

By Senator Wise

5-01619A-11

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1 A bill to be entitled
2 An act relating to termination of parental rights;
3 amending s. 39.401, F.S.; providing that a person may
4 not take a child alleged to be dependent into custody
5 except in cases involving an immediate threat to the
6 health or safety of the child; requiring a court order
7 finding probable cause that the child has been abused,
8 neglected, or abandoned, or is suffering from or is in
9 imminent danger of illness or injury as a result of
10 abuse, neglect, or abandonment; amending s. 39.702,
11 F.S.; requiring that a citizen review panel be
12 established in each judicial circuit; deleting a
13 provision that required that the citizen review panel
14 be authorized through an administrative order by the
15 chief judge of the judicial circuit; authorizing a
16 citizen review panel to make recommendations to the
17 court in adjudicatory hearings; amending s. 39.809,
18 F.S.; requiring the court to consider the report and
19 recommended order prepared by the citizen review panel
20 in a hearing or trial on a petition for termination of
21 parental rights; prohibiting continuances from being
22 extended beyond 1 year; providing an exception;
23 providing that hearings or trials involving
24 termination of parental rights be open to the public;
25 providing an exception; requiring that the report and
26 recommended order of the citizen review panel
27 accompany the written order of the court in a
28 termination of parental rights proceeding; providing
29 an effective date.

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

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33 Section 1. Subsection (1) of section 39.401, Florida
34 Statutes, is amended to read:

35 39.401 Taking a child alleged to be dependent into custody;
36 law enforcement officers and authorized agents of the
37 department.-

38 (1) Except in cases involving an immediate threat to the
39 health or safety of a child, a person, including a law
40 enforcement officer, a duly authorized person, or any other
41 officer of the court or of the state, may not take a child ~~may~~
42 ~~only be taken~~ into custody unless the child is taken into
43 custody:

44 (a) Pursuant to the provisions of this part, based upon
45 sworn testimony, ~~either~~ before or after a petition is filed
46 resulting in a court order issued after a finding of probable
47 cause by the court authorizing taking a child into custody; or

48 (b) By a law enforcement officer, or an authorized agent of
49 the department, if the officer or authorized agent has probable
50 cause resulting in a court order issued supporting ~~to support~~ a
51 finding:

52 1. That the child has been abused, neglected, or abandoned,
53 or is suffering from or is in imminent danger of illness or
54 injury as a result of abuse, neglect, or abandonment;

55 2. That the parent or legal custodian of the child has
56 materially violated a condition of placement imposed by the
57 court; or

58 3. That the child has no parent, legal custodian, or

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59 responsible adult relative immediately known and available to
60 provide supervision and care.

61 Section 2. Subsection (1) of section 39.702, Florida
62 Statutes, is amended to read:

63 39.702 Citizen review panels.—

64 (1) Citizen review panels shall ~~may~~ be established in each
65 judicial circuit ~~and shall be authorized by an administrative~~
66 ~~order executed by the chief judge of each circuit.~~ The court
67 shall administer an oath of office to each citizen review panel
68 member which shall authorize the panel member to participate in
69 citizen review panels and make recommendations to the court
70 pursuant to ~~the provisions of~~ this section.

71 Section 3. Section 39.809, Florida Statutes, is amended to
72 read:

73 39.809 Adjudicatory hearing or trial.—

74 (1) In a hearing or trial on a petition for termination of
75 parental rights, the court shall consider, assisted by a report
76 and a recommended order from the citizen review panel, the
77 elements required for termination. Each of these elements must
78 be established by clear and convincing evidence before the
79 petition is granted.

80 (2) The adjudicatory hearing must be held within 45 days
81 after the advisory hearing, but reasonable continuances for the
82 purpose of investigation, discovery, or procuring counsel or
83 witnesses may, when necessary, be granted. Continuances may not
84 extend beyond 1 year after the advisory hearing unless there are
85 compelling reasons or extraordinary circumstances,
86 notwithstanding s. 39.0136.

87 (3) The adjudicatory hearing or trial must be conducted by

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88 the judge without a jury, unless a demand for a jury is made by
89 either party, applying the rules of evidence in use in civil
90 cases and adjourning the case from time to time as necessary.
91 For purposes of the adjudicatory hearing or trial, in order to
92 avoid unnecessary duplication of expense, the judge may consider
93 in-court testimony previously given at any properly noticed
94 hearing or trial, without regard to the availability or
95 unavailability of the witness at the time of the actual
96 adjudicatory hearing or trial, if the recorded testimony itself
97 is made available to the judge. Consideration of such testimony
98 does not preclude the witness being subpoenaed to answer
99 supplemental questions.

100 (4) All hearings or trials involving termination of
101 parental rights shall be open ~~are confidential and closed~~ to the
102 public, except upon the written motion to the court by the
103 parents or guardian of the child or children who are the subject
104 of the hearing or trial that it be made confidential and closed.
105 Hearings or trials involving more than one child may be held
106 simultaneously when the children involved are related to each
107 other or were involved in the same case. The child and the
108 parents may be examined separately and apart from each other.

109 (5) The judge shall enter a written order with the findings
110 of fact and conclusions of law. The report and recommended order
111 from the citizen review panel must accompany the written order.

112 Section 4. This act shall take effect July 1, 2011.