

The bill requires that photographs, reports on examinations, and X rays be preserved in a permanent form in records held by the Florida Department of Children and Families, and it also designates the first Sunday after Labor Day as “Grandparents’ and Family Caregivers’ Day.”

This bill substantially amends the following sections of the Florida Statutes: 39.201, 39.202, 39.301, 39.304, 39.402, 39.502, 39.506, 39.5085, 39.6011, 39.6013, 39.701, 39.823, and 683.10.

II. Present Situation:

Kinship Care

The Child Welfare League of America (CWLA)¹ defines kinship care as “the full time care, nurturing and protection of children by relatives, members of their tribes or clans, godparents, stepparents, or any adult who has a kinship bond with a child.”² The CWLA notes that “one of the most recent stunning changes in the child welfare system has been the major growth in the number of children in state custody who are living with their relatives.”³

In the United States, more than six million children – approximately 1 in 12 – are living in households headed by grandparents or other relatives.⁴ In many of these homes, grandparents and other relatives are taking on the primary responsibility for the child’s needs, without either of the child’s parents present in the home.⁵

The increase in recent years in the numbers of children living with relatives can be attributed to many factors, including:

- Increased reporting of abuse and neglect;
- Change in drug usage and addiction related to the spread of crack cocaine and other drugs;
- Increased levels of poverty;
- More children affected by HIV/AIDS;
- More parents struggling with physical and mental health problems;
- Family violence and parental incarceration; and
- Decline in the availability of traditional foster homes.⁶

In Florida, 258,952 children live in grandparent-headed households, which accounts for 7.1 percent of all the children in the state.⁷ There are another 86,152 children living in households

¹ The Child Welfare League of America, founded in 1920, “provides direct support to agencies that serve children and families, improving the quality of the services they provide to more than nine million children every year.” Child Welfare League of America, *About CWLA: Fact Sheet*, <http://www.cwla.org/whowhat/more.htm> (last visited March 10, 2009).

² Child Welfare League of America, *Kinship Care: Fact Sheet*, <http://www.cwla.org/programs/kinship/factsheet.htm> (last visited March 10, 2009).

³ *Id.*

⁴ American Ass’n of Retired Persons et al., *State Fact Sheets for Grandparents and Other Relatives Raising Children* (Oct. 2007), http://www.grandfactsheets.org/state_fact_sheets.cfm (last visited March 10, 2009).

⁵ *Id.*

⁶ *Kinship Care: Fact Sheet*, *supra* note 2.

⁷ American Ass’n of Retired Persons et al., *GrandFacts, Florida* (Nov. 2007), <http://www.grandfactsheets.org/doc/Florida%2007%20New%20Template.pdf> (last visited March 10, 2009).

headed by other relatives, accounting for 2.4 percent of all the children in the state.⁸ Of the children living in households headed by grandparents or other relatives, 151,492 are living there without either parent present.⁹ Although many children living with relatives are doing so pursuant to a court order,¹⁰ far more are living with relatives in informal arrangements, with no court involvement, often because their parents are incarcerated or addicted to drugs.¹¹

Kinship Support Center

In response to the growing needs of children living in kinship care homes in Florida and the many grandparents and other relatives who are providing the primary care for them, the University of South Florida's School of Social Work established the Kinship Support Center (Center).¹² According to its website, the Center:

- Develops, maintains, and strengthens support groups for kinship caregivers and their children;
- Collaborates with the community to develop new, innovative services to address the needs and concerns of the kinship care family;
- Researches and develops techniques for working with children, kinship caregivers, biological parents, school systems, local and state service provider agencies, and the community;
- Serves as a statewide clearinghouse of kinship care information obtained at local, state, and federal level of government for service providers and caregivers;
- Provides training for service provider agencies, universities, and kinship caregivers;
- Provides direct services to kinship caregivers throughout Florida by means of the Kinship Care Warmline, a statewide listening line for kinship caregivers who need emotional support, information, and referral services; and
- Provides direct services to children living in kinship care families through a school-based intervention pilot project.¹³

⁸ *Id.*

⁹ *Id.*

¹⁰ As of December 2008, there were 8,406 children in Florida who had been placed with relatives pursuant to a court order. See Florida Dep't of Children and Families, *Department of Children and Families Staff Analysis and Economic Impact, Senate Bill Number 1276* (Jan. 21, 2009); e-mail from Julie Mayo, Florida Dep't of Children and Families, to staff of the Senate Committee on Judiciary (March 12, 2009) (on file with the Senate Committee on Judiciary).

¹¹ See generally Judge Tracy Sheehan, *Relative Caregiver Legislative Priority 2007* (April 3, 2008) (on file with the Senate Committee on Judiciary); see also James P. Gleeson, *Kinship Care Research and Literature: Lessons Learned and Directions for Future Research*, KINSHIP REPORTER VOL. 1, NO. 2 (Summer 2007), available at <http://www.cwla.org/programs/kinship/kinshipsummer2007.pdf> (last visited March 10, 2009).

¹² Pursuant to a contract that ends June 30, 2009, the Florida Department of Children and Families provides the Center with \$400,000 in funding per year, as well as a designated program liaison. According to the Center, all of its statewide programs will cease when this funding ends. Anne L. Strozier, Ph.D., M.S.W., Director, Florida Kinship Center, Univ. of South Florida, *Florida Kinship Center, Keeping Families Together* (presentation to the Senate Committee on Children, Families, and Elder Affairs) (Feb. 4, 2009).

¹³ School of Social Work, Univ. of South Florida, *Kinship Support Center*, <http://www.cas.usf.edu/~krisman/> (last visited March 10, 2009).

Relative Caregiver Program

Section 39.5085, F.S., establishes the Relative Caregiver Program through which relatives who care for dependent children are eligible for financial assistance within available funding limits.¹⁴ Chapter 39, F.S., however, does not otherwise explicitly require that relatives¹⁵ be involved in or informed of child protective investigations or dependency proceedings, unless they are legal custodians of the subject child or children.¹⁶

Fostering Connections to Success and Increasing Adoptions Act of 2008

On October 7, 2008, President Bush signed into law the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Act).¹⁷ Specifically, the Act amends Title IV of the Social Security Act as follows:

- Extends support for kinship care, including optional kinship guardianship assistance payments to grandparents and other relatives who have assumed legal guardianship of children;
- Provides matching grants to state, local, or tribal child welfare agencies, and certain private non-profit organizations;
- Requires notice to grandparents and other relatives of a child who has been removed from parental custody;
- Allows for a waiver of licensing standards on a case-by-case basis for relative foster family homes;
- Provides a state option to extend foster care and adoption assistance programs to any child up to age 21;
- Requires a caseworker to provide a child with a transition plan prior to the child turning 18;
- Entitles states to 75 percent of expenditures for the short-term training of current or prospective foster or adoptive parents, including relative guardians;
- Requires greater coordination of on-going education for foster children;
- Requires greater healthcare planning for children in foster care;
- Requires states to make a reasonable effort to place siblings in the same foster care, kinship guardianship, or adoptive placement;
- Provides Indian children in tribal areas direct access to Title IV-E funds;

¹⁴ The average Relative Caregiver payment is \$263 per month per child; the average foster care board rate is \$461 per month per child. Florida Dep't of Children and Families, *DCF Quick Facts 6* (Oct. 20, 2008), available at <http://www.dcf.state.fl.us/publications/docs/quickfacts.pdf> (last visited March 10, 2009).

¹⁵ Pursuant to s. 39.01(64), F.S., "relative" means 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. The term does not include a stepparent."

¹⁶ Section 39.502(17), F.S., requires reasonable notice of dependency proceedings to all "participants." Section 39.01(50), F.S., defines a "participant" for purposes of a shelter, dependency, or termination of parental rights proceeding as "any person who is not a party but who should receive notice of hearings involving the child, including the actual custodian of the child, the foster parents or the legal custodian of the child, identified prospective parents, and any other person whose participation may be in the best interest of the child." A relative will meet this definition only if he or she is the current or potential placement for the child.

¹⁷ Pub. L. No. 110-351 (2008).

- Extends the Adoption Incentives Program through 2013;
- Removes certain income requirements for eligibility for adoption assistance; and
- Requires a state to inform persons adopting that they may be eligible for a federal tax credit.¹⁸

In the area of kinship care, the Act requires child welfare agencies to “exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child . . .” within 30 days of a child’s removal from parental custody.¹⁹ The Act specifies that the notice must:

- Inform the relative that the child has been or is being removed from parental custody;
- Explain the relative’s options for participation in the care and placement of the child;
- Describe the requirements, services, and supports for becoming a foster family home; and
- Describe how a relative guardian may receive kinship guardianship assistance payments, if the state has elected this option.²⁰

The notice requirement does not appear to be contingent on the state’s election to accept kinship guardianship assistance payments, although the option must be included in the notice if the state chooses to implement such payments.

Many of the Act’s provisions, including the notice requirements to relatives, took effect upon passage in October 2008. However, the Act permits a state to delay implementation if the federal government agrees that the state must enact legislation to meet the Act’s requirements. If legislation is required, a state may delay implementation until the first day of the first calendar quarter following the close of the first regular session after October 7, 2009.²¹ In Florida, the delayed effective date is July 1, 2010.

The Florida Department of Children and Families (department) has certified that legislation is necessary to implement many of the Act’s provisions, including the notice to relatives provision.²² The department anticipates a need to amend foster care licensing standards (s. 409.175, F.S.) in order to facilitate the involvement of relatives in dependency proceedings. The implementation of the notice provision, which requires the department to describe the requirements for becoming a family foster home, will be affected by any amendments to the licensing standards.²³

¹⁸ Nat’l Conference of State Legislatures, *Fostering Connections to Success and Increasing Adoptions Act of 2008, H.R. 6893/P.L. 110-351*, available at <http://www.ncsl.org/print/statefed/SummaryHR6893.pdf> (last visited March 10, 2009).

¹⁹ Pub. L. 110-351, s. 103 (2008).

²⁰ *Id.*

²¹ Pub. L. 110-351, s. 601 (2008).

²² Florida Dep’t of Children and Families, *Attachment A – Certification of Required State Legislation, Title IV-E State Plan – State of Florida* (Nov. 18, 2008) (on file with the Senate Committee on Judiciary).

²³ Telephone conversation by staff of the Senate Committee of Children, Families, and Elder Affairs with Patricia Badland, Deputy Director, Office of Family Safety, Florida Department of Children and Families (Feb. 26, 2009).

Confidentiality of Records

Current law provides that all records held by the department concerning reports of child abandonment, abuse, or neglect are to be confidential and exempt from the provisions of the Public Records Act.²⁴ This includes reports made to the central abuse hotline and all records generated as a result of such reports.

The exemption authorizes release of the confidential and exempt records to specified agencies and persons under specified circumstances.²⁵ For example, the department may release otherwise confidential information to professionals as is necessary for the diagnosis and treatment of the child or of the person perpetrating abuse or neglect.²⁶

Photographs and Medical Records in Cases of Abuse, Abandonment, or Neglect

Section 39.304, F.S., permits any person required to investigate cases of suspected child abuse, abandonment, or neglect to photograph the areas of trauma visible on a child who is the subject of the report, and requires any child protection team²⁷ that examines a child to photograph visible trauma. Photographs of physical abuse injuries must be provided to the department for inclusion in the investigative file. Photographs of trauma caused by sexual abuse must be made part of the child protection team's medical record.²⁸

Under certain circumstances, a child who is the subject of an abuse investigation may be referred for diagnosis to a licensed physician or an emergency department in a hospital without the consent of the child's parents or legal custodian.²⁹ A licensed physician or advanced registered nurse practitioner who has reasonable cause to suspect that an injury is the result of child abuse, abandonment, or neglect may authorize a radiological examination to be performed on the child without the consent of the child's parent or legal custodian.³⁰

Any facility licensed under ch. 395, F.S., must provide the department, its agent, or a child protection team that contracts with the department any photograph or report on examinations made or X rays taken for the purpose of investigation or assessment of cases of abuse, abandonment, neglect, or exploitation of children.³¹

²⁴ Section 39.202(1), F.S. The Public Records Act, ch. 119, F.S., specifies conditions under which public access must be provided to records of the executive branch and other agencies. Unless specifically exempted, all agency records are available for public inspection. The term "public record" is defined very broadly and, unless made exempt, all such materials are open for public inspection at the moment they become records.

²⁵ Section 39.202(2), F.S.

²⁶ Section 39.202(3), F.S.

²⁷ Pursuant to s. 39.303, F.S., certain child abuse cases (e.g., cases involving head injury, bruising, sexual abuse, malnutrition, or death) must be referred to a Department of Health child protection team for assessment and other services. The child protection teams are comprised of representatives of school districts and appropriate health, mental health, social service, legal service, and law enforcement agencies.

²⁸ Section 39.304(1)(a), F.S.

²⁹ Section 39.304(1)(b), F.S.

³⁰ *Id.*

³¹ Section 39.304(3), F.S.

III. Effect of Proposed Changes:

This bill creates the “Zahid Jones, Jr., Give Grandparents and Other Relatives a Voice Act”³² and makes a number of changes to sections of law relating to children in order to provide notice to relatives of all proceedings and hearings regarding a child.

Specifically, the bill:

- Requires that if parents refuse voluntary services, the child protective investigator (CPI) must speak to a collateral contact,³³ which includes a relative, if the CPI has knowledge of and the ability to contact a relative (see **Section 4** of the bill);
- Allows a relative, at any time after the commencement of a protective investigation, to submit a request to a CPI or case manager to receive notice of all proceedings and hearings involving the child (see **Section 4** of the bill);
- Provides that the case plan must describe the case manager’s responsibility for forwarding a relative’s request for notification to the attorney for the Florida Department of Children and Families (department) (see **Section 10** of the bill);
- Requires that a court order for shelter placement include a written finding³⁴ that the court notified relatives who are providing out-of-home care for the child of the next dependency hearing and of the importance of active participation of the relatives who are providing out-of-home care in all proceedings and hearings (see **Section 6** of the bill);
- Requires that a court order for shelter placement include a written finding that the court notified relatives who are providing out-of-home care that they have a right to attend subsequent hearings, submit reports to the court, and speak to the court regarding the child (see **Section 6** of the bill);
- Requires the attorney for the department to notify any relative who has requested notification, of the date, time, and location of all proceedings and hearings involving the child, and to notify the relative that he or she has the right to attend all subsequent proceedings and hearings, to submit reports to the court, and to speak to the court regarding the child. The court can release the attorney from notifying a relative if the

³² Zahid Jones was a 3-year-old boy who was killed by his mother’s boyfriend just over a month after DCF returned the child to his mother’s home, despite tips from his grandmother that he was not safe. See Elizabeth Wright, *State DCF grapples with questions in wake of Lee toddler’s death*, NAPLES DAILY NEWS (June 17, 2007), available at http://www.naplesnews.com/news/2007/jun/17/state_dcf_grapples_questions_wake_lee_toddlers_dea/ (last visited March 10, 2009).

³³ The term “collateral contacts” is defined by rule to mean “face to face, telephonic or written communication with those persons who provide relevant information for a child protection investigation but who are not subjects of the reports. These persons include school personnel, service providers, neighbors, other relatives and any other significant person in the child’s life or in the caregiver’s life.” Fla. Admin. Code R. 65C-30.001(28).

³⁴ Pursuant to s. 39.402(8)(h), F.S., the court is required to enter written findings addressing enumerated issues in an order for shelter placement. The court is required to enter written findings in other sections of ch. 39, F.S. (see ss. 39.0138(7), 39.302(2)(a), 39.407(6)(c), and 39.521(1)(f)2., F.S.); however, the court is not required to enter written findings in orders at other stages in the dependency proceedings.

court finds that the relative's involvement is impeding the proceedings or is detrimental to the child's well-being (see **Section 7** of the bill). The bill does not specify what recourse a relative may have if he or she does not receive notice after requesting it. The bill may need to specify whether a relative has any recourse and, if so, how it may affect proceedings if a relative requesting notification was not involved.

- whether a relative requesting notification is granted a substantive right to notice, so that if the relative does not receive notice after requesting it, he or she has a right of recourse. If the bill is not intended to grant a substantive right to a relative requesting notification, language may need to be added to the bill to make clear that a relative does not have any recourse if notice is not provided.
- Provides that at the conclusion of an arraignment hearing, the court must notify the relatives providing out-of-home care for a child, in addition to the parties, of the date, time, and location for the next scheduled hearing (see **Section 8** of the bill); and
- Requires the attorney for the department to notify any relative who has requested notice of judicial review hearings (see **Section 12** of the bill).

Additionally, the bill amends s. 39.301, F.S., providing that if a protective investigation is commenced based on a report to the central abuse hotline from a reporter who must provide his or her name to hotline staff,³⁵ the reporter must be given the contact information of the investigator within 24 hours after an investigator has been assigned. The bill also permits such a reporter to give a written summary of the report made to the central abuse hotline to the investigator, which will become part of the master file.

Further, the bill amends s. 39.201, F.S., to provide that the department's quality assurance program must analyze unaccepted reports called into the child abuse hotline by identified relatives as a part of the review of screened-out calls.

Section 39.202, F.S., relating to the confidentiality of child abuse reports, is amended to allow a physician, psychologist, or mental health professional engaged in the care of the child to have access to otherwise confidential child abuse records.

The bill requires that photographs, reports on examinations, and X rays be preserved in a permanent form in records held by the department. According to the department, this provision codifies current practice.³⁶

The bill amends the intent language of the Relative Caregiver Program, located in s. 39.5085, F.S., to recognize the "valued resource uniquely available through grandparents and relatives of

³⁵ Section 39.201(1)(b), F.S., provides that persons in the following occupation categories are required to provide their names to the hotline staff: (1) physician, osteopathic physician, medical examiner, chiropractic physician, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons; (2) any other health or mental health professional; (3) any practitioner who relies solely on spiritual means for healing; (4) school teachers or other school officials or personnel; (5) social workers, day care center workers, or other professional child care, foster care, residential, or institutional workers; (6) law enforcement officers; or (7) judges.

³⁶ Florida Dep't of Children and Families, *supra* note 10.

children.” The bill authorizes the department to utilize available funds to develop liaison functions for relatives caring for children under ch. 39, F.S.

The bill amends s. 683.10, F.S., deleting the designation of “Grandmother’s Day” and designating the first Sunday after Labor Day as “Grandparents’ and Family Caregivers’ Day.”

The bill makes technical and conforming changes.

The bill has an effective date of July 1, 2009.

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:

Parents have a fundamental liberty interest in determining the care and upbringing of their children. The interest is protected by both the Florida and United States Constitutions.³⁷ This bill may implicate this fundamental right by allowing relatives to receive notice of all proceedings and hearings on a related child, and, therefore, the bill may be subject to constitutional scrutiny.

Florida law gives grandparents the right to visitation with their grandchildren under certain circumstances,³⁸ but the Florida Supreme Court has struck down as unconstitutional many of the substantive provisions of these grandparent visitation laws.³⁹ However, none of the court rulings that have dealt with grandparent visitation rights have affected a grandparent’s right to petition for visitation and custody in proceedings under ch. 39, F.S., where the issue of the child’s health and welfare and possibly the parents’ fitness is already at issue before the court.

Pursuant to s. 39.509, F.S., a grandparent is entitled to reasonable visitation if the grandchild has been adjudicated dependent and removed from the parent’s custody. Accordingly, it appears that in ch. 39, F.S., proceedings, a relative may be able to request

³⁷ See *Beagle v. Beagle*, 678 So. 2d 1271, 1275 (Fla. 1996); FLA. CONST. art. I, s. 23.

³⁸ See chs. 39, 61, and 752, F.S.

³⁹ See Comm. on Judiciary, Fla. Senate, *Grandparent Visitation Rights* (Interim Report 2009-120) (Oct. 2008), available at http://www.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-120ju.pdf (last visited March 10, 2009), for a detailed discussion of grandparent rights.

notice to all proceedings or hearings dealing with the related child without violating the parents' fundamental rights.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill is not expected to have a fiscal impact on the Florida Department of Children and Families (department); however, there may be an increase in workload for the department attorneys in order to fulfill the notice requirements of the bill.⁴⁰

To the extent the bill now requires the court to provide notice to relatives providing out-of-home care for a child, the court system may incur additional costs; however, these costs, if any, are unknown at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill gives relatives a right to request notification of all proceedings and hearings involving a child under ch. 39, F.S. The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Act) will require the Florida Department of Children and Families (department) to identify and provide notice to relatives that a child has been removed from the care of the custodial parents and that the relative has options for participating in the care and placement of the child. Although the provisions of this bill do not directly conflict with the federal requirements, it may be more efficient to consider all of the issues relating to relative notification in dependency proceedings at one time when the Act is implemented.

The bill allows physicians, psychologists, and mental health professionals engaged in the care of a child to receive otherwise confidential reports of abuse concerning the child. The department is already authorized to release confidential information to professionals as is necessary for the diagnosis and treatment of a child who is the subject of abuse or the person perpetrating abuse.⁴¹ The bill appears to allow disclosure of abuse records to health care providers for the ordinary care of the child, rather than just for the care related to the abuse.

⁴⁰ Florida Dep't of Children and Families, *supra* note 10.

⁴¹ Section 39.202(3), F.S.

The bill requires that photographs, reports, and X rays be preserved in a “permanent form” by the department. It is unclear if “permanent” means the records must be held in perpetuity (which may be contrary to the state’s records retention policies) or if “permanent” is meant to describe the format of the records. If the latter is intended, it is unclear what formats would be considered permanent in nature.

VIII. Additional Information:

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

CS by Judiciary on March 18, 2009:

The committee substitute removes the requirement that the court provide notice to relatives requesting notification and, instead, provides that the attorney for the Department of Children and Families shall provide notice to relatives requesting notification. The attorney must notify the relative of the date, time, and location of any proceedings and hearings, as well as notify the relative that he or she has the right to attend all subsequent proceedings or hearings, to submit reports to the court, and to speak to the court regarding the child.

CS by Children, Families, and Elder Affairs on March 4, 2009:

The committee substitute allows a relative to request notification at any time after the commencement of a protective investigation, rather than just during the investigation, and makes a technical amendment removing a duplicative provision.

- B. **Amendments:**

None.