**D. SECTION-BY-SECTION RESEARCH:**

Section 1. Amends s. 39.001 to include families among those parties whom the legislature intends to receive due process in judicial and other proceedings. Expresses legislative intent that when a child is permanently removed from parental custody, that the placement for the child be drug-free.

Section 2. Amends subsection 39.01(2) to remove the words "mental" and "emotional" from the definition of abuse. Adds the phrase "and necessitates immediate treatment" to the definition of abuse. Amends subsection 39.01(13) to remove the prohibition against a finding of contempt of court by a child in need of services being the basis for a delinquency petition. Amends subsection 39.01(14) to require that dependency proceedings be conducted pursuant to the Florida Rules of Criminal Procedure rather than the Florida Rules of Juvenile Procedure. Creates subsection 39.01(30), defining the "family bill of rights." Creates subsection 39.01(34), defining "immediate danger." Amends subsection 39.01(47) to remove "mental or emotional" from the definition of "neglect," to remove the provision that circumstances caused by poverty shall not be considered neglect and to add requirement that health care providers be licensed or certified. Amends subsection 39.01(54) to remove the option of reporting abuse or neglect to the local office of the DCF, to remove a reference to investigation and classification of reports of abuse or neglect, and to remove the option of making referrals to other public or private agencies when appropriate. Amends subsection 39.01(57) to provide that a protective supervision case plan is only for the purpose of correcting the

deficiencies cited and to require that for all services and activities ordered by the court the case plan must contain an estimated cost. Makes numerous technical and conforming changes.

Section 3. Amends section 39.012 to provide that DCF shall implement only rules and procedures set forth in chapters 39 and 415 involving child abuse. Prohibits regional offices or suboffices from establishing any local rules which might supersede or lessen the authority set forth in this section.

Section 4. Amends section 39.0145 to allow placement of a dependent child in a secure facility when the child is found to be in either direct contempt of court or in indirect contempt of court through the failure to obey a valid court order. Sets time limits for the secure detention. Provides legislative intent that the courts restrict and limit the use of contempt powers in dependency cases as applied to children.

Section 5. Amends paragraph (b) of subsection 39.038(2) to remove the option of releasing a child to a protective investigator.

Section 6. Amends subsection 39.044(2) to provide that detention hearings for children alleged to be delinquent may be held by closed circuit television, provided that the child has immediate access to his or her legal representative and is given the opportunity to confer privately with that legal representative.

Section 7. Provides that DCF shall document the savings and losses resulting from the enactment of this bill and shall submit that documentation to the Executive Office of the Governor, Office of Planning and Budget, to the chairs of the Fiscal Responsibility Council of the House of Representatives and the Senate Ways and Means Committee. Provides that if the requirements of new subsection 415.51(4) result in the loss of federal funds in excess of the amount of savings resulting from this act, that the amendment of that subsection by this act is void. Allows DCF, in accordance with the provisions of chapter 216, Florida Statutes, to redirect funds from agency savings achieved through decreased workload resulting from this act to cover any increased costs incurred in implementing it.

Section 8. Requires that professionals designated in s.425.504(1) identify themselves when making a child abuse report. Requires the hotline to be capable of tracing calls electronically.

Section 9. Amends section 39.39 to change "Department of Health and Rehabilitative Services" to "Department of Children and Family Services."

Section 10. Amends section 39.40 to require that all proceedings in dependency cases be conducted according to the Florida Rules of Criminal Procedure, rather than the Florida Rules of Juvenile Procedure. Requires that the courts resolve the placement issues within 15 days when a child less than 4 years old is placed in a shelter. Requires that the court resolve the judicial handling of all cases within 30 days when the child is less than 4 years old and is placed in a shelter.

Section 11. Amends section 39.401 to removes the standards for taking a child into custody. Removes the provisions relating to occasions when the person taking a child into custody is not an authorized agent of DCF. Adds the requirement that a petition be

filed with the court prior to removal of a child. Allows removal of a child without a court order in a medical emergency. Requires that a protective investigator petition the court before removing a child in a non-medical emergency. Requires that when a child is removed, that the parents or guardian be personally served with notice of the date, time, and place of the emergency shelter hearing. Requires the person serving the notice to provide proof of service.

Section 12. Creates section 39.4015, the "Family Bill of Rights Act." Provides that, except as provided in section 39.402(2), protective investigators of DCF may not take a child into custody absent an order authorizing taking the child into custody issued by a circuit court. Any court order issued under this section must be based on a sworn affidavit that the child is in immediate danger and setting forth the basis for the allegations. Defines "immediate danger." Provides that, except as provided in section 39.402(2), any person who takes a child into protective custody without a valid court order is guilty of a misdemeanor. Requires that DCF audio-record or videotape all meetings with children in the absence of parents. Allows "the accused or spouse of the accused" to audio-record or videotape any DCF-related activity in the home. Provides that anyone accused of child abuse of a relative shall have all the procedural and substantive rights that are afforded to the accused in criminal investigations, including the presumption of innocence and the right to face one's accuser. Prohibits anonymous reports of abuse. Provides that in all dependency proceedings, the ultimate prevailing party shall be entitled to attorney fees and costs. Provides that funds payable for DCF shall come from its existing budget. Provides that the state has an obligation to ensure that a child will not be abused in its custody. Provides that if a child is abused in state custody, all persons involved in the abuse will be held personally and civilly liable and sovereign immunity will be waived. Requires all foster parents to take unannounced drug tests at least annually. Requires the state to sign an affidavit detailing clear and convincing evidence that the child is in immediate danger and obtain a court order before removing a child from the custody of the parents or legal guardian. Requires that if parents do not have an attorney in any case where loss of parental rights or custody may result, and cannot afford one, the court shall appoint an attorney to represent them. Requires that compensation for the attorneys shall be at the hourly rate paid to attorneys in criminal cases. Prohibits the use of hearsay statements in juvenile courts. Requires that the rules of procedure in juvenile court for child abuse and dependency cases shall be the same as those used in the Florida Rules of Criminal Procedure.

Section 13. Amends section 39.402 to remove the grounds for taking a child into custody prior to a court hearing. Allows removal without a court order if the removal is due to a medical emergency or, if in the reasonable judgment of the protective investigator or law enforcement officer, the child is subject to imminent harm or danger. Authorizes a law enforcement officer to take a child into custody if the officer believe that the child is a runaway or is truant from school. Requires that the court hold a hearing within 24 hours after removal to determine whether the emergency removal should continue. Provides that, in a non-medical emergency, the protective investigator must petition the court for an order authorizing removal of a child before the removal. Requires that when a child is removed from the home, the child's parent or guardian must be personally served with a notice of the date, time, and place of the emergency shelter hearing as provided in chapter 48. Requires DCF to file an affidavit with the court stating that reasonable efforts were made to personally serve the child's parent r guardian with notice of the emergency shelter hearing. Removes the provision requiring that parents or legal custodians be given an opportunity to be heard and to present

evidence at the emergency shelter hearing. Requires that the child's parent or guardian must be personally served by an agent of the department as soon as reasonably possible with notice of the date, time, and place of the shelter hearing. This notice must be served as provided in chapter 48 and must include a detailed explanation that contains the reasons for the child's removal, a summary of the procedures involved in dependency cases, and the parent's or guardian's right to obtain an attorney. Mandates that the court require proof of service. Requires written court order for removal of child. Requires that the order for placement in a shelter contain findings that there is probable cause to believe that the child is in immediate danger. Removes the provision allowing DCF to release a child from shelter during the pendency of the shelter hearing. Provides that the failure to meet the deadline for an arraignment hearing is a 2nd degree misdemeanor.

Section 14. Amends section 39.403 to prohibit anonymous reports of child abuse or neglect. Removes option for reporting abuse to local office of DCF.

Section 15. Amends section 39.4051 to require that DCF give a certified notice to the parent and the parent's attorney of the consequence of failure to comply with a case plan. Provides that specified notices go to the attorney for the child's parents as well as to the parents. Provides that the services set forth in the case plan be designed only to aid in maintaining the child in the home, to facilitate the return of the child to the family home, or to facilitate the permanent placement of the child.

Section 16. Amends section 39.4032 to limit the provisions of the case plan to those related to the original complaint of abuse.

Section 17. Amends section 39.4033 to add the parent's attorney to persons receiving notice that a family will be required to contribute to the cost of family mediation to the extent of their ability to pay.

Section 18. Amends section 39.404 to require that a petition for dependency be filed with in 5 (rather than 7) days after a child is taken into custody. Requires that the parents be served with a copy of the dependency petition at least 48 hours before the arraignment hearing. Removes the requirement that when a child is not in the custody of DCF the petition be filed within a reasonable time after the child was referred for a protective investigation.

Section 19. Amends section 39.405 to add the parents' attorney to the list of persons to whom notice must be given.

Section 20. Amends section 39.4055 to provide that notice will be provided as set forth in the Florida Rules of Criminal, rather than Juvenile, Procedure.

Section 21. Amends section 39.407 to provide that a child taken into custody may not have a medical screening without court order. Requires that mental health professionals examining a child be licensed. Requires clear and convincing evidence before a court can order a child in the custody of the department to receive mental health treatment. Requires DCF to remove children from their home if the lifestyle of the parents represents a clear and present danger to the child. Removes provisions allowing treatment by religious practitioners.

Section 22. Amends section 39.408 to provide that arraignments and adjudicatory hearings in juvenile dependency cases be held following the procedures of the Florida Rules of Criminal Procedure. Requires clear and convincing evidence for a finding of dependency. Requires that corroborating evidence from a known source be provided when the initial report of abuse was an anonymous report. Requires a minimum of 72 hours notice of all hearings under this section.

Section 23. Amends section 39.409 to require that, when the court finds that the child named in a dependency petition is not dependent, the courts award reasonable attorney fees and costs to the parent or guardian of the child or the county if the parent or guardian was represented by a court-appointed attorney. Provides that these attorney fees and costs must be paid from the budget of DCF. Removes the provisions of current statute allowing the court to place a child under the supervision of DCF while withholding an adjudication of dependency.

Section 24. Amends section 39.41 to require that the court obtain the estimated costs for such treatment and service prior to ordering the treatment or services. Requires that if a child is placed outside the child's home, the facility must have a drug-free workplace provision. Requires prior to placing a child in the long-term custody of a relative or nonrelative, that relative or nonrelative be given a drug test and the results of the test are negative. Requires drug testing of all individuals who work with the child, specifically including DCF workers and guardians ad litem. Removes the paragraph allowing the court to commit a child to the temporary legal custody of DCF. Adds the qualifier "which has put the child's life in immediate danger" to the emergency which is one of the conditions under which a court may find that DCF has made a reasonable effort to prevent or eliminate the need for removal. Makes other technical and conforming changes.

Section 25. Amends section 39.4105 to make optional rather than required DCF's arranging of visits for grandparents. Removes the provision requiring the DCF caseworker to document the reasons for any decision to restrict a grandparent's visitation. Removes the provision that when the child has been returned to the physical custody of his or her parent or permanent custodian, or care giver, the visitation rights granted pursuant to this section will terminate.

Section 26. Amends section 39.415 to provide that the compensation paid to attorneys appointed in dependency proceedings must equal the rate established by the chief judge of the circuit under chapter 925 for attorney fees in criminal cases. Requires that these fees shall be paid from DCF's operating budget.

Section 27. Amends section 39.437 to provide that if a child summoned by the court is declared to be in contempt of court-ordered services, the child may be placed in a staff-secure shelter.

Section 28. Amends section 39.44 to require that arraignments and adjudicatory hearings in child in need of services cases be conducted pursuant to the Rules of Criminal Procedure.

Section 29. Amends section 39.441 to remove provisions giving the courts the option to withhold adjudication in child in need of services cases and place the child and family under the supervision of the department of Juvenile Justice.

Section 30. Amends section 39.4451 to remove provisions allowing records of dependency proceedings to be used in records of appeal and in cases in which charges of perjury are being tried. Adds provision that in all dependency proceedings, the ultimate prevailing party shall be entitled to attorney fees and costs. Requires that funds payable by DCF shall come from the existing budget of DCF.

Section 31. Amends section 39.446 to limit DCF's authority to have a medical screening performed on children placed in shelter care only to occasions when the screening is appropriate and necessary. Adds to the medical screening a requirement for determination of substance abuse. Requires that when a parent of the child is available but refuses to consent to necessary medical treatment, a court order for such treatment is required. Removes provisions allowing DCF to consent to necessary medical treatment during the time before a court order can be obtained. Allows the court to order substance abuse screening. Requires DCF to remove a child from the home when the behavior of the parents presents a clear and present danger to the child. Removes the provision allowing the court to order treatment by religious practitioners.

Section 32. Amends section 39.447 to provide that the compensation provided to appointed counsel shall be equal to the rate established by the chief judge of the circuit under chapter 925 for attorney fees in criminal cases. Removes language restricting this provision to child in need of services cases.

Section 33. Amends section 39.451 to insert the word "temporary" before "foster care", to add the parents' attorney to those who confer on the case plan, to remove the language allowing parents to receive assistance from any person in the preparation of the case plan.

Section 34. Amends section 39.452 to require the case plan to include the estimated cost of any services required by the plan. Adds the attorney for the parents to the list of those who must receive a copy of the case plan 72 hours prior to the filing of the plan.

Section 35. Amends section 39.453 to replace "a social services agency" with "the department," limiting the judicial review process to DCF. Requires judicial review every 6 months for all children in foster care. Inserts "temporary" before "foster care." Requires that the court consider not only the best interest of the child but also of the family.

Section 36. Amends section 39.454 to limit replace "a social services agency" with "the department," limiting the initiation of termination of parental rights to DCF. Removes the provision that allows the court to determine that the initiation of such proceedings would not be in the child's best interest. Removes the provision requiring reports to the court every 3 months if termination of parental rights have not been initiated. Removes the requirement that DCF initiate proceedings for termination of parental rights within 30 days after the 18-month judicial review.

Section 37. Amends section 39.455 to remove the good faith sovereign immunity presently available to DCF or any other social services agency.

Section 38. Repeals section 39.457, which describes the Leon County pilot program providing additional services to children in foster care.



Section 39. Amends 39.459 to make a technical change.

Section 40. Amends section 39.46 to provide that all termination of parental rights proceedings will be governed by the Florida Rules of Criminal Procedure.

Section 41. Amends section 39.461 to conform to the provisions of section 40.

Section 42. Amends section 39.4612 to provide that, in considering the manifest best interests of a child, any suitable permanent custody arrangement with a relative of the child should be the first priority.

Section 43. Amends section 39.462 to include the attorney for the parents among the persons who must receive notice of the filing of a petition for the termination of parental rights.

Section 44. Amends section 39.465 to provide that the guardian ad litem for a child is entitled to receive notice pursuant to the Florida Rules of Criminal Procedure.

Section 45. Amends section 39.469 to remove a licensed child placing agency as a body which can submit permanency plans to the court following the termination of parental rights.

Section 46. Amends section 39.471 to remove the ability of orders of termination of parental rights to be admissible in subsequent adoption proceedings, in appellate proceedings, or in proceedings related to perjury charges.

Section 47. Amends section 39.473 to substitute the Attorney General or the Attorney General's staff for an attorney for the department in representing the state in appeals of termination of parental rights. Requires that if counsel is entitled to receive compensation for these appeals, that such compensation must equal the rate established by the chief judge of the circuit court under chapter 925 for attorney fees in criminal cases.

Section 48. Amends section 397.6758 to remove provisions authorizing release of a minor from a substance abuse treatment program to DCF.

Section 49. Amends section 415.501 to remove requirements for the DCF state plan.

Section 50. Repeals section 415.5015, which provides for child abuse prevention training in district school systems.

Section 51. Amends section 415.5016 to require that interventions pursuant to the family services response system shall protect the rights of the parents. Removes provision requiring that the intervention shall intrude as little as possible into the life of the family, be focused on clearly defined objectives, and take the most parsimonious path to remedy a family's problems. Requires that prior to receiving a divorce, married couples with children be informed of the potential trauma inflicted upon children when parents use them to punish their spouse. Provides that incidents of domestic violence when a child is present are a cause for the family to receive assistance for the protection of the child.

Section 52. Amends section 415.50165 to remove from the definition of “family services response system” provisions relating to assessment of the risk to the child and family and the delivery of services to remove the risk to the child when appropriate. Makes other technical and conforming changes.

Section 53. Amends section 415.5017 to require that all agencies of DCF and other state and local law enforcement and child welfare agencies adhere to specified procedures when requesting family assistance under the family services response system. Reduces the time to produce a case plan from 30 days to 15 calendar days. Requires that all interviews with a child in an abuse case be audio-recorded or videotaped. Provides that the caregiver shall be allowed to audio-record or videotape all activity in the home related to the response by the district staff to a report alleging abuse or neglect. Requires that a family services plan be developed within 10 days and delivered to the caregiver, who is required to acknowledge receipt by signature. Restricts the length of services to family members to not more than 90 days from the date services are ordered. Removes the provision allowing transfer of the case to a part IV child protective investigation.

Section 54. Amends section 415.50175 to require that records in family services response system be destroyed 7 years after the last entry in the file or when the child reaches 18 years of age.

Section 55. Amends section 415.5018 to remove obsolete language and to require that evaluations conducted by DCF be formative and summative. Removes language relating to risk assessments. Removes language requiring the role of law enforcement and social services agencies other than DCF be clarified and strengthened in the family services response system. Removes requirement that case closure for all cases will be reported to the central abuse registry and tracking system. Removes language requiring that DCF report specified categories of cases to the State Attorney’s office. Removes language requiring face-to-face contact with the child victim.

Section 56. Amends section 415.50185 to replace “outcome” with “summative” in relation to evaluations of the Family Services Response System. Adds information required to be included in the report. Requires that a record of the social security number of each child removed from the home be kept for the purposes of a longitudinal study.

Section 57. Amends section 415.502 to require that each child in the child abuse system be tracked through the system for a longitudinal study from the initial report until the date such study is initiated.

Section 58. Amends section 415.503 to remove “mental” or “emotional” from the definition of “abused or neglected child.” Removes “threatened harm” from the definition of “abused or neglected child.” Provides that the Child Protection Team shall provide services to the child and the child’s family rather than to DCF. Removes the definition of “false report.” Removes the definition of “mental injury.” Makes other technical and conforming changes.

Section 59. Amends section 415.504 to require DCF to provide statistical analysis of child abuse victims and individuals convicted of such crimes and to provide data for longitudinal studies of victims. Removes language allowing oral transmission of reports

to the abuse hotline, replacing with "electronic data transmission." Provides procedures to be followed when an anonymous report of abuse or neglect is received by the hotline. Provides that the child's parent or guardian has the right to audio-record or videotape all activity related to child abuse investigations.

Section 60. Amends section 415.505 to provide that the child's parent or guardian has the right to audio-record or videotape all activities related to the investigation. Requires DCF to obtain a court order prior to examining or interviewing a child when denied reasonable access to the child by a parent or other person responsible for the child's welfare. Provides that DCF must show cause for the order. Provides that if DCF interviews a child in the absence of the child's parent or guardian, the interview must be audio-recorded or videotaped. Removes language allowing DCF to take a child into custody when services are refused or DCF deems that the child's need for protection so requires. Removes threat to child's mental health or welfare as grounds for restricting an adult's access to a child.

Section 61. Amends section 415.5055 to reduce the period of time for short-term psychological treatment from 6 to 3 months. Removes the authority of district administrators to authorize a longer period of treatment if needed. Requires DCF to develop a substantial testing and annual evaluation program to ensure measurable competency of all employees assigned to manage or supervise child abuse cases.

Section 62. Repeals section 415.506, which authorizes law enforcement officers, agents of DCF, the person in charge of a hospital, or a physician treating a child, to keep a child in custody if releasing the child would put the child in imminent danger. This section requires a hearing within 24 hours if the child is still in custody at that time.

Section 63. Amends section 415.507 to require a court order except in cases of extreme emergency for medical examination of a child when child abuse is suspected. Removes the authority of DCF to consent to medical treatment of a child while a court order is sought.

Section 64. Creates section 415.5081 to outline the duties of guardians advocate and guardians ad litem in child protection cases.

Section 65. Creates section 415.50813 to require the guardian ad litem to maintain the confidentiality of all information and documents received from any source described in s. 415.5081(2)(b), and prohibits disclosure of any such information or documents except in a report to the court, served on both parties to the action and their counsel or as directed by the court.

Section 66. Creates section 415.50815 to set forth training and standards for guardians ad litem. Outlines as one purpose of the section training "to better prepare attorneys preparing to serve as guardians ad litem." Directs the Supreme Court to establish training programs on or before January 1, 1998 and requires that all attorneys wishing to serve as guardians ad litem be required to successfully complete this training.

Section 67. Amends section 415.5084 to conform to section 40, above.

Section 68. Amends section 415.5086 to require that hearings in juvenile cases be conducted using the rules of evidence in use for criminal, rather than civil, cases.

Section 69. Amends section 415.51 to provide that a person who reports abuse may be cross-examined in a court of law. Provides that an alleged perpetrator identified in a false report of abuse may petition the court to be informed of the name of the person who reported the child abuse or neglect and be given a copy of DCF's file of information concerning the report. Requires the court to order that the name and a copy of the file be released to the alleged perpetrator if the court determines that there is no danger to the person who reported the abuse or neglect or to the child.

Section 70. Amends section 415.5131 to increase the maximum administrative fine for falsely reporting child abuse from \$1000 to \$2000.

Section 71. Amends section 415.516 to add to the goals of the Family Builders Program to emphasize family rights and responsibilities, and to provide services to parents whose children are out of control, truant, or otherwise at risk in order to strengthen the family.

Section 72. Amends section 415.517 to provide that the program costs of evaluations are an allowable cost consideration in service contracts.

Section 73. Amends section 415.519 to require that, in Family Builders Programs, appropriate data be collected in order to evaluate the long-term effects of the program and to track the success or failure of the individual members served by the program.

Section 74. Amends section 415.520 to provide that persons with associate degrees in the human services curriculum and 1 year of experience in working with families with children be given priority.

Section 75. Amends section 415.521 to require summative rather than outcome evaluations for Family Builders Programs. Adds categories of information which Family Builders contracting agencies must maintain and provide.

Section 76. Amends section 933.18 to remove the authority of law enforcement officers to remove a child from a private dwelling and place the child in protective custody when, during a search pursuant to a warrant, a child is discovered and appears to be in imminent danger.

Section 77. Amends section 39.038 to remove the authorization of a person taking a child into custody to release that child to a DCF protective investigator.

Section 78. Amends section 39.015 to conform a reference.

Section 79. Amends section 39.052 to conform references.

Section 80. Amends section 39.058 to conform references.

Section 81. Amends section 39.061 to conform a reference.

Section 82. Amends section 39.423 to conform a reference.

Section 83. Amends section 232.19 to conform a reference.

Section 84. Amends section 744.309 to conform a reference.

Section 85. Amends section 784.075 to conform references.

Section 86. Repeals section 415.5088, setting forth the powers and duties of guardians advocate.

Section 87. Provides an effective date of October 1, 1997.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

DCF is not equipped to audio-record or videotape all interactions with children. DCF will need to purchase and distribute the proper equipment as well as train the affected DCF staff and contract agencies. DCF estimates that these costs would include the following:

Video cameras (\$900 per camera, 10 cameras for each of the 46 service centers);	\$414,000
Audio recorders (\$50 per record, 10 recorders for each of the 46 service centers);	\$ 23,000
Total non-recurring costs for video or audio taping:	\$437,000

The Office of State Courts Administrator of the Florida Supreme Court (OSCA) estimates that \$112,904 in state standard expenses will be needed to implement the bill.

Total non-recurring costs to state agencies	\$549,904
---	-----------

2. Recurring Effects:

1. If the bill results in fewer child protective investigations and fewer children are removed from their homes and placed in alternate care, there could be a cost savings to the state. However, if children who are in danger come to harm during the time period required to obtain a court order, the state could face additional costs in medical care and other services to the child.
2. OSCA reports that the requirement that a court order be obtained prior to removal of the child will require access to the courts on a 24-hour basis. The new hearing necessitated by this requirement is predicted to result in an annual statewide increase of 97-146 days of court time. Using \$253.00. the lowest daily rate for court time, the cost for this additional hearing would be at least \$24,541 to \$36,938 annually.
3. OSCA also predicts that the increasing the burden of proof from "preponderance" to "clear and convincing" evidence will increase the time required for dependency proceedings from the average of 4 hours to a minimum of one full day. Based on 7,236 dependency petitions filed in FY

1994-95, an additional 28,944 hours, or 4,135 days of judicial time would be needed. Again using \$253.00 as the daily rate for court time, this change will result in an annual cost of at least \$1,046,155.

4. The training provisions for guardians ad litem will require 22 FTEs, according to OSCA. These positions will cost \$1,120,000 annually in salaries and benefits, with another \$53,988 in related expense.
  5. The bill requires that the attorney's fees and costs to the parent or guardian be paid by the state (specifically from the department's budget) when the child named in the petition is found not to be dependent. Currently, there is statutory limit of \$1,000 for trial appointed counsel that is paid by the county. The bill increases that limit to \$2,000. According to DCF, 610 petitions were dismissed statewide in 1994-95. If the same number are dismissed under the provisions of the bill, the annual cost of this provision will be \$1,220,000.
  6. DCF will need to purchase tapes for audio and videotaping, at an approximate cost of \$540,000 annually (1,000 tapes per month for each of the 15 districts)
  7. The bill does not specify who will pay the costs of mandatory drug testing. Those costs are predicted to total approximately \$285,000 annually, computed at a rate of \$15.00 per test for a total of 19,000 individuals ( 2,000 foster parents, 5,000 relatives, 10,000 DCF employees, and 2,000 guardians ad litem).
  8. Costs for a "staff secure shelter" will, besides the construction costs of the facility itself, necessitate 24-hour awake staff on duty at all times. According to DCF, an estimated per diem cost for one child in a 24-hour awake supervision emergency shelter is \$45-\$50 daily, or \$1350-\$1500 monthly. Thus, each child placed in secure shelter as a result of this bill, and remaining there for the maximum six months allowed, will result in an outlay of \$8100-\$9000.
  9. According to DCF, federal funds placed in jeopardy as a result of the provisions of this bill include approximately \$1,700,000 annually in CAPTA grants and an additional \$13,500,000 in Title IV-B, Subpart 1 Child Welfare Grants.
  10. The removal of sovereign immunity for the failure to provide services outlined in a case plan will expose the state to increased litigation and liability.
3. Long Run Effects Other Than Normal Growth:
- None.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

The increased costs associated with additional court hearings are borne in part by counties. While the exact amount of increased costs to the counties resulting from additional court hearings and from the requirements for appointed counsel cannot be precisely determined, the Florida Association of Counties estimates that these costs will be well in excess of the threshold for invoking Article VII, Section 18 of the Florida Constitution.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The penalty provisions in of the bill would have a fiscal impact on child protective investigators against whom criminal charges could be filed if it is alleged that they inappropriately took a child into custody without a valid court order or that they knowingly made or assisted another person in making a false statement in a sworn affidavit stating that a child is in immediate danger. The former is a first degree misdemeanor and the later is a third degree felony, punishable under ss. 775.82 and 775.83.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill would appear to require counties to spend money or to take action that requires the expenditure of money. Neither the statutory exemptions nor the exceptions to the mandate criteria would appear to be applicable.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON FAMILY LAW & CHILDREN:

Prepared by:

Legislative Research Director:

---

PEGGY SANFORD

---

PEGGY SANFORD