

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1098

SPONSOR: Judiciary Committee and Senator Garcia

SUBJECT: Foster Parents

DATE: February 26, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dowds	Whiddon	CF	Favorable
2.	Matthews	Johnson	JU	Favorable/CS
3.			AHS	
4.			AP	
5.				
6.				

I. Summary:

This bill creates the Foster Parent Act and provides the following:

- Establishes the foster parents as an integral part of the child welfare system;
- Sets forth the responsibilities of the Department of Children and Families and the responsibilities of foster parents;
- Directs the Department and foster care service providers to implement the Act and prepare an annual plan to implement the new framework in the service districts; and
- Restricts the Department’s authority to remove a child from a foster home, without court order, in those situations where the child has resided 6 months or more and the Department has denied the foster parents’ adoption application.

This bill substantially amends section 39.812 of the Florida Statutes. The bill creates section 409.1684 of the Florida Statutes.

II. Present Situation:

Florida Foster Parents

The Department of Children and Families is responsible for the establishment and the administration of the child welfare program. *See* chapter 39, F.S. (relating to dependent children) and ss. 409.145 and 409.165, F.S. Included in this program are foster homes and other appropriate facilities that can offer shelter and care to the dependent children when they must be placed away from their families. Foster homes are private residences that provide 24-hour care for children and can be found in the form of emergency shelter family homes, family foster homes, family foster group homes and specialized foster homes for children with special needs. *See* s. 409.175(2)(e), F.S. The ability to be a licensed foster home is stipulated in statute as a public trust and privilege, not an entitlement. *See* s. 409.175(1)(f), F.S.

The growing demand for foster parents and increasing difficulty in recruiting and retaining foster parents are problems that Florida and other states are experiencing. In a study conducted by the University of Florida and University of South Florida of the perspectives of foster parents, children in foster care and department staff on recruitment and retention issues, respondents reported that foster children and parents are often left on their own without support from the department but that the department was overburdened and staff were unable to do their jobs. Foster parents also complained of not being treated as a true “partner” in the care of the foster child despite what they are told in the pre-service training prior to licensure. The Casey Family Programs Foundation report, *Lighting the Way: Attracting and Supporting Foster Parents, 2000*, identified best practices for recruiting and retaining foster parents. Included in these best practices was the need for states to clarify the roles and responsibilities of foster families and provide them with training and support to succeed in their roles.

Currently, Florida Statutes, administrative rules and operating procedures governing and guiding foster parents and their role in the child welfare process focus broadly on the following areas: licensing of foster homes, provision of training, placement of a child in foster care, the foster parents involvement in the dependency process, the responsibilities of the foster parents, the responsibilities of the department to the foster parents and investigating complaints.

Licensure of Foster Homes: In order for a child to be placed in a foster home, the home must be licensed [s. 409.175(3)(a), F.S.]. The requirements a foster home must meet for licensure pertain to the operation, conduct and maintenance of the home and the responsibility assumed by the foster parents for the children they serve [s. 409.175(4)(a), F.S.].

Training for Foster Parents: The department is responsible for providing pre-service and in-service training to foster parents [s. 409.175(13), F.S.]. A minimum of 21 hours of pre-service training is required of foster parents as a condition of licensure and is provided as part of the MAPP Group Preparation and Selection program which is a 10 week course of study used to prepare and select prospective shelter, foster and adoptive parents. The specifics of the MAPP program are set forth in Rule 65C-13.009, F.A.C. Foster parents must also complete 8 hours of in-service training as a condition of license renewal.

Placement of a Child in Foster Care: A child may be voluntarily placed in foster care by his/her parents or custodians or involuntarily placed when the court has found the child dependent, pursuant to ch. 39, F.S. [ss. 409.145(2) and 409.165(3), F.S., and Operating Procedure No. 175-34, Removal and Placement of Children].

Involvement in Dependency Process: Chapter 39, F.S., provides for foster parents to be notified of judicial review, to receive copies of certain reports, to be given the opportunity to address the court regarding the child and to have their role in developing the child’s services articulated in the case plan.

Responsibilities of the Foster Parent: Rule 65C-13.010, F. A.C., sets forth the responsibilities of the foster parent to the child, to the child’s family, to the foster parent’s family and to the department. The broad overarching expectations of foster parents include giving the child love, acceptance and care, providing an opportunity for normal growth and development, and preparing the child to return to the parents or permanent placement. Specific responsibilities are

outlined relative to daily living tasks, food and nutrition, clothing and personal belongings, religion and ethnic heritage, health and education.

Responsibilities of the Department to Foster Parents: Rule 65C-13.010, F. A.C., also delineates the responsibilities of the department to the foster parent and child. The rule includes involving the foster parent as a team member, sharing of information on the child with the foster parent, involving the foster parent in all major decisions of the child and providing notice of judicial or administrative reviews. In accordance with s. 409.1753, F.S., the department is also required to provide each foster parent with a telephone number that can be used by the foster parent during normal working hours when immediate assistance is needed and the case worker is not available.

Complaint Investigations: The department is authorized to investigate complaints to determine whether the licensing requirements are being met [s. 409.175(7)(b), F.S.]. The foster home is to be advised of the complaint and provided a written report of the results of the investigation.

Adoptions by Foster Parents

Children whose parents' rights have been terminated and who are in the custody of the Department remain in placement through adoption. *See* s. 39.811(2), F.S. Foster parents of the child are considered potential adoptive families and are encouraged to adopt if they are interested. *See* R. 65C-16.005(3), F.A.C. and R. 65C-16.002(4), F.A.C. In evaluating the potential adoptive families and the appropriateness of the match for the child, the department considers such aspects as the child's choice, the adoptive families' previous child rearing experiences, commitment to respect and educate the child about his or her heritage, marital status, residence, income, adequate space and living conditions of the home and neighborhood, health, other children in the family and willingness to provide medical care. *See* R. 65C-16.005(5), F.A.C. Situations may arise in which the foster parents may not be the appropriate placement for the child, including but not limited to when: 1) the child does not want to be adopted by the foster parent, 2) the foster parent does not want to adopt the child's sibling, 3) the health status of the foster parent jeopardizes the child's opportunity for permanency or compromises the foster parent's ability to care for the child, 4) the foster parent knowingly withheld information, 5) the foster parent has returned other adopted children to the department, or 6) the foster parent has a chronic history of failing to pay child support.

All adoption applicants who have been rejected are to be reviewed by the Adoptive Applicants Review Committee. The committee consists of at least three individuals, one of whom must be the Adoption and Related Services program specialist. A written report of the committee's review is to be submitted to the department's district legal counsel with a final report to the district administrator who will make the final decision to approve or reject the applicant's adoption request.

There have been reports of significant issues arising from the removal of foster children from the homes of foster parents with whom they have long standing relationships but the foster parents application for adoption has been denied. Concerns have been expressed as to the reasons for denial of some adoption applications, the lack of opportunities to remedy issues identified that resulted in denied applications, and the need to consider the child's attachment to the foster parents or prospective adoptive parents when the adoption is being considered or denied.

III. Effect of Proposed Changes:

This bill creates the Foster Parent Act in the new section 409.1684, F.S.¹ This section states that foster parents play an integral part of the child welfare system. It sets forth legislative findings and intent relative to the essential services provided by foster parents to the children and their families and the partnership role of foster parents with other participants in the child welfare system. The legislative finding of the need for public policy regarding the role of foster parents is expressed as is the intent to enact the Foster Parent Act.

This new section provides for extensive responsibilities of the Department to a foster parent and responsibilities of a foster parent. Many of these responsibilities are already enunciated in administrative rule, operating procedures and other statutes. Following is a chart of the responsibilities identified in the newly created s. 409.1684, F.S., and the identification, if any, of comparable existing statute, administrative rule or operating procedures (referred to as CFOP) related to each responsibility.

Department Responsibilities	
<i>Created in s. 409.1684, F.S.</i>	<i>Found in Existing Statute, Rule or Operating Procedure.</i>
Treat foster parents with dignity, respect and as a professional participant.	No corresponding provision found.
Provide pre-service and ongoing training based on mutually assessed needs of foster parent.	21 hours of pre-service, via the MAPP, and 8 hours of in-service training are provided to the foster parent [s. 409.175(13), F.S., F.A.C. Rule 65C-13.003, and Rule 65C-13.009]. Mutual assessment of training needs not addressed.
Provide contact information to receive information and assistance with services.	Provide telephone number to contact department when case worker not available (s. 409.1753, F.S.). Provide names and emergency phone numbers to the foster parent. [Rule 65C-13.010(5)(p)].
Provide timely reimbursement commensurate with needs of child.	Minimum monthly foster home care board rates are set forth in memo to the District Administrators. No comparable timely reimbursement provisions, other than standard fiscal procedures.

¹ This Act is patterned after a similar act in Illinois. In 1995, Illinois enacted a Foster Parent Law which sets forth the role of foster parents in the child welfare program. The legislation articulates that foster parents are an integral part of the child welfare team and creates specific rights and responsibilities of the foster parents. These rights and responsibilities are implemented through annual plans which specify the strategies for each private agency with oversight responsibility for foster homes and regions. Minimum requirements for implementation plans are developed in rules. A Foster Parent Advisory Council is charged with monitoring the implementation of the plans' strategies and, in turn, the implementation of the foster parents' rights and responsibilities. A representative of the Illinois Department of Children and Family Services reported that the law has not resulted in any real cost increases because it reflected, to a large extent, functions either already being performed or generally expected to be performed. The law has provided a frame work for what can be expected of foster parents and the state and private agencies. One of the major effects is that foster parents have more influence in the process and more is required of foster parents.

Department Responsibilities	
<i>Created in s. 409.1684</i>	<i>Found in Existing Statute, Rule or Operating Procedure.</i>
Provide copy of agency’s case plan and subsequent changes for placement of child to ensure written understandings of agency’s plan	<p>Provide all available information on a child that would enable the foster parent to make a decision on the placement and provide appropriate care is to be provided to the foster parent [Rule 65C-13.010(5)(b) and CFOP 175-34 (4)(i)].</p> <p>A copy of the agency’s and guardian ad litem’s written report required for the judicial review must be provided to the foster parent 72 hours prior to the hearing [s. 39.701(6)(b), F.S.].</p>
Provide timely and impartial investigation of complaint. Require the department to adopt by rule matters relating to who may be present with the foster parent during the investigation, provide the right to request administrative review, and provide that corrective action plans be explained and tied to licensing standards violated.	<p>Provide investigation of complaints to determine if the home is meeting the licensing requirements. The department is to advise the home of the complaint, provide a written report of the results of the investigation, discuss the violations with the foster parents and, if not a violation that possess an immediate threat to the child, recommend a corrective action plan with time frames [s. 409.175(7) and (10), F.S., and CFOP 175-58]. An administrative review pursuant to ch. 120, F.S., is provided to foster parents in response to the department’s denial, revocation or suspension of their license (s. 120.569, F.S.).</p> <p>Stipulated process does not provide for the presence of a representative of the foster parent.</p>
Provide additional and relevant information on the child during the placement.	<p>Provide all available information on a child that would enable the foster parent to make a decision on the placement and provide appropriate care is to be provided to the foster parent [Rule 65C-13.010(5)(b), (c) and (d) and CFOP 175-34 (4)(i)].</p> <p>The department counselor is to provide consistent feedback to the foster parent on their work with the child and provide on-going information on the progress of the permanency plan [Rule 65C-13.010(5)(q) and (r)].</p>
Notify the foster parent of meetings to allow participation, of the right to be informed of decisions by the court, the department or its service providers; of the opportunity to provide input into the plan of services and full consideration thereof, and of the opportunity to communicate with other professionals providing services (including therapists, physicians, and teachers) to the child.	<p>Provide a copy of the agency’s and guardian ad litem’s written report required for the judicial review to the foster parent 72 hours prior to the hearing [s. 39.701(6)(b), F.S.].</p> <p>Give the foster parent the opportunity to address the court with any information relevant to the best interests of the child [s. 39.701(6)(d), F.S.].</p> <p>Establish in case plan the role of the foster parent in the development of the services for the child [s. 39.601(3)(e), F.S.].</p> <p>MAPP was developed to prepare the foster parents for caring for the children and for working as partners in permanency planning [Rule 65C-13.009(1)]. The foster parent is supposed to be a team member and participate in all major decisions for the children, including the development of permanency plans or visitation contracts [Rule 65C-13.010(5)(e) and (h)].</p>
Provide timely and consistent information regarding the child and the child’s family that is pertinent to the care of the child and developing a permanency plan.	<p>Provide through the department counselor consistent feedback to the foster parent on their work with the child and provide on-going information on the progress of the permanency plan [Rule 65C-13.010(5)(q) and (r)].</p>

Department Responsibilities	
<i>Created in s. 409.1684</i>	<i>Found in Existing Statute, Rule or Operating Procedure.</i>
Provide the foster parent reasonable notice of plans to terminate placement and reasons for the termination. Require the Department to adopt in rule for such termination policies and include reasonable timeframes for the child’s transition. Provide that such notice may be waived by court order or when the child is determined to be at imminent risk of harm.	Give (immediately) a copy of the amended case plan to the foster parent [s. 39.701(9)(e) and (f), F.S.]. Inform (through the department counselor) the foster parent immediately of any changes to the permanency plan [Rule 65C-13.010(5)(r)]. The department must give a minimum of two weeks notice prior to moving a child out of the foster home, except in an emergency or by order of the court [Rule 65C-13.010(5)(i)].
Notify the foster parent of all court hearings.	Serve notice of the judicial review hearing on the foster parent [s. 39.701(5)(b), F.S., and Rule 65C-13.010(5)(f)].
Consider the foster parent a placement option for a foster child formerly placed with the foster parent who is reentering the system.	Waivers to allow more than five children in the foster home may be considered to accommodate a child who has previously lived in the foster home (CFOP 175-64). Note, this only addresses circumstances where placement of the child would result in the foster home exceeding its maximum capacity.
Provide the foster parent with written copy of agency’s complaint process including policy to keep foster parents free from harassment and retaliation by the agency when voicing a complaint.	No corresponding provision found.
Inform the foster parent of his/her rights concerning reports of misconduct and the investigation and confidentiality of such reports.	Investigate immediately (the department’s protective investigative staff and family care counselor) abuse or neglect complaints against a foster parent and notify the state attorney’s office in accordance with child abuse statutes. This policy and procedure is to be discussed with the foster parent prior to licensing and with every relicensing. [Rule 65C-13.010(5)(j)]. The only misconduct identified to be investigated are complaints of violations of licensing requirements and of abuse and neglect.
Develop and implement strategies for the prevention of placement disruptions and provide assistance to children and families to hand placement disruption when it occurs.	MAPP covers the topic of prevention of placement disruptions [s. 409.175(13)(b), F.S., and Rule 65C-13.009(7)(h)].

Responsibilities of Foster Parents	
<i>Created in s. 409.1684</i>	<i>Found in Existing Statute, Rule or Operating Procedure.</i>
Communicate Openly and share information on the child with other participants in the system.	No corresponding provisions found.
Respect and act within the laws regarding the confidentiality of information	Foster parents must maintain the child’s record in an secure manner that insures confidentiality [Rule 65C-13.010(1)(c)4.].
Advocate for the children in their care.	No corresponding provisions found.
Treat the child and his/her family with dignity and respect.	The foster parent must present a positive image and demonstrate respect for the child’s family [Rule 65C-13.010(2)(a)].

Responsibilities of Foster Parents	
<i>Created in s. 409.1684</i>	<i>Found in Existing Statute, Rule or Operating Procedure.</i>
Assist in preventing placement disruptions and provide emotional support to the child and child's family if placement disruption occurs.	MAPP covers the topic of prevention of placement disruptions [s. 409.175(13)(b), F.S., and Rule 65C-13.009(7)(h)].
Be aware of the benefits of networking with other foster parents and foster parent associations.	An attribute that MAPP indicates a foster parent develop and work in partnerships with the children, children's families, department and community [Rule 65C-13.009(1)(e)5. and (7)(k)]. However, this appears to pertain to developing general partnerships, not relationships with other foster parents or associations.
Know the department's appeal process for the foster parent and rights of the foster parent.	No corresponding provision found.
Understand the importance of maintaining accurate records on the child's history and progress. Follow the department's rules and procedures.	The foster parent is responsible for maintaining records in accordance with department procedure, including progress notes [Rule 65C-13.010(1)(c)3.].
Share information with subsequent caregivers regarding the child's adjustment in the foster home.	The foster parent is responsible for preparing the child to leave the foster home and supporting the placement process [Rule 65C 13.010(1)(c)7.].
Provide services that are respectful of and maintain the child's cultural heritage and support the relationship between the child and the child's family.	The foster parent is responsible for recognizing, encouraging and supporting religious beliefs, ethnic heritage and the language of the child and family. Cultural activities are required to be incorporated into the case plan. [Rule 65C-13.010(1)(b)4. and CFOP 175-34(8)(c)]. The foster parent is responsible for maintaining a working relationship with the child's family [Rule 65C-13.010(2)].

The Department and each agency providing foster care services under contract are required to prepare a plan for implementing this section in each service district. The plan must be prepared annually and foster parents must be provided an opportunity to comment.

The bill also amends s. 39.812, F.S., relating to adoption subsequent to the termination of parental rights. In those cases in which a foster child has resided with foster parents for 6 months or more and the Department has denied the foster parents' adoption application for adoption, the Department can not remove a child from that home without a prior court order except under the following circumstances:

- 1) There is probable cause to believe that child is at imminent risk of abuse or neglect;
- 2) Thirty days have transpired following written notice to the foster parent regarding the denial of the adoption application (and no formal challenge was made by the foster parent); or
- 3) The foster parent agrees to the child's removal.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Incorporating existing responsibilities already found in rules, practices and other statutes, as well as creating new responsibilities may provide greater protection for children and foster parents and promote more accountability, higher expectations and better results from the Department and foster parents. However, more stringent requirements on the foster parents may make it more difficult for some foster homes to be licensed although these requirements may improve the quality of foster homes.

Foster parents may benefit from the expressed public policy recognition of their role in the child welfare system. Stronger and on-going emphasis on supporting and creating a true partnership with the foster parents may be instrumental in retaining good foster parents in the system.

Children residing in foster homes for 6 months or more but in which their foster parents have been denied adoption may benefit by minimizing the negative effects created by scenarios where there is an unexpected, sudden or unexplained removal from foster parents with whom a child has bonded and there was an expectation of permanency.

C. Government Sector Impact:

Although the Department of Children and Families supports the responsibilities delineated in the Foster Parent Act as representative of best practices, the Department is concerned that codifying these responsibilities may engender a right of entitlement enforceable by due process provisions for foster parents. The Department is also concerned that these responsibilities will require foster parents to be highly skilled, well-trained and adequately supported by their agencies, thus placing some foster home licenses in jeopardy for inability to comply. The Department states that additional training will be necessary to build a pool of foster parents who can perform at this high skill level. It also projects increase in staff and 1550 additional foster families to meet the needs of the children. It is estimated that the cost of additional training and recruitment and licensing staff will be \$2,942,080 for FY 2002-2003.

The Department also expressed concern regarding the restriction on the Department's ability to move a child from a foster home to a prospective adoptive home in those cases

in which the current foster parent's application for adoption has been denied. The Department asserts that this restriction potentially delays the department's statutory obligation to achieve permanency for the child.

VI. Technical Deficiencies:

None.

VII. Related Issues:

- To the extent that this bill creates new obligations for foster parents and the Department, specified rights or liabilities may be implied, particularly as some of the responsibilities are vaguely or broadly stated.
- The responsibilities of the department to foster parents under this Act do not require the agencies under contract to provide foster care services to assume any of the delineated responsibilities. The department has the sole authority for the licensing of foster homes and therefore, the responsibilities specified in the bill pertaining to licensure. However, the remaining responsibilities may be more appropriately placed with the agencies with direct oversight of the foster homes.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
