

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2080

SPONSOR: Senator Grant

SUBJECT: Child Protection

DATE: March 23, 2000

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill allows a parent to abandon a newborn infant anonymously and with limited amnesty from criminal prosecution at a fire station or at a hospital. It provides an expedited process for the acceptance, emergency treatment, transfer of custody, termination of parental rights and adoption in cases of unclaimed abandoned newborn infants in the absence of actual or suspected child abuse or neglect. It sets forth the responsibilities and duties for fire stations, hospitals, licensed child-placing agencies, and the Department of Children and Families in the process for handling an abandoned newborn infant. It acknowledges parental rights to reclaim or claim an abandoned newborn infant within specified timeframes. It provides limited statutes of repose period for challenging judgments terminating parental rights and subsequent adoption under chapter 63, F.S., based on fraud and other grounds. It directs the Department of Children and Families and the Department of Health to conduct a media campaign to promote safe alternatives for placement of abandoned newborn infants.

This bill creates the following sections of the Florida Statutes: 383.50, 63.0423, 63.167, 63.182, 409.163, and 827.035. The bill also substantially amends sections 39.01, 39.201, and 63.167, F.S.

II. Present Situation:

Abandoned Infants and Children

The phenomenon of abandoned infants and older children, especially newborn infants, has generated significant public interest and public concern. Based on media reports, the infants are abandoned in public places, trash bins, and other areas for any number of reasons by mothers primarily who range in age from teens to their forties. A yet unpublished survey taken by the U.S.

Department of Health and Human Services of media reports nationwide indicates that while many of the babies are born full-term and healthy, a third of them die before they are found.¹

In 1988, Congress enacted the Abandoned Infants Assistance Act (P.L. 100-105) to address the phenomenon of infants abandoned in hospitals, especially those who were exposed perinatally to drugs or HIV². This federal legislation provides funding to support comprehensive and coordinated intervention programs for services to these infants and young children. More recently, a number of states (e.g., California, Georgia, Kansas, Minnesota and Texas) have either enacted or are introducing legislation targeted to address the situation of abandoned newborn infants by providing limited immunity for parents who abandon a newborn infant in a designated safe location such as a hospital or fire station. Florida has no such law at this time.

Over 27 states automatically initiate proceedings to terminate parental rights once a court determines that a child is abandoned, and another 20 states (including Florida) consider abandonment as grounds for termination of parental rights. In Florida, a child is deemed abandoned if the parent or legal custodian of a child, while being able, makes no provision for the child's support and makes no effort to communicate with the child, which situation is sufficient evidence to be a willful rejection of parental obligations. *See* s. 39.01(1), F.S. If the parents or legal custodian's efforts are marginal in the court's opinion, then the court may declare the child to be abandoned for purposes of proceeding to a termination of parental rights under part IX of ch. 39, F.S.

Disposition of an Abandoned Child

Under current Florida law, an abandoned child is placed in a foster home for 60 days during which time a search for the parents is conducted by law enforcement and the Department of Children and Families with the assistance of the media. *See* s.39.806, F.S. If no parent is found, the Department of Children and Families files a petition to terminate parental rights and moves to provide constructive service³ in lieu of adherence to the diligent search requirement. A subsequent advisory hearing is held at which the court makes additional inquiries. Failure by a parent to appear constitutes a consent to the termination of parental rights at the advisory hearing.⁴ If no parent or family member is known or identified, an adjudicatory hearing is held within 45 days of the advisory hearing to terminate parental rights. If a parent or family member is known but is not located, the Department of Children and Families must conduct a diligent search under section 39.803, F.S.⁵ If the parent is located, DNA testing is required. If termination of parental rights is granted, a permanency or placement hearing must be held within 30 days after the court enters its

¹In 1998, 33 of 105 abandoned infants found in public places were dead. These numbers are part of the estimated 31,000 infants abandoned in hospitals including infants whose mothers said they did not want their infant, and infants whom child protective services deemed would not be safe to return home to a parent due to evidence of drug addiction or other factor.

²They are often referred to as "boarder babies."

³Section 49.10, F.S., provides for constructive service by publication for 4 consecutive weeks.

⁴An advisory hearing is not required if the parent voluntarily surrendered his or her parental rights. *See* §39.808, F.S.

⁵The diligent search must include, at a minimum, inquiries of all known relatives of the parent or prospective parents, of all offices of program areas of the department and other state and federal agencies likely to have information of such person, of utility and postal providers, and of law enforcement agencies.

order regarding disposition of the child at the adjudicatory hearing. Such child may be placed with a licensed child-placing agency, the department or other legal custodian. Permanency of a child may include placement of a child in a long-term custodial relationship, under legal guardianship, or in an adoptive home subsequent to adoption proceedings as provided in ch. 63, F.S.

Prosecution for Abuse or Neglect of a Child

Any person who abuses or neglects a child is subject to criminal prosecution for a felony under section 827.03, F.S. The term “child abuse” is defined to mean either: 1) intentional infliction of physical or mental injury, 2) intentional act reasonably expected to result in physical or mental injury, or 3) active encouragement of any person to act with the result of physically or mentally injuring the child. The term “neglect” is defined to mean failure to provide care, supervision or necessary services to maintain a child’s physical and mental health, or a failure to make a reasonable effort to protect a child from abuse, neglect or exploitation by another.

Reporting Child Abuse

Florida law requires all persons including, but not limited to physicians, health professionals, school teachers, social workers, law enforcement officers and judges who know or who have reasonable cause to suspect that a child is abused, abandoned or neglected to report such knowledge to the Department of Children and Families via the statewide central abuse hotline. *See* Part II, ch. 39, F.S. (ss. 39.201-39.206). A person who knowingly and willfully fails to report child abuse, abandonment or neglect is guilty of a first degree misdemeanor. *See* s. 39.205, F.S.

In addition, a licensed medical facility pursuant to ch. 395, F.S., is required to adopt a protocol for reporting any actual or suspected case of child abuse, abandonment or neglect, and to designate a physician to act as a liaison between the hospital and the Department of Children and Family Services office for investigating the case. *See* s.395.1023, F.S.

Duty of a Hospital

Pursuant to section 395.1041, F.S., every general hospital with an emergency department is required to provide emergency services for any emergency medical condition under specified circumstances, including for persons who are being transferred by another hospital as medically needed. The provision of emergency services and care may not be based on a person’s race, ethnicity, religion, national origin, citizenship, age, sex, preexisting medical condition, physical or mental handicap, insurance status, economic status or ability to pay for medical services. Hospitals and their employees, including physicians, are not liable for refusing to render emergency services and care if it has been determined that the person is not suffering from an emergency medical condition or that the hospital does not have the service capability or capacity to tend to the person.

III. Effect of Proposed Changes:

Section 1 creates section 383.50, F.S., within ch. 383, F.S., relating to maternal and infant hygiene. It allows a parent to abandon anonymously and with limited liability from criminal prosecution a newborn infant at a hospital or a firestation for medical treatment and subsequent placement with a licensed child-placing agency, provided there is no actual or suspected child abuse or neglect. If the newborn infant is left at a firestation, the newborn infant must be treated

to the extent possible and needed before it is immediately transferred to the hospital. It defines a newborn infant as a child who is approximately 3 days or younger as to be determined by a licensed physician. It provides immunity from liability to fire stations, hospitals or any of its licensed health care professionals who accept and treat these newborn infants with the exception of liability for negligence.

The hospital or fire station may offer materials to the parent to include: 1) information regarding the importance of medical and social history in treating the newborn infant and the assurance of anonymity if providing such information, and 2) the process for reclaiming the newborn infant by contacting the entity with the physical or legal custody of the newborn infant within 30 days of abandonment or else termination of parental rights proceedings will be initiated.

A hospital shall immediately contact a local licensed child-placing agency or alternatively, contact the Department of Children and Families' statewide central abuse hotline for the names of three licensed child-placing agencies to call for acceptance of an abandoned newborn infant for subsequent adoption. Such newborn infants are presumed eligible for coverage under Medicaid. In the event there is actual or suspected child abuse or neglect of the newborn infant, the abuse is to be reported to the statewide central abuse hotline.

In the event none of the contacted licensed child-placing agencies accept the newborn infant, the Department of Children and Families will assume custody of the newborn infant which shall be treated as if voluntarily surrendered for purposes of processing.

Section 2 amends s. 39.01, F.S., relating to definitions for dependency proceedings. The term "abandoned" is redefined to exclude those abandoned newborn infants left at a fire station or hospital.

Section 3 amends s. 39.201, F.S., relating to mandatory reporting requirements of child abuse and neglect. The statewide central abuse hotline is required to document reports of abandoned newborn infants left at fire stations or hospitals. The hotline is also required to provide to the hospital the names of three licensed child-placing agencies on a rotating list who are eligible and willing to accept custody of abandoned newborn infants who were left at a fire station or hospital. In cases of actual or suspected child abuse or neglected, the hotline must accept the call as a report of abuse, abandonment or neglect.

Section 4 amends s. 63.167, F.S., to expand the duties of the state adoption information center by maintaining a list of licensed child-placing agencies eligible and willing to accept abandoned newborn infants and to provide such information to the statewide central abuse hotline.

Section 5 creates s. 63.0423, F.S., relating to the expedited procedure for termination of parental rights of parents of abandoned newborn infants for purposes of subsequent adoption.

Acceptance and placement by the licensed child-placing agency: If a licensed child-placing agency accepts the newborn infant from the hospital, the agency is responsible for all medical costs of the newborn infant, must take physical custody of the newborn infant and must obtain an emergency custody order from the court. The newborn infant must be placed temporarily in a prospective adoptive home pending termination of parental rights and finalization of adoption.

Termination of parental rights and diligent search: A licensed child-placing agency may not file a petition for termination of parental rights until 30 days after the placement of the newborn infant in the prospective home and only after having conducted a diligent search and having provided constructive notice pursuant to chapter 49. The diligent search must be initiated within 7 days after receiving physical custody of the newborn infant.

Claim by a parent: A parent, who is not otherwise the parent who abandoned the newborn infant, has up until the end of the adjudicatory hearing on the petition to terminate parental rights to claim the newborn infant. If a claim is made by such parent, the proceeding on the termination of parental rights must be held in abeyance for 60 days to allow the court to order genetic testing to verify maternity or paternity, to appoint a guardian ad litem upon the court's own motion, and to order whatever evaluation or investigation is necessary to determine what is in the best interest of the newborn infant, i.e., return the infant or terminate parental rights. The court may not terminate parental rights solely on the basis that the newborn infant was abandoned in accordance with s. 383.50. The judgment returning the infant or terminating parental rights must include written findings of fact as to the grounds for judgment. A copy of the judgment must be mailed to the department, the petitioner, and persons whose consent were required, if known.

Relief from judgment: Relief from a judgment terminating parental rights is available upon motion by a parent that a person knowingly gave false information that prevented the parent from asserting parental rights including claim to the newborn infant. However, such motion cannot be filed later than two years after the date of the judgment terminating the parental rights. Unless good cause is shown otherwise, a preliminary hearing must be held within 30 days of the motion to determine parent-child contact, if any, pending resolution of the matter, and specific written findings must be included in the order. The court may also order genetic testing to determine maternity or paternity on its own or upon motion of any party, if paternity or maternity has not been previously established. Within 45 days (except for good cause shown) of the preliminary hearing, the court must hold a final hearing on the motion to set aside the judgment.

Section 6 substantially revises section 63.182, F.S., to provide a one-year statute of repose for challenges against a judgment for termination of parental rights and judgments for adoption based on any ground except for fraud, which can be alleged up to two years from date of the judgments.

Section 7 creates section 409.163, F.S., within ch. 409, F.S., relating to social and economic assistance. It requires the Department of Children and Families in conjunction with the Department of Health to produce a media campaign to promote:

- 1) safe placement alternatives for placement of newborn infants;
- 2) the process for abandoning a newborn infant anonymously and with limited immunity from criminal prosecution;
- 3) the rights of parents to reclaim or claim an abandoned newborn infant; and
- 4) information about the adoption process.

Section 8 creates section 827.035, F.S., within ch. 827, F.S., relating to prosecution for the abuse of children. It creates an affirmative defense to the offense of abandonment of a newborn infant in accordance with section 383.50, F.S. This affirmative defense means that if criminal prosecution is brought against the parent under chapter 827, F.S., for abuse or neglect, the parent can assert this

defense provided he or she proves that the newborn infant was left in accordance with s. 383.50 and there is no other actual or suspected child abuse or neglect.

Section 9 provides that the bill becomes effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Corresponding legislation has been filed to provide a public records exemption for all records obtained pursuant to this act.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The parent-child relationship is protected under the state and federal constitution. *See In the Matter of the Adoption of Doe v. Doe*, 543 So.2d 741, 746 (Fla. 1989). The bill tries to balance the interest in providing a safe haven for newborn infants abandoned by their parents and protecting the fundamental and constitutionally protected parental right of either parent. Additional provisions may be needed to ensure timely and strict compliance with consent, disclosure, service, notice and hearing provisions for all parties involved, including the biological or legal father and the prospective adoptive parents of the abandoned newborn infant.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may encourage parents who would otherwise abandoned their newborn infants in an unsafe location that would threaten the well-being and health of the newborn infant to abandon them in a hospital or fire station, without disclosure of identity and with limited immunity from prosecution.

This bill provides an expedited process for the safe placement and adoption of some abandoned newborn infants who would otherwise be at risk for abandonment in unsafe

locations and who would be subject to the lengthier and overburdened state process for the placement and adoption of children.

C. Government Sector Impact:

The courts may be required to provide an expedited process for licensed child-placing agencies seeking emergency custody of an abandoned newborn under this bill.

There may be a fiscal impact on the Department of Children and Families commensurate with their increased duties for the statewide central abuse hotline and the statewide adoption center. Similarly, there may be a fiscal impact on the Department of Children and Families and the Department of Health in complying with the directive to produce and conduct a media campaign to promote safe alternatives for placement of abandoned newborn infants.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill may require some additional provisions and some revisions in order to harmonize and clarify procedural and substantive aspects of the proposed law.

VIII. Amendments:

None.