

STORAGE NAME: h0585.flc

DATE: March 24, 1997

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

BILL #: HB 585

RELATING TO: Adoption of Foster Children

SPONSOR(S): Representatives Murman and Frankel

STATUTE(S) AFFECTED: Sections 39.469 and 63.022(2), creates sections 63.0426, and 63.0427, Florida Statutes

COMPANION BILL(S): SB 1212 (similar)

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

- (1) FAMILY LAW AND CHILDREN
- (2) CHILDREN AND FAMILY EMPOWERMENT
- (3)
- (4)
- (5)

I. SUMMARY:

The bill expands the number of categories of individuals who may have continuing communication or contact pending adoption with a child whose parents' rights have been terminated.

The bill provides statutory authority for continuing communication or contact after an adoption is final. Communication or contact may include, but is not limited to, visits, letters, and cards, or telephone calls. Post-adoption contact may occur in two types of circumstances:

- (1) by mutual consent of the birth parents, siblings, other relatives, or non-relatives of a child who is the subject of an adoption under Chapter 63, F.S. and the prospective adoptive parents. Such continuing contact must serve the best interests of the child to be adopted.
- (2) by court order in adoptions of foster children to allow post-adoption communication or contact among separated siblings who are not included in the adoption, if such communication or contact is found to be in the best interests of the children.

The bill also provides criteria to be considered by the court in determining the best interests of the child and for review of the appropriateness of the ongoing communication or contact if necessary. It allows the prevailing party in a review hearing to be awarded reasonable attorney's fees and court costs.

The bill is predicted to have little or no financial impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently, s. 39.469(5), F.S. provides that if a court terminates parental rights, it may order that the parents or relatives of the parent whose rights are being terminated be allowed to maintain some contact with the child **pending adoption** if the best interests of the child are served by the continued contact. If the child is placed for adoption, the nature and frequency of the contact must be reviewed by the court at the time the child is adopted. The statutes do not further address continued contact between the adoptee and parents or relatives of parents whose parental rights are terminated after the adoption is final.

Chapter 63, Florida Statutes, contains no provision for continuing communication or contact between the child to be adopted and parents, siblings, other relatives or nonrelatives after the finalization of an adoption. Section 63.172(1)(b), F.S., provides that a "judgment of adoption terminates all legal relationships between the adopted person and the adopted person's relatives, including the birth parents ... so that the adopted person is a stranger to his or her former relatives for all purposes"

Continued contact with siblings is not addressed except in legislative intent in s. 39.45, F.S., which provides that, "When two or more children in foster care are siblings, every reasonable attempt shall be made to place them in the same foster home; in the event of permanent placement of the siblings, to place them in the same adoptive home; and, if the siblings are separated, to keep them in contact with each other".

B. EFFECT OF PROPOSED CHANGES:

The bill establishes statutory authority for continuing communication and contact after the finalization of an adoption in two types of circumstances:

- (1) by voluntary mutual consent of birth parents, siblings or other relatives or nonrelatives of a child who is subject to adoption, and the prospective adoptive parents. In this kind of agreement the bill provides for the following:
 - i) the agreement shall be in writing and shall include the nature and frequency of future communication or contact.
 - ii) the agreement must be signed by the adoptive parents, the birth parents, siblings, other relatives or nonrelatives desiring the contact or communication.
 - iii) the Department of Children and Family Services may assist in drafting the agreement but shall not be required to be a party to such an agreement.
 - iv) the parties may by mutual agreement renegotiate the terms of the agreement.
 - v) the initial agreement shall be attached to the petition to adopt and be considered by the court during the final adoption hearing.
 - vi) at the request of a party, the court may retain jurisdiction in order to review the appropriateness of the continuing communication or contact.
 - vii) during the review process, the court may order mediation for the parties.

- viii)the continuing validity of the adoption shall not be contingent upon ongoing communication or contact.
 - ix)the ability of the adoptive parents and child to change residence within or outside the state shall not be impaired by the continuing contact agreement.
 - x)in any action for review, the prevailing party may be awarded reasonable attorney's fees and court costs.
- (2)by court order in adoptions of foster children to allow the child who is subject to adoption to request continuing contact or communication among separated siblings when such contact is in the best interests of the children. In determining the best interests of the children the court shall consider:
- i)any previous orders of the court under s. 39.469(5), F.S.
 - ii)recommendations of the department, foster parents if other than the adoptive parents, and the guardian ad litem.
 - iii)statements of the prospective adoptive parents.
 - iv)any other relevant or material information.

In this type of agreement the bill provides for the following:

- v)the court order shall state the nature and frequency for the communication or contact.
- vi)this order shall be made a part of the final adoption order.
- vii)the continuing validity of the adoption shall not be contingent upon ongoing communication or contact.
- viii)the ability of the adoptive parents and child to change residence within or outside the state shall not be impaired by the continuing contact agreement.
- ix)the adoptive parent may petition for review at any time if the adoptive parent believes that the best interests of the adopted child are being compromised.
- x)during the review process, the court may order mediation for the parties.
- xi)in any action for review, the prevailing party may be awarded reasonable attorney's fees and court costs.

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?

No.

- (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?

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

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

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?

Parties may request a review of a continuing communication or contact order from time to time. The prevailing party may be awarded reasonable attorney's fees and court costs.

4. Individual Freedom:

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

The bill clarifies the option of continuing post adoption contact or communication between the child to be adopted and parents, siblings, relatives, or nonrelatives under specified circumstances.

- 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 court would have to consider previous orders, as well as statements from the department, the foster parents if different from the adoptive parents, the prospective adoptive parents and the guardian ad litem in order to determine the best interests of the child to be adopted when considering whether or not to order continuing communication or contact after an adoption is final.

(2) Who makes the decisions?

The court.

(3) Are private alternatives permitted?

No.

(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?

Yes, it allows for post adoption contact between the child being adopted and other family members under specified circumstances.

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:

This section is not applicable to this bill.

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 39.469(5), F.S., to include siblings and nonrelatives of a child whose parent's rights have been terminated as persons the court may allow to have continuing communication or contact with the child during the period of time between the termination of parental rights and the adoptive placement. The section also specifies that communication or contact may include but is not limited to, visits, letters and cards, and telephone calls. It clarifies that the persons seeking to maintain contact must be individuals with whom the child has had an established positive emotional attachment prior to the termination of parental rights.

Section 2. Amends s. 63.022(2), F.S., to provide legislative intent for continuing communication or contact after an adoption is final in two types of circumstances:

- (1) by mutual consent of the birth parents, siblings, other relatives, or non-relatives of a child who is the subject of an adoption under Chapter 63, F.S. and the prospective adoptive parents. Such continuing contact must serve the best interests of the child to be adopted.
- (2) by court order in adoptions of foster children to allow post-adoption communication or contact among separated siblings who are not included in the adoption, if such communication or contact is found to be in the best interests of the children.

Section 3. Creates s. 63.0426, F.S., to provide statutory authority for birth parents, siblings and other relatives or nonrelatives of a child subject to adoption, and the prospective adoptive parents of that child to agree, by mutual consent, to continuing communication or contact after the adoption is finalized. The section also provides:

- (3) that the agreement shall be in writing and shall include the nature and frequency of future communication or contact.
- (4) that the agreement must be signed by the adoptive parents, the birth parents, siblings, other relatives or nonrelatives desiring the contact or communication.
- (5) that the Department of Children and Family Services may assist in drafting the agreement but shall not be required to be a party to such an agreement.
- (6) that the parties may by mutual agreement renegotiate the terms of the agreement.
- (7) that the initial agreement shall be attached to the petition to adopt and be considered by the court during the final adoption hearing.
- (8) that at the request of a party, the court may retain jurisdiction in order to review the appropriateness of the continuing communication or contact.
- (9) that during the review process, the court may order mediation for the parties.
- (10) that the continuing validity of the adoption shall not be contingent upon ongoing communication or contact.
- (11) that the ability of the adoptive parents and child to change residence within or outside the state shall not be impaired by the continuing contact agreement.
- (12) that in any action for review, the prevailing party may be awarded reasonable attorney's fees and court costs.

Section 4. Creates s. 63.0427, F.S., to give a foster child who is the subject of an adoption petition the right to request the court to order continuing communication or contact with the child's siblings who are not included in the adoption. The decision of the court shall be based on the best interests of the child and the court shall consider the following in making that determination:

- (13) any previous orders of the court under s. 39.469(5), F.S.
- (14) recommendations of the department, foster parents if other than the adoptive parents, and the guardian ad litem.
- (15) statements of the prospective adoptive parents.
- (16) any other relevant or material information.

Any order for continuing contact shall specify the nature and frequency of the contact, and shall be made a part of the final adoption order. Such an order shall not affect the

continuing validity of the adoption nor impair the ability of the adoptive parents and child to change residence within or outside Florida.

The section also gives the adoptive parent the right to request a court review if the adoptive parent believes that the continuing contact or communication is compromising the best interests of the child. The court may amend the contact order, the department shall not be required to be a party to the review, the parties may be ordered to mediation and the prevailing party may be awarded reasonable attorney's fees.

Section 5. Provides for an effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

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:

There is predicted to be little or no economic impact on the department or court system from this bill. The issue of continuing contact is a part of already established department and court procedures. Although legal fees and court costs may be incurred by the parties seeking a review of continuing contact agreements, the bill provides for an award of reasonable attorney's fees and court costs to the prevailing party.

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:

None.

STORAGE NAME: h0585.flc

DATE: March 24, 1997

PAGE 10

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON Family Law and Children:
Prepared by:

Legislative Research Director:

Carol E. Preston

Peggy Sanford