

STORAGE NAME: h0655.jud

DATE: April 14, 1999

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 655

RELATING TO: Bill of Rights/Dependent Children

SPONSOR(S): Representative Gottlieb

COMPANION BILL(S): SB 1414(i)

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

- (1) CHILDREN & FAMILIES YEAS 5 NAYS 1
- (2) FAMILY LAW & CHILDREN (W/D)
- (3) JUDICIARY
- (4) HEALTH & HUMAN SERVICES APPROPRIATIONS
- (5)

I. SUMMARY:

House Bill 655 creates a "Bill of Rights" specifying 23 rights of children in the custody of the Department of Children and Family Services who have been placed in shelter or foster care. The creation of a statutory "right" carries with it a guarantee that it will be legally enforced by the courts. Thus, it creates an entitlement to certain services or actions by the Department of Children and Family Services and creates the basis for a cause of action and corresponding opportunity for an award of damages by a court for the alleged deprivation of a right.

The Department of Children and Families estimates that the fiscal impact of this bill is \$87,224,142 in FY 99/00 and will be \$97,747,450 in FY 00/01.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 39.01, F.S., defines a **dependent child** as a child who is found by a court:

- ▶ to have been abandoned, abused, or neglected by the child's parent or parents, legal custodians, or caregivers;
- ▶ to have been surrendered to the department, the former Department of Health and Rehabilitative Services, or a licensed child-placing agency for the purpose of adoption;
- ▶ to have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, the department, or the former Department of Health and Rehabilitative Services, after which placement, under the requirements of this chapter, of a case plan has expired and the parent or parents, legal custodians, or caregivers have failed to substantially comply with the requirements of the plan;
- ▶ to have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a natural parent or parents have signed a consent pursuant to the Florida Rules of Juvenile Procedure;
- ▶ to have no parent, legal custodian, or caregiver to provide supervision and care; or
- ▶ to be at substantial risk of imminent abuse, abandonment, or neglect by the parent or parents, legal custodians, or caregivers.

Shelter is a place for the temporary care of a child who is alleged to be or who has been found to be dependent, pending court disposition before or after adjudication. A shelter hearing must be held within 24 hours after the removal of the child, and parents or legal custodians of the child must be given notice of the hearing. At the shelter hearing the court appoints a guardian ad litem if warranted. The department must establish probable cause that reasonable grounds for removal exist and that the provision of services will not eliminate the need for placement.

Foster care is a place for the care of a dependent child pending reunification with the family or adoption.

Currently, the provisions of Florida law pertaining to dependent children is contained in chapter 39, Florida Statutes. Statements of **legislative intent with regard to child safety and protection** found in ch. 39, F.S., include the provisions that:

- ▶ judicial procedures, as well as other procedures to assure due process to children and other parties, are conducted fairly in order to protect constitutional and other legal rights;
- ▶ the health and well-being of all children under the care of the state are promoted; and
- ▶ the child's family ties are preserved and strengthened whenever possible by only removing the child from parental custody when his or her welfare or public safety cannot be otherwise assured.

Subsection 3 of s. 39.001, F.S., stipulates that all children of this state are afforded **general protections** to include

- ▶ protection from abuse, neglect, and exploitation;
- ▶ a permanent and stable home;
- ▶ a safe and nurturing environment which will preserve a sense of personal dignity and integrity;
- ▶ adequate nutrition, shelter, and clothing;
- ▶ effective treatment for physical, social, and emotional needs;
- ▶ equal opportunity and access to education, recreation and other community resources;
- ▶ access to preventive services; and
- ▶ an independent, trained advocate, when intervention is necessary and a skilled guardian or caregiver in a safe environment when alternative placement is necessary.

Legal Framework

Pursuant to s. 39.013(2), F.S., the circuit court has exclusive original jurisdiction of all proceedings under chapter 39, of a child voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, or the department, and of the adoption of children whose parental rights have been terminated. Jurisdiction attaches when the initial shelter petition, dependency petition, or termination of parental rights petition is filed, or when a child is taken into the custody of the department.

Currently, decisions on how to properly care for dependent children and how to assess need for such services as counseling, education, and vocational training are discretionary judgmental decisions made pursuant to broad authority vested in the Department of Children and Family Services by the Legislature and has been found by the courts to be immune from tort liability.

In Department of Health and Rehabilitative Services v. B.J.M., 656 So.2d 906 (Fla. 1995), the Florida Supreme Court held that the decisions of HRS regarding placement of juveniles and rehabilitative services provided to juveniles constituted performance of discretionary governmental functions for which the state was immune. The Court found that:

Decisions on how to properly care for a dependent child or rehabilitate a delinquent juvenile, and to assess the need for counseling, education, and vocational training are discretionary judgmental decisions to be made pursuant to the broad discretion vested in HRS by the Legislature. These decisions represent the cutting edge of HRS policy. Additionally, it is apparent that both the nature of and the amount of services that may be provided is limited by HRS resources, and by the legislative-executive policy decisions as to what resources to provide and how those resources may be utilized.

HRS, along with other governmental agencies in this state, must constantly take into account practical considerations, such as budgetary constraints, when deciding how to allocate its limited funds among a virtually unlimited number of needs. (Citation omitted) As a result, in setting up its programs and providing services, HRS is to a great extent financially "strait-jacketed." When there are thousands of children in need and resources provide for only a fraction, decisions as to allocation may be difficult and sometimes arbitrary. For the courts to impose liability for tort damages on HRS for decisions as to the provision of services would not only "saddle [it] with a potentially crushing burden of financial liability, but would also [cause] the judicial branch of government to trespass into the domain of the legislative branch."

To buttress its decision that HRS's failure to provided certain services was shielded immunity, the Court looked to express provisions of s. 39.455 (1)(2), F.S. (now renumbered as s. 39.011(1)(2), F.S.) This subsection reads:

- (1) In no case shall employees or agents of the department or a social service agency acting in good faith be liable for damages as a result of failing to provide services agreed to under the case plan unless the failure to provide such services occurs as a result of bad faith or malicious purpose, or occurs in a manner exhibiting wanton and willful disregard of human rights, safety, or property.
- (2) The inability or failure of the department or of a social service agency or the employees or agents of the social service agency to provide the services agreed to under the case plan shall not render the state or the social service agency liable for damages unless such failure to provide services occurs in a manner exhibiting wanton or willful disregard of human rights, safety, or property.

The following tables display the number of children in shelter care and foster care by age grouping for FY 97/98.

Alleged Victims of Child Abuse/Neglect Placed in Emergency Shelter FY 97/98		
AGE	#	%
0-2 years	2072	31.4
3-5 years	1237	18.7
8-9 years	1470	22.2
10-13 years	1064	16.1
14-17 years	762	11.5
Unknown	2	0.0
TOTAL	6607	100

Children in Foster Care				
	All Children		Children in foster care waiting for adoption	
AGE	#	%	#	%
0-5 years	3248	26.7	353	26.2
6-12 years	4453	36.6	686	50.9
13-14 years	2228	18.3	241	17.9
16-18 years	1957	16.1	67	5.0
19+ years	282	2.3	2	0.1
TOTAL	12168	100	1349	100

STATUTORILY CREATED BILL OF RIGHTS

Currently there are several "Bills of Rights" delineated in Florida Statutes. Typically these provisions enunciate certain rights, and in some cases responsibilities, of particular classes of individuals. Some specifically permit a cause of action for violation of the rights, some specifically disallow a remedy, and others are silent. The following is a brief summary of statutorily created Bills of Rights.

Florida Patients Bill of Rights and Responsibilities (s. 381.026, F.S.)

This section establishes rights and responsibilities for patients of health care facilities and providers. Such entities are to observe standards relating to individual dignity, treatment information, financial information and disclosure, access to health care, experimental research and notification to patients as to their rights and responsibilities. Patients in turn are responsible for such matters as keeping providers informed, following through on treatment plans and paying for services rendered.

Health care providers and facilities are required to provide patients with a summary of "The Florida Patient's Bill of Rights and Responsibilities" and can be penalized for failing to do so. Regarding enforcement of the rights provided, s. 381.026(3), F.S., states, "This section shall not be used for any purpose in any civil or administrative action and neither expands nor limits any rights or remedies provided under any other law."

Bill of Rights of Persons Who are Developmentally Disabled (s. 393.13, F.S.)

This act provides legislative intent and specifies certain rights for developmentally disabled individuals. Such rights include the right to dignity, privacy, social interaction and participation in community activities as well as the right to be free from isolation or unreasonable restraint.

Section 393.13(5), F.S., states that, "Any person who violates or abuses any rights or privileges of persons who are developmentally disabled provided by this act shall be liable for damages as determined by law. Any person who acts in good faith compliance with the provisions of this act shall be immune from civil or criminal liability for actions in connection with evaluation, admission, habilitative programming, education, treatment, or discharge of a client. However, this section shall not relieve any person from liability if such person is guilty of negligence, misfeasance, nonfeasance, or malfeasance."

In Department of Health and Rehabilitative Services v. Lee, 665 So.2d 304 (Fla. 1st DCA 1995), the Court found that HRS supervision policies, which were being challenged by the mother of a developmentally disabled individual, were dictated by the "Bill of Rights of Persons Who are Developmentally Disabled." The mother sued HRS for the negligent supervision of her daughter who became pregnant while residing in a state institution. The Court found that the Legislature had mandated that HRS provide normal living conditions, to the extent possible, to persons with developmental disabilities and secure, restrictive and constant supervision would be inconsistent with the normalization policy referenced in the statutorily created Bill of Rights.

Rights of Mental Health Patients (394.459, F.S.)

This section focuses on rights related to individual dignity, treatment, informed consent, quality of treatment, communication, care of personal effects, voting, habeas corpus, violations and liability for violations. Regarding the latter two, the Agency for Health Care Administration has statutory authority for sanctioning violators and any person who violates or abuses any rights or privileges of patients provided by this part is liable for damages as determined by law, s. 394.46(10), F.S.

Nursing Home Resident Rights (s. 400.022, F.S.)

This section provides a full panoply of rights for residents of nursing home facilities. Section 400.023, F.S., establishes a cause of action against any licensee responsible for violating these rights. It also provides for punitive damages and the awarding of attorney fees under certain conditions.

Residents' Bill of Rights for Assisted Living Facilities (s. 400.428, F.S.)

This section enumerates various rights for ALF residents. Section 400.429, F.S., provides for civil actions to enforce those rights.

Residents' Bill of Rights for Adult Family-Care Homes (s. 400-628, F.S.)

Very similar rights to those rights for ALF residents. Section 400.629, F.S., likewise provides for civil actions to enforce rights.

Residents' Rights in Continuing Care Facilities (s. 651.083, F.S.)

This section establishes rights for residents of continuing care facilities. Violations of the residents' rights constitute grounds for disciplinary action by the Department of Insurance. Also, s. 651.083(5), F.S., states that, "This section does not supersede any bill of rights provided by law for residents of nursing homes or assisted living facilities."

Insurance Policyholders Bill of Rights (s. 626.9641, F.S.)

This section expresses certain principles that are intended to serve as regulatory standards for the Department of Insurance. Section 626.9641(2), F.S., states, "This section shall not be construed as creating a civil cause of action by any individual policyholder against any individual insurer."

Florida Taxpayer Bill of Rights (s. 213.015, F.S.)

In 1992, the Legislature created this section to guarantee that the rights, privacy and property of Florida taxpayers are adequately safeguarded and protected during tax assessment, collection, and enforcement processes administered under Florida's revenue laws. This section does not explicitly grant an independent cause of action for violations, however, some of the referenced rights are subject to enforcement provisions expressed elsewhere.

Police Officers' Bill of Rights (ss. 112.531-534, F.S.)

This section gives detailed procedural rights and privileges to law enforcement and correctional officers. Section 112.534, F.S., provides injunctive relief to officers in cases where the employing agency fails to comply with the requirements of the statute. According to several district courts of appeal, "The Police Officers' Bill of Rights" does not create a statutory right for damage suits against an employer agency. See e.g., McRae v. Douglas, 644 So.2d 1368 (Fla. 5th DCA 1994), Sylvester v. City of Delray Beach, 584 So.2d 214 (Fla. 4th DCA 1991), City of Miami v. Cosgrove, 516 So.2d 1125 (Fla. 3d DCA 1987).

Firefighters' Bill of Rights (s. 112.80-84, F.S.)

These sections specify the procedures that must be followed when a firefighter is subject to an interrogation. Enforcement of these provisions is found in s. 112.83, F.S., which provides for injunctive relief. Section 112.84(2), F.S., also provides, that, "This part is neither designed to abridge nor expand the rights of firefighters to bring civil suits for injuries suffered in the course of their employment as recognized by the courts, nor is it designed to abrogate any common-law or statutory limitation on the rights of recovery."

Weight-Loss Consumer Bill of Rights (s. 501.0575, F.S.)

This section specifies certain information that must be provided to consumers. Section 501.0581, F.S., permits the Department of Agriculture and Consumer Services to seek injunctive or other appropriate relief to enforce the act. It also states that remedies provided shall be in addition to any other remedies provided by law.

B. EFFECT OF PROPOSED CHANGES:

House Bill 655 creates a "Bill of Rights" specifying 23 rights of children in the custody of the Department of Children and Family Services who have been placed in shelter or foster care. The creation of a statutory "right" carries with it a guarantee that it will be legally enforced by the courts. Thus, it creates an entitlement to certain services or actions by the Department of Children and Family Services and creates the basis for a cause of action and corresponding opportunity for an award of damages by a court for the alleged deprivation of a right.

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?

N/A

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

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

Yes. The creation of a statutory "right" carries with it a guarantee that it will be legally enforced by the courts. Thus, it creates an entitlement to certain services or actions by the Department of Children and Family Services and creates the basis for a cause of action and corresponding opportunity for an award of damages by a court for the alleged deprivation of a right.

- 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?

N/A

- b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

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

The creation of a statutory "right" carries with it a guarantee that it will be legally enforced by the courts. Thus, it creates an entitlement to certain services or actions by the Department of Children and Family Services and creates the basis for a cause of action and corresponding opportunity for an award of damages by a court for the alleged deprivation of a right.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

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?

N/A

- 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

B. STATUTE(S) AFFECTED:

Creates s. 39.4085, F.S.

C. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 39.4085, F.S.

Creates a "Bill of Rights" specifying the rights of children in the custody of the Department of Children and Family Services who have been placed in shelter or foster care.

Subsection 1

Effect of Proposed Changes:

Creates a right to receive a copy of this "Bill of Rights" and have it fully explained to them when they are placed in the custody of the department.

Present Situation:

Many of the children in shelter care and foster care are infants, toddlers, young children or developmentally delayed children with no or little reading and comprehension skills.

Subsection 2

Effect of Proposed Changes:

Creates a right to the guarantee of individual dignity, liberty, pursuit of happiness, and the protection of their civil and legal rights as persons in the custody of the state.

Present Situation:

Individual dignity, liberty, pursuit of happiness, and other rights are protected under the United States and Florida Constitutions, and are subject to enforcement under federal civil rights act 42 USC s. 1983.

Subsection 3

Effect of Proposed Changes:

Creates a right to have their privacy protected, have their personal belongings secure and transported with them, and, unless otherwise ordered by the court, have uncensored communication, including receiving and sending unopened communications and having access to a telephone.

Present Situation:

These proposed rights are enforced by the department and are incorporated into current administrative rules - FAC 65C013.010(1)(b)3.; .010(2)(c). Failure of a department employee or contract provider to ensure these rights could result in adverse personnel action or action for breach of contract by the department.

Subsection 4

Effect of Proposed Changes:

Creates a right to personnel providing services that are sufficiently qualified and experienced to assess the risk children face prior to removal from their homes and to meet the needs of the children once they are in the custody of the department.

"Sufficiently qualified and experienced" and "needs of children" are not defined and is open to interpretation.

Present Situation:

Department employees and contract providers are required to undergo training through the Professional Development Centers, and a certification program has been developed to ensure that employees and providers achieve a required level of competence. The department utilizes risk assessment instruments to assess child safety, and family strengths and weaknesses (see s. 39.301, 39.307, and 39.816). This information is used to make recommendations to the court, placement decisions, and determine service needs. The department, within the limits of legislative appropriations, currently meets the assessed needs of children and families in the context of an individual case which may not take legislative goals, funding limitations, and systemic issues into consideration.

Subsection 5

Effect of Proposed Changes:

Creates the right to remain in the custody of their parents or legal custodians unless and until there has been a determination by a qualified person exercising competent professional judgment that removal is necessary to protect their physical, mental, or emotional health or safety. "Qualified person exercising competent professional judgment" is not defined and is open to interpretation.

Present Situation:

Section 39.401, F.S., contains very specific provisions regarding conditions that must exist before a child is removed from the custody of parents or legal custodians. The court must concur with the department's decision to remove a child in a shelter hearing under s.39.404, F.S.

Subsection 6

Effect of Proposed Changes:

Creates the right to have a full risk, health, educational, medical and psychological screening and, if needed, assessment and testing prior to placement in shelter or foster care; and to have their photograph and fingerprints included in their case management file.

Present Situation:

The department has a full Early Periodic Screening, Diagnosis, and Testing (EPSDT) screening performed on each child within 48 hours of placement in a shelter. Other screening, testing and assessment is done on an individual basis as needed, and as promptly as possible. It would not currently be possible to have all of this assessment and testing done prior to placement in shelter or foster care. In compliance with statutory mandates, the department removes children in order to protect them from further or imminent danger. Such removal is often done in the middle of the night, when assessment and testing services are not available. The department's first priority in such situations is to attend to the child's immediate medical needs and to get the child safely settled with a relative or in a licensed shelter. The department does not photograph or fingerprint children in shelter care or foster care.

Subsection 7

Effect of Proposed Changes:

Creates a right to referral to and receipt of any and all services, including necessary medical, emotional, psychological, psychiatric and educational evaluations and treatment, within 1 week after identification of the need for such services by the screening and assessment process.

Present Situation:

The department currently provides services, except for educational services which are the responsibility of the Department of Education, as promptly as possible after the need has been identified, and within the limits of Medicaid funding and legislative appropriations. Provision of psychological and psychiatric treatment services for children in the custody of the department is the subject of a currently ongoing class action lawsuit, Interests of M.E.

Subsection 8.

Effect of Proposed Changes:

Creates a right to placement in a home with no more than one other child unless they are part of a sibling group.

Present Situation:

The current capacity limit for licensed foster homes is five children. See s. 409.175, F.S.; 65C-13, F.A.C. This bill provision would more than double the number of licensed foster homes needed. The department is already struggling to recruit sufficient homes within the current capacity limit. The department experience with placement of children has shown that it takes approximately three placement options for each child because of special needs or behavior issues of the child or preferences and capabilities of the foster homes. As of October 1998 there were 3,890 foster homes serving 9,038 children. An additional 3,339 children were in residential group care or shelter. Forty-one percent of the licensed foster homes have more than two foster children. An estimated 35 percent of licensed homes have two or more of their own children and would be automatically disqualified under this proposed legislation. According to the department, a massive recruitment effort would be required to identify an estimated 10,000 new homes.

Subsection 9.

Effect of Proposed Changes:

Creates a right to placement away from other children who pose a threat of harm to them, either because of their own risk factors or those of the other child. The term "threat of harm" is not defined and is open to interpretation.

Present Situation:

The department does not place known physically or sexually aggressive children with younger, more vulnerable children in a foster home. See 65C-13.015, F.A.C. ("Prevention and Management of Sexual Assault in Foster Care") Likewise, medically vulnerable children are accorded special attention in regard to placement. See 65C-13.017, F.A.C. ("Services for HIV Infected Children").

Subsection 10.

Effect of Proposed Changes:

Creates a right to placement in a home where the shelter or foster caregiver is aware of and understands the child's history, needs, and risk factors.

Present Situation:

The department currently provides foster parents with all relevant information related to the care of the child (see 65C-13.010(5)(c) and (d)).

Subsection 11.

Effect of Proposed Changes:

Creates a right to development of a plan by the counselor and the shelter or foster caregiver to deal with identified behaviors that may present a risk to the child or others.

Present Situation:

Section 39.601, F.S., defines a case plan and requires the department or agent of the department to develop a case plan for each child or child's family receiving services. The case plan must be developed in conference with the parent, caregiver, or legal custodian of the child and any court-appointed guardian ad litem and, if appropriate, the child. The case plan must include, in addition to other requirements a description of the problem being addressed that includes the behavior or act of a parent, legal custodian, or caregiver resulting in risk to the child and the reason for the department's intervention and a description of the services to be provided to the family and child specifically addressing the identified problem.

Subsection 12.

Effect of Proposed Changes:

Creates a right to be involved and incorporated, where appropriate, in the development of the case plan, to have a case plan which will address their specific needs, and to object to any of the provisions of the case plan.

Present Situation:

Section 39.601, F.S., defines a case plan and requires the department or agent of the department to develop a case plan for each child or child's family receiving services. The case plan must be developed in conference with the parent, caregiver, or legal custodian of the child and any court-appointed guardian ad litem and, if appropriate, the child.

Subsection 13.

Effect of Proposed Changes:

Creates a right to meaningful case management and planning that will quickly return the child to his or her family or move the child on to other forms of permanency.

Present Situation:

Pursuant to extensive revisions to Chapter 39, F.S., (chapter 98-403, LOF) during the 1998 legislative session, new federal requirements were incorporated into the chapter that allow for concurrent (dual) case planning [see s. 39.601(3)(a), F.S.], and that specifically require a 12-month permanency hearing [see s. 39.701(8)(f), F.S.]. In the 12-month permanency hearing, if the child is not returned to the parents or legal custodians, the department must present a permanency plan to the court which sets out the department's plan for adoption or other permanent living arrangement for the child.

Subsection 14.

Effect of Proposed Changes:

Creates a right to regular visitation by a caseworker, at least once a month, which shall include meeting with the child alone and conferring with the shelter or foster caregiver.

Present Situation:

Section 39.601, F.S., requires that the case plan contain a description of the visitation rights and obligations of the parent or parents, caregiver, or legal custodian during the period the child is in care. The department is required to include the number of face-to-face meetings to be held each month between the parents, caregivers (foster parents), or legal custodians and the department caseworkers. The department is also required by administrative rule, 65C-13.010(5)(g), to visit the child at least monthly.

Subsection 15.

Effect of Proposed Changes:

Creates a right to regular visitation, at least once a week, with their siblings, unless the court orders otherwise.

Present Situation:

The department already provides in rule for regular visitation among siblings (see 65C-13.010(2)).

Subsection 16.

Effect of Proposed Changes:

Creates a right to regular visitation with their parents, at least once a month, unless the court orders otherwise.

Present Situation:

Section 39.402(9), F.S., requires the court to determine visitation at the shelter hearing. Section 39.601(3), F.S., requires the case plan to contain parental visitation rights and responsibilities. Finally, the department must report to the court in the judicial review social study concerning frequency, duration and results of parent-child visitation pursuant s. 39.701(6)(a)7., F.S.

Subsection 17.

Effect of Proposed Changes:

Creates a right to a free and appropriate education; minimal disruption to their education and retention in their home school, if appropriate; referral to the child study team; all special educational services; including, where appropriate, the appointment of a parent surrogate; the sharing of all necessary information between the school board and the department, including information on attendance and educational progress.

Present Situation:

The responsibilities of the Department of Education (DOE) & school districts are already established in state and federal law. The department must comply with all state and federal laws related to a child's education. In addition s. 402.22, F.S. further delineates the duties and responsibilities of the department and schools to educate children in residential care (including foster care).

Subsection 18.

Effect of Proposed Changes:

Creates a right to raise grievances with the department over the care they are receiving from their caregivers, caseworkers, or other service providers.

Present Situation:

Section 39.701, F.S., requires a judicial review of a child status in foster care at least every six months to determine the compliance or lack of compliance with the case plan. At the hearing the court may hear from the guardian ad litem, an advocate for the best interest of the child, the child, parents, and custodians. The guardian ad litem is free to raise service issues at any time.

Subsection 19.

Effect of Proposed Changes:

Creates a right to be heard by the court, if appropriate, at all review hearings.

Present Situation:

Rule 8.255(b), Florida Rules of Juvenile Procedure, states that "the child has a right to be present at the hearing unless the court finds that the child's mental or physical condition or age is such that a court appearance is not in the best interest of the child." The rule further provides that "any party may file a motion to require or excuse the presence of the child."

Subsection 20.

Effect of Proposed Changes:

Creates a right to have a guardian ad litem appointed to represent their best interests and, where appropriate, an attorney ad litem appointed to represent their legal interests; the guardian ad litem and attorney ad litem shall have immediate and unlimited access to the children they represent.

Present Situation:

Sections 39.820-39.822, F.S., establish a system guardian ad litem and guardian advocates connected to the 20 judicial circuits. Subsection 39.820, F.S., defines a guardian ad litem as a certified guardian ad litem program, a duly certified volunteer, a staff attorney, contract attorney, or certified pro bono attorney working on behalf of a guardian ad litem or the program; staff members of a program office; a court-appointed attorney; or a responsible adult who is appointed by the court to represent the best interests of a child in a proceeding as provided for by law, including, but not limited to, chapter 39, who is a party to any judicial proceeding as a representative of the child, and who serves until discharged by the court. Section 39.822, F.S., requires that a guardian ad litem be appointed by the court at the earliest possible time to represent the child in any child abuse, abandonment, or neglect judicial proceeding, whether civil or criminal.

Subsection 21.

Effect of Proposed Changes:

Creates a right to have all their records available for review by their guardian ad litem and attorney ad litem if they deem such review necessary.

Present Situation:

Section 39.0132(3), F.S., states the following: "All records shall be inspected only upon order of the court by persons deemed by the court to have a proper interest therein, except that, subject to the provisions of s. 63.162, F.S., a child and the parents, legal custodians, or caregivers of the child and their attorneys, **guardian ad litem**, law enforcement agencies, and the department and its designees shall always have the right to inspect and copy any official record pertaining to the child."

Subsection 22.

Effect of Proposed Changes:

Creates a right to organize as a group for purposes of ensuring that they receive the services and living conditions to which they are entitled and to provide support for one another while in the custody of the department.

Present Situation:

There is currently nothing in the law, rules or operating procedures which would prohibit such organization among foster children. A statewide teen advisory board has been established and regularly works with the department on issues of interest to older foster children.

Subsection 23.

Effect of Proposed Changes:

Creates a right to be afforded prompt access to all available state and federal programs, including, but not limited to: Early Periodic Screening, Diagnosis, and Testing (EPSDT) services, developmental services programs, Medicare and supplemental security income, Children's Medical Services, and programs for severely emotionally disturbed children.

Present Situation:

Federal and state laws and regulations currently establish application procedures and eligibility criteria for all of the services listed in this provision of HB 655. Some programs are not immediately available and have a long waiting list.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

\$87,224,142 in FY 99/00 (See Fiscal Comments section)

2. Recurring Effects:

\$97,747,450 in FY 00/01 (See Fiscal Comments section)

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

Cost estimates provided by the Department of Children and Families.

Subsection 1

Copy of "Bill of Rights" to each child placed in shelter/foster care. Estimate 5,000 children will come into care FY 1999-00 (10-12% increase over FY 1997-98 total of 4,451) For 5,000 copies of a 2-page document at \$.02 per page = \$200.00 first year; \$200 + 10-12 % each subsequent year.

Subsection 6

Comprehensive assessment centers. The department estimates \$5 million per year department outlay for comprehensive psychological/substance abuse assessment system alone. Addition of risk, medical and educational assessment would at least triple that amount, for an estimated total \$15 million outlay first year and each subsequent year.

Fingerprinting. Estimate 2,500 children fingerprinted at \$15 per child = \$37,500 first year and each subsequent year.

Subsection 7

Residential treatment services within one week of referral. Currently, there is a waiting list of 200 children. Average cost of treatment is \$200 per day. Thus, day one cost would be 200 times \$200 = \$40,000 per day or \$14.6 million first year and each subsequent year in which at least 200 new children require residential treatment.

Subsection 8

Reduction of foster home capacity from 5 to 2 children. This would require the recruitment, training, screening and licensing of an estimated 10,000 new foster homes at a cost of \$57.5 million the first year: Licensure staff, 127 FTEs, 9 mos., = \$14,862,815

Foster Home Liaison Counselors for training and supporting foster homes; 741 FTEs; 9 mos. = \$37,062,732

10% increased travel time for foster care counselors; 93 FTEs; 9 mos. = \$4,655,953

10% increase travel expense = \$586,942

Fingerprinting, FBI and FDLE background screening for 10,000 new foster homes @ \$40 = \$400,000

Subsection 20

Court-appointed attorney ad litem to represent legal interests of dependent child when appropriate. Assume 2,500 children are appointed an attorney ad litem per year. Current statute allows counties to set the rate for appointed counsel in dependency proceedings. Assume an average of \$2,500 for representation through appeal, and \$3,500 for termination of parental rights through appeal (statutory cap). Total cost of appointed attorneys ad litem for 2,500 children through TPR appeal would be \$15 million first year and each subsequent year.

Subsection 22

Group meetings among foster children. Assume 1 meeting per month in each district, with 2 hours of staff time and transportation for 20 children = \$100 per meeting times 15 times 12 = \$18,000 first year and each subsequent year.

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:

The creation of a statutory "right" carries with it a guarantee that it will be legally enforced by the courts. Thus, it creates an entitlement to certain services or action by the Department of Children and Family Services and creates the basis for a cause of action and corresponding opportunity for an award of damages by a court for the alleged deprivation of a right. Because certain rights are vague, the bill would encourage litigation wherein a court would be asked to determine the meaning of terms such as "sufficiently qualified and experienced" and "needs of children" in the context of an individual case which may not take legislative goals, funding limitations, and systemic issues into consideration. A remedy in these cases would require the Legislature to provide additional funding or other resources to address the deprivation of a right as determined by a court.

Judiciary Committee staff comments

The amendment to this bill adopted on April 5, 1999 limits actions for damages against the state. The amendment does not address the problem of a potential explosion in litigation which do not seek monetary damages. The state's resources are finite and much of the language of the bill could be construed to require more educated personnel and more sophisticated care for everyone so requesting.

For example, on some occasions children continue to die from abuse at home, while on other occasions, they are improperly removed. Might the requirement "[p]ersonnel providing services who are sufficiently qualified and experienced to assess the risk factor children face prior to their removal" be interpreted by a court -- in light of the current failures by social workers to protect children -- to require a team of Ph.D.'s in psychology and related fields to make these assessments?

Might "[r]eferral to and receipt of any and all services, including . . . psychological, psychiatric and educational . . . treatment" include responsibility for residential treatments in private facilities that could continue for years after placement?

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The broad language of the bill creates entitlements and then places the enforcement of those entitlements with the judiciary. Currently, in the developmentally disabled area, the courts have interpreted language to expand the care available to these individuals, and it could be anticipated that a similar response might occur in the area of dependent children. Both litigation and departmental costs could increase exponentially.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The following amendment was adopted on 4/5/99.

On page 4, between lines 13 & 14 of the bill insert:

This section shall only be enforceable in a Chapter 39 proceeding and shall not be construed as creating a cause of action for damages by any individual against the state.

VII. SIGNATURES:

COMMITTEE ON CHILDREN & FAMILIES:

Prepared by:

Bob Barrios

Staff Director:

Bob Barrios

AS FURTHER REVISED BY THE COMMITTEE ON JUDICIARY:

Prepared by:

Jo Ann Levin

Staff Director:

Don Rubottom