

STORAGE NAME: h0511s1.cfs.doc
DATE: January 25, 2002

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

BILL #: CS/HB 511
RELATING TO: Children/Continuance/Case Plans
SPONSOR(S): Committee on Child & Family Security and Representative(s) Cusack & others

TIED BILL(S):

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

- (1) CHILD & FAMILY SECURITY YEAS 7 NAYS 0
 - (2) JUDICIAL OVERSIGHT
 - (3) COUNCIL FOR HEALTHY COMMUNITIES
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

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 to 60 days per year, and removes the required 15-day shelter placement review.

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.

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.

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.

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

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends subsection (10) of 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. 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:

N/A

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.

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

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

CS/HB 511 differs from HB 511 in the following ways:

The Committee Substitute removed Section 4 and Section 5 from the bill, removing from HB 511 all provisions relating to case plans.

VII. SIGNATURES:

COMMITTEE ON CHILD & FAMILY SECURITY:

Prepared by:

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