HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1521 Children in Out-of-Home Placements
SPONSOR(S): Barreiro
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1732

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee		Shaddock	Bond
2) Health Care Appropriations Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Abused, neglected, abandoned and orphaned children are placed in the foster care system under the supervision of the Department of Children and Family Services ("DCF"), pending reunification with their parents, adoption, or other placement as appropriate. Foster parents and their foster children sometimes develop close emotional bonds that are harmed when the foster children are removed from the foster home. Current law places some limits upon moving a dependent child after a disposition hearing has been conducted and the dependent child is in a placement.

This bill further limits the ability of DCF to move a dependent child from a current out-of-home placement by creating a rebuttable presumption that it is in the best interests of a dependent child who has resided in a particular out-of-home placement for one than 1 year to remain in that placement with the foster parent as the permanent custodian.

The bill also requires that a foster child who has been denied developmental disabilities services must be given an opportunity for an administrative hearing before the Division of Administrative Hearings (DOAH).

The Department of Children and Family Services estimates that this bill may have a recurring negative fiscal impact on state revenues of $16 million annually commencing in FY 2005-2006. This bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families -- This bill may provide stability for foster children, but may interfere with reunification of such foster children with their parents.

B. EFFECT OF PROPOSED CHANGES:

Background - Moving Foster Children

Chapter 39, F.S., provides for proceedings regarding dependency of minor children. A dependent child is one that is dependent upon the state for services due to abuse, neglect, abandonment, or death of the parents or guardian. Once a child is adjudicated dependent, the court has the power by order to:

- Require the parent or the legal custodian and the child, to participate in necessary treatment and services;
- Require the parties to participate in dependency mediation; and
- Require placement of the child either under the protective supervision of an authorized agent of the Department of Children and Family Services ("DCF"), in the home of one or both of the child's parents, in the home of a relative of the child, with another adult approved by the court, or in the custody of the DCF.[1]

In 2000, the legislative enacted s. 39.522, F.S., regarding change of custody after the disposition hearing. The statute provides:

- A child who has been placed in the child's own home under the protective supervision of an authorized agent of the department, in the home of a relative, in the home of a legal custodian, or in some other place may be brought before the court by the department or by any other interested person, upon the filing of a petition alleging a need for a change in the conditions of protective supervision or the placement.
- If the parents or other legal custodians deny the need for a change, the court must hear all parties in person or by counsel, or both. Upon the admission of a need for a change or after such hearing, the court must enter an order changing the placement, modifying the conditions of protective supervision, or continuing the conditions of protective supervision as ordered.
- The standard for changing custody of the child is the best interest of the child.
- If the child is not placed in foster care, then the new placement for the child must meet the home study criteria and court approval pursuant to this chapter.
- In cases where the issue before the court is whether a child should be reunited with a parent, the court must determine whether the parent has substantially complied with the terms of the case plan to the extent that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by the return of the child to the home.

[1] 25 Fla. Jur. 2d, Family Law s. 273.

Section 39.701(9)(f), F.S., requires the dependency court to review a child's permanency no later than 12 months after a child was sheltered.[2] Section 39.621, F.S., identifies adoption as the primary permanency option when reunification with a parent is not appropriate.

Section 39.812(4), F.S., provides that, when the department denies foster parents' applications to adopt a child, the Department of Children and Families ("department") must obtain court approval in order to remove the child from the foster home if the child has resided there for at least 6 months.

If the parents or other legal custodians deny the need for a change, the court must hear all parties in person or by counsel, or both. Upon the admission of a need for a change or after a hearing, the court can order a change in the placement, modify the conditions of supervision, or continue the conditions of supervision. If the child is not placed in foster care, then the new placement for the child must meet the home study criteria and court approval pursuant to ch. 39, F.S.[3]

Effect of Bill - Moving Foster Children

This bill first adds foster homes to the list of placements from which a child can be moved pursuant to a postdisposition change of custody. Further, the bill expands who a court must hear in determining the need for a change in custody. If a need for a change of custody has been denied, the court must hear all parties in including the custodian and the interested persons.

The bill also creates a rebuttable presumption that continued placement with the custodian of a child in an out-of-home placement as in the best interest of the child if the child has resided in the same out-of-home placement for more than 1 year. This presumption may not be rebutted solely by the wishes of a parent or by placing the child with a person who is biologically related to the child but who is not living with a parent.

Background - Certain Disability Hearings

All persons who have been denied federally-funded developmental disability services or other public benefits, including foster children, are entitled to a fair hearing conducted by the Office of Appeal Hearings. The fair hearing process is designed to provide relatively rapid and easily accessible due process proceedings to contest the denial, reduction or termination of benefits or services. The fair hearings process is conducted according to federal and state law and rules that ensure the individual's right to due process is protected.[4] Applicants for or recipients of public benefits have the right to appeal an adverse decision in a fair hearing to the District Court of Appeal, but the agency may not seek an appeal.[5]

Effect of Bill - Certain Disability Hearings

Finally, the bill directs that all decision affecting developmental disability benefits of dependent children, who are in the custody of the department, be heard by an administrative law judge, regardless of the facts.

C. SECTION DIRECTORY:

Section 1 amends s. 39.522, F.S. to provide a rebuttable presumption in out-of-home placements.

Section 2 amends s. 63.082, F.S. to include a cross-reference to the rebuttable presumption.

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[2] Sheltered is defined in s. 39.01(64), F.S. as "a placement with a relative or a nonrelative, or in a licensed home or facility, for the temporary care of a child who is alleged to be or who has been found to be dependent, pending court disposition before or after adjudication."
[3] 25 Fla. Jur. 2d, Family Law s. 279.
[4] *See, e.g.,* 42 U.S.C. 1396a(3); 42 CFR 431.200, et seq; s. 409.285, F.S.
[5] Sections 120.68, 409.285, F.S.

Section 3 amends s. 120.80, F.S. to require that hearings be conducted by an administrative law judges in cases involving children with developmental disabilities who are in the custody of the department.

Section 4 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Department of Children and Family Services estimates that this bill may cause the loss of federal matching funds resulting in a loss of $15,952,857.80 annually commencing in FY 2005-2006.

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:

Department of Children and Families Comments

> As of January 31, 2006, there were 8,228 children in licensed out-of-home care classified as Title IV-E Eligible/Reimbursable. As of December 31, 2005, the federal share of the average quarterly cost for these IV-E clients is $1,938.85. A statutory rebuttable presumption regarding the appropriateness of a particular placement, without consideration of case specifics as required by Safe Families and Adoptions Act,, has the potential to cost Florida all or a significant portion of that federal share, up to an anticipated maximum of $15,952,857.80. This does not include the concurrent loss of federal administrative or training funds. However, the legislature could choose to continue state matching funds, in order to provide a reduced level of services.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Department of Children and Families Comments:

Page 2, lines 38-39 which describe who has standing to participate in a postdisposition change of custody hearing, the term “other legal custodians” is changed to “other custodians” and “guardians” is added. These changes will give foster parents the standing to object to a modification of placement, even if that modification were actually reunification with a parent.

Page 2, Lines 38-40, provide that the court shall hear, in addition to all parties, “the custodian and the interested persons in person or by counsel” not only reinforces the provision of standing as discussed above for foster parents, but gives party standing to interested persons who would otherwise be, at best, participants. In other words, foster parents and other interested persons would now be entitled to ask the court for relief in regard to children to whom they have no legal rights.

This bill first adds foster homes to the list of placements from which a child can be moved pursuant to a postdisposition change of custody. This change creates an anomaly, since s. 39.522, F.S., actually provides for modification of legal custody, not modification of physical placements. A foster home is only a physical placement. The actual temporary legal custodian, when a child is in a foster home, is the department. As the legal custodian, the department determines the particular licensed foster care placement for a foster child. Court interference with this determination would violate the separation of power between the judicial and executive branch.

This bill would effect a dramatic expansion of foster parents’ rights to custody of dependent children far beyond what the Legislature has provided for in ss. 39.521 or 409.175, F.S. The bill would create a new impediment to the primary goal of reunification, and would create a new ground for litigation in the dependency proceeding that could substantially delay permanency decisions, to the detriment of the child. The bill would, therefore, make it more difficult to comply with the AFSA time parameters.

The bill also adversely impacts the reunification goal by creating a rebuttable presumption that an out-of-home caregiver is the placement that is in the best interest of the child when the same out-of-home placement has continued for more than 12 months. Currently, parents are required by state law to complete case plans within 12 months of a child’s removal from the home. The 12-month deadline can be extended under extraordinary circumstances. The effect of the proposed rebuttable presumption would be that, after 12 months, the child’s parents would be required to prove that they are superior to the out-of-home placement in order to be reunified with the child upon resolution of the extraordinary circumstances.

There is no “permanent custodian” (see page 2, lines 49-50) currently provided under ch. 39, F.S. Long-term custody is a permissible permanency goal

pursuant to s. 39.622, F.S. The “permanent custodian” referenced by the bill appears to be incorporate a concept from another current bill, SB 1080, which would replace the permanency option of “long-term custodian” with “permanent guardian”. The language in the two bills, however, is different. The bill would create a de facto change in the case plan goal on the 366th day of the case, notwithstanding whatever findings a court made regarding the final case plan goal at a permanency hearing prior to the end of the 1st year of an out-of-home placement.

The bill appears to conflict with the Safe Families and Adoptions Act ("ASFA")[6] requirements. AFSA requires the finalization of the case plan goal within 12 months of a child’s removal from the home. The case plan goal must be in the best interests of a child, based on the facts and circumstances of that particular child’s case. [*See* 45 C.F.R. s. 1356.21(d).] A statutory rebuttable presumption that remaining in a particular placement with a particular person as “permanent custodian” is in a child’ best interests is in direct conflict with ASFA requirements.

The language in the bill conflicts with ss 120.569 and 120.57, F.S., because it would direct that all decisions affecting developmental disability benefits of dependent children be heard by an administrative law judge (ALJ), regardless of whether there were disputed issues of material fact. The bill would also place Florida in potential violation of federal law. Subsection 120.80(7), F.S., currently exempts *all* federally funded public benefits decisions from being heard by an administrative law judge, because the federal hearing procedures and requirements (*see* 42 CFR s. 431.200, et seq.) are different from those in ss. 120.569 and 120.57, F.S., and from the Uniform Rules of Procedure that apply to administrative proceedings in Florida. *See* ch. 28-106, F.A.C. To the extent that the federal procedures are different, adherence to the State of Florida Division of Administrative Hearings ("DOAH") requirements would be unlawful.

Additionally, providing that such cases be heard in DOAH would greatly delay their resolution. The Office of Appeal Hearings generally schedules and hears these cases more quickly than DOAH could. Furthermore, the Office of Appeal Hearings has final order authority in these cases, whereas DOAH would not. The client would be required to wait for DOAH to render a Recommended Order, and then for the agency to prepare and issue a Final Order, before the issue were resolved or even ripe for appeal to the District Court of Appeal.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

[6] 42 U.S.C. s. 620, et seq.