

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 878

INTRODUCER: Senator Garcia

SUBJECT: Child Welfare

DATE: March 25, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Walsh	CF	Pre-meeting
2.			JU	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill, short titled the "Lambourg Keep Families United Act," makes numerous changes to chapter 39, Florida Statutes, relating to dependency proceedings for children. Those changes include:

- Requiring photographs of a child to be taken by all caseworkers, guardians ad litem, and volunteers at each visit and requiring that those photographs and a report be immediately transmitted to the court, foster parents, and all parties to the case;
- Providing that an unmarried biological father is not a relative for purposes of the Relative Caregiver Program under s. 39.5085, F.S.;
- Providing that a court may direct a person with, or seeking, custody of a child into a residential treatment facility in which the child may also reside;
- Changing the best interest standard for placement of a child;
- Requiring quarterly reports from counties and reduced funding to those counties based on the percentage of children who entered the child welfare system;
- Requiring permanency hearings to be timed so permanency will be achieved within 12 months;
- Revising provisions relating to visitation with a child in care; and
- Revising the scope of federally authorized pilot and demonstration projects.

The bill substantially amends ss. 39.0136, 39.5085, 39.521, 39.621, 39.801, 39.803, 39.809, 39.812, and 39.816, and creates ss. 39.0142, 39.6215, and 39.8056, of the Florida Statutes.

II. Present Situation:

Chapter 39, F.S., establishes legislative intent to provide for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development; to recognize that most families desire to be competent caregivers and providers for their children; to ensure permanency for children within one year, and to ensure that the health and safety of children served shall be of paramount concern.¹ Chapter 39, F.S., provides the process and procedures for the following:

- Reporting child abuse and neglect;
- Protective investigations;
- Taking children into custody and shelter hearings;
- Petition, arraignment, adjudication, and disposition;
- Disposition; postdisposition change of custody;
- Case plans;
- Permanency;
- Judicial reviews; and
- Termination of parental rights.

Many of the provisions and time-frames in chapter 39, F.S., are required by federal law in order to be eligible for federal funding.²

Chapter 63, F.S., establishes legislative intent that in every adoption, the best interest of the child should govern and be of foremost concern in the court's determination and that the court shall make a specific finding as to the best interest of the child in accordance with the provisions of the chapter. The chapter also includes provisions pertaining to responsibilities of unmarried biological fathers.

Photographs and reports of child visitation

Photographs are required for:

- All children under court ordered in-home supervision within fifteen days after the case has been staffed and transferred to a service unit;
- All children placed in care within seventy-two hours of the beginning of a removal;
- Any child who has been on runaway status shall immediately upon return to care. The exception is when a child's appearance has not significantly changed since a prior photograph was taken; and
- All children and sibling groups available for adoption who are required to be registered on the Adoption Exchange System.³

¹ s. 39.001, F.S.

² Including, but not limited to, the Fostering Connections to Success and Increasing Adoptions Act (P.L. 110-351), the Keeping Children and Families Safe Act (P.L. 108-36), the Adoption and Safe Families Act (P.L. 105-89), the Child Abuse Prevention and Treatment Act (P.L. 93-247), and the Adoption Assistance and Child Welfare Act (P.L. 96-242).

³ 65C-30.004, F.A.C.

The child's identity must be verified by the child protective investigator, case manager, or other personnel familiar with the child. The photograph and identifying information shall be maintained in the statewide photo database. Photographs are required to be updated every six months for children who are 59 months of age or less, and annually for all other children.⁴

In addition, because of inaccurate reports about missing children in care and caseworker dishonesty related to visiting children, at least some of Florida's caseworkers carry handheld GPS units that stamp a date and location on a photograph when they visit each child. The information is automatically updated into the state's database, making it easier to see a missing child's last whereabouts and adding more oversight for caseworkers.⁵

Relative Caregiver Program

The Florida Legislature created the Relative Caregiver Program in 1998 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.⁶ Relatives who are caring for children placed with them by the court pursuant to this chapter shall receive a special monthly relative caregiver benefit established by department rule. Relatives eligible for financial assistance include:

- Relatives who are within the fifth degree by blood or marriage to the parent or stepparent of a child and who are caring full-time for that dependent child in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement with the relative under this chapter.
- Relatives who are within the fifth degree by blood or marriage to the parent or stepparent of a child and who are caring full-time for that dependent child, and a dependent half-brother or half-sister of that dependent child, in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement with the relative under this chapter.

The definition of relative in s. 39.01(64), F.S., includes 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.

Substance Abuse Facilities

An estimated 1,427,000 children under the age of 18 live with a substance dependent mother in a single-parent (mother) household.⁷ Many of these women may be reluctant to enter substance abuse treatment because they have no child care options, or they may be concerned about losing custody of their children. Increasing the awareness of substance abuse treatment facilities that

⁴ *Id.*

⁵ The Ledger. *DCF Closing 'Gaps' in Tracking Children*, September, 2009. Available at: <http://www.theledger.com/article/20090914/NEWS/909145082?p=all&tc=pgall> . (Last visited March 22, 2011).

⁶ s. 39.5085, F.S.

⁷ National Survey of Substance Abuse Treatment Services. Residential Substance Abuse Treatment Facilities Offering Residential Beds for Clients' Children. October 2009. Available at: <http://www.oas.samhsa.gov/2k9/219/219ResChildBed2k9.htm>. (Last visited March 21, 2011).

provide child care options may help these mothers better understand the available options in order to receive the treatment they need to improve their lives and the lives of their children.⁸

The federal Substance Abuse and Prevention and Treatment Block Grant requires that women be treated with their children and specifies set-aside criteria for these services. Some of these services include residential services for women and their children. The department reports that these services are not available in all DCF circuits and, therefore, statewide capacity is limited. Children admitted to treatment with their mothers typically reside in the same facility and even share their bedroom, especially infants and toddlers. Most women's programs of this type focus on mothers with newborns and toddlers.⁹

Permanency

Chapter 39, F.S., provides that time is of the essence for permanency of children in the dependency system. A permanency hearing must be held no later than 12 months after the date the child was removed from the home or no later than 30 days after a court determines that reasonable efforts to return a child to either parent are not required, whichever occurs first.¹⁰ The purpose of the permanency hearing is to determine when the child will achieve the permanency goal or whether modifying the current goal is in the best interest of the child. A permanency hearing must be held at least every 12 months for any child who continues to receive supervision from the department or awaits adoption. Available permanency goals for children listed in order of preference, are:

- Reunification;
- Adoption, if a petition for termination of parental rights has been or will be filed;
- Permanent guardianship of a dependent child under s. 39.6221;
- Permanent placement with a fit and willing relative under s. 39.6231; or
- Placement in another planned permanent living arrangement under s. 39.6241.¹¹

The best interest of the child is the primary consideration in determining permanency for a child.¹²

Required reports by counties as to children in care and program funding

Foster care and related services are provided by Community Based Care (CBC) lead agencies and their subcontracted providers.¹³ Services are provided by circuits that conform to judicial circuits, and not counties. CBCs are responsible for entering information on children in care into the statewide automated information system, known as Florida Safe Families Network (FSFN). This automated system generates reports on children in care, including the outcome measure related to achieving permanency within twelve months.

⁸ *Id.*

⁹ Department of Children and Family Services. Staff Analysis and Economic Impact. SB 878. February 7, 2011.

¹⁰ s. 39.621, F.S.

¹¹ *Id.*

¹² *Id.*

¹³ s. 409.1671, F.S.

Chapter 39 provides for extending out of home care beyond twelve months as the result of a judicial determination.¹⁴ There are no financial penalties at this time imposed on CBCs for children who remain in care longer than twelve months.

Diligent search

When a child is removed from the physical custody of his or her parent or guardian, a diligent search must be initiated to identify and locate any absent parent. An affidavit of diligent search shall be included in the predisposition report. Diligent search efforts shall continue until the department is released from any further search by the court. When a child is placed in care, for the purpose of concurrent planning, the caseworker shall initiate or continue diligent efforts to identify and locate any relatives who would be willing and able to care for the child.¹⁵

Authorization for pilot and demonstration projects

Section 39.816, F.S., authorizes DCF to establish pilot¹⁶ and demonstration projects¹⁷ for specific purposes, contingent upon receipt of a federal grant or contract pursuant to s. 473A(i) of the Social Security Act, 42 U.S.C. s. 673A(i) and s. 1130(a) of the Social Security Act, 42 U.S.C. s. 1320a-9, respectively. Authorization for these pilots and demonstration projects were provisions of the Adoption and Safe Families Act, enacted in November of 1997.¹⁸

III. Effect of Proposed Changes:

The bill makes a number of changes to chapter 39, F.S., relating to dependent children, including:

- Requiring all caseworkers, guardians ad litem, and department approved volunteers to photograph a child at every visit and submit the photograph and a report while at the site where the child is located. The photograph and the report are to be transmitted immediately to all parties to the case, the court and the foster parents;

¹⁴ ss.39.0136 and 39.621, F.S.

¹⁵ s.39.503, F.S.

¹⁶ Pilots could be funded for the purposes of the development of best practice guidelines for expediting termination of parental rights, models to encourage the use of concurrent planning, the development of specialized units and expertise in moving children toward adoption as a permanency goal, the development of risk assessment tools to facilitate early identification of the children who will be at risk of harm if returned home, models to encourage the fast tracking of children who have not attained 1 year of age into pre-adoptive placements, and development of programs that place children into pre-adoptive families without waiting for termination of parental rights. Available at: <http://thomas.loc.gov/cgi-bin/query/F?c105:7:./temp/~c105kVJSoh:e22134>: (last visited March 21, 2011).

¹⁷ Demonstration projects could be funded for the purpose of identifying and addressing barriers that result in delays to adoptive placements for children in foster care and identifying and addressing parental substance abuse problems that endanger children and result in the placement of children in foster care, including through the placement of children with their parents in residential treatment facilities that are specifically designed to serve parents and children together in order to promote family reunification and that can ensure the health and safety of the children in such placements. Available at: http://www.acf.hhs.gov/programs/cb/laws_policies/cblaws/public_law/pl105_89/pl105_89a3.htm (last visited March 21, 2011).

¹⁸ Public Law 105-89.

- Providing that an unmarried biological father, as defined in s. 63.032, F.S., is not considered a relative for purposes of the Relative Caregiver Program;
- Providing that the court may direct the placement of a person in a substance abuse treatment facility in which the child may also reside at the same location as described in s. 39.816, F.S., relating to the authorization of pilot and demonstration projects approved and funded by the federal government;
- Removing the best interests of child standard relating to adoption;
- Requiring permanency hearing to be held at such time so child will achieve permanency within 12 months;
- Requiring reports by counties as to children in care and program and providing for financial penalties;
- Eliminating the requirement to complete a diligent search prior to the adjudicatory hearing on the termination of parental rights if the person whose location is unknown is an unmarried biological father and the mother files an affidavit to that effect within 30 days after the child enters care. If a mother files such an affidavit within thirty days, the diligent search must be completed within 60 days of the date the court accepted the affidavit;
- Prohibiting visitation with a child who has been placed with a licensed foster parent who has applied to adopt the child, unless there is a preexisting visitation arrangement; and
- Expanding the types of pilots and demonstration projects that may be authorized.

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:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Fiscal sanctions for not achieving permanency in 12 months may result in fewer funds for a community-based care agency.

C. Government Sector Impact:

The department reports the fiscal impact cannot be determined.

VI. Technical Deficiencies:

- On lines 69-76 of the bill, it is unclear who “department authorized volunteers” are and why they would be visiting children in care. It is also unclear what constitutes a “report,” by what means it and the photograph of the child must be submitted from the site of the visit, and by what means and how often the courts, foster parents and all other parties to the case would be required to access in information transmitted. The bill does not specify for what purpose the photograph and report would be used.
- Lines 110-111 of the bill exclude an unmarried biological father as a relative for purposes of the Relative Caregiver Program. Unmarried biological fathers are not currently eligible for the Relative Caregiver program.
- Lines 141-144 of the bill, permit placement in a substance abuse facility as described in s. 39.816, F.S., which refers to types of demonstration projects that were authorized under the Adoption and Safe Families Act and were funded through fiscal year. The intent of this provision in the bill is unknown.
- Lines 220-221 of the bill, delete the best interest of child standard for placement after an unfavorable home study.
- Lines 422-480 of the bill amend s. 39.816, F.S., relating to the authorization for pilot and demonstration projects. Authorization for these pilots and demonstration projects was provided for in the Adoption and Safe Families Act in 1997. Funding for the pilot projects was limited to fiscal years 1998-2000. Funding for the demonstration projects was limited to fiscal years 1998-2002. The scope of these projects is provided for in federal law and cannot be amended by states. Since the funding authority has expired for both the pilots and the demonstrations, it would appear that s. 39.816, F.S., should be repealed and not amended.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.