

STORAGE NAME: h881.flc

DATE: April 8, 1997

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

BILL #: HB 881

RELATING TO: Adoption

SPONSOR(S): Representative Posey

STATUTE(S) AFFECTED: Creating s. 63.0725, Florida Statutes.

COMPANION BILL(S): None

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

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

I. SUMMARY:

This bill allows the adoptive parents of a child who has been returned to a family member to be reimbursed for support, care, and love given the child. The family member must pay \$100 for each day the child was with the adoptive parents. Fifty-percent of the fee will go to the adoptive parents. The Department of Children and Family Services will receive the other 50 percent, plus reimbursement for money spent on an abandoned child.

This bill is expected to have no negative fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

A petition for adoption can only be granted under s. 63.062, F.S., with the written consent of the mother. The father's written consent is also required if:

- (1) The child was conceived or born during the father's marriage to the mother.
- (2) The child is his by adoption.
- (3) The child has been found by a court to be his.
- (4) He has filed a signed acknowledgment of paternity with the Office of Vital Statistics.
- (5) He has paid child support in a customary, repetitive manner.

If the minor is over 12 years of age, he or she must also consent unless the court decides that requiring consent is not in the best interests of the child. In addition to these parties, the court also has the discretion to require the consent of a person who is lawfully entitled to custody, and/or of the court itself, if the person who has physical custody does not have the authority to consent.

Under s. 63.072, F.S., parental consent is not necessary if: a parent has deserted or abandoned a child; parental rights have been terminated; or a parent is incompetent and a restoration of competency is not medically expected. In cases where the consent of a legal guardian or lawful custodian is required, it can be excused if the party does not respond within 60 days to a written request for consent or if the written reasons given for withholding consent are found by a court to be unreasonable.

Consent may only be withdrawn if the court finds fraud or duress, s. 63.082(5), F.S.

According to s. 63.172, F.S., a judgment of adoption relieves birth parents of their rights and responsibilities, and terminates the adopted person's legal relationship with relatives, including the natural parents, transferring them to the petitioner for adoption. An adoption, as opposed to a custody arrangement, is a final decision on the rights of a natural parent. A custody arrangement can be modified if there has been a "substantial change" in circumstances. Once an adoption has been finalized and the requisite consent obtained it may be challenged only if there has been some irregularity or procedural defect in the adoption proceeding itself. The attack must be within one year of the judgment of adoption, s. 63.182, F.S.

When a child in the care of the Department of Children and Families is adopted, the parental rights of the child's parents have been terminated because neglect, abandonment or abuse has been proved by clear and convincing evidence. Once a parent's rights are terminated, they no longer have standing to object to an adoption. To terminate parental rights in Florida, abuse, abandonment or neglect must be shown with clear and convincing evidence. (*In Interest of J.D.*, 510 So.2d 623 (Fla. App. 1 Dist. 1987)).

There are an average of 10,000 children in foster care each month in Florida. Most are there because of neglect, with a smaller percentage there for abuse or abandonment. Neglect includes lack of basic necessities, adult supervision, and/or necessary medical attention. For 50 percent of foster care children, the Department of Children and Families has a goal of reuniting them with their families. For another 30 percent, there is

the goal of adoption. The remaining 20 percent include children with a goal of permanent custody with foster care parents, long-term foster care or independent living. Children who are in foster care with a goal of reunification are there an average of 20.5 months. Children who are in foster care with a goal of adoption are there an average of 45 months.

Section 409.166, F.S., provides for an adoption assistance program for families who adopt "special needs" children. These families receive Medicaid assistance for the child, up to \$1,000 reimbursement for the costs of adoption, day services through Title XX, and a monthly cash subsidy. Special needs children are defined in the section as children that have been difficult to place because they are older than 8 years of age, a member of a sibling group, physically or emotionally handicapped, mentally retarded, or of black or racially mixed parentage.

The U.S. Supreme Court has recognized that parental rights are in some sense "fundamental". According to the Court in *Santosky v. Kramer*, 455 U.S. 745 (1982), "The fundamental liberty interest of natural parents in the care, custody and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child."

B. EFFECT OF PROPOSED CHANGES:

This bill provides that if a family member wants a child returned after the child has been adopted and a court grants that request, the family member must reimburse the adoptive parents for the love, care and support they have given the child.

Since the Department of Children and Families terminates parental rights in a case where a child that has been in its care is adopted, this bill will rarely affect such adoptions. This bill will probably primarily affect adoptions through licensed private agencies, lawyers or physicians.

This bill will primarily apply in cases where there was fraud or duress in obtaining the consent for adoption or where other statutory requirements were not substantially complied with, since these are the only cases where an adoption can be negated. This bill could also apply if for some reason the existence of one of the persons whose consent was required was unknown, for example, when an unwed mother lied about paternity.

Under this bill, when a child is returned to a family member after an adoption, the family member must pay \$100 a day for each day the child was with the adoptive parents. Fifty-percent will be given to the adoptive parents and 50 percent to the Department of Children and Families.

The department will also be reimbursed for money spent on an abandoned child. Since only a small percentage of children are in foster care because they are abandoned and usually in such cases parental rights are terminated, the department will only be reimbursed under this section of the bill in a small number of cases.

A family member whose child is returned will not have a hearing to determine if this amount is in proportion to their income or if there are reasons that this amount should or should not be paid. Also, since parents whose rights have not been terminated may still

have some fundamental interest in their child, there might be a constitutional problem with requiring parents to pay what could be a substantial amount that they cannot afford in order to regain custody of their own 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?

No

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

No

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?

N/A

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

N/A

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

N/A

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?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

Yes. Family members will have to pay under this bill to have a child returned to them after a court takes the child from its adoptive parents.

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?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

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

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:

Fifty percent of any fees paid by family members seeking the return of an adopted child will be awarded to the Department of Children and Families. Family members must also reimburse the department for expenditures made for an abandoned child.

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Family members who want the child returned must reimburse the adoptive parents for the love, support and care given the child at the rate of \$100 per day. If an abandoned child is returned to his or her family after being out of the home for the average foster care stay of 45 months, the compensation due would be \$135,000 (45 months x 30 days at \$100 per day = \$135,000).

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2. Direct Private Sector Benefits:

Adoptive parents that must return a child to a family member will be reimbursed for the love, support and care given the child at the rate of \$100 per day for each day they had the child.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The 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

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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VII. SIGNATURES:

COMMITTEE ON FAMILY LAW AND CHILDREN:

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