

By Senator Rich

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1 A bill to be entitled

2 An act relating to the termination of parental rights;
3 amending s. 39.806, F.S.; revising the grounds for
4 terminating parental rights to include a parent's
5 incarceration in a federal or county correctional
6 institution or facility and the significance of the total
7 period of such incarceration to a child based on the
8 child's age and need for a stable home; requiring a court
9 to calculate the period of incarceration beginning on the
10 date that the parent enters the correctional institution
11 or facility; requiring a court to consider a parent's
12 failure to substantially comply with the case plan within
13 12 months after the child is adjudicated dependent as
14 evidence of continuing abuse, neglect, or abandonment;
15 deleting a provision that provides the circumstances under
16 which the 12-month period begins; providing an effective
17 date.

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19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Paragraphs (d) and (e) of subsection (1) of
22 section 39.806, Florida Statutes, are amended to read:

23 39.806 Grounds for termination of parental rights.--

24 (1) Grounds for the termination of parental rights may be
25 established under any of the following circumstances:

26 (d) When the parent of a child is incarcerated in a
27 federal, state, or county ~~federal~~ correctional institution or
28 facility and either:

34-03009A-08

20082576__

29 1. The period of time for which the parent has been or is
30 expected to be incarcerated is significant to the child such that
31 it is considered abandonment under s. 39.01(1). In determining
32 whether the incarceration is significant to the child, the court
33 shall consider the child's age and need for a permanent and
34 stable home. The court shall calculate the period of
35 incarceration beginning on the date that the parent enters a
36 federal, state, or county correctional institution or facility
37 ~~will constitute a substantial portion of the period of time~~
38 ~~before the child will attain the age of 18 years;~~

39 2. The incarcerated parent has been determined by a the
40 court of competent jurisdiction to be a violent career criminal
41 as defined in s. 775.084, a habitual violent felony offender as
42 defined in s. 775.084, or a sexual predator as defined in s.
43 775.21; has been convicted of first degree or second degree
44 murder in violation of s. 782.04 or a sexual battery that
45 constitutes a capital, life, or first degree felony violation of
46 s. 794.011; or has been convicted of an offense in another
47 jurisdiction which is substantially similar to one of the
48 offenses listed in this paragraph. As used in this section, the
49 term "substantially similar offense" means any offense that is
50 substantially similar in elements and penalties to one of those
51 listed in this subparagraph, and that is in violation of a law of
52 any other jurisdiction, whether that of another state, the
53 District of Columbia, the United States or any possession or
54 territory thereof, or any foreign jurisdiction; or

55 3. The court determines by clear and convincing evidence
56 that continuing the parental relationship with the incarcerated
57 parent would be harmful to the child and, for this reason, that

34-03009A-08

20082576__

58 termination of the parental rights of the incarcerated parent is
59 in the best interest of the child.

60 (e) When a child has been adjudicated dependent, a case
61 plan has been filed with the court, and:

62 1. The child continues to be abused, neglected, or
63 abandoned by the parents. Twelve months after the ~~In this case,~~
64 ~~the failure of the parents to substantially comply for a period~~
65 ~~of 12 months after an~~ adjudication of the child as a dependent
66 child or the child's placement into shelter care, whichever came
67 first, the court shall consider the parent's failure to
68 substantially comply with the case plan as ~~constitutes~~ evidence
69 of continuing abuse, neglect, or abandonment unless the failure
70 to substantially comply with the case plan was due either to the
71 lack of financial resources of the parents or to the failure of
72 the department to make reasonable efforts to reunify the parent
73 and child. ~~The 12-month period begins to run only after the~~
74 ~~child's placement into shelter care or the entry of a disposition~~
75 ~~order placing the custody of the child with the department or a~~
76 ~~person other than the parent and the approval by the court of a~~
77 ~~case plan with a goal of reunification with the parent, whichever~~
78 ~~came first; or~~

79 2. The parent has materially breached the case plan by
80 making it unlikely that he or she will be able to substantially
81 comply with the case plan before the time for compliance expires.
82 Time is of the essence for permanency of children in the
83 dependency system. In order to prove the parent has materially
84 breached the case plan, the court must find by clear and
85 convincing evidence that the parent is unlikely or unable to

34-03009A-08

20082576__

86 | substantially comply with the case plan before time expires to
87 | comply with the case plan.

88 | Section 2. This act shall take effect July 1, 2008.