

By Senator Wise

5-00937-09

20092420__

1 A bill to be entitled
2 An act relating to parental rights; amending s.
3 39.401, F.S.; providing that a child may be taken into
4 custody only pursuant to a court order unless there is
5 an immediate threat to the child's health or safety;
6 amending s. 39.702, F.S.; requiring citizen review
7 panels to be established in all judicial circuits;
8 requiring the recommendations of the panel to be
9 considered at a hearing or trial on the termination of
10 parental rights; amending s. 39.809, F.S.; requiring
11 the court to consider the recommendations of a citizen
12 review panel when considering the termination of
13 parental rights; lengthening the number of days
14 between the advisory hearing and the adjudicatory
15 hearing; requiring a jury for the adjudicatory hearing
16 or trial; requiring the hearing or trial to be open to
17 the public except pursuant to court order; requiring
18 the recommendations of the citizen review panel to
19 accompany the court's order; providing an effective
20 date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Subsection (1) of section 39.401, Florida
25 Statutes, is amended to read:

26 39.401 Taking a child alleged to be dependent into custody;
27 law enforcement officers and authorized agents of the
28 department.—

29 (1) Except where there is an immediate threat to the health

5-00937-09

20092420__

30 or safety of a child, a child may not ~~only~~ be taken into custody
 31 except pursuant to a court order issued pursuant to the
 32 provisions of this part and a finding that:

33 ~~(a) pursuant to the provisions of this part, based upon~~
 34 ~~sworn testimony, either before or after a petition is filed; or~~

35 ~~(b) By a law enforcement officer, or an authorized agent of~~
 36 ~~the department, if the officer or authorized agent has probable~~
 37 ~~cause to support a finding:~~

38 (a)1. ~~That~~ The child has been abused, neglected, or
 39 abandoned, or is suffering from or is in ~~imminent~~ danger of
 40 illness or injury as a result of abuse, neglect, or abandonment;

41 (b)2. ~~That~~ The parent or legal custodian of the child has
 42 materially violated a condition of placement imposed by the
 43 court; or

44 (c)3. ~~That~~ The child has no parent, legal custodian, or
 45 responsible adult relative ~~immediately~~ known and available to
 46 provide supervision and care.

47 Section 2. Subsections (1) and (4) of section 39.702,
 48 Florida Statutes, are amended to read:

49 39.702 Citizen review panels.—

50 (1) Citizen review panels shall ~~may~~ be established in each
 51 judicial circuit and ~~shall~~ be authorized by an administrative
 52 order executed by the chief judge of each circuit. The court
 53 shall administer an oath of office to each citizen review panel
 54 member which authorizes ~~shall authorize~~ the panel member to
 55 participate in citizen review panels and make recommendations to
 56 the court pursuant to the provisions of this section and s.
 57 39.809.

58 (4) Based on the information provided to each citizen

5-00937-09

20092420__

59 review panel ~~pursuant to s. 39.701~~, the each citizen review
60 panel shall provide the court with a report and recommendations
61 regarding:

62 (a) The placement and dispositional alternatives that the
63 court must ~~shall~~ consider before issuing a judicial review
64 order.

65 (b) The parental rights that the court must consider before
66 terminating such rights.

67 Section 3. Section 39.809, Florida Statutes, is amended to
68 read:

69 39.809 Adjudicatory hearing or trial.-

70 (1) In a hearing or trial on a petition for termination of
71 parental rights, the court, with the assistance of the report
72 and recommendations provided by the citizen review panel under
73 s. 39.702, shall consider the elements required for termination.
74 Each of these elements must be established by clear and
75 convincing evidence before the petition is granted.

76 (2) The adjudicatory hearing or trial must be held within
77 90 ~~45~~ days after the advisory hearing, but reasonable
78 continuances for the purpose of investigation, discovery, or
79 procuring counsel or witnesses may, when necessary, be granted.

80 (3) The adjudicatory hearing or trial must be conducted by
81 the judge with ~~without~~ a jury, applying the rules of evidence in
82 use in civil cases and adjourning the case from time to time as
83 necessary. For purposes of the adjudicatory hearing or trial, to
84 avoid unnecessary duplication of expense, the jury judge ~~judge~~ may
85 consider in-court testimony previously given at any properly
86 noticed hearing, without regard to the availability or
87 unavailability of the witness at the time of the actual

5-00937-09

20092420__

88 adjudicatory hearing or trial, if the recorded testimony itself
89 is ~~made~~ available ~~to the judge~~. Consideration of such testimony
90 does not preclude the witness from being subpoenaed to answer
91 supplemental questions.

92 (4) Unless the court approves a written motion filed by the
93 parent or child who is the subject of the hearing or trial
94 requesting that the hearing or trial be confidential and closed,
95 all hearings or trials involving the termination of parental
96 rights must be open ~~are confidential and closed~~ to the public.
97 Hearings or trials involving more than one child may be held
98 simultaneously when the children involved are related to each
99 other or were involved in the same case. The child and the
100 parents may be examined separately and apart from each other.

101 (5) The judge shall enter a written order with the findings
102 of fact and conclusions of law. The report and recommendations
103 of the citizen review panel must accompany the court's order.

104 Section 4. This act shall take effect July 1, 2009.