

By the Committee on Family Law & Children and Representatives Heyman, Sanderson, Wise, Frankel, Casey, Brennan, Dennis, Boyd, Turnbull, Bloom, Murman, Jacobs, Brown, Mackenzie, Wasserman Schultz, D. Prewitt, Lynn, Meek, Warner, Fischer, Silver, Dawson-White and Chestnut

1                                   A bill to be entitled  
2           An act relating to child welfare; amending s.  
3           39.01, F.S., relating to definitions with  
4           respect to specified provisions relating to  
5           juvenile proceedings; redefining the term  
6           "diligent search"; defining the term "next of  
7           kin"; amending s. 39.401, F.S., relating to  
8           taking a child alleged to be dependent into  
9           custody; requiring the Department of Children  
10          and Family Services to request child's parent  
11          or custodian to disclose certain information  
12          regarding parents, prospective parents, and  
13          next of kin; amending s. 39.402, F.S., relating  
14          to placement in a shelter; providing for the  
15          court to require parent or custodian present at  
16          emergency shelter hearing to provide certain  
17          information on the record regarding parents,  
18          prospective parents, or next of kin; amending  
19          s. 39.405, F.S.; revising certain guidelines  
20          relating to filing of affidavit of diligent  
21          search in dependency cases; removing  
22          requirement for appointment of guardian ad  
23          litem, under specified circumstances; amending  
24          s. 39.4051, F.S., relating to special  
25          procedures in dependency cases when identity or  
26          location of parent is unknown; revising duties  
27          of the Department of Children and Family  
28          Services with respect to diligent searches;  
29          reenacting s. 39.462(1)(a), F.S., relating to  
30          process and service in proceedings to terminate  
31          parental rights, to incorporate said amendment

1 in references thereto; creating s. 39.4052,  
2 F.S.; requiring written notice to identified  
3 adult relatives of a child taken into care;  
4 creating s. 39.4053, F.S.; prescribing duties  
5 of the department and guidelines relating to  
6 due diligence in the identification and  
7 notification of parents, relatives, and  
8 custodians of a child in departmental custody;  
9 amending s. 39.41, F.S., relating to powers of  
10 disposition; providing for diligent search;  
11 conforming terminology; amending s. 39.4625,  
12 F.S., relating to special procedures in  
13 termination of parental rights cases when  
14 identity or location of parent is unknown;  
15 revising guidelines relating to court inquiry  
16 and diligent search; reenacting s.  
17 39.462(1)(a), F.S., relating to elements of  
18 petition for termination of parental rights, to  
19 incorporate said amendment in references  
20 thereto; amending s. 39.464, F.S., relating to  
21 grounds for termination of parental rights;  
22 conforming provisions relating to diligent  
23 search; reenacting s. 39.4611(1)(a) and (b) and  
24 (2), to incorporate said amendment in  
25 references thereto; amending s. 415.505, F.S.,  
26 relating to child protective investigations and  
27 institutional child abuse or neglect  
28 investigations; requiring the agent of the  
29 department to request the parent or custodian  
30 to disclose certain information regarding  
31 parents, prospective parents, or next of kin

1           when child is taken into custody; providing an  
2           effective date.

3

4 Be It Enacted by the Legislature of the State of Florida:

5

6           Section 1. Subsection (27) of section 39.01, Florida  
7 Statutes, 1996 Supplement, is amended, present subsections  
8 (48) through (76) are renumbered as subsections (49) through  
9 (77), respectively, and a new subsection (48) is added to said  
10 section, 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, or a relative made known to  
16 the social services agency by the parent or custodian of a  
17 child. When the search is for a parent, prospective parent, or  
18 relative of a child in the custody of the department, this  
19 search must be initiated as soon as the agency is made aware  
20 of the existence of such parent, prospective parent, or  
21 relative. A diligent search shall include interviews with  
22 persons who are likely to have information about the identity  
23 or location of the person being sought, comprehensive database  
24 searches, and records searches, including searches of  
25 employment, residence, utilities, Armed Forces, vehicle  
26 registration, child support enforcement, law enforcement, and  
27 corrections records, and any other records likely to result in  
28 identifying and locating the person being sought. The initial  
29 diligent search must be completed within 90 days after a child  
30 is taken into custody. After the completion of the initial  
31 diligent search, the department, unless excused by the court,

1 shall have a continuing duty to search for relatives who may  
2 be appropriate for placement of the child until such relatives  
3 are found or until the child is placed for adoption initiated  
4 ~~as soon as the agency is made aware of the existence of such a~~  
5 ~~parent, with the search progress reported at each court~~  
6 ~~hearing until the parent is either identified and located or~~  
7 ~~the court excuses further search.~~

8 (4) "Next of kin" means an adult relative of a child  
9 who is the child's brother, sister, grandparent, aunt, uncle,  
10 or first cousin.

11 Section 2. Subsection (4) is added to section 39.401,  
12 Florida Statutes, to read:

13 39.401 Taking a child alleged to be dependent into  
14 custody.--

15 (4) When a child is taken into custody pursuant to  
16 this section, the Department of Children and Family Services  
17 shall request that the child's parent or custodian disclose  
18 the names, relationships, and addresses of all parents and  
19 prospective parents and all next of kin of the child, as  
20 defined in s. 39.01(48), so far as are known.

21 Section 3. Paragraph (a) of subsection (7) of section  
22 39.402, Florida Statutes, is amended to read:

23 39.402 Placement in a shelter.--

24 (7)(a) A child may not be held in a shelter longer  
25 than 24 hours unless an order so directing is entered by the  
26 court after an emergency shelter hearing. At the emergency  
27 shelter hearing, the court shall appoint a guardian ad litem  
28 to represent the child unless the court finds that such  
29 representation is unnecessary. The parents or legal custodians  
30 of the child shall be given such notice as best ensures their  
31 actual knowledge of the time and place of the hearing and

1 shall be given an opportunity to be heard and to present  
2 evidence at the emergency shelter hearing. The court shall  
3 require the parents or custodians present at the hearing to  
4 provide to the court on the record the names, addresses, and  
5 relationships of all parents, prospective parents, and next of  
6 kin of the child, so far as are known.

7 Section 4. Subsection (9) of section 39.405, Florida  
8 Statutes, is hereby repealed, subsections (10) through (17) of  
9 said section are renumbered as subsections (9) through (16),  
10 respectively, and subsection (8) of said section is amended to  
11 read:

12 39.405 Notice, process, and service.--

13 (8) It is not necessary to the validity of a  
14 proceeding covered by this part that the parents or legal  
15 custodians be present if their identity or residence is  
16 unknown after a diligent search as defined in s. 39.01(27) has  
17 been made, ~~but in this event the petitioner shall file an~~  
18 ~~affidavit of diligent search prepared by the person who made~~  
19 ~~the search and inquiry, and the court may appoint a guardian~~  
20 ~~ad litem for the child.~~

21 ~~(9) When an affidavit of diligent search has been~~  
22 ~~filed under subsection (8), the petitioner shall continue to~~  
23 ~~search for and attempt to serve the person sought until~~  
24 ~~excused from further search by the court. The petitioner shall~~  
25 ~~report on the results of the search at each court hearing~~  
26 ~~until the person is identified or located or further search is~~  
27 ~~excused by the court.~~

28 Section 5. Subsection (5) of section 39.4051, Florida  
29 Statutes, is amended to read:

30 39.4051 Identity or location of parent unknown;  
31 special procedures.--

1           (5) If the inquiry under subsection (1) identifies a  
2 parent or prospective parent, and that person's location is  
3 unknown, ~~the court shall direct~~ the department shall ~~to~~  
4 conduct a diligent search for that person before the  
5 scheduling of a disposition hearing regarding the dependency  
6 of the child unless the court finds that the best interest of  
7 the child requires proceeding without notice to the person  
8 whose location is unknown.

9           Section 6. For the purpose of incorporating the  
10 amendment to section 39.4051, Florida Statutes, in references  
11 thereto, subsection (1) of section 39.462, Florida Statutes,  
12 is reenacted to read:

13           39.462 Process and services.--

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

17           (a) Notice of the date, time, and place of the  
18 advisory hearing for the petition to terminate parental rights  
19 and copy of the petition must be personally served upon the  
20 following persons, specifically notifying them that a petition  
21 has been filed:

- 22           1. The parents of the child.
- 23           2. The legal custodians or guardian of the child.
- 24           3. If the parents who would be entitled to notice are  
25 dead or unknown, a living relative of the child, unless upon  
26 diligent search and inquiry no such relative can be found.
- 27           4. Any person who has physical custody of the child.
- 28           5. Any grandparent entitled to priority for adoption  
29 under s. 63.0425.
- 30           6. Any prospective parent who has been identified  
31 under s. 39.4051 or s. 39.4625.

1           7. The guardian ad litem for the child, if one has  
2 been appointed.

3  
4 The document containing the notice to respond or appear must  
5 contain, in type at least as large as the balance of the  
6 document, the following or substantially similar language:  
7 "FAILURE TO RESPOND TO THIS NOTICE OR TO APPEAR AT THIS  
8 HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL  
9 RIGHTS OF THIS CHILD (OR THESE CHILDREN)."

10           Section 7. Section 39.4052, Florida Statutes, is  
11 created to read:

12           39.4052 Affirmative duty of written notice to adult  
13 relatives.--

14           (1) When a child is taken into care pursuant to this  
15 part, adult relatives made known to the department by a parent  
16 or custodian of a child shall be provided with written notice  
17 from the department which includes the following information:

18           (a) The nature, time, and place of the pending  
19 proceeding.

20           (b) The various possible outcomes both of the pending  
21 proceeding and of future proceedings including termination of  
22 parental rights, reunification, foster care placement,  
23 long-term foster care placement, and shelter care.

24           (c) That the adult relatives may be evaluated for  
25 temporary custody of the child.

26           (d) That the adult relatives may maintain or establish  
27 a relationship with a child in care through visitation or  
28 other contacts.

29           (e) That the adult relatives may choose not to receive  
30 further notice regarding future proceedings.

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

5       (3) The department shall make a good faith attempt to  
6 provide the written notice required by this section as soon as  
7 possible after the identity and location of the adult relative  
8 is made known to the department.

9       Section 8. Section 39.4053, Florida Statutes, is  
10 created to read:

11       39.4053 Diligent search; child in custody of  
12 department.--

13       (1) Within 90 days after taking a child into custody,  
14 the department shall either identify and locate, or shall  
15 complete a diligent search for, the parents, prospective  
16 parents and legal custodians of the child, and the next of kin  
17 of the child. The purpose of identifying and locating these  
18 persons, or of conducting a diligent search for them, is to  
19 ensure the proper placement of the child, either with parents,  
20 with relatives, or in the custody of the department. Any  
21 relatives who are located pursuant to this section shall be  
22 assessed as to their willingness to provide emotional support  
23 to the parents during reunification, including assisting the  
24 parents to achieve a safe, stable home, and as to their own  
25 custodial intentions toward the child who is in the custody of  
26 the department. In any search for parents or prospective  
27 parents under this section, the department shall consider the  
28 results of the inquiry conducted by the court pursuant to s.  
29 39.4051(1). For the purposes of this section, "diligent  
30 search" is as defined in s. 39.01(27), and "next of kin" is as  
31 defined in s. 39.01(48).



1           (2) If the department fails to place the child for  
2 adoption within 12 months of finalization of the termination  
3 of parental rights, the department shall notify the persons  
4 specified in subsection (1) of the child's status unless said  
5 notice is excused by the court for good cause shown.

6           Section 9. Paragraph (b) of subsection (4) of section  
7 39.41, Florida Statutes, is amended to read:

8           39.41 Powers of disposition.--

9           (4)(a) If the court does not commit the child to the  
10 temporary legal custody of an adult relative or adult  
11 nonrelative approved by the court, the disposition order shall  
12 include the reasons for such a decision and shall include a  
13 determination as to whether diligent efforts were made by the  
14 department to locate an adult relative willing to care for the  
15 child in order to present that placement option to the court  
16 instead of placement with the department.

17           (b) If a diligent search is ~~efforts are~~ made to locate  
18 an adult relative willing and able to care for the child but,  
19 because no suitable relative is found, the child is placed  
20 with the department or a nonrelative custodian, both the  
21 department and the court shall consider transferring temporary  
22 legal custody to a willing adult relative or adult nonrelative  
23 approved by the court at a later date, but neither the  
24 department nor the court is obligated to so place the child if  
25 it is in the child's best interest to remain in the current  
26 placement. ~~For the purposes of this paragraph, "diligent~~  
27 ~~efforts to locate an adult relative" means a search similar to~~  
28 ~~the diligent search for a parent, but without the continuing~~  
29 ~~obligation to search after an initial adequate search is~~  
30 ~~completed.~~

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1           Section 10. Section 39.4625, Florida Statutes, is  
2 amended to read:

3           39.4625 Identity or location of parent unknown after  
4 filing of termination of parental rights petition; special  
5 procedures.--

6           (1) If the identity or location of a parent is unknown  
7 and a petition for termination of parental rights is filed,  
8 the court shall conduct an ~~the following~~ inquiry of the parent  
9 who is available, or, if no parent is available, of any  
10 relative or custodian of the child who is present at the  
11 hearing and likely to have relevant ~~the~~ information.†

12           ~~(a) Whether the mother of the child was married at the~~  
13 ~~probable time of conception of the child or at the time of~~  
14 ~~birth of the child.~~

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

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

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

23           ~~(e) Whether any man has acknowledged or claimed~~  
24 ~~paternity of the child in a jurisdiction in which the mother~~  
25 ~~resided at the time of or since conception of the child, or in~~  
26 ~~which the child has resided or resides.~~

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

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

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

7           (2)(5) If the inquiry under subsection (1) identifies  
8 a parent or prospective parent whose, and that person's  
9 location is unknown, and the court determines that an adequate  
10 diligent search as defined in s. 39.01(27) has been conducted,  
11 no further diligent search shall be required by the court  
12 ~~shall direct the department to conduct a diligent search for~~  
13 ~~that person before scheduling an adjudicatory hearing~~  
14 ~~regarding the dependency of the child unless it is determined~~  
15 ~~by the court to be in finds that the best interest of the~~  
16 ~~child requires proceeding without actual notice to the person~~  
17 ~~whose location is unknown.~~

18           ~~(6) The diligent search required by subsection (5)~~  
19 ~~must include, at a minimum, inquiries of all known relatives~~  
20 ~~of the parent or prospective parent, inquiries of all offices~~  
21 ~~of program areas of the department likely to have information~~  
22 ~~about the parent or prospective parent, inquiries of other~~  
23 ~~state and federal agencies likely to have information about~~  
24 ~~the parent or prospective parent, inquiries of appropriate~~  
25 ~~utility and postal providers, and inquiries of appropriate law~~  
26 ~~enforcement agencies.~~

27           (3)(7) If a diligent search is required by the court  
28 pursuant to this section, any agency contacted by petitioner  
29 with a request for information ~~pursuant to subsection (6)~~  
30 shall release the requested information to the petitioner  
31 without the necessity of a subpoena or court order.

1           ~~(8) If the inquiry and diligent search identifies a~~  
2 ~~prospective parent, that person must be given the opportunity~~  
3 ~~to become a party to the proceedings by completing a sworn~~  
4 ~~affidavit of parenthood and filing it with the court or the~~  
5 ~~department. A prospective parent who files a sworn affidavit~~  
6 ~~of parenthood while the child is a dependent child but no~~  
7 ~~later than at the time of or prior to the adjudicatory hearing~~  
8 ~~in the termination of parental rights proceeding for the child~~  
9 ~~shall be considered a parent for all purposes under this~~  
10 ~~section.~~

11           Section 11. For the purpose of incorporating the  
12 amendment to section 39.4625, Florida Statutes, in references  
13 thereto, paragraph (a) of subsection (1) of section 39.462,  
14 Florida Statutes, is reenacted to read:

15           39.462 Process and services.--

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

19           (a) Notice of the date, time, and place of the  
20 advisory hearing for the petition to terminate parental rights  
21 and copy of the petition must be personally served upon the  
22 following persons, specifically notifying them that a petition  
23 has been filed:

- 24           1. The parents of the child.
- 25           2. The legal custodians or guardian of the child.
- 26           3. If the parents who would be entitled to notice are  
27 dead or unknown, a living relative of the child, unless upon  
28 diligent search and inquiry no such relative can be found.
- 29           4. Any person who has physical custody of the child.
- 30           5. Any grandparent entitled to priority for adoption  
31 under s. 63.0425.

1           6. Any prospective parent who has been identified  
2 under s. 39.4051 or s. 39.4625.

3           7. The guardian ad litem for the child, if one has  
4 been appointed.

5  
6 The document containing the notice to respond or appear must  
7 contain, in type at least as large as the balance of the  
8 document, the following or substantially similar language:  
9 "FAILURE TO RESPOND TO THIS NOTICE OR TO APPEAR AT THIS  
10 HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL  
11 RIGHTS OF THIS CHILD (OR THESE CHILDREN)."

12           Section 12. Paragraph (b) of subsection (1) of section  
13 39.464, Florida Statutes, is amended to read:

14           39.464 Grounds for termination of parental rights.--

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

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

24           Section 13. For the purpose of incorporating the  
25 amendment to section 39.464, Florida Statutes, in a reference  
26 thereto, paragraphs (a) and (b) of subsection (1) and  
27 subsection (2) of section 39.4611, Florida Statutes, are  
28 reenacted to read:

29           39.4611 Elements of petition for termination of  
30 parental rights.--

31

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

4           (a) That at least one of the grounds listed in s.  
5 39.464 has been met.

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

11           (2) When a petition for termination of parental rights  
12 is filed under s. 39.464(1), a separate petition for  
13 dependency need not be filed and the department need not offer  
14 the parents a case plan with a goal of reunification, but may  
15 instead file with the court a case plan with a goal of  
16 termination of parental rights.

17           Section 14. Present paragraphs (e) through (i) of  
18 subsection (1) of section 415.505, Florida Statutes, 1996  
19 Supplement, are redesignated as paragraphs (f) through (j),  
20 respectively, and a new paragraph (e) is added to said  
21 subsection, to read:

22           415.505 Child protective investigations; institutional  
23 child abuse or neglect investigations.--

24           (1)

25           (e) When a child is taken into custody pursuant to  
26 this section, the authorized agent of the department shall  
27 request that the child's parent or custodian disclose the  
28 names, relationships, and addresses of all parents and  
29 prospective parents and all next of kin, so far as are known.  
30 For purposes of this section, "next of kin" is as defined in  
31 s. 39.01(48).

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Section 15. This act shall take effect July 1, 1998.