

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 381

Care of Children

SPONSOR(S): Thompson

TIED BILLS:

IDEN./SIM. BILLS: SB 1276

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Services Policy Committee		Preston	Schoolfield
2)	Civil Justice & Courts Policy Committee			
3)	Health & Family Services Policy Council			
4)	Full Appropriations Council on General Government & Health Care			
5)				

SUMMARY ANALYSIS

The bill may be cited as the "Zahid Jones, Jr. Give Grandparents and Other Relatives a Voice Act" as the bill makes a number of changes to chapter 39, Florida Statutes, in order to give grandparents and other relatives a greater chance of voicing concerns, including, but not limited to:

- Adds a component to the Department of Children and Family Services' (DCF or department) quality assurance program related to unaccepted calls to the Hotline by identified relatives;
- Provides that a relative may request to receive notification of all proceedings and hearings related to a child and provides that the attorney for DCF shall provide such notification to a relative who so requests;
- Provides an addition to the legislative intent relating to the relative caregiver program regarding procedures and protocols to acknowledge the value of care provided by grandparents and other relatives;
- Provides the department with authority to develop liaison functions under the relative caregiver program for relatives who care for children;
- Requires the attorney for DCF to notify a relative who has requested such notification of the next judicial review hearing;
- Adds physicians and mental health professionals engaged in the care or treatment of a child to the list of entities that may have access to reports and records in cases of child abuse or neglect and it provides for specified medical records to be preserved in permanent form by the department; and
- Provides for a reporter of abuse, abandonment or neglect to 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 Caregiver's" Day.

The bill is not anticipated to have a fiscal impact on state or local government.

## 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:

##### **Kinship Care**

The Child Welfare League of America (CWLA)<sup>1</sup> 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% of all the children in the state. There are an additional 86,152 children living in households headed by other relatives, accounting for 2.4% 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

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<sup>1</sup> Child Welfare League of America, Kinship Care: Fact Sheet, <http://www.cwla.org/programs/kinship/factsheet.htm>.

<sup>2</sup> American Ass'n of Retired Persons, State Fact Sheets for Grandparents and Relatives Raising Children (Oct. 2007), [http://www.grandfactsheets.org/state\\_fact\\_sheets.cfm](http://www.grandfactsheets.org/state_fact_sheets.cfm).

<sup>3</sup> Child Welfare League of America, Kinship Care: Fact Sheet, <http://www.cwla.org/programs/kinship/factsheet.htm>.

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

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

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 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;
- 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, in order to provide some assistance to these relatives raising children, in 1998 the Legislature created the Relative Caregiver Program which provides financial assistance within available funding limits to qualified families.<sup>5</sup> The bill amends s. 39.5085, Florida Statutes, to:

- Provide for the establishment of procedures and protocols that serve to advance the continued safety of children by acknowledging the valued resource uniquely available through grandparents and relatives of children, and
- Authorize the department to develop liaison functions to be available to relatives who care for children pursuant to this chapter to ensure placement stability in extended family settings.

### **Confidentiality of Records**

In order 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 s. 119.07(1), Florida Statutes, and shall not be disclosed except as specifically authorized by chapter 39, Florida Statutes.<sup>6</sup>

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<sup>5</sup> See s. 39.5085, Florida Statutes.

<sup>6</sup> See s. 39.202(1), Florida Statutes.

With the exception of children who are missing, access to such records, excluding the name of the reporter, may be granted to a specified listed of entities, including, but not limited to, employees of the department, 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>7</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>8</sup>

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 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**

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>9</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>10</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>11</sup> Any photographs or report on examinations made or X rays are required to be sent to the department as soon as possible.<sup>12</sup>

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.

Finally, the bill also 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 and provides that the first Sunday after Labor Day is designated as "Grandparents' and Family Caregiver's" Day.

## **B. SECTION DIRECTORY:**

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<sup>7</sup> See s. 39.202(2), Florida Statutes.

<sup>8</sup> See s. 39.202(3), Florida Statutes.

<sup>9</sup> See s. 39.304(1), Florida Statutes.

<sup>10</sup> See s. 39.304(2), Florida Statutes.

<sup>11</sup> See s. 39.304(3), Florida Statutes.

<sup>12</sup> See s. 39.304(4), Florida Statutes.

**Section 1.** Provides a short title for the bill.

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

**Section 3.** Amends s. 39.202, Florida Statutes, relating to confidentiality of reports and records in cases of child abuse and neglect.

**Section 4.** Amends s. 39.301, Florida Statutes, relating to the initiation of protective investigations.

**Section 5.** Amends s. 39.304, Florida Statutes, relating to photographs, medical examinations, X rays, and medical treatment of abused, abandoned, or neglected children.

**Section 6.** Amends s. 39.402, Florida Statutes, relating to placement in a shelter.

**Section 7.** Amends s. 39.502, Florida Statutes, relating to notice, process, and service.

**Section 8.** Amends s. 39.506, Florida Statutes, relating to arraignment hearings.

**Section 9.** Amends s. 39.5085, Florida Statutes, relating to the relative caregiver program.

**Section 10.** Amends s. 39.6011, Florida Statutes, relating to case plan development.

**Section 11.** Amends s. 39.6013, Florida Statutes, relating to case plan amendments.

**Section 12.** Amends s. 39.701, Florida Statutes, relating to judicial review.

**Section 13.** Amends s. 683.10, relating to Grandmother's Day.

**Section 14.** Provides for an effective date of July 1, 2009.

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

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

1. Revenues:

None.

2. Expenditures:

None.

### **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:**

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

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

None.

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