

STORAGE NAME: h1513.flc

DATE: March 31, 1997

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

BILL #: HB 1513

RELATING TO: Adoption

SPONSOR(S): Sanderson

STATUTE(S) AFFECTED: Sections 39.001, 39.01, 39.45, 39.451, 39.454, 39.456, 39.469, 39.47, and 39.471

COMPANION BILL(S): SB 1954 (identical)

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

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

I. SUMMARY:

This bill eliminates the authority of the Department of Children and Families to find adoptive homes for special needs children who are in the department's care and custody. The bill makes such adoptions the exclusive responsibility of licensed private adoption agencies and intermediary attorneys.

The bill broadens the legislative intent regarding adoption of foster children to encompass the elimination of public agency adoption and to encourage that such adoptive placements be finalized more quickly.

This bill diminishes the efforts that are expected to be made to keep siblings together in one foster or adoptive home. The bill also reduces the length of time in which natural parents may come into compliance with a case plan after the child enters foster care, and therefore accelerates the process of terminating parental rights.

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 the current 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 multiple services available to find adoptive homes for foster children. The Florida Adoption Exchange, created in section 409.167, 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.

Other available services include:

- Adoption Homefinders, which uses adoption counselors specialized in special needs children to place children
- One-Church, One Child program, which concentrates on finding homes for African-American children
- an Internet homepage which shows photos of children awaiting adoption in foster care
- Partners for Adoptions, an information guide for the public.

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 primarily handle 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 eliminate the department’s authority to place special needs children for adoption, and will make such adoptions the exclusive responsibility of intermediaries/attorneys and licensed private adoption agencies.

In the period up to and including termination of parental rights, this bill will leave the department with all of its current responsibilities for dependent foster children

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

- assure expeditious placement of children into permanent homes and adopted;
- assure no child remains in department’s custody longer than absolutely necessary;
- mandate that permanent adoptive placement plan be immediately effectuated;
- assure terminations of parental rights happen no later than 12 months after child is declared dependent;
- mandate that the department cooperate with private child-placing agencies and intermediaries who will have sole responsibility for adoptive placements;
- assure all prospective adoptive parents are considered for placement; and
- maximize the likelihood of success in adoptive placements.

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 will modify the legislative intent regarding efforts to be made to keep siblings in one home. The bill will reduce the currently intended effort so that only a “reasonable effort” must be made to place such siblings in the same foster home or the same adoptive home. This bill deletes the legislative intent that when siblings are separated, every reasonable attempt be made to keep them in contact with each other.

This bill adds legislative intent 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 six or more licensed child-placing agencies or intermediaries certify that a child cannot be placed for adoption, this bill requires the court to place the child with the department for an alternative permanency plan approved by the court. The bill does not give the department the option of continuing efforts to find adoptive homes if the private agencies or intermediaries fail.

This bill will reduce the amount of time natural parents have to come into compliance with their case plan, from 18 months to 12 months, before the department must file a petition for termination of parental rights. Therefore, under this bill, if the child has not been returned to the custody of the parents within 12 months, the court must order the department to initiate termination of parental rights proceedings.

The bill requires the department to immediately notify all licensed child-placing agencies and intermediaries of the availability of a child upon termination of the child's parents' parental rights.

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 court:
 - a. approves the prospective adoptive home,
 - b. determines that the prospective adoptive parents have received full disclosure concerning the history of the child,
 - c. determines that 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.

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 eliminates the role of the department in placing special needs children in adoptive homes. The bills gives the authority for such placements to private intermediaries and licensed child placement agencies.

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

This bill reduces the entitlement of siblings to remain together and to remain in contact with each other if placed in separate homes.

- 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?

This bill eliminates the role of the department in placing special needs children in adoptive homes. The bill gives the authority for such placements to private intermediaries and licensed child placement agencies. Therefore, private agencies and attorneys will be the only parties authorized to find 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?

Children in foster care would no longer be entitled to the specialized adoption services provided by the department.

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

Intermediary attorneys will benefit because they will be authorized to provide a new type of service. Potential adoptive parents and children **may** benefit if the bill results in placing more foster children in adoptive homes.

It is unclear who will pay the cost of implementing and operating the private system. The department will pay the cost of broadening access to the exchange and tracking systems. If the department will contract with agencies and intermediaries to provide adoption services, the department will pay the cost of operation. If intermediaries are not able to contract with the department, but will instead be paid by individual clients, potential adoptive parents will pay the cost of operating the system.

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 and licensed child placement agencies to adopt special needs children.

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

The bill will prohibit the department from providing adoption services for special needs children and from providing input on the appropriateness of the family selected.

5. Family Empowerment:

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

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

Intermediaries will evaluate the needs of their clients, the potential adoptive parents. Licensed child placement agencies are obligated to consider the best interests of the child first.

- (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?

Natural parents will be afforded less time to comply with their case plan, and therefore less time before their parental rights are terminated.

- 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 control the placement of foster children in adoptive homes.

- (3) government employees/agencies?

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 12 months following a child being declared dependent; to mandate the department's cooperation with private child-placing agencies and intermediaries who will be solely responsible for 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; and to maximize the likelihood of success in adoptive placements.

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

Section 3. Amends section 39.45 to express legislative intent that reasonable efforts, rather than every reasonable effort, be made to place siblings together in foster homes. Adds provision that the inability to placing siblings in the same adoptive home must not delay or preclude the immediate placement of one child in an otherwise appropriate and available home.

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 pending adoption, with the placement for adoption being done by a licensed child-placing agency or an intermediary. Requires that if no fewer than 6 licensed child-placing agencies or intermediaries certify in writing to the court that the child cannot be placed for adoption, the court must place the child with the department for an alternative permanency plan approved by the court.

Section 5. Amends section 39.454 to provide that at the 12-month judicial review hearing, if the child is not returned to the physical custody of the natural parents, the social services agency shall institute termination of parental rights proceedings.

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 remove the provisions authorizing the department to place a child for adoption, providing instead that the child is placed with the department pending an adoptive placement. Requires the department to immediately notify all licensed child-placing agencies and intermediaries of the availability of the child when termination of parental rights is ordered. Gives licensed child-placing agencies and intermediaries exclusive authority for adoptive placement of all children committed to the department, unless no fewer than 6 agencies or intermediaries have certified that a child cannot be placed for adoption, at which time the department is required to provide the court with an alternative long-term placement plan.

Section 9. Amends section 39.47 to authorized a licensed child-placing agency or intermediary to place a child for adoption under specified conditions. Removes the

authority of the department to place the child or to become a party to subsequent adoptions proceedings in order to consent to the adoption. Removes a licensed child-placing agency from those who may have custody of a child pending adoption. Authorizes the court to enter an order approving a petition filed by a licensed child-placing agency or intermediary if it finds that the petition is in the best interest of the child.

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

Section 11. Amends section 39.473 to make conforming changes.

Section 12. 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 a total department savings of \$9,458,203. This is the amount spent on activities that would be assumed by private agencies and intermediaries, including adoption staff salaries and expenses, OPS, Purchase of Adoption Services, and adoption-contracted services.

According to the department, the bill will result in recurring costs of \$10,028,630. This includes an estimated cost of \$9,800,000 in contracts in with private agencies and intermediaries. This cost of contracts is based on a cost of \$7,000 per child at an average of 1,400 children placed per year. The total recurring costs figure also includes \$228,630 for four staff members needed to maintain the tracking system to account for the placement of the children.

Therefore, according to the department, an estimated \$646,571 is needed to implement the provisions of this bill.

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:

Net costs to the department: \$ 646,571

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:

It is more expensive to keep children in foster care than to place them in adoptive homes. The bill would encourage sibling groups to be split up, which could possibly result in more older children remaining in foster care but might allow more rapid placement of other children. If intermediaries are unable to place the same number of special needs children in adoptive homes as the department, there will be a reduction in placements, leaving more children in foster care. However, intermediaries may also facilitate quicker placement of some children.

If the intermediaries are able to place foster children at the same rate as the department, the total fiscal impact may be reduced as the cost of placing foster children in adoptive homes will be reduced.

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.

The bill may have a technical deficiency in that it amends paragraph (e) in section 39.001, relating to delinquency rather than paragraph (d) in section 39.001 relating to dependency.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON FAMILY LAW & CHILDREN:

Prepared by:

Legislative Research Director:

JENNY CONNER

PEGGY SANFORD