

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 673 Adoption

SPONSOR(S): Children, Families & Seniors Subcommittee, Adkins

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/SB 590

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	10 Y, 0 N, As CS	Tuszynski	Brazzell
2) Justice Appropriations Subcommittee	11 Y, 0 N, As CS	Smith	Lloyd
3) Health & Human Services Committee	13 Y, 0 N	Tuszynski	Calamas

SUMMARY ANALYSIS

The Florida Adoption Act, Ch. 63, F.S., applies to all adoptions, whether private or from the child welfare system. The chapter's intent is to provide stable and permanent homes for adoptive children in a prompt manner, prevent the disruption of adoptive placement, and hold parents accountable for meeting the needs of children.

For children in the child welfare system whose permanency goal is adoption, community-based care lead agencies generally work to find adoptive families and the court approves such placements using the best interest standard in Ch. 39, F.S. That section authorizes the court to look broadly at all relevant factors to determine what would be in a child's best interest.

Section 63.082, F.S., allows a private adoption entity to intervene in the child welfare case to instead place a dependent child with prospective adoptive parents chosen by the child's parent or the private adoption entity. However, the best interest standard that applies in this instance is narrower than that in Ch. 39, F.S. Section 63.082(6)(e) lists 4 specific factors the court must consider to determine whether it is in the best interest of the child to transfer custody to the prospective adoptive parents.

HB 673 changes the standard in s. 63.082(6)(e), F.S., for determining whether the transfer of a child's placement is in the child's best interest. The bill requires the court to consider and weigh all relevant factors, including new factors regarding whether a petition for termination of parental rights has been filed pursuant to s. 39.806(1)(f), (g), or (h), the stability of the current placement, the child's wishes, and what is best for the child.

The bill also amends s. 39.01, F.S., providing additional specificity to the definitions of "Abandoned" or "Abandonment" and "Parent".

For situations where a child's placement is transferred through the intervention process, the bill permits the court to establish requirements for the transfer of custody rather than ordering an immediate transfer.

The bill also creates timelines for intervention and placement hearings under s. 63.082(6), F.S., as well as increased requirements for notice to a parent of the right to private adoption from the child welfare system.

The bill has an insignificant fiscal impact on state and local expenditures.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Child Welfare System

Chapter 39, F.S., creates the dependency system that is charged with protecting child welfare. The Department of Children and Families (DCF) Office of Child Welfare works in partnership with local communities and the courts to ensure the safety, timely permanency and well-being of children.

Child welfare services are directed toward the prevention of abandonment, abuse, and neglect of children.¹ DCF's practice model is based on the safety of the child within his or her home, using in-home services such as parenting coaching and counseling to maintain and strengthen that child's natural supports in his or her home environment. Such services are coordinated by community-based care lead agencies which are contracted by DCF.

However, when it is determined that a child cannot safely remain in his or her own home, DCF works, through the involvement of the dependency courts, toward guaranteeing the safety of the child out of home while providing services to reunify the child as soon as it is no longer unsafe to do so.

Ultimately, if a child's home remains unsafe and the court is unable to reunify him or her in the family home, the child welfare system may seek a permanent home for that child through the adoption process.

The Dependency Process

Dependency Proceeding	Description of Process	Controlling Statute
Removal	The child's home is determined to be unsafe, and the child is removed.	s. 39.401, F.S.
Shelter Hearing	A shelter hearing occurs within 24 hours after removal. The judge determines whether to keep the child out-of-home.	s. 39.401, F.S.
Petition for Dependency	A petition for dependency occurs within 21 days of the shelter hearing. This petition seeks to find the child dependent.	s. 39.501, F.S.
Arraignment Hearing and Shelter Review	An arraignment and shelter review occurs within 28 days of the shelter hearing. This allows the parent to admit, deny, or consent to the allegations within the petition for dependency and allows the court to review any shelter placement.	s. 39.506, F.S.
Adjudicatory Trial	An adjudicatory trial is held within 30 days of arraignment. The judge determines whether a child is dependent during this trial.	s. 39.507, F.S.
Disposition Hearing	If the child is found dependent, disposition occurs within 15 days of arraignment or 30 days of adjudication. The judge reviews the case plan and placement of the child. The judge orders the case plan for the family and the appropriate placement of the child.	ss. 39.506 and 39.521, F.S.
Judicial Review Hearings	The court must review the case plan and placement every 6 months, or upon motion of a party.	s. 39.701, F.S.

Dependency Proceeding	Description of Process	Controlling Statute
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¹ S. 39.001(8), F.S.

Petition for Termination of Parental Rights	Once the child has been out of home for 12 months, if DCF determines that reunification is no longer a viable goal, termination of parental rights is in the best interest of the child, and other requirements are met, a petition for termination of parental rights is filed.	ss. 39.802, F.S., 3.8055, F.S., 39.806, F.S., and 39.810, F.S.
Advisory Hearing	This hearing is set as soon as possible after all parties have been served with the petition for termination of parental rights. The hearing allows the parent to admit, deny, or consent to the allegations within the petition for termination of parental rights.	s. 39.808, F.S.
Adjudicatory Trial	An adjudicatory trial shall be set within 45 days after the advisory hearing. The judge determines whether to terminate parental rights to the child at this trial.	s. 39.809, F.S.

Adoption from the Child Welfare System

Statute requires child welfare services, including adoption services, to be delivered through community-based care (CBC) lead agencies contracted by DCF.² For example, CBC's provide pre- and post-adoption services and administer maintenance adoption subsidies which provide ongoing financial support for children adopted from the foster care system.

Adoption is a method of achieving permanency for children who have suffered abuse, neglect, or abandonment and who are unable to be reunified with their parents. Research indicates that children generally have better outcomes through adoption than through placement in long-term foster care.³

The Florida Adoption Act

The Florida Adoption Act, ch. 63, F.S., applies to all adoptions, whether private or from the child welfare system, involving the following entities:⁴

- Department of Children and Families (DCF);
- Child-placing agencies licensed by DCF under s. 63.202, F.S.;
- Child-caring agencies registered under s. 409.176, F.S.;
- An attorney licensed to practice in Florida; or
- A child-placing agency licensed in another state which is qualified by DCF to place children in Florida.

Chapter 63, F.S., provides extensive legislative intent for the purpose and process of adoption,⁵ and for cooperation between private adoption entities and DCF in matters relating to permanent placement options for children in the care of DCF whose parents wish to participate in a private adoption plan.⁶ While the child welfare system uses adoption as a way to achieve permanency for children after the rights of the parents are terminated, ch. 63, F.S., allows a child welfare-involved parent whose parental rights have not been terminated to work with a private adoption entity to find a permanent home for his or her child.

² S. 409.986(1), F.S.

³ Evan B. Donaldson Adoption Institute, *Keeping the Promise: Critical Need for Post-Adoption Services to Enable Children and Families to Succeed*, Oct. 2010, p. 8.

⁴ S. 63.032(3), F.S.

⁵ S. 63.022, F.S.

⁶ S. 63.022(5), F.S.

Intervention by an Adoption Entity into a Dependency Proceeding

Section 63.082, F.S., allows a private adoption entity to intervene in ch. 39, F.S., dependency cases. The intervention process allows a child welfare-involved parent to have his or her dependent child removed from the child's current child welfare placement and adopted by other parents chosen by the child-welfare involved birth parent or adoption entity; the child-welfare involved parent could also choose to have his or her child adopted by the child's current foster parents. Statute currently requires courts to notify welfare-involved parents about this option after it has been determined that reunification is not a viable alternative and before the filing of a petition of termination of parental rights (at or after the disposition hearing).⁷

For children already in DCF custody, s. 63.082(6), F.S., provides that parental consent for placement of a minor with an adoption entity or qualified adoptive parents is valid, binding, and enforceable by the court.⁸ After the parent executes the consent, the process is as follows:

1. The court permits the adoption entity to intervene in the dependency case.⁹
2. The adoption entity provides the court with a copy of the preliminary home study of the prospective adoptive parents and any other evidence of the suitability of the proposed placement.¹⁰
3. The dependency court holds a hearing to determine if the required documents to intervene have been filed and whether a change in the child's placement is appropriate.¹¹
4. Upon the court's determination that the prospective adoptive parents are appropriate and that the adoption appears to be in the best interest of the minor child, the court immediately orders transfer of custody of the minor child to the prospective adoptive parents, under the supervision of the adoption entity.¹²
5. The adoption entity keeps 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.¹³

There are no statutory timeframes for when steps in this process must occur.

"Best Interest" Standards

Under ch. 39, F.S., the dependency court has broad powers to determine what is in the best interest of the child. Florida law does not enumerate the factors to be considered to determine the best interest of the child.¹⁴ The court has the ability to look at all relevant factors to determine what would be in a child's best interest while under the jurisdiction of the court.

However, ch. 63, F.S., has a different best interest standard for intervention by an adoption entity in a dependency proceeding. Chapter 63, F.S., states the best interest of the child should govern and be of foremost concern in the court's determination in adoption proceedings.¹⁵ Section 63.082(6)(e), F.S., expressly enumerates the factors to be considered in determining the best interest of the child. To determine whether the child's best interests are served by transferring custody to the prospective adoptive parent or adoption entity selected by the child's parent, statute directs the court to consider:

1. The right of the parent to determine an appropriate placement;
2. The permanency offered;
3. The child's bonding with any potential adoptive home that the child has been residing in; and

⁷ S. 63.082(6)(g), F.S.

⁸ S. 63.082(6)(a), F.S.

⁹ S. 63.082(6)(b), F.S.

¹⁰ Id.

¹¹ S. 63.082(6)(c), F.S.

¹² S. 63.072(d), F.S.

¹³ S. 63.082(f), F.S.

¹⁴ During termination of parental rights proceedings, 11 enumerated factors must be considered under s. 39.810, F.S., to determine that it is in the manifest best interest to terminate parental rights.

¹⁵ S. 63.022(2), F.S.

4. The importance of maintaining sibling relationships, if any.¹⁶

Florida courts have found that the best interest determination under the ch. 63, F.S., adoption intervention process is unique and not the same as the best interest determination under ch. 39, F.S. The court stated in *In re S.N.W.*¹⁷ that once the court gives consideration to the right of the parent to determine an appropriate placement for the child as required under s. 63.082(6)(e), F.S.,¹⁸ the court is prevented from comparing the birth parents' choice of prospective adoptive parents with other potential placements that the court or DCF might choose. Additionally, the court stated that the "best interest" analysis requires a determination that 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 DCF in light of other alternatives.

Abandonment

Section 39.01(1), F.S., defines "abandoned" or "abandonment" as a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. The definition is silent as to the effect an acknowledgement of paternity by an alleged or prospective parent has on the period of time considered to determine whether the child was abandoned.

In April 2015, the Fourth District Court of Appeal of the State of Florida found that in determining whether a father abandoned his child, the court should only consider the actions of that prospective father *after* the establishment of paternity.¹⁹

Effect of Proposed Changes

Intervention by an Adoption Entity Into a Dependency Proceeding

The bill amends s. 63.082(6)(a), F.S., changing the application of the statute from children "in the custody" of DCF to children "under the supervision" of DCF or "otherwise subject to the jurisdiction of the dependency court." This clarifies that s. 63.082, F.S., applies to not only children placed in foster care but also any child under the jurisdiction of the dependency court, such as those in a relative placement.

Notice to Parents

The bill instructs the court to provide written notice to the child-welfare involved parent of the right to participate in a private adoption plan at several points during the dependency process. These include:

- the arraignment hearing held pursuant to s. 39.506, F.S.;
- in the order approving the case plan pursuant to s. 39.603, F.S.; and
- in the order that changes the permanency goal to adoption and termination of parental rights pursuant to s. 39.621, F.S.

This timeframe allows a parent to consider and evaluate this option beginning much earlier in the dependency process, before the child has been in a placement for a significant length of time.

Best Interest Standard

The bill changes the best interest standard in s. 63.082(6)(e), F.S., for evaluating whether a child's custody will be transferred from the child welfare system to a prospective adoptive parent or adoption

¹⁶ S. 63.082(e), F.S.

¹⁷ 912 So2d 368 (2005), See also *In re K.A.G.*, 152 So3d 1271 (2014).

¹⁸ In determining the best interest of the child under s. 63.082, F.S., the court shall consider the rights of the parent to determine an appropriate placement for the child, 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 possible.

¹⁹ *A.S. v. Department of Children & Families*, 162 So.3d 335, 339

entity selected by the child's parent. The bill specifies that the court shall weigh all relevant factors. It also adds as new factors:

- Whether a petition for termination of parental rights has been filed pursuant to s. 39.806(1)(f),²⁰ (g),²¹ or (h);²²
- The stability of the potential adoptive home in which the child has been residing as well as the desirability of maintaining continuity of the placement;
- The reasonable preferences and wishes of the child, if the court deems the child to be of sufficient maturity, understanding, and experience to express a preference; and
- What is best for the child.

The bill permits the court to establish reasonable requirements for the transfer of custody of the child to the prospective adoptive parents, including a reasonable period of time for the transfer to occur. Currently the court must immediately order the transfer of custody of the child to the prospective adoptive parents.

The bill also requires the court, absent good cause or mutual agreement, to hold the hearing on the motion to intervene within 30 days after filing, and a written final order shall be filed within 15 days after the hearing.

Abandonment Definition

The bill amends s. 39.01, F.S., changing the definition of "abandon" or "abandonment", and "parent".

The definition of "abandon" or "abandonment" is changed to include that a man's acknowledgement of paternity of the child does not limit the period considered in determining whether the child was abandoned.

The definition of "Parent" is amended to clarify and conform to the definition of abandon that the term does not include an alleged or prospective parent, unless the parental status is applied for the purpose of determining whether the child has been abandoned.

This change allows DCF to provide evidence of a prospective father's behavior and actions prior to the acknowledgement of paternity in considering whether the father abandoned his child.

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

B. SECTION DIRECTORY:

- Section 1:** Amends s. 39.01, F.S., relating to the definitions of "Abandonment" and "Parent."
Section 2: Amends s. 63.082, F.S., relating to execution of consent to adoption, and intervention.
Section 3: Provides an effective date of July 1, 2016.

²⁰ Parent or parents have engaged in egregious conduct.

²¹ Parent or parents have subjected the child or another child to aggravated child abuse as defined in s. 827.03, sexual battery or sexual abuse as defined in s. 39.01, or chronic abuse.

²² Parent or parents have committed the murder, manslaughter, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent or another child, or a felony battery that resulted in serious bodily injury to the child or to another child.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill has an insignificant fiscal impact on expenditures and workload for the courts.

“The bill could increase judicial or court workload to the extent that providing such written notice requires more time than the current notice requirement, which does not specify the form that such notice must take. Notice may currently be provided verbally by a judge during the hearing.”²³

The bill requires the courts to hold a hearing within 30 days, and issue an order within 15 days after the hearing. This should not have a significant impact on workload as other cases could be shifted to comply with the timeframe if needed.

The bill also changes the standard for determining a change of placement by amending the best interest factors in s. 63.082(6)(e), F.S.²⁴ This change will require courts to consider more factors than under current law, which could require additional judicial time for judges who do not currently take these factors into consideration.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill has an insignificant fiscal impact on expenditures and workload for the courts.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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:

²³ Office of the State Courts Administrator, *CS/HB 673 Judicial Impact Statement*, Dated: January 21, 2016, On file with the House Justice Appropriations Subcommittee.

²⁴ *Id.*

The United States Supreme Court has concluded, “freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment.”²⁵

Florida courts have long recognized this fundamental right: “[W]e nevertheless cannot lose sight of the basic proposition that a parent has a natural God-given legal right to enjoy the custody, fellowship and companionship of his offspring. This is a rule older than the common law itself....”²⁶ However, “the only limitation on this rule of parental privilege is that as between the parent and the child the ultimate welfare of the child itself must be controlling.”²⁷ The “right is not absolute but is subject to the overriding principle that it is the ultimate welfare or best interest of the child which must prevail”²⁸.

There is no consensus among Florida courts on where the right of the parent begins to cede to the right of the child in dependency cases, prior to termination of parental rights. This legislation sits right at the intersection of these sometimes-competing interests.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 13, 2016, the Children, Families and Seniors Subcommittee adopted two amendments. The amendments made the following changes:

- Added two additional factors for the court to consider in the best interest analysis when deciding on granting an adoption intervention:
 - The stability of the potential adoptive home in which the child has been residing as well as the desirability of maintaining continuity of the placement; and
 - The reasonable preferences and wishes of the child, if the court deems the child to be of sufficient maturity, understanding, and experience to express a preference;
- Moved the “rights of the parent to determine an appropriate placement” factor to the end of the list;
- Struck language providing for a presumption to guide the court’s decision based on the time a child has been in a placement; and
- Made a technical correction to cite the correct name of the permanency goal being referenced.

On January 28, 2016, the Justice Appropriations Subcommittee adopted one strike-all amendment. The amendment made the following changes:

- Amends s. 39.01, F.S., adding language to the definitions of “Abandoned” or “Abandonment” and “Parent”:
 - Changing “abandon” or “abandonment” to include that a man’s acknowledgement of paternity of the child does not limit the period of time considered in determining whether the child was abandoned.
 - Adding that the definition of a “Parent” does not include an alleged or prospective parent, unless the parental status is applied for the purpose of determining whether the child has been abandoned.
- Removed the acts title “Child’s Best Hope Act”.
- Removing language regarding adoption consent of a minor younger than 6 months.

²⁵ *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 1394, 71 L.Ed.2d 599 (1982)

²⁶ *State ex rel. Sparks v. Reeves*, 97 So.2d 18, 20 (Fla. 1957) See also *In re Camm*, 294 So.2d 318, 320 (Fla.), cert. denied, 419 U.S. 866, 95 S.Ct. 121, 42 L.Ed.2d 103 (1974)

²⁷ *Id.*

²⁸ *In re Camm*, 294 So.2d 318, 320 (Fla.), cert. denied, 419 U.S. 866, 95 S.Ct. 121, 42 L.Ed.2d 103 (1974).

- Removes the language about the relinquishment of parental rights upon the consent of adoption.
- Changes language in s. 63.082 (6) (c), F.S., regarding proper child placement, from “appropriate” to “in the best interests of the child.”
- Changes language in s. 63.082 (6) (d), F.S., clarifying court determination guidelines.
- Removes from the proposed language in s. 63.082 (6) (d), F.S., requiring written notice of a timeframe.
- The amendment changes the bill to be more in line with the Senate companion.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute as passed by the Justice Appropriations Subcommittee.