

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 Judiciary Committee

BILL: CS/CS/SB 1048

INTRODUCER: Judiciary Committee, Children, Families, and Elder Affairs Committee, Children, Families, and Elder Affairs Committee, and Senator Lynn

SUBJECT: Child Protection

DATE: March 20, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Jameson	CF	Fav/CS
2.	Daniell	Maclure	JU	Fav/CS
3.			HA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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|------------------------------|--------------------------------------------|-----------------------------------------|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill amends and creates several sections of law involving children and families to enhance child protection by:

- Giving the Department of Children and Families (the department) authority to adopt administrative rules relating to children who become missing while they are involved with the department;
- Clarifying 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;
- Requiring 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;
- 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;
- Adding new grounds for terminating parental rights;

- Providing that if a court finds that termination of parental rights is in the best interest of a child, it is also the least restrictive means of protecting the child;
- Clarifying requirements for background screening of caregivers;
- Providing exceptions to the requirement that all child protective investigations be closed within 60 days;
- Requiring that notice of proceedings be given to foster and preadoptive parents;
- Revising the inquiries required by a petitioner in conducting a diligent search to find a parent or prospective parent whose location is unknown, to include a thorough search of at least one electronic database specifically designed for locating persons.
- Authorizing a court to enter an injunction in a child welfare case that addresses domestic violence issues;
- Providing that a court may enter only one order adjudicating a child dependent in a dependency case;
- Permitting a court to grant an exception to the requirement that a predisposition study be filed;
- Allowing the Department of Highway Safety and Motor Vehicles to give the department access to information contained in its database for purposes of identifying persons who are the subject of child protective investigations;
- Making significant changes to the Florida Child Welfare Student Loan Forgiveness Program;
- Conforming Florida law to federal requirements under the Adoption and Safe Families Act; and
- Aligning Florida law with the revised Interstate Compact on the Placement of Children.

Additionally, the bill amends and creates certain definitions relevant to children and families, and allows the department additional time to complete its reorganization process.

This bill substantially amends the following sections of the Florida Statutes: 39.01, 39.0121, 39.0138, 39.201, 39.301, 39.307, 39.401, 39.502, 39.503, 39.504, 39.507, 39.521, 39.701, 39.8055, 39.806, 39.810, 63.032, 322.142, 402.401, 409.175, 409.401, 409.404, 787.04, 937.021, 985.04, 39.0015, 39.205, 39.302, 39.6011, 39.811, 39.828, and 419.001. This bill also amends chapter 2007-174, Laws of Florida. This bill creates section 39.0141, Florida Statutes. This bill repeals the following sections of the Florida Statutes: 409.402 and 409.403.

II. Present Situation:

Missing Child Reports

(See sections 4 and 26 of this bill)

In Florida, pursuant to s. 937.021, 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 of Children and Families (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.¹ 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.²

Because local law enforcement agencies are not required by law to accept reports of missing children from the department or its contracted providers, cases of children who become missing while they are involved with the department sometimes go uninvestigated.³ Without guidelines, law enforcement protocols for accepting missing child reports from the department or its contracted providers vary across the state, and missing children may be put in harm's way when law enforcement agencies delay or decline to act.⁴

Linking Reports of Missing Children to Adult Records (See section 25 of this bill)

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.⁵ 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.⁶

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.⁷

¹ Comm. on Children, Families, and Elder Affairs, Fla. Senate, *Missing Children 4* (Interim Project Report 2008-106) (Oct. 2007).

² *Id.* at 4-5.

³ *Id.* at 3.

⁴ *Id.* at 4. In some cases, although not required by statute or rule, law enforcement agencies will only accept a missing child report from the department 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 the department. *Id.* at 3.

⁵ *Id.* at 5.

⁶ *Id.* at 6.

⁷ Section 787.04, F.S., provides violations and penalties for removing minors from the state or concealing minors contrary to a state agency or court order. According to the Florida Department of Law Enforcement, less than 1 percent of cases involving missing children are linked in the databases to a case identifying an adult as missing or wanted. Comm. on Children, Families, and Elder Affairs, *supra* note 1, at 6 fn. 31.

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.⁸ It is a defense that a person acted with the belief that the action was necessary to protect the child from abuse.⁹ Violation of s. 787.04, F.S., is a third-degree felony.¹⁰

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.¹¹ This rarely occurs, however, suggesting that actual use of the statute is limited.¹² Barriers to enforcement include insufficient 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.¹³

Additionally, 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.¹⁴

Department of Children and Families Specific Rulemaking Authority (See section 2 of this bill)

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;¹⁵

⁸ Section 787.04(3), F.S.

⁹ Section 787.04(5), F.S.

¹⁰ Section 787.04(6), F.S. A felony of the third degree is punishable by up to five years imprisonment, a maximum \$5,000 fine, or penalties imposed on a habitual felony offender under s. 775.084, F.S. See ss. 775.082 and 775.083, F.S.

¹¹ Comm. on Children, Families, and Elder Affairs, *supra* note 1, at 6.

¹² *Id.* According to the Florida Department of Law Enforcement, only 114 arrest charges were made for violation of s. 787.04, F.S., between 2003 and 2006. *Id.* at fn. 35.

¹³ *Id.* at 6.

¹⁴ *Id.* See generally *State v. Mancuso*, 652 So. 2d 370 (Fla. 1995) (discussing the need for a “knowingly and willfully” standard to prosecute under the “hit-and-run” statute).

¹⁵ FLORIDA’S CTR. FOR THE ADVANCEMENT OF CHILD WELFARE PRACTICE, *Missing Children Guide: Reporting, Location, Stabilization and Prevention* (rev. Sept. 2007), available at <http://centerforchildwelfare.fmhi.usf.edu/kb/mssngchld/Forms/AllItems.aspx> (follow “Missing Children Guide – September 2007” link) (last visited March 13, 2008). The Missing Children Guide (the Guide) was developed by the Department of Children and Families, community-based care providers, and the Florida Department of Law Enforcement/Missing Children

- Operating Procedure No. 175-85: Prevention, Reporting and Services to Missing Children;¹⁶ and
- Administrative Rule: Missing Children.¹⁷

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 the department's contracted providers or local law enforcement agencies.

Termination of Parental Rights and Permanency (See sections 1, 15, 16, 17, and 33 of this bill)

Florida courts have long recognized the “fundamental liberty interest of parents in determining the care and upbringing of their children free from the heavy hand of government paternalism.”¹⁸ This fundamental parental right is not absolute, but is limited only by the principle that the welfare or best interest of the child is paramount.¹⁹

Although a parent's interest in maintaining parental ties is essential, a child's entitlement to a safe environment is more so.²⁰ 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.”²¹ Florida courts have also held that, because termination of parental rights implicates a fundamental liberty interest, termination must be the least restrictive means of protecting the child.²²

Relying on these constitutional principals, the framework for terminating parental rights in Florida requires the state to establish with clear and convincing evidence:²³ (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.²⁴ The “least restrictive means” analysis is not defined by statute; however, Florida courts have found that the least restrictive means test “requires the court to utilize measures short of termination if such measures can permit a safe re-establishment of the parent-child bond.”²⁵

Information Clearinghouse. 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.

¹⁶ FLORIDA DEP'T OF CHILDREN AND FAMILIES, *Prevention, Reporting and Services to Missing Children*, CF Operating Procedure No. 175-85 (Oct. 17, 2002), available at <http://www.dcf.state.fl.us/publications/policies/175-85.pdf> (last visited March 13, 2008). The purpose of the Operating Procedure is to provide uniform policies for ensuring prompt and comprehensive action when a child is missing. The Operating Procedure defines “missing child” and provides instruction on the reporting, recovery, prevention, and stabilization of missing children.

¹⁷ Fla. Admin. Code Ann. R. 65C-30.019 (2008). The rule prescribes the responsibilities of caregivers when children under investigation or protective supervision are believed to be missing.

¹⁸ *Padgett v. Dep't of Health and Rehabilitative Servs.*, 577 So. 2d 565, 570 (Fla. 1991).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 571.

²² *Id.*

²³ See s. 39.809(1), F.S.

²⁴ *T.C. v. Dep't of Children and Families*, 961 So. 2d 1060, 1061 (Fla. 4th DCA 2007).

²⁵ *L.D. v. Dep't of Children and Family Servs.*, 957 So. 2d 1203, 1206 (Fla. 3d DCA 2007) (quoting *E.R. v. Dep't of Children*

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.”²⁶

A proceeding to terminate parental rights may be initiated by the department, the guardian ad litem, or any other interested person.²⁷ 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.²⁸

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, aiding, abetting, conspiracy, or solicitation to murder 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.²⁹

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

- (a) Voluntary surrender of the child by the parent or parents;
- (b) Abandonment;
- (c) Conduct that demonstrates that the continuing involvement of the parent or parents 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 physical, mental, or emotional 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.

and Family Servs., 937 So. 2d 1196, 1199 (Fla. 3d DCA 2006)).

²⁶ *T.M. v. Dep't of Children and Families*, 971 So. 2d 274, 278 (Fla. 4th DCA 2008) (quoting *L.B. v. Dep't of Children and Families*, 835 So. 2d 1189, 1195 (Fla. 1st DCA 2002)).

²⁷ Section 39.802(1), F.S.

²⁸ Section 39.802(4), F.S.

²⁹ Section 39.8055, F.S.

Reasonable efforts to preserve and reunify families are not required if a court determines that any of the events described in (e)-(i), listed above, has occurred.³⁰

In determining the best interests of the child, the court must consider and evaluate all relevant factors, including:

- Availability of a permanent custody arrangement with a relative of the child;
- Ability of the parent to provide for the child;
- Capacity of the parent to care for the child;
- Mental and physical health needs of the child;
- Love, affection, and other emotional ties existing between the child and the parent;
- Likelihood of an older child remaining in long-term foster care upon termination;
- 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;
- Length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- Depth of the relationship existing between the child and the present custodian;
- Reasonable preferences and wishes of the child; and
- Recommendations for the child provided by the child's guardian ad litem or legal representative.³¹

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.

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.

Adoption and Safe Families Act (See section 15 of this bill)

Enacted in 1997, the Adoption and Safe Families Act (ASFA) “establishes unequivocally that our national goals for children in the child welfare system are safety, permanency, and well-being.”³² The ASFA also 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, ASFA requires states to file or join a petition to terminate parental rights in at least the following three circumstances, unless certain specified exceptions apply:

³⁰ Section 39.806(2), F.S. *See also* s. 39.521(1)(f), F.S.

³¹ Section 39.810, F.S.

³² ADMINISTRATION FOR CHILDREN & FAMILIES, U.S. DEP'T OF HEALTH & HUMAN SERVS., *Program Instruction* (Jan. 8, 1998), available at http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/pi9802.htm (last visited March 13, 2008).

- The child has been in foster care for 15 of the most recent 22 months;
- The child is an abandoned infant; or
- 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.³³

Placement of Subsequent Siblings (See section 1 and 18 of this bill)

The term *relative* is defined 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.”³⁴ 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.”³⁵ Under current law, the adoptive parent of a child who was adopted is not considered a “relative” to a biological sibling of the adopted child who later enters the system.

Child-on-Child Sexual Abuse Investigations (See sections 1, 5, 7, and 27 of this bill)

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.”³⁶ Juvenile sexual abuse is defined to mean “any sexual behavior which occurs without consent, without equality, or as a result of coercion.”³⁷ Juvenile sexual offender behavior can range from no contact sexual behavior, such as making obscene phone calls, to varying degrees of direct sexual contact.³⁸ Typically, “juvenile sexual abuse” is the term used to describe child-on-child sexual activity.

The department must accept certain reports for protective investigation, including reports involving a known or suspected juvenile sexual offender.³⁹

³³ 42 U.S.C. s. 675(5)(E) (2008).

³⁴ Section 39.01(63), F.S.

³⁵ Emily Kernan, *Keeping Siblings Together Past, Present, and Future*, J. NAT’L CENTER YOUTH L. 2 (Oct.-Dec. 2005), available at http://www.youthlaw.org/fileadmin/ncyl/youthlaw/publications/ynl/2005/issue_4/05_ynl_4_kernan_keeping.pdf (last visited March 13, 2008).

³⁶ Section 39.01(7), F.S.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Section 39.201(2)(f), F.S.

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.⁴⁰ 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.
- Services accepted by alleged offender. 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.⁴¹

Criminal History Records Checks for Caregivers (See sections 3, 8, and 21 of this bill)

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.”⁴² A criminal history records check may include the submission of fingerprints for the Federal Bureau of Investigation (FBI) and the Florida Department of Law Enforcement (FDLE), as well as checks through local law enforcement agencies.⁴³ 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.⁴⁴ 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.

Section 39.401(3), F.S., requires that any placement of a child that 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.

⁴⁰ Section 39.307(2)(f), F.S.

⁴¹ Section 39.307(2)(g), F.S.

⁴² Section 39.0138(1), F.S.

⁴³ *Id.*

⁴⁴ Section 39.0138(2) and (3), F.S. Florida Administrative Code Rule 65C-28.011 specifically describes the background screening requirements for persons with whom a child is to be placed.

Non-Relative Caregivers
(See sections 3, 8, and 21 of this bill)

Chapter 39, F.S., allows for the placement of dependent children with non-relative adults upon removal of the child⁴⁵ or adjudication of dependency.⁴⁶ Current law does not specifically provide for judicial oversight of or limitations on such placements.

A court may place a child in a “permanent guardianship” with a relative or non-relative adult under certain, specified conditions.⁴⁷ In a permanent guardianship, the court retains jurisdiction over the case, but review hearings and supervision by the department are discontinued.⁴⁸ Permanent guardianship does not terminate the parent-child relationship, but it is considered a permanent placement for the child.⁴⁹

Closure of Child Protective Investigations
(See section 6 of this bill)

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 that 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.⁵⁰

Notice in Dependency Actions
(See sections 9, 10, and 14 of this bill)

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.⁵¹ The attorney for the department, the guardian ad litem, and “all other parties and participants” are also entitled to “reasonable notice.”⁵²

⁴⁵ Section 39.401(3), F.S.

⁴⁶ Section 39.521(3), F.S.

⁴⁷ Section 39.6221, F.S.

⁴⁸ Section 39.6221(5), F.S.

⁴⁹ Section 39.6221(6), F.S.

⁵⁰ Dep’t of Children and Families, 2008 Agency Proposal Policy Analysis, SB 1048, at 2-3.

⁵¹ Section 39.502(1), F.S.

⁵² Section 39.502(17), F.S.

If the identity or location of a parent is unknown, the court must conduct an inquiry of the parent, custodian, or any relative of the child who is available.⁵³ If the identity of a parent is determined but the location of that parent is still unknown after the inquiry, the petitioner must conduct a diligent search for that person before a disposition hearing can be scheduled.⁵⁴ The diligent search must include, at a minimum:

- Inquiries of all known relatives of the parent;
- Inquiries of all offices of program areas of the department likely to have information regarding the parent;
- Inquiries of other state and federal agencies;
- Inquiries of utility and postal providers; and
- Inquiries of law enforcement agencies.⁵⁵

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 panel hearing⁵⁶ 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 next hearing was announced, service of notice is not required.⁵⁷

Dependency Adjudication (See section 12 of this bill)

According to the Department of Children and Families (the department), ch. 39, F.S., contemplates that an adjudication of dependency is determined with reference to what happens to a child, not with reference to the conduct of the adult caregiver.⁵⁸ As such, an adjudication of a child “as to” one parent or the other is imprecise; the child is dependent regardless of which parent caused the abuse, neglect, or abandonment.⁵⁹

The department suggests that when a court finds that a child is adjudicated “as to” a particular parent, the court sometimes requires that the child be adjudicated twice before permanent placement can be made or before parental rights can be terminated.⁶⁰ As well, in some cases,

⁵³ Section 39.503(1), F.S.

⁵⁴ Section 39.503(5), F.S.

⁵⁵ Section 39.503(6), F.S.

⁵⁶ See s. 39.702, F.S.

⁵⁷ Section 39.701(5), F.S.

⁵⁸ Dep’t of Children and Families, 2008 Agency Proposal Policy Analysis, SB 1048, at 1.

⁵⁹ See, e.g., *T.S. v. Dep’t of Children and Families*, 935 So.2d 626, 627 (Fla. 1st DCA 2006) (affirming an order adjudicating the child dependent “as to” the mother).

⁶⁰ Dep’t of Children and Families, 2008 Agency Proposal Policy Analysis, SB 1048, at 1.

courts approve multiple and inconsistent case plans for a single child. The confusion causes unnecessary delays in placement and permanency.⁶¹

Child Welfare and Domestic Violence Injunctions

(See section 11 of this bill)

Current law 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.⁶² An injunction issued pursuant to this statute may order an alleged or actual offender to:

- Refrain from further abuse;
- Participate in a specialized treatment program;
- Limit contact with the child victim or other children;
- Refrain from contacting the child;
- Have limited or supervised visitation with the child;
- Pay temporary support; and
- Vacate the home in which the child resides.⁶³

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, to petition the court for an injunction for protection. An injunction pursuant to this section may:

- 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;
- Award the petitioner temporary custody of the minor children of the parties;
- Establish temporary support;
- Order the respondent to participate in treatment; and
- Refer the petitioner to a certified domestic violence center.⁶⁴

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.⁶⁵

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.⁶⁶

⁶¹ *Id.*

⁶² Section 39.504, F.S.

⁶³ Section 39.504(3)(b), F.S.

⁶⁴ Section 741.30(6)(a), F.S.

⁶⁵ Section 741.30(6)(d), F.S.

⁶⁶ See generally Dep't of Children and Families, 2008 Agency Proposal Policy Analysis, SB 1048, at 3.

Predisposition Studies
(See section 13 of this bill)

The department is required 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.⁶⁷ 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;
- 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.⁶⁸

⁶⁷ Section 39.521(1)(a), F.S.

⁶⁸ Section 39.521(2), F.S.

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.⁶⁹

Department of Highway Safety and Motor Vehicles Data
(See section 19 of this bill)

The Department of Highway Safety and Motor Vehicles (DHSMV) is permitted to share information from its database, including digital images and signatures, in the following circumstances:

- For DHSMV administrative purposes;
- For the issuance of duplicative licenses;
- In response to law enforcement agency requests;
- With the Department of State to determine voter registration eligibility;
- 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.⁷⁰

The exchange of information with the enumerated state agencies must be pursuant to an interagency agreement.⁷¹

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.⁷²

Student Loan Reimbursement
(See section 20 of this bill)

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.⁷³ The section prescribes eligibility criteria, award amounts, and repayment terms⁷⁴ and provides that the program is to be implemented only as specifically funded.⁷⁵

⁶⁹ Dep't of Children and Families, 2008 Agency Proposal Policy Analysis, SB 1048, at 4.

⁷⁰ Section 322.142(4), F.S.

⁷¹ *Id.*

⁷² Dep't of Children and Families, 2008 Agency Proposal (Issue #7a) Policy Analysis, SB 1048, at 1.

⁷³ Section 402.401(1), F.S.

⁷⁴ Section 402.401(2), F.S.

⁷⁵ Section 402.401(3), F.S.

This program was funded in FY 2003-2004, 2004-2005, and 2006-2007, but it was not funded in FY 2005-2006.⁷⁶ According to the Office of Program Policy Analysis and Government Accountability (OPPAGA), the proviso language that has accompanied the appropriations for this program since FY 2003-2004 has not mirrored the statutory description of the program.⁷⁷

**Interstate Compact on the Placement of Children
(See section 22, 23, and 24 of this bill)**

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.⁷⁸ It establishes the legal, financial, and supervisory responsibilities of all parties involved in the placement.⁷⁹ 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 (APHSA), interstate compacts “are enacted by state legislatures that adopt reciprocal laws that substantively mirror one another” and they are binding on all member states.⁸⁰

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, as well as a physical evaluation of their home.⁸¹ 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.⁸² The ICPC also contemplates an agreement between the sending and receiving states on how services and supports will be financed.⁸³

First drafted in 1960, the ICPC has been enacted by all of the states, the District of Columbia, and the U.S. Virgin Islands.⁸⁴ 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.⁸⁵

⁷⁶ Kara Collins-Gomez, Don Wolf, and Ann Renaud, *Memorandum: Child Welfare Student Loan Forgiveness Program 6* (October 25, 2006) (on file with the Senate Committee on Judiciary).

⁷⁷ *Id.* at 2.

⁷⁸ FLORIDA’S CTR. FOR THE ADVANCEMENT OF CHILD WELFARE PRACTICE, *History of the ICPC*, available at <http://centerforchildwelfare.fmhi.usf.edu/kb/icpc/Forms/AllItems.aspx> (follow “History of ICPC” link) (last visited March 13, 2008).

⁷⁹ *Id.*

⁸⁰ AMERICAN PUBLIC HUMAN SERVS. ASS’N, INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN, *Understanding Interstate Compacts*, available at <http://www.aphsa.org/Policy/icpc2006rewrite.htm> (follow “Understanding Interstate Compacts” link under the “Understanding Interstate Commission” heading) (last visited March 14, 2008).

⁸¹ *History of the ICPC*, *supra* note 78.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* Section 409.401, F.S., enacts the ICPC into Florida law.

⁸⁵ *History of the ICPC*, *supra* note 78.

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.⁸⁶ 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.”⁸⁷

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.⁸⁸

Department of Children and Families Organizational Redesign (See section 28 of this bill)

In 2007, the Legislature passed ch. 2007-174, L.O.F., authorizing the Department of Children and Families (the department) to begin the process of reorganization, subject to further legislative review and approval, and providing that any modifications to its organizational structure must be compatible with its scheduled sunset review pursuant to s. 11.905, F.S.⁸⁹

The Legislature directed the department 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.⁹⁰

The department was also directed to submit a report on its organizational modifications, detailing its progress, no later than January 1, 2008, concurrent with its Sunset Review Report.⁹¹

The Legislature authorized the department to establish community partnerships to advise it 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.⁹²

The law is scheduled to expire on June 30, 2008.⁹³

⁸⁶ See AMERICAN PUBLIC HUMAN SERVS. ASS'N, INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN, *Enactment Progress*, available at <http://www.aphsa.org/Policy/icpc2006rewrite.htm> (last visited March 13, 2008).

⁸⁷ AMERICAN PUBLIC HUMAN SERVS. ASS'N, INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN, *Proposed ICPC: Frequently Asked Questions*, at 4, available at <http://www.aphsa.org/Policy/icpc2006rewrite.htm> (follow “Proposed ICPC Frequently Asked Questions” link under the “Resource Materials” heading) (last visited March 14, 2008).

⁸⁸ Correspondence from Pat Badland, Office of Family Safety, Dep't of Children and Families (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁸⁹ See Comm. on Children, Families, and Elder Affairs, Fla. Senate, *Professional Staff Analysis & Economic Impact Statement, CS/SB 1394* (April 20, 2007), available at <http://www.flsenate.gov/data/session/2007/Senate/bills/analysis/pdf/2007s1394.cf.pdf> (last visited March 13, 2008).

⁹⁰ DEP'T OF CHILDREN AND FAMILIES, *Reorganization of the Department of Children and Families, Report to the Legislature*, at 2 (Jan. 1, 2008).

⁹¹ *Id.*

⁹² Comm. on Children, Families, and Elder Affairs, *supra* note 89, at 13.

⁹³ Subsection (3), s. 1, ch. 2007-174, L.O.F.

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 provides that the term “abandonment” is synonymous with “abandoned.”

The bill creates the definition “child who has exhibited inappropriate sexual behavior” under ch. 39, F.S. The term is defined as a child younger than 12 years old who has been found by the Department of Children and Families (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.⁹⁴

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 provides that exposure to alcohol is indicated by “*any amount*” of alcohol contained in the blood, urine, or meconium of a child at birth. Therefore, it appears that a finding of trace amounts of alcohol could be treated as harm under this definition.

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 amends s. 39.0121, F.S., to expand the Department of Children and Families’ rule-making authority to include provisions for the reporting, locating, recovering, and stabilizing of children whose whereabouts become unknown while they are involved with the department. The bill directs the department to adopt rules that will:

⁹⁴ Dep’t of Children and Families, 2008 Agency Proposal Policy Analysis, SB 1048, at 1-2.

- 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)(c), 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.,⁹⁵ and that violations of s. 787.04(3), F.S., are reported.

Section 3

The bill amends s. 39.0138, 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 a new section of law, 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.⁹⁶

Section 5

The bill amends s. 39.201, F.S., to provide that the department is required to make and receive 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

Section 39.301, F.S., is amended 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 continuing beyond the 60-day period 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;

⁹⁵ Section 787.04, F.S., deals with removing minors from the state or concealing minors contrary to an agency or court order.

⁹⁶ Section 937.021, F.S., discusses the procedure for accepting and acting upon missing child reports.

- 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 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, 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.⁹⁷

Section 8

The bill amends s. 39.401, F.S., to clarify that the placement of a child other than 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 within 24 hours 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

This bill amends s. 39.503, F.S., to include a thorough search of at least one electronic database specifically designed for locating persons within the list of inquiries required for a diligent search to find a parent or prospective parent whose location is unknown.

⁹⁷ Dep’t of Children and Families, 2008 Agency Proposal Policy Analysis, SB 1048, at 2.

Section 11

Section 39.504, F.S., is amended 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. This provision will allow the court to enter an injunction at an earlier point in time than what current law allows.

The scope of the child welfare injunction is broadened to provide coverage in domestic violence situations as well as cases of child abuse.

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 a subsection to the statute to provide that if the intent of an injunction is to protect a child from domestic violence, the injunction may:

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

Section 12

The bill amends s. 39.507, F.S., providing that the court in a dependency case may enter only one order adjudicating a child dependent and, upon a properly noticed motion, may hold an evidentiary hearing and enter supplemental findings with respect to one parent, both parents, or a custodian, without retrial or readjudication of the child's dependency status.

Section 13

The bill amends s. 39.521, 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 also adds the new grounds for termination of parental rights proposed by the bill (section 15 of this bill) to the list of circumstances under which reasonable efforts to reunify a child with the parent or parents is not required.

Section 14

The bill amends s. 39.701, F.S., to require notice of judicial review on specified individuals regardless of whether the person was present at the previous hearing, including the child, if he or she is 15 years of age or older, and the attorney for the child.

Section 15

The bill amends s. 39.8055, F.S., to conform Florida law to federal requirements under the Adoption and Safe Families Act of 1997,⁹⁸ requiring a termination of parental rights petition to be filed when a parent has been convicted of murder, manslaughter, aiding and abetting murder, or conspiracy or solicitation to murder the other parent or another child of the parent.

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.⁹⁹

Section 16

Section 39.806, F.S., is amended to provide additional grounds for termination of parental rights (TPR) as follows:

- Materially breaching a case plan. “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.
- A parent subjects the child *or another child* to aggravated child abuse, sexual battery, or sexual abuse.
- A parent has been convicted of murder or manslaughter *of the other parent* or of another child, aiding or abetting, or conspiracy or solicitation to murder *the other parent* or another child, or a felony battery that resulted in serious bodily injury to the child or to another child.
- 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.
- 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(31)(g), F.S., after which the mother had the opportunity to participate in substance abuse treatment.
- On three or more occasions, the child or another child of the parent is placed in out-of-home care pursuant to ch. 39, F.S.

The bill also provides that reasonable efforts to preserve and unify families are not required if the court finds that any of the new grounds, listed above, have occurred.

⁹⁸ 42 U.S.C. s. 675 (2008).

⁹⁹ 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).

Section 17

The bill amends s. 39.810, F.S., to find that termination of parental rights is the least restrictive means of protecting a child when the court finds that termination of parental rights is in the best interests of the child.

The bill does not provide a definition for the term “least restrictive means.”

Section 18

The bill amends s. 63.032, 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 19

The bill amends s. 322.142, F.S., to allow the Department of Highway Safety and Motor Vehicles 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 20

Section 402.401, F.S., is amended to give the department the authority to administer the Florida Child Welfare Student Loan Forgiveness Program (the Program). 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. An “eligible” employee is one 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.

The bill amends the current law so that it more accurately describes the Program as it is currently implemented by the department pursuant to proviso language.¹⁰⁰

Section 21

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

¹⁰⁰ See Memorandum: Child Welfare Student Loan Forgiveness Program, *supra* note 76, at 3.

Section 22

The bill substantially amends s. 409.401, F.S., so that it aligns with the new federal Interstate Compact on the Placement of Children (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 a state's 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.¹⁰¹

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 23

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

Section 24

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

Section 25

The bill amends s. 787.04, F.S., to make it unlawful to knowingly and willfully 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.

According to the department, changing the language from “criminal intent” to “knowingly and willfully” clarifies the burden of prosecution for individuals who remove a child from the state or who conceal a child.¹⁰²

¹⁰¹ E-mail correspondence from Patricia Badland, Office of Family Safety, Dep't of Children and Families, to Senate Committee on Children, Families, and Elder Affairs, Feb. 11, 2008 (on file with the Senate Committee on Judiciary).

¹⁰² Dep't of Children and Families, Committee Substitute for Senate Bill 1048 Analysis, March 5, 2008.

Section 26

The bill amends s. 937.021, 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 person filing a report to present an order that a child be taken into custody before accepting a report that the child is missing.

Section 27

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 28

Chapter 2007-174, L.O.F., is amended to extend the expiration date to June 30, 2009, rather than June 30, 2008. This amendment will allow the department to continue the process of reorganization that began in 2007.

Sections 29, 30, 31, 32, 34, and 35

The bill conforms cross-references.

Section 33

The bill amends s. 39.811, F.S., to add new grounds for termination of parental rights proposed by the bill (section 15 of this bill) to the list of circumstances under which reasonable efforts to reunify a child with the parent or parents is not required.

Section 36

Provides an effective date of July 1, 2008, unless otherwise expressly provided in the act.

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.”¹⁰³

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 it will be funded.

The bill directs law enforcement agencies to accept missing children reports from the department and its contracted providers, in addition to from parents and guardians under current law. This change may result in an increase in missing children investigations conducted by law enforcement agencies. However, the extent of any fiscal impact on law enforcement agencies is not known.

According to the Department of Children and Families, the bill is not expected to have a fiscal impact.¹⁰⁴

VI. Technical Deficiencies:

- The revisions to s. 39.504, F.S., cause certain words to no longer match. For example, on lines 537-540 the bill reads that a copy of the injunction is to be delivered to the respondent **by** law enforcement. On lines 541-542, the bill refers to delivery of the injunction **to** the law enforcement agency. It appears that, originally, these two sentences were supposed to mirror each other.

VII. Related Issues:

None.

¹⁰³ *Padgett*, 577 So. 2d at 571.

¹⁰⁴ Dep’t of Children and Families, Committee Substitute for Senate Bill 1048 Analysis, March 5, 2008.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Judiciary on March 18, 2008:

The committee substitute:

- Aligns Florida law with the most recent version of the revised Interstate Compact on the Placement of Children;
- Revises the inquiries required by a petitioner in conducting a diligent search to find a parent or prospective parent whose location is unknown, to include a thorough search of at least one electronic database specifically designed for locating persons; and
- Makes technical and conforming changes.

CS by Children, Families, and Elder Affairs on February 20, 2008:

The committee substitute adds new grounds for terminating parental rights and conforms Florida law to federal requirements under the Adoption and Safe Families Act. The bill makes additional, significant amendments to ch. 39, F.S. The bill allows 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, makes significant changes to the Florida Child Welfare Student Loan Forgiveness Program, and aligns 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.

- B. **Amendments:**

None.