

STORAGE NAME: h0511.cfs.doc
DATE: January 16, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CHILD & FAMILY SECURITY
ANALYSIS**

BILL #: HB 511
RELATING TO: Children/Continuance/Case Plans
SPONSOR(S): Representative(s) Cusack

TIED BILL(S):

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

- (1) CHILD & FAMILY SECURITY
 - (2) JUDICIAL OVERSIGHT
 - (3) COUNCIL FOR HEALTHY COMMUNITIES
 - (4)
 - (5)
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I. SUMMARY:

House Bill 511 expands, to all parties in child dependency court proceedings, requests for continuances due to lack of material evidence. It limits periods of time for which continuances may be granted, and removes the required 15-day shelter placement review. The bill also eliminates many content requirements of the case plan and requires the department to develop rules for case plans based on federal law.

Current statute, s. 39.01(51), F.S., provides that the parties to the proceedings are the parents, the petitioner, the department, the guardian ad litem, and the child. Current ss. 39.013(10) and 39.402(14), F.S., permit delays to the time requirements for proceedings. Continuances may be granted to the child and parents and their representation for reasonable delays. Continuances may also be granted to the department or petitioner because of lack of material evidence or exceptional circumstance.

The bill amends ss. 39.013(10) and 39.402(14), F.S., to provide for any of the parties to request continuances due to lack of evidence. The bill emphasizes the need to adhere to time frames and to limit extensions in order to preserve the rights of the child. The bill provides that a party may not be granted more than 60 days of continuances within any 12-month period. Granting a continuance or extension of the time limitations in advance of the circumstances creating the delay is prohibited.

The bill removes the required 15-day hearing to review shelter placement. In its place is the ability for the court to require a shelter hearing at any time, if necessary.

House Bill 511 also eliminates many of the specific content requirements for the case plan provided in ss. 39.601 and 39.602, F.S. In place of statutory requirements, the department is directed to adopt rules governing the content and format of case plans to comply with Title IV-E of the Social Security Act. The bill eliminates statutory requirements not specified under federal law, such as: the services in which parents are to participate, and the role of the foster parents in the development of services.

Attorneys for the state have used the prescriptiveness of case plans in ch. 39 in federal court to establish that the state has adequate jurisdiction to decide important issues of child safety in state courts.

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The effective date of the act is July 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

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

B. PRESENT SITUATION:

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

The federal Adoption and Safe Families Act 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. The department must determine for the court's approval if the child should be returned to the parent, continued in foster care for a specified period, placed for adoption, or continued in foster care on a permanent or long-term basis because of the child's special needs or circumstances.

Section 39.001(1)(h), F.S., identifies one of the purposes of ch. 39, F.S., as "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."

Chapter 39, F.S., has established the following time frames to guide the court's involvement in the child safety and permanency process:

- Shelter Hearing --Within 24 hours after removal of the child from home
- Petition Filed, seeking adjudication that child is dependent --Within 21 days after shelter hearing
- Arraignment Hearing --Within 28 days after shelter hearing
- Hearing to Review Shelter Placement --Every 15 days after arraignment hearing until child is released
- Adjudicatory Hearing --No later than 30 days after arraignment
- Case Plan must be filed (if not filed earlier) --Within 60 days after the removal of the child
- Disposition Hearing and Case Plan Acceptance --30 days after adjudicatory hearing
- Judicial Review --90 days after the disposition hearing, but no later than 6 months after the child is removed from the home
- Judicial Review for Permanency --No later than 12 months after the date the child was placed in foster care, unless there is an extraordinary situation.

Parties to the Proceedings

Section 39.01(51), F.S., provides that "Party" to the proceedings means the parent or parents of the child, the petitioner, the department, the guardian ad litem or the representative of the guardian ad litem program, and the child.

Continuances

Sections 39.013(10) and 39.402(14), F.S., permit delays to the above time requirements as a result of continuances granted to parties to the proceedings. Continuances can be granted to the child and parents and their representation for reasonable delays. Continuances can be granted to the department or petitioner because of lack of material evidence or exceptional circumstance. Section 39.013(10) and 39.402(14), F.S., provide that exceptions to the time limitations of ch. 39 can be made for:

- Reasonable delays for continuances granted at the request of the child or the child's counsel or the child's guardian ad litem.
- Reasonable delays for continuances granted at the request of the parent or legal custodian.
- Delays for continuances granted at the request of the attorney for the department or petitioner, if the continuance is granted because of an unavailability of material evidence despite due diligence and if the evidence will be available within 30 days. And, to allow the attorney for the department or petitioner additional time to prepare the case because of an exceptional circumstance.
- Reasonable delays to notice the child's parents of the hearing to the child's parents.

One problem raised by observers of the dependency process is that, while time frames have been established to provide for a child's permanency within 12 months, continuances lengthen that process well beyond the statutory time frames.

Shelter Reviews

If a child is removed from the home of the parents, then the court, at the arraignment hearing and every 15 days thereafter until the child is returned to the home or a disposition hearing is conducted, must review the appropriateness of maintaining that child in an out-of-home placement. According to the department this provision was added in 1998 because many children were left in out-of-home placements for 6 months to a year without an adjudication of dependency. Multiple continuances by various parties to the case would cause this significant delay. The frequent shelter reviews were instituted to ensure that the court would be reminded that this case was being significantly delayed.

State and Federal Statutory Requirements for Case Plans

The case plan is the document that drives the process to achieve permanency for the child. The success of the permanency process depends on an accurate determination of needs and goals for the child, and services to achieve these goals. The case plan articulates the permanency process and the course of action to meet the needs and goals for the child.

Section 471 of Title IV-E of the Social Security Act (42 U.S.C. 671) requires the development of a case plan as defined in section 475 (42 U.S.C. 675). In Florida Statutes, Sections 39.601 and 39.602, F.S., set forth Florida's requirements for a case plan that must be developed for every child

receiving services pursuant to ch. 39. F.S. State and federal statutory requirements for the case plan are compared below:

Federal Law Requirements: Sec. 675.

(A) A description of the type of home or institution in which a child is to be placed, including the safety and appropriateness of the placement and how the child plans will carry out the voluntary placement agreement or judicial determination.

(B) A plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents in order to: improve conditions in the parents' home, facilitate return of the child to his home or permanent placement, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services provided.

(C) To the extent available and accessible, the health and education records of the child, including: names and addresses of providers; grades, school record and assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement; and immunizations, known medical problems, medications; and any other relevant information.

(D) Where appropriate, for a child age 16 or over, description of the programs and services that will help such child prepare for the transition from foster care to independent living.

(E) For a child whose permanency goal is adoption or placement in another permanent home, documentation of the steps taken to find an adoptive family or other permanent living arrangement, to place the child with an adoptive family, a fit andwilling relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship—including child specific recruitment efforts such as state, regional, and national adoption exchanges and electronic exchange systems.

Comparison of State and Federal Case Plan Requirements

Florida Statutory Requirements

Federal Law Requirements

s. 39.601(1)

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| • Developed in conference with parent | --Not specified in Federal Law |
| • Written simply and in principal language | --Not specified in Federal Law |
| • Describes planned face-to-face meetings between parents and department | --Not specified in Federal Law |
| • Subject to change | --Not specified in Federal Law |

s. 39.601(2)

- | | |
|---|--|
| • Reasonable, accurate and in compliance with other court orders | --Not specified in Federal Law |
| • Description of problem being addressed by department's intervention | --Not specified in Federal Law |
| • Description of tasks for parents and services, including type, frequency, location and person accountable for service | --Plan includes services (see A, above). |
| • Measurable objectives | --Not specified in Federal Law |

s.39.601(3)

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|--|---|
| • Description of permanency goal and type of placement. Plans for adoptive placement may | --Placement provided for in (A) and (B), above. |
|--|---|

be made concurrently with efforts to return child safely home

- Description of type of home or institution where child is to be placed --Similar to (A), above.
- Description of financial support obligation to the child --Not specified in Federal Law
- Description of visitation rights and obligations of parents --Not specified in Federal Law
- Discussion of the safety and appropriateness of the placement, that it is least restrictive and most family-like. --Similar to (A), above.
- Role of the foster parents or legal custodians in development of services --Not specified in Federal Law
- Description of efforts to maintain stability of child's educational placement --Provided for in (C), above.
- Discussion of department's plans to carry out the judicial determination of the court --Similar to (A), above.
- Description of plan for assuring that services will be provided to improve the conditions of the home and facilitate the safe return of the child to the home or permanent placement --Similar to (B), above.
- Description of plan assuring that service will be provided to address the needs of the child while in out-of-home placement --Similar to (B), above.
- Written notice to parents that failure to substantially comply with case plan may result in termination of parental rights --Not specified in Federal Law
- For a child whose permanency plan is adoption or placement in another permanent home, documentation of the steps being taken to find to an adoptive family or other permanent living arrangement, to place the child in a planned permanent living arrangement, and finalize the adoption, legal guardianship or long-term custodial relationship. --Similar to (E), above.

s. 39.602 (case plans when parents do not participate)

- Specific services to be provided, the goals, plans for the child, and time for accomplishing the goals of the plan and permanence for the child --Not specified in Federal Law

Case Plan Requirements in Florida Rules and Procedures

Requirements for case plans are established for each program component in different sections of administrative rules and department operating procedures. In the Florida Administrative Code, requirements for case plans are included in: 65C-10.003, Child Protective Investigations; 65C-11.002, Ongoing Assessment and Documentation Requirements; 65C-12.008, Case Supervision Responsibilities; 65C-13.013-13.021, Substitute Care; and 65C-16.003, Case Reviews.

Department of Children and Families Operating Procedures specify case plan requirements by program component in: CFOP 175-15, Child Welfare Legal Services; CFPO 175-21, Investigative Response; CFOP 175-24, Predisposition Study; CFOP 175-32, Reasonable Efforts; CFOP 175-38, Reunification; and CFOP 175-41, Family Assessment.

Issues Regarding the Specificity of Case Plan Requirements

The department reports that questions have been raised regarding the value and impact of the detailed statutory prescription on the flexibility and effectiveness of case plans in meeting children's needs. At the same time, the department reports that the detailed prescriptiveness of the case plan in ch. 39, F.S., has worked to Florida's advantage in convincing the federal courts that the state courts have adequate jurisdiction to decide the important issues in child protection cases.

Child welfare professionals in Florida and other states believe that the meticulous case plan requirements under ch. 39, F.S., and inconsistent implementation by the department to carry out statutory requirements for case plans, have contributed to poor performance outcomes for abused children and their families. Other states, such as Ohio, have chosen to direct that case plans be standardized under rules developed by the child welfare agency that comply with content requirements of Title IV-E of the Social Security Act. Whether, as a result of this change, these states have experienced improvements in their child permanency outcomes is unknown. Operational issues regarding case planning and improved performance outcomes often require such action as higher professional standards, training, and greater staff supervision for child protection staff.

Recent Court Decision

According to the department the detailed provisions in ch. 39 of Florida Statutes regarding judicial hearings and approval of case plans and the detailed statutory requirements for case plans are necessary to meet the conditions of the settlement of a recent lawsuit in federal court.

Judge Moreno, US District Court, Miami, in his December 4, 2001 decision in the Bonnie L. vs. Jeb Bush case (00-2116-CIV-Moreno), stated that he dismissed the suit against Florida's foster care system because the detailed requirements for state dependency court hearing and case plan approval, and the statutory requirements for case plans, gave state courts primary responsibility for protecting the safety of the child. Judge Moreno argued that the state court's primary responsibility for child safety in state law, should not be overridden by the federal courts.

C. EFFECT OF PROPOSED CHANGES:

House Bill 511 expands the parties who can request continuances for all court proceedings under ch. 39, F.S., while limiting the circumstances and number of continuances that can be requested. The required 15-day hearing to review shelter placement and the statutory specifications for the case plan are removed. The Department of Children and Family Services is directed to adopt rules governing the content and format of case plans to comply with Title IV-E of the Social Security Act, 42 U.S.C. 671 and 675 (1980), as amended.

This bill substantially amends ss. 39.013, 39.402, 39.506, 39.601 and 39.602, of the Florida Statutes.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends section 39.013, F.S.,--Procedures and jurisdiction; right to counsel.--

The bill expands to any party to a dependency hearing, in addition to the attorney for the department and the petitioner, the provision that they can request a continuance due to material evidence not being available.

The bill limits continuances and extensions, to the number of days absolutely necessary to complete a task to preserve rights of a party or best interests of the child. Specifies that time limitations are a right of the child and the best interests of the child are timely handling of dependency proceedings as set for in ch. 39, F.S.

Requires that a party may not be granted more than 60 days in continuances or extensions during dependency proceedings within any 12-month period, except under extraordinary circumstances necessary to preserve the constitutional rights or best interests of child.

Section 2. Amends subsections (14) and (16) of section 39.402, F.S., --Placement in shelter—

Provides the same changes as section 1 of the bill:

Expands who may request a continuance or extension of time due to lack of material evidence from the attorney for the department or petitioner, to any party under provisions of ch. 39.402(14)(b)1, F.S.

Limits continuances and extensions to the number of days absolutely necessary to complete a task to preserve rights of a party or best interests of the child and specifies that time limitations are a right of the child and the best interests of the child are timely handling of dependency proceedings as set for in ch. 39, F.S.

Requires that a party may not be granted more than 60 days in continuances or extensions within any 12-month period during dependency proceedings, except under extraordinary circumstances necessary to preserve the constitutional rights or best interests of the child.

Section 3. Amends subsection (8) of section 39.506, F.S.,--Arrestment hearings—

Removes requirement that the court continue to review child's placement in shelter every 15 days.

Section 4. Amends subsections (2) and (3) of section 39.601, F.S., and adds new subsection (11)—Case plan requirements—

Removes detailed requirements for the contents of case plans and adds the requirement that the department adopt rules regarding case plan content that must comply with requirements of Title IV-E of the Social Security Act, 42. U.S.C. 671 and 675.

Section 5. Amends section 39.602, F.S., --Case planning when parents do not participate and the child is in out-of-home care—

Removes subsection (3) regarding specific content required in the case plans.

Section 6. Set the effective date of the bill as July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

The department reports that there would be one-time costs for rule promulgation when removing the case plan requirements from Florida Statutes and including them in Florida Administrative Code.

	FY 2002-2003	FY 2003-2004
Non-recurring Expenditures:	\$15,000	None
Recurring Expenditures:	None	None

B. **FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

N/A

2. Expenditures:

N/A

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

N/A

D. **FISCAL COMMENTS:**

The department states that the bill has the potential to result in a cost savings for the state because a reduction in continuances could reduce the length of time that a child remains in the dependency system.

By eliminating the requirement that a shelter hearing be held every 15 days, the bill has the potential to result in cost savings for the judicial system and a savings of staff time for the department.

The department reports that there would be one-time costs for rule promulgation when removing the case plan requirements from Florida Statutes and including them in the Florida Administrative Code. These costs would again be incurred whenever these rules change to correspond with changing federal requirements. Costs are variable depending on the length and complexity of the rule and the necessity of public hearings. The estimated cost of \$15,000 assumes the development of a relatively simple rule of approximately one page in length and assumes that public hearings would be held in north, central, and south Florida.

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:**

The bill will not reduce the authority of municipalities and counties to raise revenues.

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

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CHILD & FAMILY SECURITY:

Prepared by:

Staff Director:

Glenn Mitchell

Robert Brown-Barrios