

By Representatives Heyman, Sanderson, Wise, Frankel, Casey, Brennan, Dennis, Boyd, Turnbull, Bloom, Murman, Jacobs, Brown, Mackenzie, Wasserman Schultz, D. Prewitt, Lynn, Meek, Warner, Fischer, Silver and Dawson-White

1 A bill to be entitled
2 An act relating to child welfare; amending s.
3 39.405, F.S.; revising certain guidelines
4 relating to filing of affidavit of diligent
5 search in dependency cases; removing
6 requirement for appointment of guardian ad
7 litem, under specified circumstances; amending
8 s. 39.4051, F.S., relating to special
9 procedures in dependency cases when identity or
10 location of parent is unknown, and reenacting
11 s. 39.01(27), F.S., relating to the definition
12 of "diligent search," and s. 39.462(1)(a),
13 F.S., relating to process and service in
14 proceedings to terminate parental rights, to
15 incorporate said amendment in references;
16 revising duties of the Department of Children
17 and Family Services with respect to diligent
18 searches; providing for notice by publication
19 under certain circumstances; creating s.
20 39.4052, F.S.; requiring written notice to
21 identified adult relatives of a child taken
22 into care; creating s. 39.4053, F.S.;
23 prescribing duties of the department and
24 guidelines relating to due diligence in the
25 identification and notification of parents,
26 relatives, and custodians of a child in
27 departmental custody; defining "next of kin";
28 creating s. 39.4054, F.S.; imposing an
29 affirmative duty on a parent to disclose
30 information on the child's relatives, under
31 specified circumstances; amending s. 39.4625,

1 F.S., relating to special procedures in
2 termination of parental rights cases when
3 identity or location of parent is unknown, and
4 reenacting s. 39.462(1)(a), F.S., relating to
5 elements of petition for termination of
6 parental rights, to incorporate said amendment
7 in references thereto; revising guidelines
8 relating to court inquiry and diligent search;
9 amending s. 39.464, F.S., relating to grounds
10 for termination of parental rights, and
11 reenacting s. 39.4611(1)(a) and (b) and (2), to
12 incorporate said amendment in references
13 thereto; conforming provisions relating to
14 diligent search; providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Subsection (9) of section 39.405, Florida
19 Statutes, is hereby repealed, subsections (10) through (17) of
20 said section are renumbered as subsections (9) through (16),
21 respectively, and subsection (8) of said section is amended to
22 read:

23 39.405 Notice, process, and service.--

24 (8) It is not necessary to the validity of a
25 proceeding covered by this part that the parents or legal
26 custodians be present if their identity or residence is
27 unknown after a diligent search pursuant to s. 39.4053 has
28 been made, ~~but in this event the petitioner shall file an~~
29 ~~affidavit of diligent search prepared by the person who made~~
30 ~~the search and inquiry, and the court may appoint a guardian~~
31 ~~ad litem for the child.~~

1 ~~(9) When an affidavit of diligent search has been~~
2 ~~filed under subsection (8), the petitioner shall continue to~~
3 ~~search for and attempt to serve the person sought until~~
4 ~~excused from further search by the court. The petitioner shall~~
5 ~~report on the results of the search at each court hearing~~
6 ~~until the person is identified or located or further search is~~
7 ~~excused by the court.~~

8 Section 2. Subsections (5) and (6) of section 39.4051,
9 Florida Statutes, are amended to read:

10 39.4051 Identity or location of parent unknown;
11 special procedures.--

12 (5) If the inquiry under subsection (1) identifies a
13 parent or prospective parent, and that person's location is
14 unknown, ~~the court shall direct~~ the department shall to
15 conduct a diligent search for that person before the
16 scheduling of a disposition hearing regarding the dependency
17 of the child unless the court finds that the best interest of
18 the child requires proceeding without notice to the person
19 whose location is unknown.

20 (6) The diligent search required by subsection (5)
21 must include, at a minimum, inquiries of all relatives of the
22 parent or prospective parent made known to the petitioner,
23 inquiries of all offices of program areas of the department
24 likely to have information about the parent or prospective
25 parent, inquiries of other state and federal agencies likely
26 to have information about the parent or prospective parent,
27 inquiries of appropriate utility and postal providers, and
28 inquiries of appropriate law enforcement agencies. Subject to
29 availability of funds, the department shall provide notice by
30 publication in a newspaper of general circulation in the
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1 county of the parent or the prospective parent's last known
2 address.

3 (7) Any agency contacted by a petitioner with a
4 request for information pursuant to subsection (6) shall
5 release the requested information to the petitioner without
6 the necessity of a subpoena or court order.

7 Section 3. For the purpose of incorporating the
8 amendment to s. 39.4051, Florida Statutes, in references
9 thereto, the sections or subdivisions of Florida Statutes set
10 forth below are reenacted to read:

11 39.01 Definitions.--When used in this chapter:

12 (27) "Diligent search" means the efforts of a social
13 service agency in accordance with the requirements of s.
14 39.4051(6) to locate a parent or prospective parent whose
15 identity or location is unknown, initiated as soon as the
16 agency is made aware of the existence of such a parent, with
17 the search progress reported at each court hearing until the
18 parent is either identified and located or the court excuses
19 further search.

20 39.462 Process and services.--

21 (1) Before the court may terminate parental rights, in
22 addition to the other requirements set forth in this part, the
23 following requirements must be met:

24 (a) Notice of the date, time, and place of the
25 advisory hearing for the petition to terminate parental rights
26 and copy of the petition must be personally served upon the
27 following persons, specifically notifying them that a petition
28 has been filed:

- 29 1. The parents of the child.
- 30 2. The legal custodians or guardian of the child.

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1 3. If the parents who would be entitled to notice are
2 dead or unknown, a living relative of the child, unless upon
3 diligent search and inquiry no such relative can be found.

4 4. Any person who has physical custody of the child.

5 5. Any grandparent entitled to priority for adoption
6 under s. 63.0425.

7 6. Any prospective parent who has been identified
8 under s. 39.4051 or s. 39.4625.

9 7. The guardian ad litem for the child, if one has
10 been appointed.

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12 The document containing the notice to respond or appear must
13 contain, in type at least as large as the balance of the
14 document, the following or substantially similar language:
15 "FAILURE TO RESPOND TO THIS NOTICE OR TO APPEAR AT THIS
16 HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL
17 RIGHTS OF THIS CHILD (OR THESE CHILDREN)."

18 Section 4. Section 39.4052, Florida Statutes, is
19 created to read:

20 39.4052 Affirmative duty of written notice to adult
21 relatives.--

22 (1) When a child is taken into care pursuant to this
23 part, adult relatives identified pursuant to s. 39.4051(6)
24 shall be provided with written notice from the department
25 which states the following information:

26 (a) The nature, time, and place of the pending
27 proceeding.

28 (b) The various possible outcomes both of the
29 impending proceeding and of future proceedings including
30 termination of parental rights, reunification, foster care
31 placement, long-term foster care placement, and shelter care.

1 (c) The ability of adult relatives to be evaluated for
2 temporary custody of the child.

3 (d) The ability of adult relatives to maintain or
4 establish a relationship with a child in care through
5 visitation or other contacts.

6 (e) The ability to choose not to receive further
7 notice regarding future proceedings.

8 (2) Notice of future proceedings shall be provided to
9 the adult relative, unless he or she requests in writing that
10 such notice be discontinued or the court excuses further
11 notice for good cause shown.

12 (3) The department shall make a good faith attempt to
13 provide the written notice required by this section as soon as
14 possible after the identity of the adult relative is made
15 known to the department.

16 Section 5. Section 39.4053, Florida Statutes, is
17 created to read:

18 39.4053 Due diligence.--

19 (1) Within 90 days after the department takes custody
20 of a child, the department shall make good faith and diligent
21 efforts to identify, locate, and notify, and determine through
22 written statement the custodial intention of, the parents or
23 legal custodians and next of kin of the mother and next of kin
24 of the father of the child for purposes of reunification of
25 the child with family or proper placement in custody of the
26 department. These efforts shall include an assessment of the
27 willingness of any relatives identified and located to provide
28 emotional support to the parents during reunification and to
29 assist the parents in achieving a safe, stable home. These
30 efforts shall include conducting interviews, comprehensive
31 database searches, and record searches to locate those

1 persons, including verifying information related to location
2 of residence, employment, service in the Armed Forces, vehicle
3 registration in this state, and corrections records. For
4 purposes of this section, the term "next of kin" means an
5 adult relative of the minor child who is the child's brother,
6 sister, grandparent, aunt, uncle, or first cousin.

7 (2) In attempting to identify and locate the father,
8 inquiry shall be made as to whether:

9 (a) The woman who gave birth to the minor was married
10 at the probable time of conception of the minor, or at a later
11 time.

12 (b) The woman was cohabiting with a man at the
13 probable time of conception of the minor.

14 (c) The woman has received payments or promises of
15 support, other than from a governmental agency, with respect
16 to the minor or because of her pregnancy.

17 (d) The woman has named any individual as the father
18 on the birth certificate of the minor or in connection with
19 applying for or receiving public assistance.

20 (e) Any individual has formally or informally
21 acknowledged or claimed paternity of the minor in a
22 jurisdiction in which the woman resided during or since her
23 pregnancy, or in which the minor resided or resides, at the
24 time of the inquiry.

25 (3) If the child remains in the custody of the
26 department, all known persons identified as persons required
27 to consent to adoption pursuant to s. 63.062 shall be notified
28 by certified mail of the placement of the child for adoption.

29 (4) If the department fails to place the child for
30 adoption within 12 months of finalization of the termination
31 of parental rights, the department shall notify the persons

1 specified in subsection (1) of the child's status unless said
2 notice is excused by the court for good cause shown.

3 Section 6. Section 39.4054, Florida Statutes, is
4 created to read:

5 39.4054 Affirmative duty of known parent to disclose
6 information on relatives.--

7 (1) When a child is taken into care pursuant to this
8 part, the child's parent shall be obligated to disclose to the
9 Department of Children and Family Services the names,
10 relationships, and addresses of the biological parents and all
11 next of kin as defined in s. 39.4052, so far as are known,
12 including, but not limited to, grandparents and other adult
13 relatives.

14 (2) The parent shall provide to the department an
15 affidavit signed by the parent which contains the information
16 required under subsection (1).

17 Section 7. Section 39.4625, Florida Statutes, is
18 amended to read:

19 39.4625 Identity or location of parent unknown after
20 filing of termination of parental rights petition; special
21 procedures.--

22 (1) If the identity or location of a parent is unknown
23 and a petition for termination of parental rights is filed,
24 the court shall conduct an ~~the following~~ inquiry of the parent
25 who is available, or, if no parent is available, of any
26 relative or custodian of the child who is present at the
27 hearing and likely to have relevant ~~the~~ information.†

28 ~~(a) Whether the mother of the child was married at the~~
29 ~~probable time of conception of the child or at the time of~~
30 ~~birth of the child.~~

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1 ~~(b) Whether the mother was cohabiting with a male at~~
2 ~~the probable time of conception of the child.~~

3 ~~(c) Whether the mother has received payments or~~
4 ~~promises of support with respect to the child or because of~~
5 ~~her pregnancy from a man who claims to be the father.~~

6 ~~(d) Whether the mother has named any man as the father~~
7 ~~on the birth certificate of the child or in connection with~~
8 ~~applying for or receiving public assistance.~~

9 ~~(e) Whether any man has acknowledged or claimed~~
10 ~~paternity of the child in a jurisdiction in which the mother~~
11 ~~resided at the time of or since conception of the child, or in~~
12 ~~which the child has resided or resides.~~

13 ~~(2) The information required in subsection (1) may be~~
14 ~~supplied to the court or the department in the form of a sworn~~
15 ~~affidavit by a person having personal knowledge of the facts.~~

16 ~~(3) If the inquiry under subsection (1) identifies any~~
17 ~~person as a parent or prospective parent, the court shall~~
18 ~~require notice of the hearing to be provided to that person.~~

19 ~~(4) If the inquiry under subsection (1) fails to~~
20 ~~identify any person as a parent or prospective parent, the~~
21 ~~court shall so find and may proceed without further notice.~~

22 ~~(2)(5)~~ If the inquiry under subsection (1) identifies
23 a parent or prospective parent whose, and that person's
24 location is unknown, and the court determines that the
25 diligent search pursuant to s. 39.4053 has been conducted, no
26 further diligent search shall be required by the court shall
27 direct the department to conduct a diligent search for that
28 person before scheduling an adjudicatory hearing regarding the
29 dependency of the child unless it is determined by the court
30 to be in finds that the best interest of the child requires
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1 ~~proceeding without actual notice to the person whose location~~
2 ~~is unknown.~~

3 ~~(6) The diligent search required by subsection (5)~~
4 ~~must include, at a minimum, inquiries of all known relatives~~
5 ~~of the parent or prospective parent, inquiries of all offices~~
6 ~~of program areas of the department likely to have information~~
7 ~~about the parent or prospective parent, inquiries of other~~
8 ~~state and federal agencies likely to have information about~~
9 ~~the parent or prospective parent, inquiries of appropriate~~
10 ~~utility and postal providers, and inquiries of appropriate law~~
11 ~~enforcement agencies.~~

12 ~~(7) Any agency contacted by petitioner with a request~~
13 ~~for information pursuant to subsection (6) shall release the~~
14 ~~requested information to the petitioner without the necessity~~
15 ~~of a subpoena or court order.~~

16 ~~(8) If the inquiry and diligent search identifies a~~
17 ~~prospective parent, that person must be given the opportunity~~
18 ~~to become a party to the proceedings by completing a sworn~~
19 ~~affidavit of parenthood and filing it with the court or the~~
20 ~~department. A prospective parent who files a sworn affidavit~~
21 ~~of parenthood while the child is a dependent child but no~~
22 ~~later than at the time of or prior to the adjudicatory hearing~~
23 ~~in the termination of parental rights proceeding for the child~~
24 ~~shall be considered a parent for all purposes under this~~
25 ~~section.~~

26 Section 8. For the purpose of incorporating the
27 amendment to s. 39.4625, Florida Statutes, in references
28 thereto, the sections or subdivisions of Florida Statutes set
29 forth below are reenacted to read:

30 39.462 Process and services.--

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1 (1) Before the court may terminate parental rights, in
2 addition to the other requirements set forth in this part, the
3 following requirements must be met:

4 (a) Notice of the date, time, and place of the
5 advisory hearing for the petition to terminate parental rights
6 and copy of the petition must be personally served upon the
7 following persons, specifically notifying them that a petition
8 has been filed:

9 1. The parents of the child.

10 2. The legal custodians or guardian of the child.

11 3. If the parents who would be entitled to notice are
12 dead or unknown, a living relative of the child, unless upon
13 diligent search and inquiry no such relative can be found.

14 4. Any person who has physical custody of the child.

15 5. Any grandparent entitled to priority for adoption
16 under s. 63.0425.

17 6. Any prospective parent who has been identified
18 under s. 39.4051 or s. 39.4625.

19 7. The guardian ad litem for the child, if one has
20 been appointed.

21

22 The document containing the notice to respond or appear must
23 contain, in type at least as large as the balance of the
24 document, the following or substantially similar language:
25 "FAILURE TO RESPOND TO THIS NOTICE OR TO APPEAR AT THIS
26 HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL
27 RIGHTS OF THIS CHILD (OR THESE CHILDREN)."

28 Section 9. Paragraph (b) of subsection (1) of section
29 39.464, Florida Statutes, is amended to read:

30 39.464 Grounds for termination of parental rights.--

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1 (1) The department, the guardian ad litem, a licensed
2 child-placing agency, or any person who has knowledge of the
3 facts alleged or who is informed of said facts and believes
4 that they are true, may petition for the termination of
5 parental rights under any of the following circumstances:

6 (b) When the identity or location of the parent or
7 parents is unknown and, if the court requires a diligent
8 search pursuant to s. 39.4625, cannot be ascertained by
9 diligent search as provided in s. 39.4625 within 90 ~~60~~ days.

10 Section 10. For the purpose of incorporating the
11 amendment to section 39.464, Florida Statutes, in a reference
12 thereto, paragraphs (a) and (b) of subsection (1) and
13 subsection (2) of section 39.4611, Florida Statutes, are
14 amended to read:

15 39.4611 Elements of petition for termination of
16 parental rights.--

17 (1) A petition for termination of parental rights
18 filed under this chapter must contain facts supporting the
19 following allegations:

20 (a) That at least one of the grounds listed in s.
21 39.464 has been met.

22 (b) That the parents of the child were informed of
23 their right to counsel at all hearings that they attend and
24 that a dispositional order adjudicating the child dependent
25 was entered in any prior dependency proceeding relied upon in
26 offering a parent a case plan as described in s. 39.464.

27 (2) When a petition for termination of parental rights
28 is filed under s. 39.464(1), a separate petition for
29 dependency need not be filed and the department need not offer
30 the parents a case plan with a goal of reunification, but may
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1 instead file with the court a case plan with a goal of
2 termination of parental rights.

3 Section 11. This act shall take effect January 1,
4 1998.

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7 HOUSE SUMMARY

8 Revises duties of the Department of Children and Family
9 Services and guidelines with respect to diligent
10 searches, and removes requirement for appointment of
11 guardians ad litem, under specified circumstances in a
12 dependency case when the parent's identity or location is
13 unknown. Provides for notice by publication. Requires
14 written notice to identified adult relatives of a child
15 taken into care. Prescribes duties of the department and
16 guidelines relating to due diligence in the
17 identification and notification of parents, relatives,
18 and custodians of a child in departmental custody.
19 Defines "next of kin." Imposes an affirmative duty on a
20 parent to disclose information on the child's relatives,
21 under specified circumstances.

22 Revises guidelines relating to court inquiry and diligent
23 search in a termination of parental rights case when the
24 parent's identity or location is unknown. Revises
25 provisions relating to petition for termination of
26 parental rights, to conform.
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