

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 Committee on Children, Families, and Elder Affairs

BILL: SB 590

INTRODUCER: Senator Detert

SUBJECT: Adoption

DATE: November 15, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Pre-meeting
2.			JU	
3.			FP	

I. Summary:

SB 590 revises the circumstances under which, for children under the supervision of the Department of Children and Families, an adoption consent from parents is valid, binding, and enforceable. The bill also requires the court to consider a child’s best interest when changing a placement rather than the appropriateness of the placement. The bill requires courts in all dependency proceedings to advise the parent who is a party to the case at the arraignment hearing of the right to participate in a private adoption plan.

The bill has an effective date of July 1, 2016.

II. Present Situation:

In Florida, chapter 39, F.S., governs proceedings relating to the involvement of children in the state’s child protection system. When, allegations of abuse, neglect, or abandonment are reported an investigation is conducted by the Department of Children and Families (the department or DCF). Based on the results of the investigation, a petition may be filed requesting the court place the child in shelter and seeking adjudication that the child is dependent and should be placed in the state’s care.¹ When a child is placed in the state’s care the state “acts in the protective and provisional role of in loco parentis” for the child.² While parents have a due process right to be heard regarding the full array of constitutional rights which may be exercised in connection with their children, parents cannot unilaterally make decisions regarding their children without court approval. The courts have broad discretion to rely on the standard of best interest of the child when making determinations of dependency and throughout the court’s involvement in the matter.

¹ s. 39.501(2), F.S.

² *Buckner v. Family Services of Central Florida, Inc.*, 876 So.2d 1285 (Fla.5th DCA 2004)

Within 28 days after a child has been sheltered by the court, an arraignment hearing must be held.³ At the arraignment hearing, the parent or legal guardian of the child may either admit, deny or consent to the findings of dependency alleged in the petition; however, if a parent or legal guardian denies any allegation contained in the petition the court must hold an adjudicatory hearing within 30 days of the arraignment.⁴ If the court determines the child dependent at the adjudicatory hearing and the child is placed in out-of-home care, the court must inquire of the parent or parents whether the parents have relatives who might be considered as a placement for the child.⁵ Placement of the child to the temporary, legal custody of the department invests the department with all rights and responsibilities of a legal custodian.⁶ If a child cannot remain safely in the home with the parent with whom the child was residing at the time of the events that brought the child within the jurisdiction of the court and no adult relative is available for temporary, legal custody, then the state may place the child with an adult willing to care for the child under the protective supervision of the department.⁷ However, any change in the temporary legal custody or the conditions of protective supervision must be brought before the court. The standard for determining a change in custody is the best interest of the child.⁸

Section 39.806, F.S., provides the grounds for when the department may file a petition for the termination of parental rights. A parent or parents may voluntarily execute a written surrender of the child and consent to an order giving custody of the child to the department for subsequent adoption.⁹ If, after a hearing on the petition, the court terminates the parental rights, the department shall, within 30 days, provide the court with a case plan that identifies the permanency goals of the child.¹⁰ When the department is given custody of a child for subsequent adoption under chapter 39, the department may place the child with an agency as defined in s. 63.032, F.S., with a child-caring agency registered under s. 409.176, or in a family home for prospective adoption.¹¹ Prospective adoptive parents may not file a petition for adoption until the judgment terminating parental rights becomes final. An adoption proceeding under s. 39.812, F.S. is governed by chapter 63, F.S.¹² The court shall retain jurisdiction over any child for whom custody is given to a social service agency until the child is adopted.¹³

For children in the custody of the department, s. 63.082(6), F.S., provides that parental consent for placement of a minor with an adoption entity or qualified adoptive parents, but parental rights have not yet been terminated, is valid, binding, and enforceable by the court.¹⁴ After the parent executes the consent, the adoption entity is permitted to intervene in the dependency case and provide the court with a copy of the preliminary home study of the prospective adoptive parents

³ s. 39.506(1), F.S.

⁴ s. 39.506(1), F.S.

⁵ s. 39.507(7)(c), F.S.

⁶ s. 39.521((3)(d), F.S.

⁷ s. 39.521((3)(c), F.S.

⁸⁸ s. 39.522(1), F.S.

⁹ s. 39.806(1)(a), F.S.

¹⁰ s. 39.811(8), F.S.

¹¹ s. 39.812(1), F.S.

¹² s. 39.812(5), F.S.

¹³ s. 39.811(9), F.S.

¹⁴ s. 63.082(6)(a), F.S.

and any other evidence of the suitability of the placement.¹⁵ The dependency court shall hold a hearing to determine if the required documents to intervene have been filed and whether a change in the child's placement is appropriate.¹⁶ In determining whether the child's best interests are served by transferring custody to the prospective adoptive parent selected by the child's parent, the court shall consider the rights of the parent to determine an appropriate placement, the permanency offered, the child's bonding with any potential adoptive home that the child has been residing in, and the importance of maintaining sibling relationships, if any.¹⁷ Upon the court's determination that the prospective adoptive parents are properly qualified and that the adoption appears to be in the best interest of the minor child, the court shall immediately order the transfer of custody of the minor child to the prospective adoptive parents, under the supervision of the adoption entity.¹⁸ The adoption entity is responsible for keeping the dependency court informed of the status of the adoption proceedings at least every 90 days from the date of the order changing placement of the child until the date the adoption is finalized.¹⁹

III. Effect of Proposed Changes:

Section 1 amends s. 63.082(6), F.S., to allow a parent to execute a consent for placement of a minor with an adoption entity or qualified prospective adoptive parents when the child is under the supervision of the department. The consent is valid, binding, and enforceable by the court unless a termination of parental rights petition has been filed and qualified adoptive parents have been identified. This section is also amended to allow the court to consider the best interests of a child pursuant to s. 39.522(1), F.S., when making a determination of a child's change in placement instead of whether the change in placement is appropriate.

The bill amends s. 63.082(6), F.S., by striking subsection (e), which provides direction to the court when determining whether the best interests of the child are served by transferring the custody of the minor child to the prospective adoptive parent selected by the parent. The court should consider, among other considerations, the rights of the parent to determine an appropriate placement for the child.

Section 63.082(6), F.S., is also amended by the bill by instructing the court to advise the parent who is the party to the dependency case of their right to participate in a private adoption plan at the arraignment hearing held pursuant to s. 39.506, F.S., in all dependency hearings. Currently the court advises the parent of the option to participate in a private adoption plan after it has been determined that reunification is not a viable alternative and before the filing of a petition of termination of parental rights.

Section 2 of the bill provides an effective date of July 1, 2016.

¹⁵ s. 63.082(6)(b), F.S.

¹⁶ s. 63.082(6)(c), F.S.

¹⁷ s. 63.082(e), F.S.

¹⁸ s. 63.072(d), F.S.

¹⁹ s. 63.082(f), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Currently s. 63.082, F.S., allows a parent to execute a consent for placement of a minor with an adoption entity or qualified prospective adoptive parents when the minor child is in the custody of the department but the parent's rights have not yet been terminated. This consent is considered valid, binding, and enforceable by the courts. The adoption entity is then entitled to intervene in the dependency case and request a hearing on a change in the placement of the child. The adoption court's standard for review is whether a change in placement is appropriate. The proposed legislation would revise the adoption court's standard for review for a change in placement to be the best interests of the child which make it consistent with the dependency court's standard.

However, the proposed legislation creates an exception to the consent by the parent if a petition for termination of parental rights has been filed and qualified adoptive parents have been identified. While the parent is a party to a termination of parental rights, a petition filed is not a

petition granted. A consent to adoption by a parent or by the department should always be subject to court's review and based on the standard of the best interests of the child.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 63.082

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
