

STORAGE NAME: h2305z.flc
DATE: May 23, 2000

****FAILED TO PASS THE LEGISLATURE****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FAMILY LAW AND CHILDREN
FINAL ANALYSIS**

BILL #: HB 2305

RELATING TO: Dependency Court Improvement

SPONSOR(S): Committee on Family Law and Children, Representative Roberts and others

TIED BILL(S): HB 2307

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

- (1) FAMILY LAW AND CHILDREN YEAS 8 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The bill revises, reorganizes and clarifies various provisions relating to the protection of dependent children. The bill provides definitions for the terms "long-term custody" and "long-term licensed custody." The bill removes the requirement of a court-appointed attorney for a legal guardians, reserving that right for the parents only. The role of the guardian ad litem in dependency cases is clarified to assure that the guardian ad litem represents the best interests of the child. The bill creates two additional parts within chapter 39, F.S., and reorganizes sections within the chapter. The bill clarifies procedures as to permanency options.

There is no fiscal impact from the bill.

The provisions of this bill passed in HB 2125.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

In 1995, the U.S. Department of Health and Human Services provided funding to the highest court in every state for a comprehensive research project to study the judicial management of foster care and adoption proceedings. The Dependency Court Improvement Project (DCIP) was created within the Office of State Courts Administrator in Florida. In 1998, legislation created through the DCIP study, implementing mandated provisions of the federal Adoption and Safe Families Act and major revisions to ch. 39, F.S. was approved. See ch. 98-403, L.O.F. In 1999, legislation was passed that addressed errors and inconsistencies in the 1998 rewrite. See ch. 99-193, L.O.F.

This proposed committee bill was created out of the effort of DCIP, as a continuing process to review and revise those areas of the law pertinent to the protection of children.

Chapter 39, F.S., relates to the protection of children. The chapter is divided into eleven parts to reflect an orderly presentation of the dependency process from intake to case outcome. Those parts include: general provisions; reporting child abuse; protective investigations; family builders program; taking children into custody and shelter hearings; petition, arraignment, adjudication, and disposition; case plans; judicial reviews; termination of parental rights; guardians ad litem and guardian advocates; and domestic violence.

C. EFFECT OF PROPOSED CHANGES:

Generally, the bill makes technical, conforming, and clarifying changes to chapter 39, F.S. See "Section-by-Section Analysis."

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 39.01, F.S., relating to definitions for ch. 39. This section changes the term "termination of parental rights" to "adoption" in the definition of "long-term custody" or "long-term custodial relationship" to ensure that long-term custody can be used following a termination of parental rights proceeding if adoption is determined not to be in the child's best interest. The section also delineates a long-term placement in the home of a relative or other unlicensed adult from a long-term placement that is licensed by the Department of Children and Family Services. The section defines "long-term licensed custody" to mean the relationship that a juvenile court order creates between a child and placement licensed

by the state to provide residential care for dependent children, if the licensed placement is willing and able to continue to care for the child until the child reaches the age of majority. The section creates a definition for "ordinary and necessary medical treatment" and provides that foster parents are authorized agents of the department when they are acting to perform duties or exercise powers assigned or designated by the department including the authorization of ordinary and necessary medical care for children placed in their custody.

Section 2. Amends subsection (10) and adds a new subsection (4) of s. 39.013, F.S., relating to procedures and jurisdiction and right to counsel under ch. 39. This section provides that any order of the circuit court hearing dependency matters must be filed by the clerk of the court in any dissolution or other proceedings involving custody or visitation with the child. The order from the dependency court must take precedence over other custody and visitation orders. In addition, dependency orders addressing custody or visitation must be kept confidential. This section also removes the right of legal guardians to have court-appointed counsel. The right is reserved for parents only.

Section 3. Amends s. 39.0132, F.S., relating to oaths, records, and confidential information, by removing the reference to "part" and in its place, adding "chapter," to conform to the rest of ch. 39. This change will ensure that the court's records dealing with all aspects of dependency cases remain confidential and can be used, as appropriate, in appellate and administrative proceedings.

Section 4. Amends subsection (2) of s. 39.202, F.S., relating to confidentiality of reports and records in cases of child abuse or neglect, to provide that if a perpetrator is not a parent, access by the perpetrator to information is limited to information involving the protective investigation only.

Section 5. Amends paragraph (c) of subsection (8) of s. 39.402, F.S., relating to placement in a shelter, to provide that the guardian ad litem shall represent the best interest of the child, and not the child's desires. This is consistent with the definition of guardian ad litem contained in s. 39.820(1), F.S.

Section 6. Amends subsection (18) of s. 39.502, F.S., relating to notice, process, and service, by removing the reference to "part" and in its place, adding "chapter," to conform to the rest of ch. 39.

Section 7. Amends subsection (5) of s. 39.503, F.S., relating to when the identity or the location of the parent is unknown, and special procedures, to substitute the word "petitioner" in place of "department" because the petitioner in some dependency cases is not the department, and ch. 39 consistently requires that the petitioner perform a diligent search.

Section 8. Redesignates part VII of ch. 39 as part VIII. A new part VII is created, entitled "Disposition; Postdisposition Change of Custody." A new part IX is created, entitled "Permanency." Subsequent sections are renumbered.

Section 9. Section 39.508, F.S., is renumbered as sections 39.521 and 39.522, F.S. New section 39.521 refers to disposition hearings and new section 39.522 refers to postdisposition change of custody. The majority of the new sections retain the language of s. 39.508. Substantive changes include:

- providing for a disposition hearing only if the court finds that dependency has been proven;
- providing what the court needs to address at the disposition hearing;
- providing the court the ability to order all parties, not just the parents, legal custodian, and the child, to mediation;
- requiring the Department of Children and Family Services to obtain out-of-state criminal records checks when permitted by the other state's laws;
- clarifying that homestudies are required for both shelter and postdisposition placement and to provide judges with the discretion to continue placement after being fully informed of the homestudy results, so long as the court finds that the placement is in the child's best interest.

Section 10. Amends s. 39.5085, F.S., relating to the Relative Caregiver Program. The section provides that permanency in the best interests of the child can be achieved through a variety of permanency options, including long-term relative custody, guardianship, or adoption.

Section 11. Creates s. 39.522, F.S., relating to consent for medical and dental treatment. The sections provides circumstances and procedures for obtaining consent for medical and dental treatment for children placed in the custody of the department.

Section 12. Amends subsection (2) and paragraph (a) of subsection (3) of s. 39.601, F.S., relating to case plan requirements. This section provides that the case plan must be filed with the court and served on all parties whose whereabouts are known, at least 72 hours prior to the disposition hearing. In addition, this section provides that alternative permanency goals should be identified and pursued at the same time as efforts are made to reunify the child with the parents.

Section 13. Amends paragraph (a) of subsection (1) of s. 39.603, F.S., relating to court approvals of case planning, by deleting the term "shall" and inserting in its place "may" to provide permissive authority for a court to appoint a guardian ad litem. The court is given the discretion to determine if the facts of a particular case warrant the appointment of a guardian ad litem.

Section 14. Creates s. 39.621, F.S., relating to permanency determination by the court. This section is created from a restatement of current law in s. 39.001(1)(j) and 39.703(1), F.S., relating to permanency. This section provides when a permanency option is appropriate, lists specific permanency options, and provides that a permanency placement is intended to continue until the child reaches the age of majority, unless the court finds that the permanency placement is no longer in the best interest of the child.

Section 15. Creates s. 39.622, F.S., relating to long-term custody. This section was previously s. 39.508(9)(a)5.a. and b., F.S. This section is in substantially the same form as current law. In addition, this section removes from current law the agreement of the parties, as a condition of approval for a long-term custody plan, that the child could be returned to the parents' custody if the parents demonstrate a material change in circumstances and the return is in the child's best interest. This section also provides that the court be notified of any change in residence.

Section 16. Creates s. 39.623, F.S., relating to long-term licensed custody. This section was previously s. 39.508(9)(a)6.b., F.S. The section is in substantially the same form as current law but some terms have been changed to conform to the bill's intent, such as "long-term out-of-home care" to "long-term licensed custody."

Section 17. Creates s. 39.624, F.S., relating to independent living. This section was previously s. 39.508(9)(a)6.c., F.S. and has been reorganized. This section also allows for independent living to be considered a permanency option, if this type of alternative care arrangement is the most appropriate plan and that the health, safety, and well-being of the child will not be jeopardized by such an arrangement.

Section 18. Amends paragraph (b) of subsection (3) and paragraph (b) and (c) of subsection (6) of s. 39.701, F.S., relating to judicial review. This section provides that if a citizen review panel recommends extending the goal of reunification for any case plan beyond 12 months from the date the child was removed from the home or the case plan was adopted, whichever date came first, the court must schedule a judicial review hearing within 30 days after receiving the recommendation from the panel. This section also provides that the guardian ad litem report be served on all parties whose whereabouts are known. This section also replaces obsolete language with new terms.

Section 19. Amends subsection (5) of s. 39.803, F.S., relating to identity or location of parent unknown after filing of termination of parent rights petition and special procedures. This section clarifies who should conduct the diligent search required under this section, and the type of hearing before which the search should occur.

Section 20. Amends s. 39.804, F.S., relating to penalties for false statements of paternity. This section provides that criminal penalties for knowingly and willfully making a false statement concerning the paternity of a child is applicable to a mother of a dependent child or any person other than the mother.

Section 21. Amends paragraph (b) of subsection (1) of s. 39.806, F.S., relating to grounds for termination of parental rights. This section clarifies that abandonment as defined in 39.01(1), F.S., is a grounds for petitioning for the termination of parental rights.

Section 22. Amends paragraph (a) and (b) of subsection (2) of s. 39.807, F.S., relating to right to counsel and guardian ad litem. This section clarifies that the guardian ad litem's role is to represent the best interest of the child and not the child's wishes.

Section 23. Amends subsection (4) of s. 39.811, F.S., relating to powers of disposition and order of disposition. This section provides that in the case of a child who is neither in the custody of the department or the custody of a parent, and the parents' rights have been terminated, the court may order the child to be placed with a legal custodian who will either be designated a guardian or a long-term custodian, if the child has been residing with the custodian for a minimum of six months.

Section 24. Amends subsections (1) and (2) of s. 435.045, F.S., relating to requirements for prospective foster or adoptive parents. These subsections were previously in statute as s. 39.508(3)(a)(1), and have been reorganized for clarity.

Section 25. Amends paragraph (b) of subsection (3) of s. 39.0015, F.S., relating to child abuse prevention training in the district school system, to correct a cross-reference.

Section 26. Amends subsection (1) of s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment, or neglect, to correct a cross-reference.

Section 27. Amends paragraph (b) of subsection (10) of s. 409.2554, F.S., relating to definitions, to correct a cross-reference.

Section 29. Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Office of State Courts Administrator reports that this bill should have no fiscal impact.

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 take an action requiring expenditures of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state sales tax shared with municipalities.

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V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FAMILY LAW AND CHILDREN:

Prepared by:

Staff Director:

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON FAMILY LAW AND CHILDREN:

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