

**STORAGE NAME:** h1513s1.flc

**DATE:** April 14, 1997

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

**BILL #:** CS/HB 1513

**RELATING TO:** Adoption

**SPONSOR(S):** Committee on Family Law and Children and Representative Sanderson

**STATUTE(S) AFFECTED:** Sections 39.001, 39.01, 39.45, 39.451, 39.453, 39.456, 39.464, 39.469, 39.47, 39.471, 39.473, 409.166, 409.167, 63.072, 63.092, and 63.097

**COMPANION BILL(S):** SB 1954 (S)

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

- (1) FAMILY LAW & CHILDREN YEAS 6 NAYS 1
- (2) HEALTH AND HUMAN SERVICES APPROPRIATIONS
- (3)
- (4)
- (5)

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**I. SUMMARY:**

This bill will allow intermediary attorneys to share with the Department of Children and Families and licensed child placement agencies the responsibility for finding adoptive homes for children whose parent's rights have been terminated.

The bill broadens the legislative intent regarding adoption of foster children to allow for the inclusion of intermediary attorneys in the process and to encourage that adoptive placements be finalized more quickly.

This bill provides that the inability to place siblings in the same adoptive home must not delay or preclude the immediate placement of one child in an otherwise appropriate and available home if the court determines such placement to be in the individual child's best interest.

The fiscal impact of the bill is indeterminate.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Department of Children and Families (the department) is currently responsible for the adoption placement of special needs or foster children. This system of public agency adoption was established in 1963 to provide adoption efforts specifically to foster children. Prior to 1963, all adoptions were performed only by either private agencies or intermediaries. However, the private sector was largely unable to place these special needs children in adoptive homes because, at that time, the private sector was primarily experienced in the placement of healthy infants.

Since its establishment, the department's adoption program has placed only special needs children. "Special needs child" means a child who has established significant emotional ties with his foster parents; or is not likely to be adopted because he is: eight years of age or older, mentally retarded, physically or emotionally handicapped, of black or racially mixed parentage, or a member of a sibling group of any age, provided two or more members of a sibling group remain together for purposes of adoption.

Chapter 39 deals with proceedings relating to juveniles, including foster care placement and termination of parental rights. Section 39.001(d) states that chapter 39 is intended to

“. . . secure for the child custody, care, and discipline as nearly as possible equivalent to that which should have been given by the parents; and to assure, in all cases in which a child must be permanently removed from parental custody, that the child be placed in an approved family home, adoptive home, independent living program, or other placement that provides the most stable and permanent living arrangement for the child, as determined by the court.”

39.45(2) states the legislative intent that “. . . permanent placement with the biological or adoptive family be achieved as soon as possible for every child in foster care and that no child remain in foster care longer than 1 year.”

When a child also has siblings living in foster care, section 39.45 provides for legislative intent that “every reasonable attempt” be made to place the siblings in the same foster home and the same adoptive home. The section further provides that, if the siblings are separated, it is the intent of the Legislature that every reasonable attempt be made to keep them in contact with each other. Under this language, the department conducts specialized recruitment efforts for families who are willing to consider adopting siblings prior to making a placement that would separate the siblings.

When a child is placed in foster care, section 39.4031 and section 39.451 require the department to develop a case plan that describes the steps that will be taken to achieve permanency for the child - either through the goal of family reunification or, if reunification is impossible, termination of parental rights and adoptive placement. The plan may not extend longer than 18 months without a special extension. If, after 18 months, the parents have not complied with the case plan, the department must file a petition for the termination of parental rights. However, under sub-section 39.454(1), the department may initiate proceedings to terminate parental rights prior to this point if the department is of the opinion that the parents have not complied with their responsibilities under the case plan although able to do so.

Upon termination of parental rights, it is the responsibility of the department to find prospective adoptive homes for these foster children. According to the department, foster parents are the most likely families to adopt foster children. In 1994-95, foster parents made up 78% of the families who adopted foster children. Foster families have often had the child placed in their home for a long period of time prior to adoptive placement and therefore, have formed an attachment to the child. According to the department, the average annual household income of families who adopted foster children in 1995-96 was \$33,000.

Although foster parents commonly adopt the children, the department has services available to find adoptive homes for foster children. One such service is the Florida Adoption Exchange, created in section 409.167, which operates as a matching system to connect compatible prospective families and children throughout the country. District adoption staff "register" children and families on the exchange by sending descriptions of the children who are awaiting adoption and descriptions of the families who are also waiting, including the kind of child(ren) individual families would like to adopt. The exchange then provides the photo listing service to all licensed child-placing agencies and to all appropriate citizen groups and other organizations and associations interested in children's services. Current law requires that any child who is legally available for adoption be placed on the exchange if, after 90 days, no placement for the child has been found.

In addition to these programs, licensed private adoption agencies who choose to do so may assist the department by contracting with the department to provide adoption services. These agencies are paid a fee to recruit adoptive families for foster children, place the child with the family and then supervise the adoptive home until finalization of the adoption. Approximately 150-200 foster children per year are placed in this manner. However, some agencies have indicated that if additional funding were available, they would be able to place additional children.

Only licensed child placement agencies may receive these contracts. In order to become licensed, such agencies must be non-profit corporations and operate under other specific requirements of Rule 10M-24, F.A.C. According to the department, it is possible for an individual to become licensed as a child placement agency, and several individuals have in fact done so.

Intermediaries are not eligible to contract with the department for the provision of adoption services to foster children unless they become a licensed child placement agency. Subsection 63.032(8) defines an "intermediary" as "an attorney or physician who is licensed or authorized to practice in this state or, for the purpose of adoptive placements of children from out of state with citizens of this state, a child placing agency licensed in another state that is qualified by [the department]." Chapter 39 does not include a definition for "intermediaries."

The practice of intermediaries has traditionally not included placing special needs children for adoption. Instead, intermediaries have primarily handled private adoptions of infants or children placed for adoption voluntarily by their parents. Intermediaries who are attorneys are ethically bound to represent the interests of their clients. In most adoption cases, the client is the parents who are seeking to adopt, not the child. In contrast, the department and licensed private child-placing agencies are charged to serve the **best interests of the child**. See 10 F.A.C. 10M-8.005(6).

If it is not possible to find a permanent adoptive home for a child, section 39.451 requires that “the case plan must record the actions taken for preparing the child for alternative permanency goals or placements such as long term foster care or independent living.”

**B. EFFECT OF PROPOSED CHANGES:**

This bill will authorize the department to allow intermediaries to assist the department and licensed child placement agencies in finding prospective adoptive homes for children whose parents’ rights have been terminated. It will give licensed child-placing agencies and intermediaries a shared responsibility with the department for the adoptive placement of children who are legally available for adoption and whose foster parents are either unable or unwilling to adopt.

The bill will broaden legislative intent to include an intent to:

- assure that children are expeditiously placed into permanent homes and adopted;
- assure that no child remains in department’s custody longer than absolutely necessary;
- mandate that permanent adoptive placement plans be immediately effectuated;
- assure that terminations of parental rights happen no later than 18 months after a foster child is declared dependent;
- mandate that the department cooperate with private child-placing agencies and intermediaries in the adoptive placements of children whose parents’ rights have been terminated;
- assure that all prospective adoptive parents are considered for placement;
- maximize the likelihood of success in adoptive placements;
- mandate dependency court approval of all proposed adoptive placements of children under the protective supervision of the department and grant the court the authority to enter any order necessary to protect and promote the best interests of the child; and
- expand the department’s contracts with private child-placing agencies to include all adoptive placements for children whose parents’ rights have been terminated and whose foster parents and relative are unwilling or unable to adopt.

This bill defines an intermediary as a “licensed attorney who is a member of The Florida Bar and authorized by chapter 63 to place a child for adoption.” This will be a more narrow definition of intermediary than that provided in chapter 63.

This bill adds legislative intent regarding the efforts to be made to keep siblings in one home, such that the immediate placement of one child in an otherwise appropriate and available home should not be delayed or precluded by the inability to place siblings in the same adoptive home if the court determines such a placement to be in the best interest of the individual child.

The bill will allow intermediaries and licensed adoption agencies to pursue adoptive placements for foster children after:

1. The relatives of the child have stated that they cannot provide a permanent home for the child, and

2. The foster parents of the child state that they are unwilling or unable to adopt. The foster parents shall have 3 months from the time that termination of parental rights petition is granted.

Later consideration of foster parents or relatives will not be precluded. The bill will require the court to determine the appropriateness of the adoptive placement of the child.

The bill will require the department to provide all licensed child-placing agencies and intermediaries access to the adoption exchange. Through the adoption exchange, the department shall provide the name of any child who is legally available for adoption and whose nonrelative foster parents are unwilling or unable to adopt the child.

A licensed child-placing or an intermediary will have the authority to place a child in a family home for adoption if:

1. All of the chapter 63 procedures and prerequisites for adoption are completed,
2. All documents evidencing compliance with chapter 63 are filed with the court,
3. The dependency court determines:
  - a. the prospective adoptive home is appropriate, and
  - b. the prospective adoptive parents have received full disclosure concerning the history of the child,
  - c. the prospective adoptive parents are willing and able to provide for all current and future recommendations of the mental health providers working with the child, and
4. The adoption is in the best interests of the child. The bill provides guidelines for the determination of the best interests of the child.

The bill changes the duties of the adoption exchange. Each district of the department will be required to notify the adoption exchange in writing of each child in its care who has been legally freed for adoption no later than 30 days after the date of the final orders terminating the rights of the child's parents. The district must notify the adoption exchange within 10 working days when they identify a placement which will occur within 3 months of the final order to terminate parental rights.

The adoption exchange shall hold a child's name in an inactive status if:

- The child will be placed for adoption with the child's foster parents, relatives, or another identified family within 3 months of the order terminating parental rights.
- There is a significant change in the child's physical, mental, or emotional status so that a move to an adoptive home would adversely affect the child's safety or place the adoption at increased risk for disruption.
- Adoption is no longer the plan for the child and the goal change has been approved by the court.

The bill authorizes the court to excuse the consent of the department to an adoption.

The bill provides that the prospective adoptive parents are responsible for payment of the fees in accordance with the requirements of 63.097(1). The bill will allow the prospective parents to seek reimbursement from the department of up to \$1,000 in nonrecurring adoption expenses if the foster child adopted is a special needs child.

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?

No.

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

This bill will allow intermediaries to participate in finding adoptive homes for children whose parental rights have been terminated.

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

No.

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

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

Private attorneys who are intermediaries will be authorized to participate in finding adoptive homes for children whose parental rights have been terminated.

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

No new agency is created.

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

No new agency is created.

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?

Prospective adoptive parents who use an intermediary to adopt a foster child will be responsible for payment of the adoption fees in accordance with the requirements of 63.097(1). The bill will allow the prospective parents to seek reimbursement from the department of up to \$1,000 in nonrecurring adoption expenses if the foster child adopted is a special needs child.

4. Individual Freedom:

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

The bill will allow potential adoptive parents to use intermediary attorneys to adopt foster children.

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

No.

5. Family Empowerment:

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

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

N/A

- (2) Who makes the decisions?

A court will determine if the placement is in the best interests of the child.

- (3) Are private alternatives permitted?

N/A

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

No.

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

No.

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

No.

- 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?

Licensed child placement agencies and intermediary attorneys will share with the department the responsibility for finding adoptive homes for children whose parents' rights have been terminated.

(3) government employees/agencies?

The department will share with licensed child placement agencies and intermediary attorneys the responsibility for finding adoptive homes for children whose parental rights have been terminated. The department will continue to deal with the families up to and including the point at which parental rights are terminated.

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

Section 1. Amends section 39.001 to provide legislative intent that all children who are the subject of an order terminating parental rights are expeditiously placed in permanent homes and adopted; to assure that no child remains in the custody of the department longer than absolutely necessary; to reduce long-term emotional and psychological damage to children by mandating that a permanent adoptive placement plan be immediately effectuated for each dependent child upon termination of his or her parents' rights; to assure that a termination of parental rights will be effectuated no later than 18 months following a child being declared dependent; to mandate the department's cooperation with private child-placing agencies and intermediaries in the adoptive placements of all children whose parents' rights have been terminated; to assure that all prospective adoptive parents are considered for placement of such children; to maximize the likelihood of success in adoptive placements; to mandate dependency court approval of all proposed adoptive placements of children under the department's supervision; to grant authority to the court to enter any order necessary to protect and promote the child's best interests; to expand the department's contracts with private child-placing agencies to include all adoptive placements for children whose parents' rights have been terminated and whose foster parents and relatives are unwilling or unable to adopt.

Section 2. Amends section 39.01 to add a definition of "intermediary."

Section 3. Amends section 39.45 to express legislative intent to assure that no child remain in foster care longer than absolutely necessary; to mandate that permanent adoptive placement plans be effectuated expeditiously upon termination of a parent's rights; to assure that all children who are the subject of an order terminating parental rights are expeditiously placed into permanent homes and adopted; to expand the department's current contracts with private child-placing agencies to include all adoptive placements for children whose parents' rights have been terminated and whose foster parents and relatives are unwilling or unable to adopt; and to maximize the likelihood of success in adoptive placement. Adds provision that the inability to place siblings in the same adoptive home must not delay or preclude the immediate placement of one child in an otherwise appropriate and available home if the court determines such placement to be in the individual child's best interests.

Section 4. Amends section 39.451 to provide that a case plan for a child for whom parental rights have been terminated provide for the placement of the child with the department by a licensed child-placing agency or an intermediary for the purpose of finding an adoptive home. Provides that permanent adoptive placement should be the primary goal when parental rights are terminated. Provides that the child's ties with relatives and the foster parents shall be preserved by allowing relatives the choice to provide a permanent home for the child without undergoing the legal step of adoption; by allowing nonrelative foster parents three months from the time the termination of parental rights petition is granted. Provides that if the child's relatives state they cannot provide a permanent home and the foster parents state they are unwilling or unable to adopt, an intermediary or licensed adoption agency shall pursue an adoptive placement for the children, although later consideration of foster parents or relatives is not precluded. Provides that the case plan must select an alternative permanency goal.

Section 5. Amends section 39.453 to require the court to determine the appropriateness of the adoptive placement of the child by the department, agency or intermediary.

Section 6. Amends section 39.456 to add "an intermediary" to the list of persons who may place children in adoptive homes.

Section 7. Amends section 39.464 to add "intermediary" to the list of parties who may receive custody of children following the execution of a voluntary written surrender by the parent.

Section 8. Amends section 39.469 to require the court to place the child in the custody of the department for purpose of adoptive placement by the department, a licensed child-placing agency or an intermediary upon termination of parental rights. Requires the department to provide licensed child-placing agencies and intermediaries access to the adoption exchange, as authorized in s.409.167, and thereby make available the name of any child who is legally available for adoption and whose nonrelative foster parents are unwilling or unable to adopt the child. Provides that the department will share with the department the responsibility for the adoptive placement of children who are legally available for adoption and whose nonrelative foster parents are unwilling or unable to adopt the child.

Section 9. Amends section 39.47 to authorize a licensed child-placing agency or intermediary to place a child for adoption under specified conditions. Provides guidelines for determining when the adoption is in the manifest best interests of the child. Provides that adoptive placements are made by the department, a licensed child-care agency or intermediary. Requires the department to provide follow-up information services upon the request of any family who has adopted a foster child.

Section 10. Amends section 39.471 to provide that adoptive placements are made by the department, a licensed child-care agency or intermediary.

Section 11. Amends section 39.473 to provide that an order terminating parental rights that places the child with a licensed child-placing agency or intermediary will be suspended while the appeal is pending.

Section 12. Amends section 409.166 definition of "special needs child" to allow for the inclusion of intermediaries in the process of placing such children. Deletes from the

definition the factor that the child has established significant emotional ties with his or her foster parents.

Section 13. Amends section 409.167 to require each district to notify the adoption exchange in writing of each child in its care who has been legally freed for adoption no later than 30 days after the date of the final orders terminating parental rights. Provides guidelines for such notifications. Provides guidelines for when a child's name shall be held in inactive status on the adoption exchange.

Section 14. Amends section 63.072 to allow a court to waive the consent of the department to the child's adoption.

Section 15. Amends section 63.092 to require that a preliminary home study for the prospective adoptive parents of a child under the supervision of the department include documentation of counseling and education including the Model Approach to Parenting or equivalent training approved by the department.

Section 16. Amends section 63.097 to provide for the payment and reimbursement of fees in foster child adoptions.

Section 17. Provides an effective date of July 1, 1997.

### III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

#### A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

##### 1. Non-recurring Effects:

According to the department, the bill will result in non-recurring costs of \$76,144. This amount would cover the department's need to contract for the development of a tracking system to account for the placement of the children in order to assure that a child is not promised to more than one family. The amount includes \$26,144 in non-recurring staff costs and \$50,000 in non-recurring contract costs.

##### 2. Recurring Effects:

According to the department, the bill will result in recurring costs of \$228,630 to support the expanded system. This figure includes salaries for four staff members needed to maintain the tracking system to account for the placement of the children.

According to the Office of the State Courts Administrator, there will be an increase in court hearings under the provisions of this bill but the number, frequency or duration cannot be determined. The fiscal impact on the courts is thus indeterminate.

##### 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:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

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:

The Dependency Court Improvement Project, under the Office of State Court Administration, is currently analyzing data and will make recommendations in June of 1997 regarding strategies to move foster children more quickly through both the foster care and court systems.

On page 6, lines 29-30, the bill amends section 39.451(1)(b) to provide that foster parents have 3 months upon termination of parental rights. However, it is unclear for what purpose foster parents are afforded these three months.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

A strike everything amendment was adopted as a committee substitute by the Committee on Family Law and Children on April 8, 1997. Four additional amendments were adopted at the meeting.

The strike-everything amendment made the following major changes:

- Allows intermediary attorneys to participate in finding prospective adoptive homes for foster children without completely eliminating the role of the department in the process;
- Removes language that would reduce the efforts to be made to keep siblings in foster care in one home, while still providing that the inability to place siblings in the same adoptive home must not delay or preclude the immediate placement of one child if a court determines such placement to be in the best interests of the individual child. Restores language that allows such siblings who must be separated to maintain contacts with each other;
- Provides for the expansion of the adoption exchange;
- Provides guidelines for determining when an adoptive placement is within the best interests of the child;
- Provides that parents seeking to adopt foster children through intermediaries shall be responsible for payment of fees in accordance with the requirements of section 63.097 F.S.
- Removes language that would require termination of parental rights to occur within 12 months rather than 18 months.

The other amendments adopted made the following changes:

- Provides that the department shall provide follow-up information services upon the request of any family who adopts a foster child.
- Requires that documentation of counseling and education or equivalent training approved by the department be included in preliminary home studies for adoptions of children under the supervision of the department.
- Deletes certain requirements when a child's name is held in an inactive status on the adoption exchange.
- Removes language that would require termination of parental rights to occur within 12 months rather than 18 months.

VII. SIGNATURES:

COMMITTEE ON FAMILY LAW & CHILDREN:

Prepared by:

Legislative Research Director:

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JENNY CONNER

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PEGGY SANFORD