

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: PCS/SB 1048

INTRODUCER: Children, Families and Elder Affairs Committee

SUBJECT: Child Welfare

DATE: February 18, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Jameson	CF	Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

Proposed Committee Substitute for Senate Bill 1048 gives the Department of Children and Families (DCF or "the department") authority to adopt administrative rules relating to children who become missing while they are involved with the department. The bill amends ch. 39, F.S., to clarify that it is the responsibility of the department and its contracted providers to make reasonable efforts to locate a child whose whereabouts become unknown and to report the child as missing. The bill amends s. 937.021, F.S., to require law enforcement agencies to accept reports of missing children from the department or its contracted providers, as well as from the parent or guardian of the child. The bill amends s. 787.04(3), F.S., making it unlawful to knowingly and willfully remove a minor from the state or conceal the location of a minor, after receiving constructive or actual notice of a pending dependency proceeding or abuse investigation involving the minor.

The bill amends s. 39.806, F.S., adding new grounds for terminating parental rights, and creates s. 39.8061, F.S., requiring courts to consider certain factors when determining whether termination of parental rights is the least restrictive means of protecting a child. The bill amends s. 39.8055, F.S., to conform Florida law to federal requirements under the Adoption and Safe Families Act.

The bill further amends ch. 39, F.S., changing the definitions of "abandoned," "harm," and "relative," and adding a definition for "child who has exhibited inappropriate sexual behavior."

The bill clarifies requirements for background screening of caregivers, provides exceptions to the requirement that all child protective investigations be closed within 60 days, requires that notice of proceedings be given to foster and preadoptive parents, authorizes a court to enter an

injunction in child welfare case that addresses domestic violence issues, and permits a court to grant an exception to the requirement that a predisposition study be filed.

The bill amends s. 63.032, F.S., changing the definition of "relative."

The bill amends s. 322.142, F.S., to allow the Department of Highway Safety and Motor Vehicles to give DCF access to information contained in its database for purposes of identifying persons who are the subject of child protective investigations.

The bill amends s. 402.410, F.S., making significant changes to the Florida Child Welfare Student Loan Forgiveness Program.

The bill amends s. 409.401, F.S., to align Florida law with the revised Interstate Compact on the Placement of Children.

The bill amends ch. 2007- 174, L.O.F., to allow the department additional time to complete its reorganization process.

This bill substantially amends the following sections of the Florida Statutes: 39.01, 39.021, 39.0138, 39.201, 39.301, 39.307, 39.401, 39.502, 39.504, 39.507, 39.521, 39.701, 39.8055, 39.806, 63.032, 322.142, 402.313, 402.3131, 402.401, 409.175, 409.401, 409.404, 787.04, 937.021, 985.04, ch. 2007-174, L.O.F., 39.0015, 39.205, 39.302, 39.6011, 39.828, and 419.001; creates the following sections of the Florida Statutes: 39.0141 and 39.8061; and repeals the following sections of the Florida Statutes: 409.402 and 409.403.

II. Present Situation:

Missing Child Reports

(See Sections 4 and 24 of PCS for SB 1048)

In Florida, pursuant to s. 937.021(1), F.S., local law enforcement agencies are mandated to accept a report that a child is missing, but only if the report is filed by the child's parent or guardian. Law enforcement agencies are not required to accept or investigate missing children reports that are filed by the department or by the department's contracted providers.

Children who are involved with the department sometimes become missing *because* their parents or guardians, who are the only individuals from whom a law enforcement agency must take a report, abscond with them or fail to prevent or report their absence. According to the department, the potential refusal or reluctance of law enforcement agencies to accept reports of missing children is of particular concern in two types of cases: those involving children who become missing while an abuse investigation is pending and those who become missing after they have been placed under the department's protective supervision. In both situations, the child remains in the legal custody of the parent or guardian, and law enforcement agencies are often reluctant to interfere with parental rights by accepting a report that the child is missing. This is especially true in cases where the child is still living with the parent or guardian.¹

¹ The Florida Senate, Committee on Children, Families and Elder Affairs, *Missing Children* (Interim Project Report 2008-106) (October 2007) at p. 4 -5.

Because local law enforcement agencies are not required by law to accept reports of missing children from DCF or its contracted providers, cases of children who become missing while they are involved with the department sometimes go uninvestigated. Without guidelines, law enforcement protocols for accepting missing child reports from DCF or its contracted providers vary across the state and missing children may be put in harm's way when law enforcement delays or declines to act.²

**Linking Reports of Missing Children to Adult Records
(See Section 23 of PCS for SB 1048)**

When an adult absconds with a child who is involved with the department, and a local law enforcement agency *does* accept a missing child report on the child, the agency may also accept a report regarding the adult, enter the adult into the criminal databases, either as wanted on a warrant or as missing, and link the adult's record to the child's record. The ability to link the records in the databases facilitates the location of the child, since the likelihood of a law enforcement officer looking up an adult in the database (e.g., at a traffic stop) is greater than the likelihood of an officer looking up the child.³

While there is understandable reluctance on the part of law enforcement to list an adult as missing in the absence of any reason other than that a child is missing, it is unclear why adults are not more often entered as wanted pursuant to s. 787.04(3), F.S.⁴

Section 787.04(3), F.S., makes it unlawful for any person, with criminal intent, to lead, take, entice, or remove a minor from the state, or to conceal the location of a minor, under the following circumstances:

- During the pendency of a dependency proceeding affecting the minor; or
- During the pendency of any investigation, action, or proceeding concerning the alleged abuse or neglect of the minor.

The statute requires that the defendant must have had notice of the pending proceeding, investigation, or action, and that he or she must have acted without the permission of a state agency or court.⁵ It is a defense that a person acted with the belief that the action was necessary to protect the child from abuse.⁶ Violation of s. 787.04, F.S., is a third degree felony.⁷ Section 787.04(3), F.S., appears to allow, if not require, law enforcement to issue arrest warrants for adults who abscond with children under the circumstances described, and to enter them in the data bases as wanted, while entering the children as missing. This rarely occurs, however, suggesting that actual use of the statute is limited.⁸ Barriers to enforcement include insufficient

² In some cases, although not required by statute or rule, law enforcement agencies will only accept a missing child report from DCF or a contracted provider upon receipt of an order that "authorizes" law enforcement to take a particular child into custody and deliver the child to the care or supervision of DCF. *Id.* at p. 3.

³ *Id.* at p. 6.

⁴ According to FDLE, less than one percent of cases involving missing children are linked in the databases to a case identifying an adult as missing or wanted. *Id.*

⁵ Section 787.04(3), F.S.

⁶ Section 787.04(5), F.S.

⁷ Section 787.04(6), F.S.

⁸ The Florida Senate, Committee on Children, Families and Elder Affairs, *Missing Children* (Interim Project Report 2008-106) (October 2007) at p. 6.

evidence that a parent or guardian had notice as required by the statute, and inadequate training of law enforcement officers, as well as of department and provider staff, as to the effective use of the statute.⁹

In addition, s. 787.04(3), F.S., requires “criminal intent” but it may be more precise and more prosecutable to require that the defendant acted “knowingly and willfully” after receiving actual or constructive notice of the pending proceeding, investigation or action.¹⁰

DCF Policies and Procedures Regarding Missing Children (See Section 2 of PCS for SB 1048)

The department does not have specific rulemaking authority with respect to the reporting, location and recovery of children whose whereabouts are unknown, but it relies on the following to manage cases of missing children:

- Missing Children Guide, Reporting, Location, Stabilization and Prevention;¹¹
- Operating Procedure: Prevention, Reporting and Services to Missing Children;¹² and
- Administrative Rule: Missing Children.¹³

Although these documents provide guidelines for the department and its contracted providers, they are, in some respects, inconsistent, incomplete or unclear. In addition, neither the Missing Children Guide nor the Operating Procedure is enforceable against DCF’s contracted providers or local law enforcement agencies.

Termination of Parental Rights and Permanency (See Sections 1, 13, 14 and 15 of PCS for SB 1048)

During the fall of 2007, the Senate Committee on Children, Families and Elder Affairs conducted public hearings around the state to allow foster parents, service providers, adoptive families and adoption agencies to present their ideas for a more effective and efficient foster care and adoption process in Florida. Many of the individuals who testified at the public hearings spoke to issues regarding termination of parental rights and permanency.

Termination of Parental Rights Generally

Florida courts have long recognized that parents have a “fundamental liberty interest in determining the care and upbringing of their children free from the heavy hand of government paternalism.”¹⁴ The right of parental privilege is not absolute, but is limited only by the principle that the welfare or “best interest” of the child is paramount.¹⁵

⁹ *Id.*

¹⁰ *Id.* See also, *State v. Mancuso*, 652 So.2d 370 (Fla. 1995); *Mogavero v. State*, 744 So.2d 1048 (Fla. 4th DCA 1999).

¹¹ Developed by DCF, community-based care providers and FDLE (December 2006). The Guide describes when and how a caregiver should report a child as missing and how to work with local law enforcement to recover a child.

¹² CFOP No. 175-85 (October 17, 2002). The Operating Procedure defines “missing children” and provides instruction on the reporting, recovery, prevention and stabilization of missing children,

¹³ Fla. Admin. Code Ann. r. 65C-30.019 (2006) prescribes the responsibilities of caregivers when children under investigation or protective supervision are believed to be missing.

¹⁴ *Padgett v. Department of Health and Rehabilitative Services*, 577 So.2d 565, 570 (Fla. 1991). See also, *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

¹⁵ *Padgett*, 577 So.2d at 570 (Fla. 1991).

Although a parent's interest in maintaining parental ties is essential, a child's entitlement to a safe environment is more so.¹⁶ Because the State has a compelling interest in protecting its children, it may permanently and involuntarily terminate parental rights, but only after showing by clear and convincing evidence that the parent poses a "substantial risk of significant harm to the child."¹⁷ In addition, because termination of parental rights implicates a fundamental liberty interest, termination must be the least restrictive means of protecting the child.¹⁸

Recognizing these constitutional principals, the framework for terminating parental rights in Florida requires the State to establish with clear and convincing evidence (1) the existence of statutory grounds; (2) that termination is in the child's best interest; and (3) that termination is the least restrictive means of protecting the child.¹⁹ The "least restrictive means" analysis is not required or defined by statute.

In prospective abuse cases, the department must prove a connection between past acts of abuse and the prospect that abuse will occur again. The issue in prospective abuse cases is whether future behavior adversely affecting the child can be "clearly and certainly predicted."²⁰

Grounds for Termination of Parental Rights in Florida

A proceeding to terminate parental rights may be initiated by the department, the guardian ad litem or any other interested person.²¹ The petition for termination must include allegations that one of the grounds for termination has been met, that the parents were informed of their right to counsel, and that termination is in the best interest of the child.²²

Unless certain exceptions apply, the department is mandated to file a petition to terminate parental rights if:

- At the time of the 12-month judicial review hearing, a child is not returned to the physical custody of the parents;
- A child has been in out-of-home care under the responsibility of the state for 15 of the most recent 22 months;
- A parent has been convicted of murder or manslaughter of the other parent, or of a felony battery that resulted in serious bodily injury to the child or to any other child of the parent; or
- A court determines that reasonable efforts to reunify the child and parent are not required.²³

Pursuant to s. 39.806(1), F.S., the following are grounds for the termination of parental rights in Florida:

(a) Voluntary surrender;

¹⁶ *Id.* at 571.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *T.C. v. Department of Children and Families*, 961 So.2d 1060, 1061 (Fla. App. 4 Dist. 2007). *See also*, s. 39.809 (1), F.S.

²⁰ *T.M. v. Department of Children and Families*, 971 So.2d 274 (Fla.App. 4 Dist. 2008). *See also*, *Hodgson v. Minnesota*, 497 U.S. 417, 484 ("...a State cannot terminate parental rights based upon a presumption that a class of parents is unfit without affording individual parents an opportunity to rebut the presumption.").

²¹ Section 39.802(1), F.S.

²² Section 39.802(4), F.S.

²³ Section 39.8055, F.S.

- (b) Abandonment;
- (c) Conduct that demonstrates that the continuing involvement in the parent-child relationship; threatens the life, safety, well-being, or physical, mental, or emotional health of the child, irrespective of the provision of services;
- (d) Incarceration (under certain circumstances);
- (e) Failure to comply with the case plan;
- (f) Egregious conduct that threatens the life, safety, or health of the child or the child's sibling;
- (g) Aggravated child abuse, sexual battery or sexual abuse, or chronic abuse;
- (h) Murder, voluntary manslaughter, or felony assault of the child or another child; and
- (i) Parental rights to a sibling have been terminated involuntarily.

Reasonable efforts to preserve and reunify families are not required if a court determines that any of the events described in paragraphs (1)(e)-(i) has occurred.²⁴

In determining the best interests of the child, the court must consider and evaluate all relevant factors, including the parents' ability to provide and care for the child, the mental and physical health needs of the child, and the emotional ties between the parents and child.²⁵

Section 39.811(6), F.S., provides that the parental rights of one parent may be severed without severing the parental rights of the other parent only under certain, specified circumstances, one of which is if the parent whose rights are being terminated meets any of the grounds specified in s. 39.806 (1)(d) and (f)-(i), F.S.

Federal Requirements

(See Section 13 of PCS for SB 1048)

Enacted in 1997, the Adoption and Safe Families Act (AFSA) amended Title IV-E of the Social Security Act in an effort to provide additional safety and permanency for children in foster care. To this end, AFSA requires states to file or join a petition to terminate parental rights in at least the following three circumstances unless certain specified exceptions apply:

- The child has been in foster care for 15 of the most recent 22 months;
- The child is an abandoned infant; or

²⁴ Section 39.806(2), F.S. *See also*, s. 39.521(1)(f), F.S.

²⁵ Section 39.810, F.S., identifies the following factors to be considered by a court: (1) availability of a permanent custody arrangement with a relative of the child; (2) ability of the parent to provide the child; (3) capacity of the parent to care for the child; (4) mental and physical health needs of the child; (5) love, affection, and other emotional ties existing between the child and the parent; (6) likelihood of an older child remaining in long-term foster care upon termination; (7) child's ability to form a significant relationship with a parental substitute and the likelihood that the child will enter into a more stable and permanent family relationship as a result of permanent termination; (8) length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity; (9) depth of the relationship existing between the child and the present custodian; (10) reasonable preferences and wishes of the child; (11) recommendations for the child provided by the child's guardian ad litem or legal representative.

- The parent has murdered or committed voluntary manslaughter of another child of the parent, or has aided or abetted, attempted, conspired or solicited to commit such murder or manslaughter, or has committed a felony assault resulting in serious bodily injury to the child or another child of the parent.²⁶

Placement of Subsequent Siblings

(See Section 1 and 16 of PCS for SB 1048)

Section 39.01(63), F.S., defines "relative" as a "grandparent, great-grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, niece, or nephew, whether related by the whole or half blood, by affinity, or by adoption." A stepparent is specifically excluded from the definition.

Research indicates that maintenance of sibling bonds is "crucial to child development and adjustment, especially for children who are separated from the only homes and parents they have ever known . . . Brothers and sisters provide emotional support, comfort, and a sense of stability, belonging and continuity . . . Siblings also play a crucial role in the development of one's identity and self-esteem."²⁷ If the adoptive parent of a child who was adopted from the child welfare system is identified as a relative as to a biological sibling of the adopted child who later enters the system, permanency for the subsequent child may be expedited and siblings may benefit from placement together.

Child-on-Child Sexual Abuse Investigations

(See Sections 1, 5, 7 and 25 of PCS for SB 1048)

Chapter 39, F.S., defines an "alleged juvenile sexual offender" to be a child 12 years of age or younger who is alleged to have committed a sexual crime or to have committed "juvenile sexual abuse," meaning any sexual behavior which occurs without consent, without equality, or as a result of coercion. Juvenile sexual offender behavior can range from no contact sexual behavior, such as making obscene phone calls, to varying degrees of direct sexual contact.²⁸ Typically, "juvenile sexual abuse" is the term used to describe child-on-child sexual activity.

Section 39.201(2), F.S., requires the department to accept for protective investigation certain reports, including reports involving a known or suspected juvenile sexual offender.²⁹

Section 39.307, F.S., titled "Reports of Child-on-Child Sexual Abuse," directs the department, upon receiving a report of juvenile sexual abuse, to assist the family in receiving appropriate services and to adhere to certain procedures with respect to the case. Specifically, the department is required to perform an assessment of risk and to complete a service and treatment needs report within seven days of receipt of the report involving a juvenile sexual offender. The department must classify the outcome of this initial report in one of the following ways:

- Report closed. Services were not offered to the alleged juvenile sexual offender because the department determined that there was no basis for intervention.

²⁶ 42 U.S.C. s. 675(5)(E)(2006).

²⁷ Emily Kernan, *Keeping Siblings Together Past, Present and Future*, Youth Law News (October - December 2005).

²⁸ Section 39.01(7), F.S.

²⁹ Section 39.201(2)(f), F.S.

- Services accepted. Services were offered to the alleged juvenile sexual offender and accepted by the caregiver.
- Report closed. Services were offered to the alleged juvenile sexual offender, but were rejected by the caregiver.
- Notification to law enforcement. Either the risk to the victim's safety and well-being cannot be reduced by the provision of services or the family rejected services, and notification of the alleged delinquent act or violation of law to the appropriate law enforcement agency was initiated.
- Services accepted by victim. Services were offered to the victim of the alleged juvenile sexual offender and accepted by the caregiver.
- Report closed. Services were offered to the victim of the alleged juvenile sexual offender, but were rejected by the caregiver.³⁰

Criminal History Records Checks for Caregivers (See Sections 3, 8 and 19 of PCS for SB 1048)

Under current law, the department is required to conduct criminal history records checks for "all persons being considered by the department for approval for placement of a child."³¹ A criminal history records check may include the submission of fingerprints to the Federal Bureau of Investigation (FBI) and the Florida Department of Law Enforcement (FDLE), as well as checks through local law enforcement agencies.³² The department may not place a child with any person whose criminal history records check discloses that the person has been convicted of certain, specified felonies.³³ Section 39.0138, F.S., does not require that the department search its own automated abuse information system, and it does not specify that anyone other than the individual being considered for approval is subject to a background check.³⁴

Section 39.401 (3), F.S., requires that any placement of a child which is not in a licensed shelter must be preceded by a local and state criminal records check, as well as a search of the department's automated abuse information system, on all members of the household.

Non-Relative Caregivers (See Sections 3, 8 and 19 of PCS for SB 1048)

Chapter 39, F.S., allows for the placement of dependent children with non-relative adults upon removal³⁵ or adjudication of dependency.³⁶ Current law does not specifically provide for judicial oversight of or limitations on such placements.

Section 39.6221, F.S., permits a court to place a child in a "permanent guardianship" with a relative or non-relative adult under certain, specified conditions. In a permanent guardianship, the court retains jurisdiction over the case, but review hearings and supervision by the

³⁰ Section 39.307 (2)(g), F.S.

³¹ Section 39.0138(1), F.S.

³² *Id.*

³³ Section 39.0138 (2) and (3), F.S.

³⁴ Rule 65C-28.011 more specifically describes the background screening requirements for persons with whom a child is to be placed. Fla. Admin. Code Ann. r. 65C-28.011.

³⁵ Section 39.401(3), F.S.

³⁶ Section 39.521(3), F.S.

department are discontinued.³⁷ Permanent guardianship does not terminate the parent-child relationship, but it is considered a permanent placement for the child.³⁸

Closure of Child Protective Investigations

(See Section 6 of PCS for SB 1048)

Pursuant to s. 39.301(16), F.S., the department is required to complete all protective investigations "no later than 60 days after receiving the initial report" of abuse, neglect or abandonment.

According to the department, in the following circumstances, it is difficult or impossible to complete an investigation within the required time frame:

- Child death cases, because it routinely takes more than 60 days to receive a final Medical Examiner's report on the cause of death;
- Investigations involving missing children, because sometimes children have not been located during the 60 days; and
- Cases which involve an ongoing, concurrent criminal investigation, because a law enforcement investigation may be jeopardized by the release of information upon closure of the case by the department.³⁹

Notice in Dependency Actions

(See Sections 9 and 12 of PCS for SB 1048)

Section 39.502, F.S., prescribes the notice requirements for dependency actions. The parents of the child must be notified of all proceedings and hearings involving the child, in accordance with the provisions of the section.⁴⁰ The attorney for the department, the guardian ad litem and "all other parties and participants" are also entitled to "reasonable notice."⁴¹

Section 39.701(5), F.S., provides that the following individuals must be served with notice of a judicial review hearing or a citizen review panel⁴² hearing in a dependency action:

- Social service agency;
- Foster parent or legal custodian in whose home the child resides;
- Parents;
- Guardian ad Litem;
- Pre-adoptive parent; and
- Any other person the court directs.

If any of the parties entitled to notice were present at a previous hearing at which the hearing was announced, service of notice is not required.⁴³

³⁷ Section 39.6221(5), F.S.

³⁸ Section 39.6221(6), F.S.

³⁹ Pat Badland, *2008 Agency Proposal, Department of Children & Families, Policy Analysis* at p. 2.

⁴⁰ Section 39.502(1), F.S.

⁴¹ Section 39.502(17), F.S.

⁴² See s. 39.702, F.S.

⁴³ Section 39.701(5), F.S.

Child Welfare and Domestic Violence Injunctions**(See Section 10 of PCS for SB 1048)**

Section 39.504, F.S., permits a court to issue an injunction to prevent an act of child abuse or an unlawful sexual offense involving a child, when a shelter or dependency petition has been filed or when a child has been taken into custody, and there is reasonable cause for the injunction. An injunction issued pursuant to this section may order an alleged or actual offender to, *inter alia*:

- Refrain from further abuse;
- Limit contact with the child victim or other children; and
- Vacate the home in which the child resides.⁴⁴

Section 741.30, F.S., creates a cause of action for an injunction for protection against domestic violence, allowing an individual who is the victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence, may petition the court for an injunction for protection. An injunction pursuant to this section may, *inter alia*:

- Restrain the respondent from committing any acts of domestic violence;
- Award the petitioner the exclusive use and possession of the residence the parties share or exclude the respondent from the petitioner's residence; and
- Award the petitioner temporary custody of the minor children of the parties.⁴⁵

A domestic violence injunction is valid and enforceable in all counties in the state, and law enforcement officers are permitted to use their arrest powers to enforce the terms of a domestic violence injunction.⁴⁶

According to the department, when domestic violence is involved in a child welfare case, the victim of the violence is often forced to seek both a child welfare injunction and a domestic violence injunction, because the child welfare injunction alone is insufficient to protect the child.⁴⁷

Pre-disposition Studies**(See Section 11 of PCS for SB 1048)**

Section 39.521(1)(a), F.S., requires the department to prepare, file and serve a case plan and predisposition study not less than 72 hours before a disposition hearing, which is conducted after a child has been adjudicated dependent due to confirmed findings of abuse, neglect or abandonment. The predisposition plan must provide the court with the following documented information:

- The capacity and disposition of the parents to provide for the child;
- The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;

⁴⁴ Section 39.504(3)(b), F.S.

⁴⁵ Section 741.30(6)(a), F.S.

⁴⁶ Section 741.30(6)(d), F.S.

⁴⁷ Pat Badland, 2008 *Agency Proposal, Department of Children & Families, Policy Analysis* at p. 3.

- The mental and physical health of the parents;
- The home, school, and community record of the child;
- The reasonable preference of the child;
- Evidence of domestic violence or child abuse;
- An assessment defining the dangers and risks of returning the child home;
- A description of what risks are still present and what resources are available and will be provided;
- A description of the benefits of returning the child home;
- A description of all unresolved issues;
- A Florida Abuse Hotline Information System (FAHIS) history and criminal records check for all caregivers, family members, and individuals residing within the household from which the child was removed;
- The complete report and recommendation of the child protection team of the Department of Health or, if no report exists, a statement reflecting that no report has been made;
- All opinions or recommendations from other professionals or agencies;
- A listing of appropriate and available prevention and reunification services;
- A listing of other prevention and reunification services that were available but determined to be inappropriate and why;
- Whether dependency mediation was provided;
- If the child has been removed from the home and there is a parent who may be considered for custody pursuant to this section, a recommendation as to whether placement of the child with that parent would be detrimental to the child;
- If the child has been removed from the home and will be remaining with a relative or other adult approved by the court, a home study report concerning the proposed placement shall be included in the predisposition report;
- If the child has been removed from the home, a determination of the amount of child support each parent will be required to pay;
- If placement of the child with anyone other than the child's parent is being considered, the predisposition study shall include the designation of a specific length of time as to when custody by the parent will be reconsidered; and
- Any other relevant and material evidence.

According to the department, the information contained in the predisposition study, in many cases, is already contained in the case file. However, because s. 39.521(1)(a), F.S., does not provide any exceptions to the requirement that a predisposition report be submitted, the department is sometimes required to duplicate efforts in order to comply with the statute.⁴⁸

**Department of Highway Safety and Motor Vehicles Data
(See Section 17 of PCS for SB 1048)**

Section 322.142(4), F.S., permits the Department of Highway Safety and Motor Vehicles (DHSMV) to share information from its database, including digital images and signatures, in the following circumstances:

- In response to law enforcement agency requests;
- With the Department of State to determine voter registration eligibility;

⁴⁸ Pat Badland, 2008 Agency Proposal, *Department of Children & Families, Policy Analysis* at p. 4.

- With the Department of Revenue for use in establishing paternity and establishing, modifying, or enforcing support obligations; and
- With the Department of Financial Services regarding unclaimed property.

The exchange of information with the enumerated state agencies must be pursuant to an interagency agreement.⁴⁹

According to the department, the child protective investigation process would be enhanced if the department were able to access the pictures and signatures in the DHSMV database for purposes of identifying individuals in connection with an investigation.⁵⁰

Student Loan Reimbursement

(See Section 18 of PCS for SB 1048)

Section 402.401, F.S., establishes the Florida Child Welfare Student Loan Forgiveness Program, with the stated purposes of attracting capable students into the child welfare profession, increasing employment and retention of students seeking social work degrees, and providing mid-career opportunities in the child welfare profession.⁵¹ The section prescribes eligibility criteria, award amounts, and repayment terms⁵² and provides that the program is to be implemented only as specifically funded.⁵³

This program was funded through Proviso language in FY 2005-2006, but it was not funded in FY 2006-2007.

Interstate Compact on the Placement of Children

(See Section 20, 21 and 22 of PCS for SB 1048)

The Interstate Compact on the Placement of Children (ICPC) provides a uniform set of regulations meant to ensure that children placed across state lines for purposes of adoption or foster care are placed with individuals who are safe, suitable and able to provide proper care.⁵⁴ It establishes the legal, financial, and supervisory responsibilities of all parties involved in the placement.⁵⁵ Like other interstate compacts, the ICPC is a formal, binding agreement between the states that has characteristics of both statutory and contract law. According to the American Public Human Services Association, interstate compacts "are enacted by state legislatures that adopt reciprocal laws that substantively mirror each other" and they are binding on all member states.⁵⁶

The ICPC prescribes an in-depth home study to be conducted by the receiving state that involves the assessment of the financial, criminal, social and medical histories of the prospective family,

⁴⁹ Section 322.142(4), F.S.

⁵⁰ Pat Badland, *2008 Agency Proposal (Issue #7a), Department of Children & Families, Policy Analysis*.

⁵¹ Section 402.401(1), F.S.

⁵² Section 402.401(2), F.S.

⁵³ Section 402.401(3), F.S.

⁵⁴ American Public Human Services Association, *History of the ICPC*, available at <http://www.aphsa.org/Policy/ICPC-REWRITE/Resource%20Materials/HISTORY%20OF%20THE%20ICPC.pdf> (last visited February 8, 2008).

⁵⁵ *Id.*

⁵⁶ American Public Human Services Association, *Understanding Interstate Compacts*, available at <http://www.aphsa.org/Policy/ICPC-REWRITE/Understanding%20Interstate%20Compacts/UNDERSTANDING%20INTERSTATE%20COMPACTS.pdf> (last visited February 10, 2008).

as well as a physical evaluation of their home.⁵⁷ The ICPC establishes that once a placement is determined to be suitable, the receiving state is responsible for ongoing supervision and for providing support services to the family, as well as for providing regular reports to the sending state agency and court. The ICPC also contemplates an agreement between the sending and receiving states on how services and supports will be financed.⁵⁸

First drafted in 1960, the ICPC has been enacted by all of the states, the District of Columbia and the U.S. Virgin Islands.⁵⁹ The ICPC has recently been rewritten in response to criticisms that, in its current form, it is not relevant for the 21st century. The advent of interstate highways and the Internet, and the development of administrative law, have redefined the parameters under which the compact was first drafted, and its language and procedures are outdated, misunderstood and inadequately enforced.⁶⁰

The proposed, redrafted ICPC was sent to each state for final approval in November 2005. It has been introduced in the legislatures of 12 states, but has been enacted only in Ohio.⁶¹ Once 35 states have adopted the new compact, and after a transitional period during which both compacts will operate, any state that is not a party to the new compact will have "no meaningful way to place children in new compact states"⁶²

In FY 2006-2007, 73 children from Florida were privately adopted across state lines, and 422 children were adopted from the child welfare system across state lines. In the same time frame, 67 children from other states were placed in Florida through private adoption, and 533 children were placed with parents or relatives in Florida.⁶³

Department of Children and Families Organizational Redesign (See Section 26 of PCS for SB 1048)

In 2007, the Legislature passed ch. 2007-174, L.O.F., authorizing DCF to begin the process of reorganization, subject to further legislative review and approval, and provided that any modifications to its organizational structure are compatible with its scheduled sunset review pursuant to s. 11.905, F.S.⁶⁴

The Legislature directed DCF to integrate substance abuse and mental health programs into the overall structure and priorities of the department, and authorized the department to plan for realignment of department districts with judicial circuits.

⁵⁷ American Public Human Services Association, *History of the ICPC*, available at <http://www.aphsa.org/Policy/ICPC-REWRITE/Resource%20Materials/HISTORY%20OF%20THE%20ICPC.pdf> (last visited February 8, 2008).

⁵⁸ *Id.*

⁵⁹ *Id.* Section 409.401, F.S., enacts the ICPC into Florida law.

⁶⁰ *Id.*

⁶¹ See <http://www.aphsa.org/Policy/icpc2006rewrite.htm> (last visited February 10, 2008).

⁶² American Public Human Services Association, *Proposed ICPC: Frequently Asked Questions*, available at <http://www.aphsa.org/Policy/ICPC-REWRITE/Resource%20Materials/PROPOSED%20ICPC%20FAQs.pdf> (last visited February 10, 2008).

⁶³ Pat Badland, Director, Office of Family Safety, Department of Children and Families.

⁶⁴ See Florida Senate, Professional Staff Analysis and Economic Impact Statement, CS/SB 1394 (April 20, 2007).

The Legislature directed the department to submit a report on its organizational modifications, detailing its progress, to be submitted no later than January 1, 2008, concurrent with its Sunset Review Report.⁶⁵

The Legislature authorized DCF to establish community partnerships to advise DCF regarding the improvement and coordination of community-based services, and authorized the Secretary to establish advisory groups at the state level to enhance communication with stakeholders, community leaders, and client representatives. The law is scheduled to expire on June 30, 2008.

III. Effect of Proposed Changes:

Section 1

The bill amends s. 39.01, F.S., changing the definition of "abandoned" to clarify that a parent's failure to maintain a substantial and positive relationship constitutes abandonment, and that a substantial and positive relationship requires frequent and regular contact, visitation or communication with the child.

The bill amends s. 39.01, F.S., adding a definition of "child who has exhibited inappropriate sexual behavior" to the definition section of ch. 39, F.S. The term is defined as a toddler or a child younger than age 12 who has been found by the department or a court to have committed an inappropriate sexual act on himself or another individual. According to the department, the term currently used to describe all children reported to be involved in child-on-child sexual abuse is "alleged juvenile sexual offender" as defined in s. 39.01(7), F.S. This new term more precisely describes many of the children involved in such cases, and adding this definition will avoid the stigmatizing label in cases where it is unwarranted.⁶⁶

The bill amends the definition of "harm," providing that, for purposes of determining whether a parent has harmed a child by exposure to a controlled substance or alcohol, exposure is demonstrated by either:

- Evidence of a test result at birth that the child was exposed to a controlled substance or alcohol; or
- Evidence of extensive, abusive and chronic use of a controlled substance or alcohol by a parent, coupled with a showing that the child is demonstrably affected by the usage.

The bill amends the definition of "relative" to provide that the term may include the adoptive parent of a blood sibling who was adopted from the child welfare system. This change is intended to allow the department to consider for priority placement, in foster care or for adoption, a family who has already adopted a child from the child welfare system, when a biological sibling of the adopted child subsequently enters the system.

Section 2

The bill adds subsection (16) to s. 39.0121, F.S., expanding the department's rule-making authority to include provisions for the reporting, locating, recovering, and stabilizing of children

⁶⁵ Reorganization of the Department of Children and Families, Report to the Legislature (January 1, 2008), released February 8, 2008.

⁶⁶ Pat Badland, 2008 Agency Proposal, *Department of Children & Families, Policy Analysis* at p. 2.

whose whereabouts become unknown while they are involved with the department. The bill directs the department to adopt rules that will:

- Provide comprehensive, explicit and consistent guidelines to be followed by its employees and contracted providers;
- Establish the criteria to be used to determine when it is necessary to make a report that a child in the care of the department is missing which will require, at a minimum, that in all cases in which a criminal investigation has been initiated pursuant to s. 39.301(2)(a), F.S., and the whereabouts of the subject child are unknown, a report must be filed; and
- Establish the steps to be taken by caseworkers and investigators to ensure and provide evidence that parents and guardians have been advised of the requirements of s. 787.04 (3), F.S. and that violations of s. 787.04 (3), F.S., are reported.

Section 3

The bill amends s. 39.0138(1), F.S., to clarify that all child placements, including non-relative caregiver placements, require background screening of the caregiver, as well as of other members of the household and frequent visitors to the household. The bill requires the department to search its own automated abuse information system with respect to any person subject to screening.

Section 4

The bill creates s. 39.0141, F.S., requiring the department and its contracted providers to:

- Make reasonable efforts, as defined by rule, to locate a child whose whereabouts become unknown;
- Determine, also pursuant to rule, if the child is missing; and
- Report the child as missing pursuant to s. 937.021, F.S.

Section 5

The bill amends s. 39.201(2)(f), F.S., providing that the department is required to take reports involving a child who has exhibited inappropriate sexual behavior in addition to reports involving a known or suspected juvenile sexual offender. The bill replaces "county sheriff's office" with "local law enforcement agency" throughout the subsection.

Section 6

The bill amends s. 39.301 (16), F.S., to allow the following exceptions to the requirement that all child protective investigations (CPIs) be completed no later than 60 days after the initial report is received:

- In cases where there is an active, concurrent criminal investigation and the closure of the CPI may compromise the criminal prosecution, the CPI will be closed when the criminal investigation and resulting legal action are complete;
- In child death cases, when the final report from the Medical Examiner is necessary and has not been received, the CPI will be closed after the report is received; and
- In cases where a child who is necessary to an investigation has been declared missing by the department, a local law enforcement agency or a court, the CPI will remain open until

the child is located or until sufficient information exists to close the investigation without locating the child.

Section 7

The bill amends s. 39.307(2), F.S., so that the section, which prescribes the procedures for investigating a report of child-on-child sexual abuse, includes children who have exhibited inappropriate sexual behavior, as well as juvenile sexual offenders.

According to the department, the term "juvenile sexual offender" implies criminal intervention, but not all child-on-child referrals involve criminal intervention. In fact, the purpose of s. 39.307, F.S., is to allow the department to respond to referrals of this nature, to determine if the sexual interaction was part of developmentally appropriate sexual exploration or an actual sexual offense, and to provide treatment to the children involved in the incident. Criminal intervention is only required when the incident rises to the level of a sexual offense and the family refuses services.⁶⁷

Section 8

The bill amends s. 39.401, F.S., to clarify that any placement of a child that is not in a licensed shelter must be preceded by background screening of the potential caregivers, pursuant to s. 39.0138, F.S. The bill creates s. 39.401(5), F.S., requiring judicial approval and review of all non-relative placements, and requiring the department to request that the court establish permanent guardianship or compel the non-relative caregiver to seek foster care licensure if a placement continues for longer than 12 consecutive months.

Section 9

The bill amends s. 39.502, F.S., to specifically include foster and pre-adoptive parents among the individuals who are entitled to notice of proceedings or hearings relating to children in their care or whom they are planning to adopt. Notice may be verbal or written and must be received 72 hours in advance of the proceeding or hearing.

Section 10

The bill amends s. 39.504, F.S., to authorize a court to enter an injunction to prevent an act of child abuse at any time after a protective investigation has been initiated, and deletes the provision that the injunction can be issued at the time a shelter or dependency petition has been filed or when a child has been taken into custody.

The bill provides that the terms of such an injunction will remain in effect until modified or dissolved by the court, deleting the provision that an injunction expires at the time of the disposition of the petition for shelter or dependency. The bill provides that the injunction is valid in all counties and that a law enforcement officer may exercise arrest powers in the enforcement of the injunction.

The bill adds subsection (c) to 39.504, F.S., to provide that if the intent of an injunction is to protect a child from domestic violence, the injunction may:

⁶⁷Pat Badland, 2008 *Agency Proposal, Department of Children & Families, Policy Analysis* at p. 2.

- Remove the offender from the home of the child and the caregiver;
- Award temporary custody of the child to the caregiver; and
- Establish support for the child.

Section 11

The bill amends s. 39.521(1)(a), F.S., to allow a court to grant an exception to the requirement that the department file a predisposition study, if the court finds that all of the necessary information is available in documents already filed with the court.

The bill amends s. 39.521(1)(f), F.S., to add the new grounds for TPR proposed by the bill (s. 39.01 (1)(j), (k), and (l), F.S.) to the list of circumstances under which reasonable efforts to reunify a child with the parent or parents is not required.

Section 12

The bill amends s. 39.701(5), F.S., to clarify that service of notice of a judicial review hearing or a citizen review hearing is required regardless of whether or not the person to be served was present at the previous hearing during which the hearing was announced.

Section 13

The bill amends s. 39.8055(1)(c), F.S., to conform Florida law to federal requirements under the Adoption and Safe Families Act of 1997 (P.L. 105-89).⁶⁸

The bill requires the department to file or join a petition for termination of parental rights if a child has been in out-of-home care for 12 (rather than 15) of the most recent 22 months.⁶⁹

Section 14

The bill amends s. 39.806(1), F.S., providing additional grounds for termination of parental rights (TPR) as follows:

- Subsection (e) is amended to clarify and add to the definition of material breach of a case plan as a ground for TPR. "Material breach" means (1) the parent has failed to substantially comply with the case plan for a period of 9 (rather than 12) months after an adjudication or shelter placement; (2) the parent is unlikely or unable to substantially comply with the case plan before the time for compliance expires; or (3) the parent, while able, has failed to maintain frequent and regular contact with the child.
- Subsection (g) is amended to clarify that grounds for TPR include when a parent has subjected the child *or another child* to aggravated child abuse, sexual battery or sexual abuse.
- Subsection (h) is amended to clarify that grounds for TPR include when a parent has been convicted of been convicted of murder or manslaughter *of the other parent* or of another child of the parent, aiding or abetting or conspiracy or solicitation to murder *the other parent* or another child of the parent, or a felony battery that resulted in serious bodily injury to the child or to any other child of the parent.

⁶⁸ 42 U.S.C. s. 675(5)(E) (2006).

⁶⁹ Although the federal law requires states to seek termination of parental rights when a child has been in care for 15 of the most recent 22 months, at least one state has adopted shorter time limits. *See* N.H. Rev. Stat. Ann. s. 169-C:24-a (2008).

- Subsection (j) is added to provide that grounds for TPR include when a parent has a history of extensive, abusive, and chronic use of alcohol or drugs that renders him or her unable to care for the child and he or she has refused or failed available treatment during a 3-year period preceding the petition for TPR.
- Subsection (k) is added to provide that grounds for TPR include when a mother gives birth to a child who is exposed to alcohol or a controlled substance, and the mother is the biological mother of another child who was adjudicated dependent pursuant to s. 39.01(g), F.S., after which the mother had the opportunity to participate in substance abuse treatment.
- Subsection (l) is added to provide that grounds for TPR include when, on three or more occasions, the child or any other child of the parent was placed in out-of-home care pursuant to ch. 39, F.S.

The bill amends s. 39.806(2), F.S., to provide that reasonable efforts to preserve and unify families are not required if the court finds that any of the new grounds, (j), (k), or (l), have occurred.

Section 15

The bill creates s. 39.8061, F.S., requiring a court to consider certain factors in determining whether TPR is the least restrictive means of protecting a child. The factors to be considered include:

- The extent to which maintaining a bond with the parent or parents will adversely affect the child's ability to achieve permanency;
- The extent to which parental behavior poses a risk of harm to the child's mental, physical or emotional well-being. A finding that a parent or parents have engaged in egregious conduct as provided in s. 39.806(1)(f), F.S., is conclusive evidence that TPR is the least restrictive means of protecting the child;
- The likelihood that a child can be successfully and safely reunited with the parent or parents in the immediate future;
- The parent's or parents' history of alcohol or substance abuse, their history of seeking and complying with treatment, and the success of treatment;
- The extent to which the parent or parents have complied with services pursuant to a case plan for this or another child; and
- The existence of alternatives to termination.

Section 16

The bill amends s. 63.032(14), F.S., to provide that the definition of "relative" may include the adoptive parent of a blood sibling who was adopted from the child welfare system.

Section 17

The bill amends s. 322.142(4), F.S., to allow the DHSMV to reproduce and issue information from its database to the department pursuant to an interagency agreement for purposes of identifying persons who are the subject of a child protective investigation.

Section 18

The bill amends s. 402.401, F.S., providing that the Florida Child Welfare Student Loan Forgiveness Program (the Program) is to be administered by DCF rather than by the Department of Education. The bill provides that the Program shall provide loan reimbursement to eligible employees in "critical" positions in the department, a Sheriff's office or a community-based care agency. The bill defines as "eligible" an employee who has an outstanding student loan that is not in default status.

The bill deletes provisions in current law regarding eligibility, loan amounts and repayment terms, and limits the Program to current employees, by deleting provisions allowing students who declare intent to work in child welfare to apply for loan forgiveness. The bill deletes the requirement that the Program only be implemented if funded.

Section 19

The bill amends s. 409.175(4)(a), F.S., to clarify that only relative caregivers providing full-time care or custody of a child are exempt from licensing requirements.

Section 20

The bill amends s. 409.401, F.S., so that it aligns with the provisions of the new ICPC. The new ICPC makes the following significant changes:

- Narrows the applicability of the compact to the interstate placement of children in the foster care system and children placed across state lines for adoption;
- Allows for residential facility placement with notice to the receiving state;
- Allows for the provisional placement of children with a relative pending the receiving state's requirements regarding education and training for prospective foster or adoptive parents;
- Requires the development of time frames for completion of the approval process;
- Establishes clear rulemaking authority;
- Provides enforcement mechanisms;
- Clarifies state responsibility;
- Ensures states' ability to purchase home studies from licensed agencies to expedite the process; and
- Creates an Interstate Commission comprised of one voting member from each state.⁷⁰

The language of this section is substantively identical to the language of the new ICPC, but the structure is altered to be consistent with the structure of Florida statutes.

Section 21

The bill repeals s. 409.402 and s. 409.403, F.S., relating to the former ICPC and addressed by the enactment of the revised ICPC in s. 409.401, F.S.

Section 22

The bill amends s. 409.404, F.S., to align the section with the revised ICPC.

⁷⁰ New Compact Highlights, provided by Pat Badland, Director, Office of Family Safety, Department of Children and Families, on file with the Senate Committee on Children, Families and Elder Affairs.

Section 23

The bill amends s. 787.04(3), F.S., to make it unlawful to knowingly and willfully, rather than with criminal intent, lead, take, entice, or remove a minor from the state or conceal the location of a minor, after receiving constructive or actual notice of a pending dependency proceeding or abuse investigation involving the minor.

Section 24

The bill amends s. 937.021(1), F.S., to mandate that a law enforcement agency must accept a report of a missing child from not only the parent or guardian of the child, but also from the department or its contracted providers. The bill further provides that a law enforcement agency may not require a reporter to present an order that a child be taken into custody before accepting a report that the child is missing.

Section 25

The bill amends s. 985.04, F.S., to provide that the department shall disclose to the school superintendent the presence of any child who has exhibited inappropriate sexual behavior, in addition to disclosing the presence of any child with a known history of criminal sexual behavior who is an alleged juvenile sexual offender.

Section 26

The bill provides that Section 1 of ch. 2007-174, L.O.F., expires on June 30, 2009, rather than on June 30, 2008. This amendment will allow the department to continue the process of reorganization that began in 2007.

Sections 27, 28, 29, 30, 32, and 33

The bill provides conforming cross-references.

Section 31

The bill amends s. 39.811(6), F.S., to add the new grounds for TPR proposed by the bill (s. 39.01 (1)(j), (k), and (l), F.S.) to the list of circumstances under which the rights of one parent may be severed without severing the parental rights of the other parent.

Section 34

Provides an effective date of July 1, 2008, except as otherwise expressly provided.

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:

Because portions of the bill implicate the fundamental right to parent a child, it may be subject to constitutional scrutiny. Although parents have a fundamental right to parent their children, the State has a compelling interest in protecting its children, and it may permanently and involuntarily terminate parental rights after showing by clear and convincing evidence that the parent poses a “substantial risk of significant harm to the child.”⁷¹

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The provisions in the bill relating to loan reimbursement for child welfare workers will positively impact eligible employees.

C. Government Sector Impact:

The bill deletes the provision that makes the Florida Child Welfare Student Loan Forgiveness Program available only if funded. It is unclear whether the program will continue to be funded and, if so, at what level and from what source will it be funded.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁷¹ *Padgett v. Department of Health and Rehabilitative Services*, 577 So.2d 565 (Fla. 1991). See also, *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).