

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 288

SPONSOR: Committee on Judiciary and Senator Campbell

SUBJECT: Children

DATE: February 19, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barnes	Whiddon	CF	Fav/2 amendments
2.	Matthews	Johnson	JU	Favorable/CS
3.	_____	_____	AHS	Withdrawn
4.	_____	_____	AP	Withdrawn
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill amends the law governing proceedings under chapter 39, F.S., as follows:

- Extends to all parties the right to request continuances in all dependency proceedings;
- Limits the period of continuances and extensions of time to 60 days total within a 12 month period except for extraordinary circumstances; and
- Eliminates the mandatory 15-day periodic review hearings on shelter placement and makes them subject to the court’s discretion.

This bill substantially amends the following sections of the Florida Statutes: 39.013, 39.402, and 39.506.

II. Present Situation:

Time Frames for the Dependency Proceedings Under Ch. 39, F.S.

The federal Adoption and Safe Families Act of 1997¹ requires the Department of Children and Family Services (department) to establish court-approved permanency goals for each child within the first 12 months a child is in the department’s custody. Consequently, under current state law, one of the identified purposes of chapter 39, F.S., is “to ensure that permanent placement with the biological and adoptive family is achieved as soon as possible for every child in foster care and that no child remains in foster care longer than 1 year.” See s.39.001(1)(h), F.S. The department determines and recommends to return the child to his or her parent(s), to place the child for adoption, or to continue the child’s placement in foster care for a specified period or on permanent or long-term basis due to the child’s special needs or circumstances. In order to

¹ 111 Stat. 2115 (1997); P.L. 105-89. The law emphasizes the safety, permanency and well-being of children receiving child welfare services, and establishes a new process for the Federal review of state’s child welfare services, with a focus on outcomes.

conform to the federal requirement, the following statutory time frames guide the department’s and court’s involvement in the child’s safety and permanency process:

<i>Shelter Hearing</i>	Within 1 day (24 hours) after removal of the child from the home
<i>Filing of Dependency Petition Seeking Adjudication of Child as Dependent</i>	Within 21 days after shelter hearing
<i>Arrestment Hearing Held</i>	Within 28 days after shelter hearing
<i>Hearing to Review Shelter Placement</i>	Every 15 days after arrestment hearing until child is released
<i>Dependency (Adjudicatory)Hearing</i>	No later than 30 days after the arrestment hearing
<i>Case Plan must be filed (if not filed earlier)</i>	Within 60 days after the removal of the child from the home
<i>Disposition Hearing and Case Plan Acceptance</i>	30 days after dependency (adjudicatory) hearing
<i>Judicial Review</i>	90 days after the disposition hearing, but no later than 6 months after the child is removed from the home
<i>Judicial Review for Permanency</i>	No later than 12 months after the date the child was placed in foster care, unless there is an extraordinary situation.

Extensions to the statutory time frames are permitted under two similar statutory provisions. Section 39.013(10), F.S., relating to general provisions governing proceedings under chapter 39, F.S., provides that time limitations do not include time arising from continuances granted by the court upon the request of:

1. A child, a child’s counsel, or a child’s guardian ad litem. No specific statutory grounds are enumerated.
2. The attorney for the department or the petitioner based on unavailability of evidence material to the case or based on the department’s attorney’s or petitioner’s need for additional time to prepare the case which is justified due to an exceptional circumstance.
3. The petitioner based on need for reasonable time to provide notice to the parents.
4. The parent or legal custodial of the child. No specific statutory grounds are enumerated.

A recurring problem with the existing system is that these continuances lengthen the process well beyond the 12-month goal of permanency for the child.

Shelter Placement Review

Under current law, a child’s continued placement in shelter must be reviewed every 15 days after the initial review at the arrestment until the child is either returned home or a disposition hearing is held. *See* s. 39.402, F.S. A disposition hearing is required to be held no later than 30 days after the arrestment hearing (which can occur no later than 28 days after the shelter hearing). Therefore, a child could conceivably be in a shelter placement for as long as 2 months and very probably even longer in the event of continuances and time extensions.

This provision was revised in 1999 (in the second year of a three year effort to overhaul major provisions of chapter 39, F.S.) from requiring a one-time 15-day review to a 15-day periodic review. *See* ch. 99-193, L.O.F. The change occur in conjunction with allowing parents the right to request continuances in order to secure counsel. According to the department, its purpose was to ensure that placement was not unnecessarily prolonged and that the case was proceeding to timely to a desired outcome for the child. It has been reported anecdotally, however, that the mandatory 15-day periodic review of shelter placements has since become perfunctory in nature and engenders unnecessary costs in court and staff time.

III. Effect of Proposed Changes:

Time Frames for the Dependency Proceedings Under Ch. 39, F.S.

Sections 39.013(10) and 39.402(14), F.S., are amended, to revise provisions relating to continuances in dependency proceedings. Statutory emphasis is given to the need to adhere to time frames and to limit extensions in order to preserve the rights of the child. The bill expands the list of persons, to include any party², rather than just the department attorney or petitioner, who may request a continuance based on the grounds that evidence is not available. It also prohibits granting a continuance or extension of time in advance of circumstances creating the delay. The number of days for which continuances or extensions may be granted can not total more than 60 days within any 12 month period for dependency proceedings. An exception to this limitation will be made for extraordinary circumstances necessary to preserve the constitutional rights of a party or the child's best interests.

Shelter Placement Review

Section 39.402, F.S., is also amended, to remove the 15-day periodic review of a shelter placement. In lieu thereof, it is within the court's discretion whether to hold a review hearing for shelter placement at any time, if necessary.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

- The bill restricts the period of continuances in dependency proceedings to 60 days total within a 12-month period. To the extent some provisions of the bill may constitute matters of court practice and procedure, these provisions may be construed to infringe on judicial authority or jurisdiction under the doctrine of separation of powers. *See* Art. II, Sect. 3, Fla. Const. The Florida Supreme Court has the constitutional prerogative to "adopt rules for the practice and procedure in all courts, including the time for seeking appellate review." The Legislature can not create or modify court rules, it can repeal a court rule by 2/3 vote. *See* art. V, s.2(a), Fla. Const. The Legislature has the exclusive power to enact substantive laws. Generally substantive laws create, define and regulate rights. Court rules of practice and procedure prescribe the method or process by which a party seeks to enforce or obtain redress. *See Haven Federal Savings & Loan Assoc.*, 579 So.2d 730 (Fla. 1991).

² A party is defined to include the child, the child's parents, the petitioner, the department, the guardian ad litem or the representative of the guardian ad litem program. *See* s. 39.01(51), F.S.

When a statute is procedural in nature versus substantive has been decided on a case-by-case basis. The courts, however, have acquiesced on occasions and adopted a law as a court rule, either in part or in its entirety or expanded upon or harmonized conflicting statutory provisions relating to court procedural matters as needed. Based on a review of current law, the courts tend to find certain provisions unconstitutional such as those regarding timing and sequence of court procedures, creating expedited proceedings, issuing mandates to the courts to perform certain functions, and attempting to supersede or modify existing rules of court or intrude in areas of practice and procedure within the province of the court. *See Cort v. Broward County Sheriff, et al.*, Case No. 4D00-3883 (February 13, 2002)(provision regarding recovery of expert witness fee in s. 57.071(2), F.S., is procedural in nature and unconstitutionally intrudes on judicial powers). The jurisdiction to control the flow, process and conclusion of cases or litigation in the court system has been considered traditionally within the administrative purview of the Supreme Court. *See e.g.*, Fla. R. Jud. Admin. 2.085 (relating to case control, continuances, and time standards for concluding cases); Fla. R. Civ. P. 1.460 (continuances in civil cases); Fla. Fam. L. R. 12.460 (continuances in family law cases governed by civil rules of procedure); Fla. R. Juv. P. 8.100 (continuances in juvenile delinquency proceedings); Fla.R. Juv. P. 8.255 (continuances in dependency and termination of parental rights proceedings); Fla. R. Juv. P. 8.625 (continuances in proceedings for children and families in need of services –CINS/FINS).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may benefit children in the dependency system by reducing their length of stay caused by frequent and lengthy continuances. Cases may be processed more quickly to achieve the statutory 12-month goal toward permanency for children in the dependency system.

C. Government Sector Impact:

The bill may result in savings to the state if reductions in continuances and extensions of time actually reduce a child's time within the dependency system. It also may result in cost savings for the judicial system and the department by eliminating the mandatory 15-day periodic shelter review hearings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

- Section 39.013 (10), F.S., and s. 39.402(14), F.S., are almost identical. Section 39.013(10), F.S., is a general provision applying to continuances in all proceedings conducted under chapter 39, F.S. Section 39.402(14), F.S., is a specific provision applying to continuances solely in shelter proceedings. The co-existence of these two provisions, even as amended, raises the question of why s. 39.402(14), F.S. is necessary in light of the general provision in s. 39.013(10), F.S. There is no “dependency proceeding” per se nor is the term expressly defined but the term is generally used as an umbrella term to refer to any proceeding conducted under chapter 39, F.S., which a shelter hearing, a medical emergency hearing, an arraignment, an adjudicatory hearing on a petition for dependency, a disposition hearing, a judicial review hearing, or an adjudicatory hearing on a petition for termination of parental rights.

VIII. Amendments:

None.

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