HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 215 Dependent Children
SPONSOR(S): Healthy Families Subcommittee; Albritton
TIED BILLS: **IDEN./SIM. BILLS:** SB 164

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee	13 Y, 0 N, As CS	Poche	Schoolfield
2) Health & Human Services Committee	16 Y, 0 N	Poche	Calamas

SUMMARY ANALYSIS

House Bill 215 promotes the concept that all dependent children in out-of-home care should have an opportunity to engage in normal childhood activities and experience a normal family-like upbringing.

The bill removes the "safety and normalcy balance" standard of decision making for licensed caregivers in considering participation of children in out-of-home care in age-appropriate activities. In its place, the bill imposes a "reasonable and prudent parent" standard for decision making. The standard is characterized by careful and sensible parental decisions that maintain the child's health, safety, and best interests while encouraging emotional and developmental growth. A caregiver will not be held liable for injury to a child in out-of-home care resulting from a decision to permit the child to engage in an activity if the decision was made pursuant to the "reasonable and prudent parent" standard.

The bill removes the requirement that a written plan, outlining the age-appropriate activities in which a child in out-of-home care may participate and the authority of the licensed caregiver to approve such participation, be developed and signed by the caregiver, the child, and the case manager. Instead, the bill requires the caregiver to approve participation in age-appropriate activities using the "reasonable and prudent parent" standard. The bill requires goals and objectives for participation in age-appropriate activities and information reflecting the child's progress in reaching the goals and objectives to be included in the judicial social study report to be reviewed by the court at each hearing held pursuant to s. 39.701, F.S.

The bill amends s. 39.522, F.S., to clarify the standard for placement of a child in a postdisposition change of custody. In cases in which a court is determining reunification with a parent who has substantially completed the goals and objectives of an approved case plan, the statute and case law requires the court to reunify the child with the parent if reunification does not endanger the safety, well-being, and physical, mental, and emotional health of the child. The bill requires the court to also consider whether reunification is in the best interest of the child.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Dependency and Dependent Children in Florida

Chapter 39, F.S., establishes legislative intent to provide for the care, safety, and protection of dependent 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 dependent children within one year, and to ensure that the health and safety of dependent 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, and adjudication of dependency;
- Disposition of the dependent child;
- 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]

The dependency process in Florida begins with an investigation of an allegation of child abuse, abandonment, and/or neglect.[3] A child protection investigator conducts an on-site investigation of the home where the abuse, abandonment, and/or neglect was alleged to have occurred.[4] Following the investigation, the investigator recommends that no further action be taken (indicating that the allegations are unfounded), offers voluntary services to address identified issues in the home, or recommends judicial intervention and/or removal of the child from the home.[5]

If a child is removed from the home as a result of an investigation into child abuse, abandonment, and/or neglect allegations, a shelter hearing is held within 24 hours of removal.[6] An Intervention Staffing is held to identify the service needs of the child and the family and a dependency petition is filed with the court.[7] The dependency petition contains the allegations that led to the removal of the child from the home.[8] The parent admits to, consents to, or denies the allegations contained in the dependency petition. In the meantime, the court determines the most appropriate placement for the child at the shelter hearing with an approved adult relative, with a licensed shelter or foster home, or with an approved non-relative.

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[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] S. 39.301(1), F.S.
[4] Id.
[5] S. 39.301(14) and (15), F.S.
[6] S. 39.402(8)(a) and (c), F.S.
[7] S. 39.501, F.S.
[8] S. 39.501(3)(c), F.S.

If the parent admits or consents to the allegations in the dependency petition, the court adjudicates the child dependent and a Guardian ad Litem is appointed to represent the child's best interests. A disposition hearing is held to determine appropriate services and placement setting for the child. A case plan determining permanency of the child, culminating in reunification of the family or another outcome, is also approved by the court.

In determining placement of the child following the disposition hearing, the court is faced with different standards depending on available placement options. If Department of Children and Families (DCF) prevention or reunification efforts allow the child to remain in or return to the home, the court allows such placement after making a specific finding that the reasons for removal from the home have been remedied to an extent that the child's safety, well-being, and physical, mental and emotional health will not be endangered.[9] If the child is adjudicated dependent and the court determines the child can safely remain in the home with the parent with whom the child was residing at the time the circumstances arose which brought the child under the jurisdiction of the court, and that remaining in the home is in the best interest of the child, the court shall order such placement.[10]

If the parent denies the allegations contained in the dependency petition, the case will be set for an adjudicatory hearing. The court considers evidence and hears testimony at the hearing and if, by a preponderance of the evidence, the court finds that the child was abused, abandoned, or neglected, the child is adjudicated dependent. A disposition hearing is held to determine services and placement for the child and a case plan is approved.[11]

The court also considers postdisposition changes in custody. The standard for changing custody of the child is whether the recommended or requested change is in the best interest of the child.[12] However, when the question before the court is reunification with a parent, the court must determine if the parent substantially completed the terms of the case plan to the extent that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by returning to the home.[13]

The court holds periodic judicial reviews, generally every six months until supervision is terminated, to determine the child's status, the parent's progress in following the case plan, and the goals and objectives of the case plan.[14] After twelve months, if the case plan goals have not been met, the court holds a permanency hearing to determine the child's permanency goal.[15]

There are more than 8,000 dependent children in Florida's foster care system and more than 4,000 foster parents across the state.[16] Over the past year, on any given day, there were approximately 5,000 teens between the ages of 13 and 17 residing in out-of-home care placement.[17]

Permanency

Chapter 39, F.S., provides that time is of the essence for determining permanency of a child in the dependency system.[18] 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.[19] The purpose of the permanency hearing is to determine when the child will achieve the permanency goal or whether

[9] S. 39.521(1)(e), F.S.
[10] S. 39.521(3)(a), F.S.
[11] S. 39.603(1), F.S.
[12] S. 39.522(1), F.S.
[13] S. 39.522(2), F.S.
[14] S. 39.521(1)(c), F.S.
[15] S. 39.621(1), F.S.
[16] Florida Department of Children and Families, Fostering Florida's Future, Fact Sheet, available at www.fosteringflorida.com/docs/materials/fosterbusiness.pdf (last viewed Feb. 5, 2013).
[17] Florida Department of Children and Families, Independent Living Services Advisory Council, 2012 Report of Independent Living Services for Florida's Foster Youth, page 3.
[18] S. 39.621(1) and (5), F.S.
[19] Id.

modifying the current goal is in the best interest of the child.[20] 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.[21] Available permanency goals for a child, 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.[22]

If, upon a finding by the court that the current permanency placement is no longer in the best interest of the child, a parent who has not had his or her parental rights terminated makes a motion for reunification or increased contact with the child, the court must hold a hearing to determine whether the dependency case should be reopened and whether there should be a modification of the order determining permanency.[23] The parent seeking modification of the order must prove that the requested modification does not endanger the safety, well-being, and physical, mental, and emotional health of the child.[24]

Florida Courts and Standards for Reunification

The Third District Court of Appeal has identified inconsistent statutory provisions relating to reunification contained in chapter 39, F.S.[25] The court points to s. 39.522(2), F.S., relating to postdisposition change of custody, which reads:

> "In cases where the issue before the court is whether a child should be reunited with a parent, the court shall determine whether the parent has substantially complied with the terms of the case plan to the extent that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by the return of the child to the home."

The court also points to s. 39.621(10), F.S., relating to permanency determination by the court, which provides:

> "The court shall base its decision concerning any motion by a parent for reunification or increased contact with a child on the effect of the decision on the safety, well-being, and physical and emotional health of the child. Factors that must be considered and addressed in the findings of fact of the order on the motion must include:
>
> (a) The compliance or noncompliance of the parent with the case plan;…"

The statute lists six factors that must be considered and addressed in the court's order on a parent's motion for reunification or increased contact with a child following a permanency placement order.[26] These factors are used to determine the "best interest" of the child.[27]
There appears to be a lack of clarity in statute as to which standard, "endangerment" or "best interest of the child", should be used in decisions to reunite a child with his or her parent. In *S.V.-R.*, the court confirmed the applicable standard is "endangerment"[28] in cases in which a non-offending parent seeks to become the custodial parent and the offending parent achieved her goals for reunification.[29] The court acknowledged that its approach is consistent with the analysis of the Second and Fifth District

[20] Id.
[21] Id.
[22] S. 39.621(2), F.S.
[23] S. 39.621(9), F.S.
[24] Id.
[25] *See* S.V.-R. v. Department of Children and Family Services, 77 So.3d 687, 688 (Fla. 3rd DCA 2011).
[26] S. 39.621(10)(a) through (f), F.S.
[27] *See supra* FN 25, at 689.
[28] S. 39.522(2), F.S.
[29] *See supra,* FN 25 at 690.

Courts of Appeal.[30] However, the court also notes that two decisions in the Fourth District Court of Appeal imply that the "best interests of the child" standard controls in reunification cases in general.[31]

Normalcy for Foster Children

DCF is statutorily required to provide children and young adults in foster care with opportunities to participate in life skills activities within their foster families and communities which are reasonable and appropriate for their respective ages.[32] DCF must also provide children and young adults in foster care with services designed to build life skills and increase their ability to live independently and self-sufficiently.[33] In order to support the provision of opportunities for participation in age-appropriate life skills activities, DCF is required to develop procedures which maximize the authority of foster parents and other authorized caregivers to approve participation in age-appropriate activities of children in their care.[34] The activities and authority of foster parents and other authorized caregivers are to be included in a written plan that is developed and signed by the authorized caregiver, the child, and the case manager.[35] Foster parents, or other authorized caregivers, will not be held responsible under rules or laws related to licensure as caregivers as a result of the actions of a child engaged in approved activities specified in the written plan.[36]

Florida rules also require the case manager and the foster parents, or other authorized caregiver, to work together to ensure opportunities for children and young adults in foster care to engage in social and extracurricular activities that promote social development and maturity.[37] Activities that promote such development and maturity include:

- School attendance and participation and educational planning[38];
- Participation in social and extracurricular activities, including employment[39];
- Efforts to learn to drive a car and obtain a learner's permit and driver's license, as appropriate[40];
- Attendance at overnight or planned outings, if deemed safe and appropriate[41];
- Experience in circumstances and events without direct supervision to facilitate the ability to make appropriate decisions[42]; and
- Receipt of an allowance.[43]

Despite efforts to normalize the life and experiences of Florida's foster children, the Independent Living Services Advisory Council reports that foster teens find these efforts lagging:

> "The percentage of teens that reported that they have a written approved activities plan has not changed substantially over the past three years and remains in the 60% range. In 2012, slightly more than half (53%) of the foster care youth reported that they receive the statutorily required weekly allowance. Teens that reported that they have a Florida Identification (39%), Learners Permit (10%), or Drivers' License (3%) were also low."[44]

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[30] *See id.; see also* In re A.F., 39 So.3d 1288 (Fla. 2nd DCA 2010) *and* M.M. v. Department of Children and Families, 29 So.3d 1200 (Fla. 5th DCA 2010).
[31] *See supra,* FN 28; *see also* C.S. v. Department of Children and Families, 12 So.3d 309 (Fla. 4th DCA 2009) *and* E.I. v. Department of Children and Families, 979 So.2d 378 (Fla. 4th DCA 2008).
[32] S. 409.1451(3)(a), F.S.
[33] Id.
[34] S. 409.1451(3)(a)3., F.S.
[35] Id.
[36] Id.
[37] Rule 65C-30.007(10), F.A.C.
[38] Rule 65C-30.007(10)(a), F.A.C. and Rule 65C-13.029(2)(p), F.A.C.
[39] Rule 65C-30.007(10)(c), F.A.C. and Rule 65C-13.029(2)(o), F.A.C.
[40] Rule 65C-30.007(10)(d), F.A.C. and Rule 65C-13.029(2)(s), F.A.C.
[41] Rule 65C-30.007(10)(g), F.A.C.
[42] Rule 65C-20.007(10)(h), F.A.C.
[43] Rule 65C-30.007(10)(k), F.A.C.
[44] *See supra,* FN 17 at page 9.

Reasonable and Prudent Parent Standard

In 2005, the state of California passed legislation regarding the "reasonable and prudent parent standard".[45] The standard is characterized by careful and sensible parental decisions, which maintain the child's health, safety, and best interests, that an administrator or facility manager, or his or her responsible designee, shall use when determining whether to allow a child in care to participate in extracurricular, enrichment and social activities.[46] The concept behind the standard is that a foster parent or a caregiver for a child in out-of-home care, including group home facilities, should be allowed to make decisions regarding the children in their care to the best of their ability. In essence, the law is aimed at allowing foster parents, or other authorized caregivers, to use their best judgment in determining what activities a child may or may not be able to participate in. The goal of this law is to provide youth in out-of-home care with a normal life experience and to encourage the caregiver to engage youth in extracurricular activities.

The current legal standard for foster parent decision-making in Florida is to balance safety and normalcy.[47] Prospective foster parents receive training in decision-making that balances normalcy for children in their care with safety.[48] Licensed foster parents are tasked with promoting opportunities for foster children to develop interests and skills through participation in school and community activities.[49] This includes permitting children to engage in age-appropriate social, school, and employment related activities as detailed in the written plan for appropriate activities.[50] In addition, children in licensed out-of-home care shall be afforded every opportunity for social development, recreation, and normalization of their lives.[51] Many providers equate safety with liability, and make decisions accordingly.

Effect of Proposed Changes

The bill, entitled the "Quality Parenting for Children in Foster Care Act", creates s. 39.4091, F.S., regarding participation in childhood activities. In legislative findings and intent, the bill recognizes the importance of normalizing the lives of children in out-of-home care and empowering caregivers to make decisions regarding children participating in age-appropriate activities, using their own assessments as caregivers based on a reasonable and prudent parent standard. The bill clarifies that each child coming into out-of-home care is entitled to participate in age-appropriate activities.

The bill defines "reasonable and prudent parent standard" as a standard, characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of the child while encouraging the child's emotional and developmental growth, that a caregiver must use when determining whether to permit a child in out-of-home care to participate in extracurricular, enrichment, and social activities. The standard closely mirrors the standard established in California in 2005.[52]

The bill further requires a caregiver to use the "reasonable and prudent parent" standard, and make the following specific considerations, when determining whether to permit any child in out-of-home care to participate in an activity:

- The child's age, maturity, and developmental level;
- Potential risk factors and the appropriateness of the activity;
- The best interest of the child, based on the information known to the caregiver;
- The importance of encouraging the child's emotional and developmental growth;
- The importance of providing the most family-like living experience to the child as possible; and
- The behavioral history of the child and the child's ability to safely participate in the activity.

[45] CAL. WIC s. 362.05
[46] CAL.WIC s. 362.04
[47] S. 409.1451(10), F.S.
[48] Rule 65C-13.024(2), F.A.C.
[49] Rule 65C-13.029(1)(f)3., F.A.C.
[50] Rule 65C-13.029(2)(o), F.A.C.
[51] Rule 65C-13.029(1)(g)7., F.A.C.
[52] See supra, FN 45 and 46.

DCF and the community-based care lead agencies are required to ensure that private agencies are implementing policies that are consistent with employing the "reasonable and prudent parent" standard and are promoting and protecting the child's ability to participate in age-appropriate activities.

The bill protects a caregiver from liability for harm caused to a child resulting from participation in an age-appropriate activity that was approved by the caregiver, if the caregiver acted as a reasonable and prudent parent in approving participation in that activity. The protection from liability for caregivers in these situations may lead to children in out-of-home care engaging in more age-appropriate activities designed to facilitate their emotional and developmental growth. While caregivers are currently liable for their decisions that result in injury to children in care, it is not clear whether the application of the "reasonable and prudent parent" standard will reduce liability further than what is currently experienced by caregivers.

The bill amends s. 39.522, F.S., related to postdisposition change of custody, to clarify that, in cases in which a court is deciding whether to reunite a child, who is in the custody of one parent, with a non-custodial parent who has substantially completed a reunification plan, the standard to be applied is whether the child is endangered by placement with the non-custodial parent and whether reunification with the non-custodial parent is in the best interest of the child when compared to the existing custody arrangement. The change in legal standard should eliminate future confusion by the courts and ensure that the custody decision is in the best interest of the child. The change in legal standard is also consistent with the overall principle of chapter 39, F.S., which is the ultimate welfare of the child.

The bill amends s. 409.1451, F.S., related to independent living transition services, by eliminating the requirement that the caregiver, the child in out-of-home care, and the case manager develop and sign a written plan that outlines the age-appropriate activities in which the child may participate and the authority of the caregiver to permit participation in the activities. The written plan is replaced by imposition of the "reasonable and prudent parent" standard on any decision made by the caregiver regarding the child's participation in age-appropriate activities.

The bill requires written goals and objectives for a child's participation in activities and specific information related to the child's progress in reaching the goals and objectives to be included in the written judicial study report that is provided to the dependency court. The court is to review the study report at each hearing held pursuant to s. 39.701, F.S., until the child reaches permanency status.

Lastly, the bill removes the requirement that any rules adopted by DCF pursuant to s. 409.1451, F.S., balance normalcy and safety. Instead, the bill requires that rules provide as much flexibility to caregivers to ensure that children are able to participate in normal life experiences. The bill reiterates that the standard for decision making is the "reasonable and prudent parent" standard.

B. SECTION DIRECTORY:

Section 1: Provides for citation to the act as the "Quality Parenting for Children in Foster Care Act".
Section 2: Creates s. 39.4091, F.S., relating to participation in childhood activities.
Section 3: Amends s. 39.522, F.S., relating to postdisposition change of custody.
Section 4: Amends s. 409.1451, F.S., relating to independent living transition services.
Section 5: Provides an effective date of July 1, 2013.

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:

The bill offers protection from liability for a caregiver if a child in out-of-home care is injured as a result of a decision to allow the child to participate in an age-appropriate activity, if the caregiver made the decision under the "reasonable and prudent parent" standard. The liability protection may positively impact liability insurance premiums for licensed caregivers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides sufficient rule-making authority to DCF to implement the provisions of the act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 13, 2013, the Healthy Families Subcommittee adopted three amendments for House Bill 215. The amendments made the following changes to the bill:

- Removed a citation to the Florida Administrative Code and replaced it with a citation to the relevant and applicable statute.
- Clarified the legal standard to be applied in cases where the court is determining reunification of a child with a parent who has substantially completed the terms of a case plan to include consideration of the best interests of the child.
- Removed a repetitive definition of "reasonable and prudent parent" standard and replaced it with a reference to the applicable statute.

The bill was reported favorably as a committee substitute. The analysis reflects the committee substitute.