

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 Judiciary

BILL: CS/SB 590

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Detert

SUBJECT: Adoption

DATE: January 11, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Fav/CS
2.	Brown	Cibula	JU	Pre-meeting
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 590 increases the influence of the Department of Children and Families (DCF) in selecting a prospective adoptive parent for a child under its supervision. In other words, the bill increases the authority of the DCF over adoption decisions when it is in the process of terminating the parent's rights in a dependency proceeding on the basis of abuse, abandonment, or neglect. Conversely, the bill appears intended to reduce the authority or influence of a parent to select a prospective adoptive parent for his or her child when the parent is in the process of losing parental rights.

Under existing law, an adoption entity may intervene in dependency proceedings to have a child who is under the supervision of the DCF placed in the home of a prospective adoptive parent selected by the child's parent. As under existing law, the bill requires a court to determine the best interests of the child in deciding where a child should be placed. However, the bill changes what a court must consider in determining the child's best interests. Under existing law, a court must consider the rights of the parent to determine an appropriate placement and whether a placement is otherwise appropriate. The bill removes this existing criteria, and instead directs a court to consider the value of continuity of the child's placement in his or her current residence.

Current law requires courts to advise a parent whose parental rights are being terminated of the right to participate in a private adoption plan just before the filing of a termination of parental rights. This bill provides that the court must provide written notice. Also, notice can be provided as early on in the process as at the arraignment on the petition for dependency.

II. Present Situation:

The Department of Children and Families and Dependency

Chapter 39, F.S., governs child protection for the state. Chapter 63, F.S., addresses adoption. The Department of Children and Families (DCF) investigates all allegations of abuse, neglect, and abandonment.¹ The DCF may file a petition with the circuit court to place the child in shelter and enter an adjudication that the child is dependent.

A child who is dependent is a child found by the court:

- (a) To have been abandoned, abused, or neglected by the child's parent or parents or legal custodians;
- (b) To have been surrendered to the department, the former Department of Health and Rehabilitative Services, or a licensed child-placing agency for purpose of adoption;
- (c) To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, the department, or the former Department of Health and Rehabilitative Services, after which placement, under the requirements of this chapter, a case plan has expired and the parent or parents or legal custodians have failed to substantially comply with the requirements of the plan;
- (d) To have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a parent or parents have signed a consent pursuant to the Florida Rules of Juvenile Procedure;
- (e) To have no parent or legal custodians capable of providing supervision and care;
- (f) To be at substantial risk of imminent abuse, abandonment, or neglect by the parent or parents or legal custodians; or
- (g) To have been sexually exploited and to have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care.²

If the court adjudicates the child as dependent, the child is placed in the state's care.³ When a child is placed in the state's care the state "acts in the protective and provisional role of in loco parentis" or in place of the parent for the child.⁴

Dependency Proceedings

The purpose of dependency proceedings is for the court to determine if allegations of child abuse, abandonment, or neglect stated in a petition filed by the DCF or other interested person are true.⁵ If the court finds the allegations to be true, the court will direct a course of action to protect a child. A course of action is provided through a written case plan, which may include requiring a parent, legal guardian, or a child into treatment and services, dependency mediation, and placement of a child in protective supervision.⁶

¹ Section 39.301(1), F.S.

² Section 39.01(15), F.S.

³ Section 39.501(1) and (2), F.S.

⁴ *Buckner v. Family Services of Central Florida, Inc.*, 876 So. 2d 1285, 1288 (Fla.5th DCA 2004).

⁵ Section 39.501(1) and (2), F.S.

⁶ Section 39.501(1)(b), F.S.

Dependency proceedings may include a shelter hearing, an arraignment on dependency, an adjudication of dependency hearing, a disposition hearing, and a hearing on the termination of parental rights.

Detention or Shelter Determination of a Child

A shelter hearing is a proceeding in which a court determines whether probable cause exists to keep a child in a home other than the parent's or a facility pending further investigation of the circumstances leading to the detention of a child.⁷ The circumstances in which a child may be detained or taken into custody by DCF are limited.

A hospital administrator or licensed health care professional may detain a child without parental consent if returning the child to the parent or caregiver presents an imminent danger to the child. If the child is detained, the medical provider must immediately notify the DCF. Upon receiving notification, the DCF must immediately notify the parents or legal custodians that their child is being detained and begin a child protective investigation.⁸

Alternatively, a law enforcement officer may take a child into custody, if probable cause exists that:

- The child has been abused, neglected, or abandoned, or suffers from or is in imminent danger of illness or injury due to abuse, neglect, or abandonment;
- The parent or legal custodian of the child has materially violated a condition of placement ordered by the court; or
- The child has no parent, legal custodian, or responsible adult relative immediately known and able to provide care.⁹

If a child is taken custody, the attorney representing the DCF must request a hearing within 24 hours after the removal of the child.¹⁰ A child may not be held in a shelter for more than 24 hours unless a court orders the child to remain in the shelter after a shelter hearing.¹¹

Hearings on Arraignment and Adjudication of Dependency

The purpose of an arraignment hearing is for a parent to admit, deny, or consent to findings of dependency that are alleged in the petition for dependency.¹² Within 28 days after a child has been sheltered, the court must hold an arraignment hearing on the petition for dependency.¹³ If a parent or legal guardian denies an allegation in the petition, the court must hold an adjudicatory hearing within 30 days.¹⁴ If the court finds the child dependent at the adjudicatory hearing and the child is placed in out-of-home care, the court must first consider placement of the child with

⁷ See s. 39.001(72), F.S.

⁸ Section 39.395, F.S.

⁹ Section 39.401(1)(b), F.S.

¹⁰ Section 39.401(3)(b), F.S.

¹¹ Section 39.402(8)(a), F.S.

¹² Section 39.506(1), F.S.

¹³ If any party has requested a demand for early filing, the court must hold the arraignment hearing within 7 days after the date of filing of the petition Section 39.506(1), F.S.

¹⁴ Section 39.506(1), F.S.

relatives.¹⁵ If a child cannot remain safely in the original home and no adult relative is available for temporary, legal custody, the state may place the child with an adult willing to care for the child under the protective supervision of the DCF.¹⁶ Placement of the child to the temporary, legal custody of the DCF invests the DCF with the rights and responsibilities of a legal custodian.¹⁷

Disposition Hearing

A court must hold a disposition hearing after any of the following:

- The court enters an adjudication of dependency;
- The parents or legal custodian consent to the finding of dependency or admit the allegations in the petition; or
- The parents or legal custodians have failed to appear at the arraignment hearing after being properly noticed, or are unable to be found despite a diligent search.¹⁸

The purpose of the disposition hearing is to determine a course of treatment and services and placement of the child under protective supervision.¹⁹ After the disposition hearing, the court may hold a postdisposition hearing to change the temporary legal custody or conditions of protective supervision.²⁰ In determining whether to order a change in custody, the court must base its decision on the best interest of the child. As a factor of the best interest standard, the court must consider the continuity of the child's placement in the same out-of-home residence.²¹

Hearing on a Termination of Parental Rights

If an attorney for the DCF decides that a termination of parental rights is appropriate, the DCF must allege in a petition for a termination of parental rights one of the following grounds:

- The parent or parents voluntarily executed a written surrender of the child to the DCF for adoption;
- The parent or parents have abandoned the child;
- The parent or parents through their conduct demonstrate that continuing involvement threatens the child's life, safety, or well-being irrespective of the provision of services;
- The parent's status of incarceration is harmful to the child based on the length of time the parent is expected to be unavailable to the child or the nature of the criminal history of the parent;
- The parent or parents have failed to substantially comply with a case plan;
- The parent or parents have engaged in egregious conduct that threatens the child's life, safety, or well-being, such as subjecting the child to sexual abuse;
- The parent or parents have committed certain criminal acts, including having to register as a sexual predator;
- The parental rights of a parent of a sibling have been terminated involuntarily;

¹⁵ Section 39.507(7)(c), F.S.

¹⁶ Section 39.521((3)(c), F.S.

¹⁷ Section 39.521((3)(d), F.S.

¹⁸ Section 39.521(1), F.S.

¹⁹ Section 39.521(1)(b), F.S.

²⁰ Section 39.522, F.S.

²¹ Section 39.522(1), F.S.

- The parent or parents have an extensive history of unsuccessfully treated substance abuse; including exposing the child in utero to a controlled substance or alcohol; or
- The child was conceived as a result of sexual battery by the parent.²²

The DCF must file a petition to terminate parental rights within 60 days after the following if:

- The child is not returned to the physical custody of the parents within 12 months after the child was sheltered or adjudicated dependent, whichever is first;
- A petition for termination of parental rights has not otherwise been filed, and the child has been in out-of-home care in the responsibility of the state for 12 of the most recent 22 months;
- A parent has been convicted of the murder, manslaughter, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent or another child of the parent, or a felony battery that resulted in serious bodily injury to the child or another child of the parent; or
- A court determines that reasonable efforts to reunify the child and parent are not required.²³

Adoption

If the DCF is given custody of a child for a subsequent adoption under chapter 39, F.S., the DCF may place the child with a licensed adoption agency, a registered child-caring agency, or a family home for prospective adoption.²⁴ Prospective adoptive parents may not file a petition for adoption until the court has entered a judgment terminating parental rights.

In instances in which a child is adjudicated dependent but parental rights have not yet been terminated, a parent may consent to place a minor with an adoption entity or qualified adoptive parents. The court considers consent given in these circumstances to be valid, binding, and enforceable.²⁵ After the parent gives consent, the adoption entity may intervene in the dependency case and provide the court with a copy of the preliminary home study of the prospective adoptive parents and other evidence of the suitability of the placement.²⁶ The dependency court will hold a hearing to review documents in support of intervention and determine whether a change in placement is appropriate.²⁷

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 must consider the rights of

²² Section 39.806(1), F.S.

²³ Section 39.8055(1), F.S. Exceptions to the requirement to file a termination of parental rights include the following: the child is being cared for by a qualifying relative or that the DCF provides a compelling reason that filing such a petition is not in the best interests of the child. Compelling reasons include that: adoption is not the appropriate permanency goal for the child; no grounds to file a petition to terminate parental rights exist; the child is an unaccompanied refugee minor; international legal obligations or compelling foreign-policy reasons preclude terminating parental rights; or the department has not provided to the family, consistent with the time period in the case plan, services that the department deems necessary for the safe return of the child to the home. Section 39.8055(2), F.S.

²⁴ Section 39.812(1), F.S.

²⁵ Section 63.082(6)(a), F.S.

²⁶ Section 63.082(6)(b), F.S.

²⁷ Section 63.082(6)(c), F.S.

the parent to determine an appropriate placement, the permanency offered, the child's bonding to the potential adoptive home, and the importance of maintaining sibling relationships, if any.²⁸

In the case of *In re Adoption of K.A.G.*, 152 So. 3d 1271 (Fla. 5th DCA 2014), the DCF instituted dependency proceedings and filed a shelter petition on behalf of a child whose father awaited trial for murdering the child's mother. The child was placed in the temporary custody of his maternal aunt and her fiancé. After the DCF petitioned to involuntarily terminate parental rights, the paternal grandmother petitioned to terminate the father's parental rights and adopt the child. The father had given written consent to terminate parental rights and for the grandmother to adopt the child.²⁹

The trial court ruled that the father's consent to terminate parental rights was conditional on allowing the grandmother to adopt the child. Therefore, the Aunt did not have the required consent to proceed with her petition for adoption.³⁰ The appeals court agreed with the trial court that the father's consent was properly conditional.³¹ The court held that under these circumstances, the court must analyze the best interest of the child through whether "the birth parent's choice of prospective adoptive parents is appropriate and protects the well-being of the child; not that it is the best choice as evaluated by the court or the Department in light of other alternatives."³²

Due Process Protections for Parents

A parent who is a party in a dependency action is entitled to due process safeguards. A parent must receive notice of all proceedings or hearings involving the child.³³ Notice of shelter hearings³⁴ or hearings resulting from medical emergencies must approximate actual notice. Notice by summons is required for other hearings or proceedings before the dependency court.³⁵

During a dependency proceeding, a court may decide that a child's reunification with his or her parent is not viable. In those circumstances, the adoption of the child would often be in the child's best interest. However, once reunification is no longer viable, but before the parent's parental rights are terminated, the court must provide written notice to the parent of his or her right to participate in a private adoption plan.

At each stage of dependency proceedings, parents have the right to counsel appointed by the court if the parents are indigent.³⁶

²⁸ Section 63.082(e), F.S.

²⁹ *Id.* at 1271.

³⁰ *Id.* at 1272.

³¹ *Id.* at 1276.

³² *Id.* at 1276, n. 4.

³³ Section 39.502(1), F.S.

³⁴ A shelter hearing is a hearing in which the court determines whether there is probable cause for keeping a child in shelter status pending investigation of the case. Section 39.01(71), F.S.

³⁵ *Id.*

³⁶ Section 39.013(1) and (9)(a), F.S. In fact, the State Constitution requires greater due process than the federal provision, including the appointment of counsel in every case. *M.E.K. v. R.L.K.*, 921 So. 2d 787, 790 (Fla. 5th DCA 2006).

III. Effect of Proposed Changes:

The bill increases the influence of the Department of Children and Families (DCF) in selecting a prospective adoptive parent for a child under its supervision. In other words, the bill increases the authority of the DCF over adoption decisions when it is in the process of terminating the parent's rights in a dependency proceeding on the basis of abuse, abandonment, or neglect. Conversely, the bill appears intended to reduce the authority or influence of a parent who is in the process of losing parental rights to select a prospective adoptive parent for his or her child.

Under existing law, an adoption entity may intervene in dependency proceedings to have a child who is under the supervision of the DCF placed in the home of a prospective adoptive parent selected by the child's parent. As under existing law, the bill requires a court to determine the best interests of the child in deciding where a child should be placed. However, the bill changes what a court must consider in determining the child's best interests. Under existing law, a court must consider "the rights of the parent to determine an appropriate placement for a child, the permanency offered, the child's binding with any potential adoptive home that the child has been residing in, and the importance of maintaining sibling relationships."³⁷ The bill removes this existing criteria, and instead directs a court to consider the value of continuity of the child's placement in his or her current residence.

Although the bill removes the requirement that a court consider a parent's determination for the placement of a child, the bill does not eliminate a parent's right to participate in a private adoption plan. Moreover, the bill requires parents to be given notice of the right to participate in a private adoption plan at an earlier stage of the dependency proceedings. Current law permits parental notice to be given just prior to the filing of a petition for termination of parental rights. The bill requires the court to provide written notice to a parent earlier in the process, at the time of arraignment. Moving up the time of notice might expedite the permanent placement of a child's.

Current law provides that a parent's consent to an adoption is valid for children who are in the custody of the DCF. This bill expands the circumstances in which a parent may consent for the adoption of a child in dependency proceedings by allowing a parent to consent when a child is under the supervision of the DCF. Children whose cases are under DCF supervision would include children who are in relative care.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

³⁷ Section 63.082(6)(e), F.S.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The United States Supreme Court has long recognized that even parents in dependency proceedings have not entirely lost their fundamental rights to parent, as guaranteed by the 14th Amendment of the U.S. Constitution. As stated in *Santosky v. Kramer*, 455 U.S. 745, 753 (1982), the “fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.” Therefore, certain due process protections are required, including the burden of proof in a termination of parental rights case. A court must not enter an order terminating parental rights without a finding of clear and convincing evidence that termination is warranted.³⁸ Other due process rights include notice and appointment of counsel for indigent parents.³⁹

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator indicates that judicial or court workload may increase from expanding the pool of cases from children in custody of the DCF to children in the supervision of the DCF. However, OSCA reports that it cannot accurately determine the fiscal impact due to the unavailability of data needed to quantifiably establish any impact.⁴⁰

The Department of Children and Families does not expect a fiscal impact from the provisions of this bill.⁴¹

VI. Technical Deficiencies:

None.

³⁸ *Id.* at 756, 769.

³⁹ *M.E.K. v. R.L.K.*, 921 So.2d 787, 790 (Fla. 5th DCA 2006).

⁴⁰ The Office of the State Courts Administrator, *2016 Judicial Impact Statement for CS/SB 590* (Dec. 21, 2015) (on file with the Senate Committee on Judiciary).

⁴¹ The Department of Children and Families, *2016 Agency Legislative Bill Analysis for CS/SB 590* (Dec. 8, 2015)(on file with the Senate Committee on Judiciary).

VII. Related Issues:

Current law permits parents to receive notice of the right to participate in a private adoption plan just before the filing of a termination of parental rights. This bill provides in lines 81 through 85 that written notice can be provided at the arraignment on the petition for dependency, in the order that approves the case plan, or in the order that terminates parental rights. To ensure that a parent receives written notice as early as possible, the conjunction “or” should be changed to “and”.

VIII. Statutes Affected:

This bill substantially amends section 63.082, Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on November 19, 2015:

- Allows a parent to execute a consent for placement of a minor that is under the supervision of the department with an adoption entity or qualified prospective adoptive parents and that the consent is valid, binding, and enforceable by the court.
- Revises the standard of review used by the court when making a determination of a change of placement of a child from the appropriateness of the placement to the best interests of the child.
- Ensures that the biological parent is provided written notice of his or her right to participate in a private adoption plan at the arraignment hearing held pursuant to s. 39.506, in the order approving the case plan pursuant to s. 39.603, or in the order that changes the permanency goal to adoption and terminates the parental rights pursuant to s. 39.621, F.S.

B. Amendments:

None.