

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 Appropriations

BILL: CS/SB 7018

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

SUBJECT: Child Welfare

DATE: March 1, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Preston	Hendon		CF Submitted as Committee Bill
1.	Davis	Cibula	JU	Favorable
2.	Brown	Pigott	AHS	Recommend: Favorable
3.	Brown/Preston	Kynoch	AP	Fav/CS

I. Summary:

CS/SB 7018 revises the state’s approach to out-of-home placement services for children living in foster care. Among the revisions, the bill:

- Requires an assessment process to determine the service and support needs, as well as the appropriate placement for each child who enters the foster care system;
- Requires the Department of Children and Families to develop a continuum of care that provides appropriate services based on the level of care for both foster home and group home placements; and
- Requires data collection on every aspect of the assessment, placement, and service provision process for children in foster care.

The bill also requires community-based care lead agencies¹ to have available a full array of services, including safety management services, to help keep children from coming into foster care and requires more accountability for the outcomes of services delivered. Once a child enters the child welfare system, however, the bill requires the child to be assessed through a standardized assessment process to determine the appropriate placement. Finally, the bill repeals a number of residential group home statutes that are rendered obsolete under the bill.

The bill’s fiscal impact on state government is indeterminate.

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

¹ A community-based care lead agency is a single entity with which the Department of Children and Families has a contract for the provision of care for children in the child protection and child welfare system in a community that is no smaller than a county and no larger than two contiguous judicial circuits. See part V, ch. 409, F.S.

II. Present Situation:

State Trends in Child Welfare

Many states are seeking to reduce the use of residential group homes for children in foster care. This shift reflects a growing consensus within the child-welfare field that group home settings for foster children, while sometimes necessary, should be used sparingly. To lower the number of group care placements, states have two main options: provide more preventive support for unsafe families; and recruiting more people, including relatives and non-relatives with whom children have a strong emotional relationship, to serve as foster parents.

Research shows an association between frequent placement disruptions and outcomes that are adverse to the child, including poor academic performance and social or emotional adjustment difficulties such as aggression, withdrawal, and poor social interaction with peers and teachers. Despite this evidence, there has been limited intervention by child welfare systems to reduce placement instability as a mechanism for improving outcomes for children.

Placement Options for Children in Out-of-Home Care

Federal law has long supported the belief that children should grow up in families whenever possible. The Adoption Assistance and Child Welfare Act of 1980 codified the concept that children should be cared for in their own homes whenever it is possible to do so safely and in new permanent homes when it is not. To preserve the well-being of children who enter the system, out-of-home placements must be in the least restrictive setting possible that is most like a family.² Florida has likewise codified the concept of least restrictive setting.³

The federal Adoption and Safe Families Act of 1997 (ASFA) was considered the most significant piece of legislation addressing child welfare since the enactment of the Adoption Assistance and Child Welfare Act 17 years earlier. The legislation was enacted as a response to increasing concerns voiced around the nation that child welfare systems were not providing for the safety, well-being, and permanent placement of children in a timely and adequate manner. The ASFA sought to focus on child safety when making case decisions and make certain that children did not languish or grow up in foster care but were instead connected with permanent families.⁴ Florida was one of the first states to enact the provisions of the ASFA.⁵

Placement with Relatives or Kinship Care

A substantial amount of research acknowledges that children in the care of relatives, or what is often referred to as “kinship care,” are less likely to change placements and benefit from increased placement stability, as compared to children placed in general foster care. Most child welfare systems strive to place children in stable conditions without multiple living arrangement changes because it has consistently demonstrated a better result for all children living in out-of-

² Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96–272, 42 USC s. 675.

³ See ss. 39.407, 39.6012 and 409.165, F.S.

⁴ Olivia Golden and Jennifer Macomber, *Intentions and Results: A Look Back at the Adoption and Safe Families Act* (Dec. 11, 2009), available at: <http://www.urban.org/research/publication/intentions-and-results-look-back-adoption-and-safe-families-act> (last visited Nov. 23, 2015).

⁵ Chapter 98-403, Laws of Fla.

home care. As opposed to children living in foster care, children living in kinship care are more likely to remain in their own neighborhoods, be placed with their siblings, and have more consistent interactions with their birth parents than do children who are placed in foster care, all of which might contribute to less disruptive transitions into out-of-home care.⁶

Among the appropriate placement options for children who could not be reunified with their parents, the ASFA included placement with relatives, legal guardians, or another planned permanent-living arrangement. Even though the ASFA encouraged states to seek fit and willing relatives as permanent family options, it did not offer ongoing financial assistance for relatives who were foster parents caring for children as their guardians outside of foster care.⁷ The ASFA provided incentives to encourage the movement of children to adoptive families, but did not provide similar fiscal incentives that would help children leave care to live permanently with legal guardians or relatives who were not adopting them.⁸

Additional provisions of the ASFA created challenges for placing a child with a fit and willing relative. In particular, ASFA regulations require that foster homes of relatives be licensed in the same manner as foster homes for children in non-relative placements, with few case-specific exceptions.⁹

More recent federal legislation, the 2008 Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections Act, or FCA), makes this requirement a bit less restrictive by allowing states to waive non-safety related licensing standards for relative homes on a case-by-case basis. The FCA also supports states in providing financial subsidies to kinship legal guardianship placement as long as certain conditions have been met. Florida has not implemented the provisions of the FCA related to relative guardianship.¹⁰

Florida did, however, recognize the importance of relative placements by creating the Relative Caregiver Program in 1998 to provide financial assistance to eligible relatives caring for children who would otherwise be in the foster care system.¹¹ In 2014 the program was expanded to include specified nonrelative caregivers.¹²

According to the Department of Children and Families (DCF), as of September 30, 2015, Florida had 12,343 children receiving in-home services, 12,341 children who are in kinship foster care placements, and 10,029 children who are in licensed foster care placements.¹³

⁶ David Rubin and Kevin Downes, K., et al., *The Impact of Kinship Care on Behavioral Well-being for Children in Out-of-Home Care* (June 2, 2008), available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2654276/>.

⁷ MaryLee Allen and Beth Davis-Pratt *The Impact of ASFA on Family Connections for Children* (Dec. 11, 2009), available at: <http://www.urban.org/research/publication/intentions-and-results-look-back-adoption-and-safe-families-act>.

⁸ While some relatives want to adopt, grandparents are often hesitant to do so. This is because it is necessary to first terminate their own children's parental rights and because of their hope that their adult sons or daughters will one day be able to resume parenting.

⁹ *Supra* at 7.

¹⁰ P.L. 110-351.

¹¹ Section 39.5085, F.S.

¹² Chapter 2014-224, Laws of Florida.

¹³ Florida Department of Children and Families, DCF Quick Facts, available at: <http://www.dcf.state.fl.us/general-information/quick-facts/cw/> (last visited Nov. 23, 2015).

Family Foster Homes

Family foster homes offer the next least-restrictive environment following kinship care for children who need out-of-home placements. For at least 15 years, Florida has not had enough family foster homes nor an adequate array of homes necessary to meet the variety of needs of children in out-of-home placements. In 2001, it was reported that “Florida’s foster care system was overwhelmed with many problems during the past several years as evidenced by lawsuits, grand jury investigations, and special investigations...”¹⁴

In February 2001, the Office of Program Policy Analysis and Government Accountability (OPPAGA)¹⁵ reported the following problems with Florida’s foster care system:

- The number of children admitted to foster care increased by 28.8 percent between June 1996 and June 2000;
- The DCF increased its foster home capacity by only five percent between fiscal year 1997-98 and 1998-99 even after receiving 70 new full-time equivalent positions from the 1999 Legislature solely for the purpose of recruiting new foster families; and
- The number of children needing care outpaced the number of foster homes, leaving many foster homes overcrowded.

Lawsuits also alleged numerous problems associated with the foster care system, including failure on the part of the state to develop an array of foster care settings to ensure a safe and secure placement for each foster child, particularly in respect to foster homes for teenagers.¹⁶

Florida responded to the lack of foster homes by enacting legislation in 2001 and 2002 to increase the utilization of residential group home placements until additional foster homes could be recruited.¹⁷ The 2001 and 2002 provisions required that any dependent child 11 years of age or older who has been in licensed family foster care for six months or longer, who is then moved more than once and who is a child with extraordinary needs, must be assessed for placement in licensed residential group care. Additionally, funds were authorized to be used for one-time start-up funding for residential group care purposes that include, but are not limited to, remodeling or renovation of existing facilities, construction costs, leasing costs, purchase of equipment and furniture, site development, and other necessary and reasonable costs associated with the start-up of facilities or programs.¹⁸

However, while the 2001 and 2002 legislation was being considered by the Legislature, the DCF expressed concerns that the provisions of the proposed legislation were contrary to published

¹⁴ Information contained in this portion of this bill analysis is from the analysis for CS/CS/SB 1214 by the Senate Committee on Children and Families (March 29, 2001) available at:

http://archive.flsenate.gov/session/index.cfm?Mode=Bills&SubMenu=1&BI_Mode=ViewBillInfo&BillNum=1214&Year=2001&Chamber=Senate#Analysis.

¹⁵ Office of Program Policy Analysis and Government Accountability, *Justification Review of the Child Protection Program in the Department of Children and Family Services*. Report Number 01-14 (February, 2001) available at:

<http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0114rpt.pdf>.

¹⁶ See, for example, *31 Foster Children v. Bush*, 329 F.3d 1255 (11th Cir. 2003) and *Ward. v. Feaver, et al*, 2000 WL34025227 U.S. District Court S.D. Florida.

¹⁷ See ss. 39.523, 409.1676, 409.1677 and 409.1679, F.S.

¹⁸ Section 39.523, F.S.

literature, contrary to guidance from the federal government, and contrary to the actions of other states that were moving away from group home care.¹⁹

Residential Group Care

Residential group care as a placement option for children in the child welfare system has many forms and functions, including serving as a child placement option and as a treatment component of a child's mental health system of care. The multiple roles of group care make an analysis of its effectiveness difficult and complex.²⁰

Some schools of thought contend that all residential group care has the potential to be harmful and should be eliminated. Others support the position that those placements can be beneficial for some children under certain circumstances. Still others support the wholesale use of residential group care as an alternative to the limited supply of family placements or dependence on family placements that could expose children to additional risks. However, both favorable and unfavorable claims about the effectiveness of residential group care and other options are often made without adequate supporting evidence.²¹

There appears to be a growing consensus within the child welfare community that residential group home settings for children in out-of-home care are sometimes necessary but should be used sparingly and only for the length of time necessary to place the child in a less restrictive environment. Some states have been more successful than others in efforts to decrease reliance on group home care.²²

A number of child welfare organizations are supporting an overhaul of the federal funding system for child welfare. Their goal is to shift funding from residential group home settings to alternative placements such as family-based care. The Annie E. Casey Foundation and one of its partners, the Jim Casey Youth Opportunities Initiative, supports the proposal that federal reimbursement should be eliminated for shelters and group care for children under 13 years of age but should be allowed for older children's group care but only for short periods of time when psychiatric treatment or other specialized care is needed.²³

Nationally, according to the Adoption and Foster Care Analysis and Reporting System (AFCARS) data, in 2014, 46 percent of all children in foster care lived in the foster family homes of non-relatives. Twenty-nine percent lived in family foster homes with relatives or in kinship care. Six percent lived in group homes, eight percent lived in institutions, four percent

¹⁹ Testimony from committee meetings: Senate Children and Families Committee, SB 623, January 30, 2002; Senate Children and Families Committee, SB 1214, March 14, 2001; House Child and Family Security Committee, HB 1145, March 15, 2001; House Child and Family Security Committee, HB 755, February 7, 2002.

²⁰ Richard Barth, *Institutions vs. Foster Homes: The Empirical Base for the Second Century of Debate*. Chapel Hill, NC: University of North Carolina, School of Social Work, Jordan Institute for Families (June 17, 2002), available at: http://www.researchgate.net/publication/237273744_vs._Foster_Homes_The_Empirical_Base_for_a_Century_of_Action.

²¹ Child Welfare League of America, *Residential Transitions Project Phase One Final Report* (April 2008), available at: http://rbsreform.org/materials/Residential%20Transitions%20Project%20-%204%2030%2008%20_2_.pdf.

²² *Id.* Also see California Health and Human Services Agency. California's Child Welfare Continuum of Care Reform, January 2015, *Children's Rights, What Works in Child Welfare Reform: Reducing Reliance on Congregate Care in Tennessee*, July 2011, and The Annie E. Casey Foundation, *Rightsizing Congregate Care, A Powerful First Step in Transforming Child Welfare System*, 2010.

²³ *Id.*

lived in pre-adoptive families, and the remainder lived in other types of facilities.²⁴ These statistics do not differ substantially from the distributions at the beginning of the decade, although there has been a small decrease of foster children living in group homes and institutions, and a corresponding increase of foster children in home care.²⁵ In Florida during the 2013-14 fiscal year, 11 percent of children in foster care were in residential group care, and 83 percent of the children in group care were 11 years of age and older, compared to 17 percent of children in family care settings.²⁶

Cost of Residential Group Home Care

Residential group homes are one of the most expensive placement options for children in the child welfare system. The costs associated with institutional care far exceed the costs for foster care or treatment foster care. The difference in monthly costs are often six to 10 times higher than foster care. Because there is essentially no evidence that these additional costs yield better outcomes for foster children, according to at least one researcher, there is no justification for the cost benefit for group care, if other placement options are available.²⁷

In Florida, unlike rates for foster parents and relative caregivers, which are set in statute and in rule, community-based care lead agencies annually negotiate rates for residential group home placements with providers. According to a 2014 OPPAGA study, in the 2013-2014 fiscal year, the per diem rate for the shift-care group home model averaged \$124, and costs ranged from \$52 to \$283. The per diem rate for a family group home model averaged \$97, and costs ranged from \$17 to \$175. Family foster home care pays an average daily rate of \$15.²⁸ The cost of group home care in Florida for the 2013-14 fiscal year was \$81.7 million.²⁹

III. Effect of Proposed Changes:

Section 1 amends s. 39.013, F.S., relating to procedures, jurisdiction, and right to counsel, to continue court jurisdiction until the age of 22 for young adults having a disability who choose to remain in extended foster care. This is consistent with the provisions of s. 39.6251, F.S.

Section 2 amends s. 39.2015, F.S., relating to critical incident rapid response teams, to require the quarterly report submitted by the team advisory committee to include implementation details relating to recommendations in the report.

Section 3 amends s. 39.402, F.S., relating to placement in a shelter, to update terminology to better reflect the safety methodology currently being used by the DCF.

²⁴ U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. The AFCARS Report (Sept. 18, 2015), *available at*: <http://www.acf.hhs.gov/programs/cb/resource/afcars-report-22>.

²⁵ Child Trends Data Bank, Foster Care (Dec. 2014), *available at*: <http://www.childtrends.org/?indicators=foster-care>.

²⁶ Office of Program Policy and Government Accountability, Research Memorandum, *Florida's Residential Group Care Program for Children in the Child Welfare System* (Dec. 22, 2014) (on file with the Senate Committee on Judiciary).

²⁷ *Supra* at 20.

²⁸ *Supra* at 26.

²⁹ *Id.*

Section 4 amends s. 39.521, F.S., relating to disposition hearings, to update terminology to better reflect the safety methodology currently being used by the DCF and to revise timelines for distribution of case plans.

Section 5 amends s. 39.522, F.S., relating to post-disposition change of custody, to change the standard for the court to return a child to the home from “substantially complied with the terms of the case plan” to whether the “circumstances that caused the out-of-home placement have been remedied” with an in-home safety plan in place.

Section 6 amends s. 39.6011, F.S., relating to the development of case plans, to rearrange and restructure the statutory section. The section now states the purpose of a case plan and requires documentation that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, if appropriate, have been provided and that reasonable efforts to prevent out-of-home placement have been made. Under the bill, procedures for involving the child in the case planning process are revised and put in a separate subsection.

Section 7 amends s. 39.6012, F.S., relating to case plan requirements for services and tasks for parents and safety, permanency, and well-being for children, to rearrange and restructure the statutory section. The bill requires documentation in the case plan that the required placement assessments have been completed; that the child has been placed in the least restrictive, most family-like setting, or if not, the reason for the alternative placement; and that if the child has been placed in a residential group care setting, regular reviews and updates to the case plan must be completed.

The bill also requires that provisions in the case plan relating to visitation and contact of the child with his or her parents and/or siblings also apply to extended family members and fictive kin. The term “fictive kin” is defined as individuals that are unrelated to the child by either birth or marriage, but have an emotionally significant relationship with the child that would take on the characteristics of a family relationship.

Section 8 amends s. 39.6035, F.S., relating to the transition plan, to clarify that the transition plan must be approved by the court before the child’s 18th birthday.

Section 9 amends s. 39.621, F.S., relating to permanency determinations by the court, to add provisions relating to maintaining and strengthening the placement. These provisions are current law in s. 39.6011, F.S., and they are being relocated to s. 39.621, F.S.

Section 10 amends s. 39.701, F.S., relating to judicial review, to add a requirement to the social study report for judicial review to include documentation that the placement of the child is in the least restrictive, most family-like setting that meets the needs of the child as determined through assessment. The section also requires the court to order the DCF and the community-based care lead agency to file a written notification before a child changes placements, if possible. If the notification before changing placements is not possible, the notification must be filed immediately following a change. This flexibility would accommodate those cases when a child must be moved on short notice or after work hours.

Section 11 creates s. 409.143, F.S. relating to assessment and determination of appropriate placements for children in care, to require an initial placement assessment whenever a child has been determined to need an out-of-home placement, and to establish timelines for that assessment. The bill requires the DCF to document these initial assessments in the Florida Safe Families Network (FSFN) and update the case plan. The bill also requires an additional assessment for children being placed in group care, establishes time lines for those assessments, and requires an annual report to the Governor, the President of the Senate and the Speaker of the House of Representatives relating to the placement of children.

Section 12 creates s. 409.144, F.S., relating to a continuum of care. The bill provides legislative findings and intent pertaining to the safety, permanency, and well-being of children in out-of-home care. The bill defines the terms “continuum of care,” “family foster care,” “level of care,” “out-of-home care,” and “residential group care.”

The bill requires the DCF, in collaboration with the Florida Institute for Child Welfare and other stakeholders to develop a continuum of care for the placement of children in out-of-home care that includes both family foster care and residential group care by December 31, 2017. To implement the continuum, the DCF must:

- Establish levels of care that are clearly defined with the qualifying criteria for placement at each level identified;
- Revise licensure standards and rules to reflect the services and supports provided by a placement at each level of care and include the quality standards that must be met by licensed providers;
- Develop policies and procedures to ensure that placements are appropriate for each child as determined by the required assessments and staffing and last only long enough to resolve the issue that required the placement;
- Develop a plan to recruit, train, and retain specialized foster homes for pregnant and parenting teens, sibling groups, young adults who have chosen to remain in foster care after the age of 18, and children who are involved in both the dependency and the juvenile justice systems; and
- Develop a quality rating system for providers of residential group care.

The bill requires an annual report by the DCF to the Governor, the President of the Senate, and the Speaker of the House of Representatives and specifies what the report must contain.

Section 13 amends s. 409.1451, F.S., relating to the Road-to-Independence Program, to clarify that aftercare services are available to young adults who were in licensed care on their 18th birthday.

Section 14 amends s. 409.986, F.S., relating to child protection and child welfare outcomes, to add intervention services to the definition of the term “care.”

Section 15 amends s. 409.988, F.S., relating to the duties of community-based care lead agencies. The bill requires lead agencies to ensure the availability of a full array of services necessary to meet the needs of all individuals within their local system of care. The bill adds new requirements relating to intervention services and specifies the types of services that must be

available, eligibility for those services, and authorizes the department to adopt rules to implement these services.

The bill also requires the DCF to report annually to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the adequacy of the available service array by lead agency.

Section 16 amends s 409.996, F.S., relating to duties of the DCF, to require the DCF to ensure an adequate array of services is available.

Section 17 amends s. 39.202, F.S., relating to the confidentiality of records and reports in cases of child abuse or neglect and to revise the designation of an agency.

Section 18 amends s. 39.5085, F.S., relating to the Relative Caregiver Program, to correct a cross reference.

Section 19 amends s. 1002.3305, F.S., relating to the College-Preparatory Boarding Academy Pilot Program for at-risk students, to correct a cross reference.

Section 20 repeals s. 39.523, F.S., relating to placement in residential group care.

Section 21 repeals s. 409.141, F.S., relating to equitable reimbursement methodology for residential group home care.

Section 22 repeals s. 409.1676, F.S., relating to comprehensive residential group care services to children who have extraordinary needs.

Section 23 repeals s. 409.1677, F.S., relating to model comprehensive residential services programs.

Section 24 repeals, s. 409.1679, F.S., relating to additional requirements and reimbursement methodology for residential group care.

Section 25 provides an effective date of July 1, 2016.

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. None. Government Sector Impact:

To the extent CS/SB 7018 reduces the number of children in group home care and increases the number of children in foster homes, the bill would have a positive fiscal impact on the state. The average cost of group care with shift care workers is \$124 per day per child, the average cost of group care with house parents is \$97 per day per child, and the average cost of foster homes is \$15 per day per child.³⁰ The amount of such an impact is indeterminate.

The bill revises current practices in assessment and placement of children in foster care. To the extent that these new procedures are more costly than current practices, this aspect of the bill could have a negative fiscal impact on the state. The amount of such an impact is indeterminate.

The bill revises current court procedures in the case planning and placement of children in foster care. To the extent that these new procedures are more costly than current practices, this aspect of the bill could have a negative fiscal impact on the state. The amount of such an impact is indeterminate.

The Office of the State Courts Administrator indicates that the bill will increase judicial workloads, but it cannot accurately determine the fiscal impact because the data needed to quantify the increase in judicial time and workload are not available.³¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

³⁰ *Supra* at 26.

³¹ Office of the State Courts Administrator, *2016 Judicial Impact Statement for SB 7018* (Dec. 1, 2015) (on file with the Senate Committee on Judiciary).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.013, 39.2015, 39.202, 39.402, 39.5085, 39.521, 39.522, 39.6011, 39.6012, 39.6035, 39.621, 39.701, 409.1451, 409.986, 409.988, 409.996, and 1002.3305.

This bill creates the following sections of the Florida Statutes: 409.143 and 409.144

This bill repeals the following sections of the Florida Statutes: 39.523, 409.141, 409.1676, 409.1677, and 409.1679.

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 Appropriations on March 1, 2016:

The committee substitute:

- Updates terminology in numerous sections of statute to reflect the safety methodology currently being used by DCF;
- Revises provisions of the bill relating to assessment to provide an assessment for all children in out-of-home care and an additional assessment for children placed in a group home setting; provides timelines for those assessments;
- Requires the continuum of care to include plans for specialized placements for pregnant and parenting teens, sibling groups, young adults who have chosen to remain in foster care, and children who are involved with both the dependency and juvenile delinquency systems; and
- Requires the department to develop a quality rating system for group home providers.

- B. **Amendments:**

None.