

STORAGE NAME: H0357s1.flc

DATE: March 31, 1997

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

BILL #: CS/HB 0357

RELATING TO: Child Welfare

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

STATUTE(S) AFFECTED: Sections 39.01, 39.401, 39.402, 39.405, 39.4051, 39.41, 39.4611, 39.462, 39.4625, 39.464, 415.505, and creating sections 39.4052, and 39.4053, Florida Statutes.

COMPANION BILL(S): SB 1760

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

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

I. SUMMARY:

This bill expands the definition of the "diligent search" which the Department of Children and Families (DCF) is required to do when a child is in its custody. Previously, this search was required only for parents and prospective parents. The bill expands the search requirement to include relatives. It also defines a diligent search and provides that the initial diligent search must be completed within 90 days after DCF takes a child into custody.

The bill also requires that DCF given written notice to adult relatives of a child in custody when these relatives are made known to DCF. The contents of the notice are specified, and provision is made that DCF may be excused from the requirement to give notice if the relative requests that the notice be discontinued or if a court excuses the notice for good cause shown.

The bill allows the court to excuse DCF from further diligent search at the termination of parental rights (TPR) stage of dependency hearings when it finds that a previous adequate search has been conducted.

The bill also requires that both DCF and the court question the child's parent or custodian when a child is taken into custody in order to identify and locate all parents, prospective parents, and next of kin of the child.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Section 39.01(27) defines "diligent search" as "the efforts of a social service agency in accordance with the requirements of s. 39.4051(6) to locate a parent or prospective parent whose identity or location is unknown, initiated as soon as the agency is made aware of the existence of such a parent, with the search progress reported at each court hearing until the parent is either identified and located or the court excuses further search."

Section 39.01(49) defines a "participant," for purposes of a shelter proceeding, dependency proceeding, or termination of parental rights proceeding as "any person who is not a party but who should receive notice of hearings involving the child, including foster parents, identified prospective parents, grandparents entitled to priority for adoption consideration under s. 63.0425, actual custodians of the child, and **any other person whose participation may be in the best interest of the child.** Participants may be granted leave by the court to be heard without the necessity of filing a motion to intervene," (emphasis supplied.)

Section 39.01(50) defines a "party," for purposes of a shelter proceeding, dependency proceeding, or termination of parental rights proceeding, as "the parent of the child, the petitioner, the department, the guardian ad litem when one has been appointed, and the child."

Sections 39.402 and 39.408(1) set forth the time periods for children who are held in shelter. The child may not be held more than 24 hours without a court hearing, 39.402(7)(a). A petition for dependency must be filed within 7 days, an arraignment held within 14 days, 39.402(8). If the parent, guardian, or custodian denies the allegations of the dependency petition, an adjudicatory hearing must be held within 7 days after the arraignment, 39.408(1). The child cannot be held in shelter longer than 21 days without an order of adjudication being entered by the court, 39.402(8), and cannot be held in a shelter more than 30 days after entry of an order of adjudication unless a disposition order has been entered by the court, 39.402(9). This section also gives circumstances in which the time limits do not apply.

Section 39.404(4) provides that in cases when the child has not been taken into custody, the petition for dependency must be filed "within a reasonable time after the child was referred to protective investigation..." Similarly, section 39.408 requires that hearings occur within a reasonable time if the child is in the custody of a parent, guardian, or custodian.

Section 39.4051 sets forth procedures to be followed when the identify or location of a **parent or prospective parent** is unknown and a petition for dependency or shelter is filed. The diligent search required by s. 39.4051 requires, at a minimum, inquiries of all relatives of the parent or prospective parent made known to the petitioner, inquiries of all program areas of the Department of Health and Rehabilitative Services, of other state and federal agencies, of appropriate utility and postal providers, and of appropriate law enforcement agencies likely to have information about the parent or prospective parent. These inquiries are for the purpose of identifying and locating **parents and prospective parents**, not other relatives. This section does refer to relatives, but only in the context

of asking relatives for assistance and information which may lead to identifying and locating missing parents. It does not require notice by publication. There is no time limit for the search; DCF is required to continue to search for a parent until excused from further search by the court.

If the identity or location of a parent is unknown at the time of the filing of a petition for shelter or dependency, the court is required by the provisions of s. 39.4051(1) to conduct the following inquiry of the parent who is available, or of any relative or custodian of the child who is present at the hearing and likely to have the information:

- (a) Whether the mother of the child was married at the probable time of conception of the child or at the time of the birth of the child;
- (b) Whether the mother was cohabiting with a male at the probable time of conception of the child;
- (c) Whether the mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father;
- (d) Whether the mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance; and
- (e) Whether any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother resided at the time of or since conception of the child, or in which the child has resided or resides.

Section 39.4051(8) provides that when a petition for dependency and shelter is filed and the inquiry and search described above identifies a prospective parent, that person must be allowed an opportunity to become a party to the proceedings by completing a sworn affidavit of parenthood and filing it with the court or the department. Section 39.4625 (8) contains parallel provisions for petitions for termination of parental rights.

Section 39.41(4)(b) defines "diligent efforts to locate an adult relative" as "a search similar to the diligent search for a parent, but without the continuing obligation to search after an initial adequate search is completed." This section requires such a diligent effort to be made prior to placing a child with the department or with a non-relative. This provision is in the statutory section which addresses the powers of disposition available to the court in dependency cases.

The notice requirements for dependency, shelter, and medical hearings are contained in section 39.405, which requires that notice of all proceedings involving a child be given to all parents unless parental rights have been terminated. Section 39.405(10) specifically provides that service by publication is not necessary in dependency proceedings and that the failure to serve a party or give notice to a participant shall not affect the validity of the proceedings if the court finds that the petitioner has completed a diligent search for the party or participant. There is no affirmative duty to provide adult relatives with notice of hearings, of possible outcomes, of the ability to be considered for custody and visitation, or of the ability to choose not to receive further notice.

Section 39.4625(1) provides a similar process for parents whose location or identity is not known when a petition for termination of parental rights is filed.

Section 39.47(2) provides that parents or formal legal custodians are not entitled to any notice of adoptions proceedings after termination of parental rights. This section also provides that parents and former legal custodians are not entitled to knowledge at any

time after the order terminating parental rights is entered of the whereabouts of the child or of the identity or location of any person having custody or having adopted the child. This information is protected even in an action for habeas corpus.

Current law contains no requirement that the custodial intentions of relatives of the child other than the parents be formally determined.

Other than the inquiry requirements of sections 39.4051(1) and 39.4625(1), described above, present law does not impose an affirmative duty on parents to provide information to DCF regarding relatives of a child when the child is taken into custody.

B. EFFECT OF PROPOSED CHANGES:

The bill more specifically describes the contents of a diligent search. It requires DCF to conduct an initial diligent search within 90 days after taking a child into custody, and expands the list of persons searched for to include relatives made known to DCF by the parent or custodian of a child. It also requires DCF to continue to search for relatives who may be appropriate for placement of the child until such relatives are found or until the child is placed for adoption, unless excused from further search by the court.

The bill defines "next of kin" as "an adult relative of the minor child who is the child's brother, sister, grandparent, aunt, uncle, or first cousin."

The bill requires that when a child is taken into custody that DCF request that the child's parent or custodian disclose the names, relationships, and addresses of all parents and prospective parents and all next of kin of the child, so far as are known. It requires the court at the shelter hearing to require the parents or custodians present to supply similar information.

The bill requires DCF to provide written notice to adult relatives made known to DCF by the parent or custodian of any child taken into custody. This written notice is to be provided as soon as possible after the identity of the adult relative is made known to DCF and is to include the following information:

- (a) The nature, time, and place of the pending proceeding.
- (b) The various possible outcomes both of the impending proceeding and of future proceedings including termination of parental rights, reunification, foster care placement, long-term foster care placement, and shelter care.
- (c) The ability of adult relatives to be evaluated for temporary custody of the child.
- (d) The ability of adult relatives to maintain or establish a relationship with a child in care through visitation or other contacts.
- (e) The ability to choose not to receive further notice regarding future proceedings.

Notice of future proceedings is to be provided to the adult relative, unless he or she requests in writing that such notice be discontinued or the court excuses further notice for good cause shown.

The bill creates section 39.4053, which requires that, within 90 days after taking a child into custody, DCF either identify and locate, or conduct a diligent search for, the parents, prospective parents, and legal custodians of the child and the next of kin of the

child. The purpose of identifying and locating these persons, or of conducting a diligent search for them, is to ensure the proper placement of the child, either with parents, with relatives, or in the custody of DCF. The bill requires that any relatives who are located pursuant to this search be assessed as to their willingness to provide emotional support to the parents during reunification, including assisting the parents to achieve a safe, stable home, and as to their own custodial intentions toward the child who is in the custody of DCF. The bill requires that DCF, in conducting this search, consider the results of the inquiry conducted by the court at the shelter hearing, described above.

The bill also requires that if DCF fails to place a child for adoption within 12 months after finalization of the termination of parental rights, DCF must notify the parents, prospective parents, legal custodians and next of kin of the child of the status of the child. This notice may be excused by the court for good cause shown.

The bill further removes the requirements of the inquiry required concerning absent parents at the stage of termination of parental rights, replacing these requirements with an authorization to the court to make relevant inquiry. It further allows the court to excuse a diligent search for a parent or prospective parent if it finds that an adequate diligent search has previously been conducted.

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?

Yes. The bill expands the responsibility of DCF to conduct a diligent search when a child is in the custody of DCF. It also requires that the initial search be completed in 90 days. Further, it requires that DCF provide written notice to specified relatives of the child.

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

No

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

This section is not applicable to this bill.

- (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?

No

5. Family Empowerment:

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

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

The Department of Children and Families

- (2) Who makes the decisions?

The courts

- (3) Are private alternatives permitted?

No

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

Yes, if they are subjects of allegations of abuse, neglect, or abandonment.

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

No penalties other than those currently in the law are imposed by this bill.

- 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 of Children and Families and the courts.

D. SECTION-BY-SECTION RESEARCH:

This section need be completed only in the discretion of the Committee.

Section 1. Amends section 39.01(27) to enlarge the definition of "diligent search" to include relatives made known to a social service agency. Adds specifics of the composition of a diligent search. Adds requirement that diligent search take place within 90 days after a child is taken into custody. Clarifies that after the completion of an initial diligent search within the first 90 days a child is in custody, DCF shall continue to search for relatives who may be appropriate for placement of the child until such relatives or found or the child is placed for adoption. Adds subsection 39.01(48), defining "next of kin."

Section 2. Creates subsection (4) of section 39.401 to require that whenever a child is taken into custody, DCF shall request that the parents or custodians of the child disclose the names, relationships, and addresses of all parents and prospective parents and next of kin of the child, so far as are known.

Section 3. Amends section 39.402 to require that the court, at the time of the shelter hearing, require the parents or custodians present at the hearing to provide on the record the names, addresses, and relationships of all parents, prospective parents, and next of kin of the child, so far as are know.

Section 4. Amends section 39.405 to remove references to affidavits of diligent search, which are no longer required.

Section 5. Amends section 39.4051 to make technical and conforming changes.

Section 6. Reenacts section 39.462 to incorporate amendments made to other sections.

Section 7. Creates section 39.4052 to provide that when a child is taken into the custody of DCF, that DCF must provide written notice to adult relatives made known to it by a parent or custodian of the child. Specifies the content of the notice. Provides that the duty to notice may be ended if the relative requests in writing that they receive no further notice, or the court excuses further notice for good cause shown.

Section 8. Creates section 39.4053 to require that within 90 days after taking a child into custody, DCF shall either identify and locate, or shall complete a diligent search for,

the parents, prospective parents and legal custodians of the child, and the next of kin of the child. Gives the purpose of identifying and locating or conducting the diligent search. Requires that relatives so located be assessed as to their willingness to provide emotional support to the parents during reunification, including assisting the parents to achieve a safe, stable home, and as to their own custodial intentions toward the child who is in the custody of DCF. Provides that if DCF fails to place the child for adoption within 12 months following finalization of the termination of parental rights, the parents, prospective parents and custodians, and the next of kin of the child must be notified as to the status of the child.

Section 9. Amends section 39.41 to remove obsolete language.

Section 10. Amends section 39.4625 to remove the elements of the inquiry to be conducted by the court when the identity or location of a parent is unknown. Replaces the elements with a requirement that the court conduct an inquiry for relevant information. Provides that if the court determines that DCF has conducted an adequate diligent search pursuant to section 39.4053, no further diligent search may be required.

Section 11. Amends section 39.462 to incorporate changes in references required by other changes in the bill.

Section 12. Amends section 39.464 to incorporate a reference to the diligent search required by new section 39.4625.

Section 13. Amends section 39.464 and 39.4611 to incorporate changes in references required by other changes in the bill.

Section 14. Amends section 415.505 to require that when a child is taken into the custody of DCF as the result of a protective investigation, the authorized agent of DCF must request that the child's parent or custodian disclose the names, relationships, and addresses of all parents and prospective parents and all next of kin, so far as are known.

Section 15. Establishes an effective date of July 1, 1998.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

According to DCF, the total recurring costs to implement this bill are \$121,215. These expenses are attributable to the use of automated database searches.

This cost estimate does not include additional staff time needed to accomplish the added workload required by the bill.

DCF predicts that some offsetting savings may result from additional relative placements and consequent shorter periods in foster care, but is unable to predict the amount of such savings, if any.

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

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:

DCF has not provided an analysis of the additional cost in staff to implement the provisions of the bill.

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 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:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its March 18, 1997 meeting, the Family Law and Children Committee adopted a strike-everything amendment to the bill. The bill was then temporarily passed. At the March 27, 1997, meeting of the committee, three additional amendments were adopted, and the bill was made a committee substitute.

The strike-everything amendment: The major changes made by this amendment are that it:

- a. Removes the requirement for notice by publication.
- b. Modifies the definition of "diligent search" to clarify the requirements of such a search.
- c. Clarifies that DCF can rely upon the inquiry conducted by the court concerning absent parents and prospective parents of a child, rather than repeating the questions asked by the court.
- d. Removes the requirement that parents provide DCF with written affidavits concerning relatives; replaces this requirement with one that DCF agents taking a child into custody inquire about relatives.
- e. Requires the court to inquire on the record of parents or custodians present at a shelter hearing the names, addresses, and relationships of all parents, prospective parents, and next of kin of a child taken into DCF custody, so far as are known.
- f. Removes the requirement to notify parents whose parental rights have been terminated when a child is placed for adoption.
- g. Reduces the fiscal impact of the bill from \$959,535 to \$121,215, according to DCF.

Other amendments: The amendments adopted at the March 27 meeting made the following changes:

- h. Clarifies that DCF will make inquiry about relatives of the parents or custodian of the child when the child is taken into custody.

STORAGE NAME: H0357s1.flc

DATE: March 31, 1997

PAGE 12

- i. Clarifies that after the initial diligent search, which must be accomplished within 90 days, DCF has a continuing duty to search for relatives who may be appropriate for placement of the child until such relatives are found or until the child is placed for adoption.
- j. Changes the effective date of the bill to July 1, 1998.

VII. SIGNATURES:

COMMITTEE ON FAMILY LAW & CHILDREN:

Prepared by:

Legislative Research Director:

PEGGY SANFORD

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