

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 381 Care of Children  
**SPONSOR(S):** Thompson and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:**

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	<u>Health Care Services Policy Committee</u>	<u>5 Y, 0 N</u>	<u>Preston</u>	<u>Schoolfield</u>
2)	<u>Civil Justice &amp; Courts Policy Committee</u>	<u>10 Y, 0 N</u>	<u>DeZego</u>	<u>De La Paz</u>
3)	<u>Health &amp; Family Services Policy Council</u>	<u>26 Y, 0 N</u>	<u>Lowell</u>	<u>Gormley</u>
4)	<u>Full Appropriations Council on General Government &amp; Health Care</u>		<u>Massengale</u>	<u>Leznoff</u>
5)				

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### SUMMARY ANALYSIS

This bill makes a number of changes to chapter 39, Florida Statutes, relating to grandparents and other relatives caring for children. This bill provides, in part, the following:

- The Florida Department of Children and Families' quality assurance program must analyze unaccepted reports to the abuse hotline by identified relatives as part of its review of screened out hotline calls;
- A relative may request to receive notification of all proceedings and hearings related to a child and the attorney for the department must provide such notification to a relative who requests it;
- Legislative intent relating to the relative caregiver program regarding procedures and protocols to acknowledge the value of care provided by grandparents and other relatives;
- Authority to develop liaison functions under the relative caregiver program for relatives who care for children;
- The attorney for the department must notify a relative who has requested such notification of the next judicial review hearing;
- Physicians and mental health professionals engaged in the care or treatment of a child may have access to reports and records in cases of child abuse or neglect and specified medical records must be preserved in permanent form by the department; and
- A reporter of abuse, abandonment or neglect must be provided with the name and other contact information of the protective investigator.

In addition, the bill designates the first Sunday after Labor Day as "Grandparents' and Family Caregivers' Day." This bill may be cited as the "Zahid Jones, Jr. Give Grandparents and Other Relatives a Voice Act."

The bill does not appear to have a fiscal impact on local governments. The fiscal impact on state government is indeterminate, but likely minimal.

The bill takes effect July 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

The Child Welfare League of America (CWLA) 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.” CWLA reports that major growth in the number of children in state custody who are living with relatives is one of the most dramatic changes in the child welfare system in recent years.<sup>1</sup>

In the United States, more than six million children—approximately 1 in 12—are living in households headed by grandparents or other relatives. 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.<sup>2</sup> The increase in recent years in the numbers of children living with relatives can be attributed to multiple 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.<sup>3</sup>

In Florida, 258,952 children live in households headed by grandparents, which accounts for 7.1 percent of all children in the state. There are an additional 86,152 children living in households headed by other relatives, accounting for 2.4 percent of all the children in the state. Of the children living in households headed by grandparents or other relatives, 151,492 are living there without either parent present.<sup>4</sup> While many of these children are living with relatives after being adjudicated dependent by a court

<sup>1</sup> See Child Welfare League of America, Kinship Care: Fact Sheet, *available at* <http://www.cwla.org/programs/kinship/factsheet.htm>. Last accessed February 19, 2009.

<sup>2</sup> See American Association of Retired Persons, State Fact Sheets for Grandparents and Relatives Raising Children (Oct. 2007), *available at* [http://www.grandfactsheets.org/state\\_fact\\_sheets.cfm](http://www.grandfactsheets.org/state_fact_sheets.cfm). Last accessed February 19, 2009.

<sup>3</sup> See Child Welfare League of America, Kinship Care: Fact Sheet, *available at* <http://www.cwla.org/programs/kinship/factsheet.htm>. Last accessed February 19, 2009.

<sup>4</sup> See American Association of Retired Persons, GrandFacts, Florida (Nov. 2007) at <http://www.grandfactsheets.org/doc/Florida%2007%20New%20Template.pdf>. Last accessed February 19, 2009.

pursuant to chapter 39, Florida Statutes, greater numbers are living with relatives in informal arrangements, without court involvement.

### Fostering Connections to Success and Increasing Adoptions Act of 2008

President Bush signed the Fostering Connections to Success and Increasing Adoptions Act of 2008 into law on October 7, 2008.<sup>5</sup> Generally, the Act amends Title IV of the Social Security Act as follows:

- Extends support for kinship care, including optional kinship assistance payments;
- Provides a state option to extend foster care to age twenty-one;
- Provides tribes direct access to Title IV-E funds;
- Reauthorizes the adoption incentives program;
- Requires greater healthcare planning for children in care; and
- Requires greater coordination of on-going education for foster children.<sup>6</sup>

In the area of kinship care, the Act also requires child welfare agencies to "exercise due diligence to identify and provide notice to all adult grandparents and other relatives..." within thirty days of a child's removal from the custody of the parent.<sup>7</sup> The Act specifies that the notice must:

- Inform the relative that the child has been removed;
- Explain the relative's options for participation in the care and placement of the child;
- Describe the requirements for becoming a foster family home; and
- Describe how the relative may enter into an agreement for kinship assistance payments if the state has elected this option.<sup>8</sup>

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 requirements for notice 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, then 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.<sup>9</sup> The department certified that legislation is necessary to implement many of the Act's provisions, including the notice to relatives provision.

## **Kinship Care**

### *Current Law*

Section 39.301(1)(a), Florida Statutes, provides that:

Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare... or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall report such knowledge or suspicion to the Department...

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<sup>5</sup> Pub. L. No. 110-351 (2008).

<sup>6</sup> Child Welfare League of America, Fostering Connections to Success: Resources in Seven Key Areas, available at <http://www.cwla.org/advocacy/adoptionhr6893resources.htm>. Last accessed March 2, 2009.

<sup>7</sup> Pub. L. 110-351 (2008).

<sup>8</sup> *Id.*

<sup>9</sup> Pub. L. 110-351, s. 601 (2008).

When the central abuse hotline receives a report of suspected abuse or neglect, the central abuse hotline determines whether the report requires an immediate onsite protective investigation. If a need for an immediate onsite investigation is found, then the Florida Department of Children and Families is immediately notified.<sup>10</sup> The department maintains a master file for each child whose report is accepted by the abuse hotline for investigation. The abuse hotline reports when three or more unaccepted reports are made on a single child.<sup>11</sup>

Section 39.301, Florida Statutes, provides in pertinent part that a child protective investigator contact the reporters as described in administrative rule. Current law does not require the department to notify relatives of dependency hearings and court proceedings, unless the relative is the legal custodian. A relative may or may not be notified as a participant.<sup>12</sup>

### *Proposed Changes*

The bill amends a number of sections of chapter 39, Florida Statutes, relating to dependent children, to ensure that grandparents and other relatives caring for children have an increased opportunity to participate in proceedings and hearings related to those children, including being able to receive notification of those proceedings. Specifically, the bill:

- Requires the department's quality assurance program to analyze unaccepted reports to the abuse hotline by identified relatives as part of its review of screened out hotline calls;
- Requires a child protective investigator (CPI) to make collateral contact with a relative in cases where services are refused;
- Allows a relative to submit a request to a CPI or case manager to receive notice of all proceedings involving the child;
- Provides that the case plan must describe the case manager's responsibility for forwarding a relative's request for notification of all proceedings and hearings to the attorney for the department;
- Requires that a court order for shelter placement include a written finding that the court notified relatives who are providing out-of-home care for the child of the next dependency hearing and the importance of the active participation of the relatives who are providing out-of-home care in all proceedings and hearings;
- Requires that a court order for shelter placement include a written finding that the court notified relatives 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;
- Requires the attorney for the department to notify any relative who has requested notification, of the date, time, and location of all proceedings involving the child, and to make all reasonable efforts to ensure that all relatives who have requested notification are given an opportunity to be heard by the court. The court can release the attorney from notifying a relative if the court finds that the relative's involvement is impeding the proceedings or is detrimental to the child's well-being;
- Provides that at the conclusion of an arraignment hearing, the relatives who are providing out-of-home care for a child must also be notified, in addition to the parties, of the date, time, and location for the next scheduled hearing;

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<sup>10</sup> Section 39.301(1), F.S.

<sup>11</sup> Julie Mayo, *The Florida Department of Children and Families Staff Analysis and Economic Impact*, January 21, 2009.

<sup>12</sup> A participant is 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. See s. 39.01(50), F.S.

- Requires the attorney for the Department to notify any relative who has requested notice of judicial review hearings; and
- Provides that if a protective investigation is commenced based on a report to the central abuse hotline from certain specified reporters, 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.

In addition, this bill provides that the first Sunday after Labor Day is designated as “Grandparents’ and Family Caregivers’ Day.”

## **Relative Caregiver Program**

### *Current Law*

In 1998, the Legislature created the Relative Caregiver Program to provide some assistance to relatives raising children. The program provides financial assistance within available funding limits to qualified families.<sup>13</sup> The department currently has a designated Out-of-Home Care specialist and a program liaison who works with the University of South Florida's Kinship Care Program.<sup>14</sup>

### *Proposed Changes*

The bill amends the Relative Caregiver Program to provide that it is the Legislature's intent to provide for the establishment of procedures and protocols to advance the continued safety of children by acknowledging the valued resource uniquely available through grandparents and relatives of children. In addition, this bill provides that the department may develop liaison functions to be available to relatives who care for children.

## **Confidentiality of Records**

### *Current Law*

To protect the rights of children and their parents or other persons responsible for the child's welfare, all records in the possession of the department relating to reports of child abandonment, abuse, or neglect, including reports made to the central abuse hotline and all records generated as a result of such reports, are confidential and exempt from the provisions of section 119.07(1), Florida Statutes, and shall not be disclosed except as specifically authorized by chapter 39, Florida Statutes.<sup>15</sup>

With the exception of children who are missing, access to such records, excluding the name of the reporter, may be granted to a specified list of entities, including, but not limited to, employees of the Department of Children and Families, the Department of Health, the Agency for Persons with Disabilities, criminal justice agencies, a court, a grand jury, and the principal of a school.<sup>16</sup> Information necessary for the diagnosis and treatment of a child or the person who perpetrated the abuse may also be released to professional persons.<sup>17</sup>

### *Proposed Changes*

The bill adds physicians and licensed mental health professionals engaged in the care and treatment of the child to the list of entities that may have access to these records. Since the department can currently provide professional persons with access to records necessary for the diagnosis and treatment of a child or the perpetrator of abuse, this new requirement makes it clear in statute that

<sup>13</sup> Section 39.5085, F.S.

<sup>14</sup> The University of South Florida's Kinship Care Program provides statewide technical assistance and resources for relative caring for children.

<sup>15</sup> Section 39.202(1), F.S.

<sup>16</sup> Section 39.202(2), F.S.

<sup>17</sup> Section 39.202(3), F.S.

physicians and mental health professionals are included in this list of professionals. In addition, this will provide access to these records for the ordinary treatment of a child by these professionals beyond the initial treatment related to the abuse or neglect.

## **Medical Records**

### *Current Law*

Currently, any person required to investigate cases of suspected child abuse, abandonment, or neglect may take or cause to be taken photographs of the areas of trauma visible on a child who is the subject of a report. Any child protection team that examines a child who is the subject of a report must take, or cause to be taken, photographs of any areas of trauma visible on the child. Photographs of physical abuse injuries are required to be provided to the department for inclusion in the investigative file and shall become part of that file. Photographs of sexual abuse trauma are required to be made part of the child protection team medical record.<sup>18</sup>

In addition, under certain circumstances a child 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. An examination may be performed by any licensed physician or an advanced registered nurse practitioner licensed pursuant to part I of chapter 464, Florida Statutes. If a licensed physician or advanced registered nurse practitioner has reasonable cause to suspect that an injury was the result of child abuse, abandonment, or neglect he or she may authorize a radiological examination to be performed on the child without the consent of the child's parent or legal custodian.<sup>19</sup>

Any facility licensed under chapter 395, Florida Statutes, is required to provide to 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.<sup>20</sup> Any photographs or report on examinations made or X-rays are required to be sent to the department as soon as possible.<sup>21</sup>

### *Proposed Changes*

The bill provides a requirement that photographs, reports on examinations, and X-rays shall be preserved in a permanent form in records held by the department so that they become a permanent part of the record. According to the department, this provision codifies current practice.

## **B. SECTION DIRECTORY:**

Section 1. Provides a short title for the bill.

Section 2. Amends s. 39.201, F.S., relating to mandatory reports of child abuse, abandonment, or neglect and the central abuse hotline.

Section 3. Amends s. 39.202, F.S., relating to confidentiality of reports and records in cases of child abuse and neglect.

Section 4. Amends s. 39.301, F.S., relating to the initiation of protective investigations.

Section 5. Amends s. 39.304, F.S., relating to photographs, medical examinations, X-rays, and the medical treatment of abused, abandoned, or neglected children.

Section 6. Amends s. 39.402, F. S., relating to placement in a shelter.

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<sup>18</sup> Section 39.304(1), F.S.

<sup>19</sup> Section 39.304(2), F.S.

<sup>20</sup> Section 39.304(3), F.S.

<sup>21</sup> Section 39.304(4), F.S.

Section 7. Amends s. 39.502, F.S., relating to notice, process, and service.

Section 8. Amends s. 39.506, F.S., relating to arraignment hearings.

Section 9. Amends s. 39.5085, F. S., relating to the relative caregiver program.

Section 10. Amends s. 39.6011, F.S., relating to case plan development.

Section 11. Amends s. 39.6013, F.S., relating to case plan amendments.

Section 12. Amends s. 39.701, F.S., relating to judicial review.

Section 13. Amends s. 39.823, F.S., relating to guardian advocates for drug dependent newborns.

Section 14. Amends s. 683.10, F.S., relating to Grandmother's Day.

Section 15. Provides an effective date of July 1, 2009.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

According to the Department of Children and Families, the requirement to notify each relative of all hearings and proceedings will increase the workload for Children's Legal Services staff. However, the impact is expected to be minimal.

According to the Office of the State Courts Administrator, the fiscal impact on expenditures cannot be accurately determined. However, it is expected to be minimal. Sections 39.506(2) and 39.502(17), Florida Statutes, already require the court to notice those specified therein. To the extent that the requirements are redundant or could be accomplished within existing hearings and existing methods, that is, having relatives present at hearings to be served with notice in court, there would be no fiscal impact.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax sharing with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill requires the attorney for the Department of Children and Families to notify any relative, who has so requested, notification of the date, time and location of all proceedings involving the child. In addition, a court order for shelter placement must include a written finding that the court notified relatives providing out-of-home care for the child of the next dependency hearing. Therefore, both the department attorney, as well as the court, may notify the relatives in some cases. It may be more efficient to have only the attorney for the department notify the relatives instead of both the attorney and the court.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.