

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 421 Proceedings Related to Children

SPONSOR(S): Health & Human Services Committee, Appropriations Committee, Roach and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 262

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	15 Y, 0 N	Christy	Brazzell
2) Appropriations Committee	28 Y, 0 N, As CS	Smith	Pridgeon
3) Health & Human Services Committee	17 Y, 0 N, As CS	Christy	Calamas

SUMMARY ANALYSIS

Chapter 39, F.S., creates the child welfare system, administered by the Department of Children and Families (DCF) in partnership with local communities and the courts to ensure the safety, timely permanency and well-being of children. DCF's practice model is based on the safety of the child within the home, using in-home services to maintain and strengthen that child's natural supports, if possible. However, when DCF determines that a child cannot safely remain in the home, it initiates dependency proceedings designed to guarantee the child's safety while also attempting reunification with the family, if appropriate. Ultimately, if a child's home remains unsafe, the court may terminate the parental rights of the offending parent(s) and seek another permanency option for the child, such as adoption.

CS/HB 421 revises several provisions of ch. 39, F.S., to address barriers to permanency for children in the child welfare system to shorten the timeframe for achieving permanency. The bill changes notices to parents regarding their responsibility to comply with case plans, limits the continuances available, expedites service referrals, and increases reporting requirements.

Specifically, the bill requires a parent to notify the parties and the court of barriers to compliance with a case plan task soon after discovering the barrier. It also requires DCF to make service referrals more promptly and limits continuances by the court's own motion to not exceed 60 days within any 12 month period.

The bill has no fiscal impact on DCF or local government.

The bill provides an effective date of October 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Child Welfare System

The child welfare system identifies families whose children are in danger of suffering or have suffered abuse, abandonment, or neglect and works with those families to address the problems that are endangering children, if possible.

Chapter 39, F.S., creates the dependency system that is charged with protecting child welfare. The Department of Children and Families (DCF) administers the state's child welfare system and works in partnership with local communities and the courts to ensure the safety, timely permanency and well-being 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 the home environment. DCF contracts for case management, out-of-home care, and related services with lead agencies, also known as community-based care organizations (CBCs). The model of using CBCs to provide child welfare services is designed to increase local community ownership of service delivery and design.² CBCs are responsible for providing foster care and related services.³ These services include, but are not limited to, counseling, domestic violence services, substance abuse services, family preservation, emergency shelter, and adoption. CBCs contract with a number of subcontractors for case management and direct care services to children and their families.⁴ There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.⁶

When it is determined that a child cannot safely remain in the 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 safe to do so.

Ultimately, if a child's home remains unsafe and the court is unable to return the child home, DCF and the courts may seek a permanent home for that child through the adoption process. The court is required to terminate the parental rights of the offending parent or parents in this scenario.

¹ s. 39.001, F.S.

² DEPARTMENT OF CHILDREN AND FAMILIES, *Community-Based Care*, <http://www.dcf.state.fl.us/service-programs/community-based-care/> (last visited Feb. 13, 2019).

³ *Id.*

⁴ *Supra* note 2.

⁶ Department of Children and Families, *Community Based Care Lead Agency Map*, <http://www.dcf.state.fl.us/service-programs/community-based-care/lead-agency-map.shtml> (last visited Feb. 13, 2019).

Federal Requirements for Permanency and Reasonable Efforts

Many of the federal requirements related to the dependency process can be traced to the Adoption and Safe Families Act (ASFA) of 1997.⁵ The ASFA expanded the use of detailed case planning, while emphasizing the well-being of children at all critical points during the dependency case process.⁶ It further requires that states make timely decisions regarding permanency. The permanency goal is enforced primarily via a requirement that states terminate the parental rights of children who have spent 15 or more months of the past 22 months in foster care.⁷

Beginning with the Adoption Assistance and Child Welfare Act of 1980, federal law has required states to show, except in certain circumstances, such as where the parent committed an especially egregious act, that they have made “reasonable efforts” to provide assistance and services to prevent a child’s removal or to reunify a child with the family prior to terminating parental rights.⁸ The Adoption and Safe Families Act of 1997 stated, however, that the child’s health and safety are the primary concern when assessing the degree for a state to strive in making reasonable efforts.⁹

Section 39.806, F.S., relating to grounds for termination of parental rights, addresses the issue of DCF reasonable efforts. The section states that DCF’s failure to make reasonable efforts to reunify the parent and child may excuse the parent’s noncompliance with the case plan, leading to invalidate such noncompliance as grounds for a termination of a parent’s rights. However, the section also allows a court to exempt DCF from having to make reasonable efforts to preserve and reunify families if the parents have engaged in certain conduct, such as subjecting the child to aggravated child abuse or murdering the child’s sibling; or if the court has taken certain actions, such as involuntarily terminating the parent’s rights to the child’s sibling.

Florida’s Dependency Process

Florida law prescribes specific timeframes for the dependency process, as detailed in the following table. However, s. 39.0136, F.S., also allows continuances to be granted. The statute limits continuances to a total of 60 days within any 12-month period and only for extraordinary circumstances involving the constitutional rights of a party or the child’s best interests.

⁵ Adoption and Safe Families Act of 1997, Public L. No. 105-89, H.R. 867, 105th Cong. (1997).

⁶ Committee on Child Maltreatment Research, Policy, and Practice for the Next Decade: Phase II, NEW DIRECTIONS IN CHILD ABUSE AND NEGLECT RESEARCH (Anne C. Peterson et al., 2004), available at, <https://www.ncbi.nlm.nih.gov/books/NBK195980/> (last visited Feb. 13, 2019).

⁷ Id.

⁸ Adoption Assistance and Child Welfare Act of 1980, Public L. No. 96-272, H.R. 3434, 96th Cong. (1980).

⁹ Child Welfare Information Gateway, Children’s Bureau, U.S. Department Of Health And Human Services, *Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children*, <https://www.childwelfare.gov/pubPDFs/reunify.pdf> (last visited Feb. 13, 2019).

The Dependency Process

Dependency Proceeding	Description of Process	Statute
Removal	A child protective investigation determines the child's home is 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. The 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. The time before the hearing 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 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.	s. 39.506, F.S. s. 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.
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.	s. 39.802, F.S. s. 39.8055, F.S. s. 39.806, F.S. s. 39.810, F.S.
Advisory Hearing	An advisory 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 Hearing	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.

Permanency Goals

During the dependency court process, the court sets at least one permanency goal for a child; if that goal is reunification with the child's parent, it may also set a second concurrent goal in case reunification does not occur.¹⁰ Section 39.01(59), F.S., defines a "permanency goal" as the living arrangement identified for the child to return to or identified as the permanent living arrangement of the child.

Section 39.621(3) list permanency goals in order of preference, as:

- Reunification;
- Adoption, if a petition for termination of parental rights has been or will be filed;
- Permanent guardianship of a dependent child;
- Permanent placement with a fit and willing relative; and
- Placement in another planned permanent living arrangement.

Maintaining and strengthening the placement with the child's parent is also a permanency goal option in certain circumstances, such as when the child has been reunified with a parent but the case is still under the court's jurisdiction.

The court must hold hearings at least every 12 months to assess progress toward the child's permanency goal and can change the goal if appropriate.¹¹

¹⁰ s. 39.01(19), F.S.

¹¹ s. 39.621(1), F.S.

The charts below include numbers and percentages of children finding permanency from January 2017 to December 2017.¹²

Children Who Entered Care Between 1/1/17 and 12/31/17 and Achieved Permanency	
Total Children Entering Care	16,076
Children who Achieved Permanency	6,482
Percent of Children Who Achieved Permanency	40.32%

Children in Care 12 to 23 Months as of 1/1/18 and Achieved Permanency	
Total Children in Care 12 to 23 Months	6,451
Children who Achieved Permanency	3,482
Percent of Children Who Achieved Permanency	53.98%

Case Plans

DCF must develop and refine a case plan throughout the dependency process with input from all parties. The case plan details the problems being addressed as well as the goals, tasks, services, and responsibilities required to ameliorate the concerns of the state.¹³ The case plan follows the child from the provision of voluntary services through dependency, or termination of parental rights.¹⁴ Once a child is found dependent, a judge reviews the case plan, and if the judge accepts the case plan as drafted, orders the case plan to be followed.¹⁵

Section 39.6011, F.S., details the development of the case plan and who must be involved, such as the parent, Guardian ad Litem,¹⁶ and if appropriate, the child. The section also details what must be in the case plan, such as descriptions of the identified problems, the permanency goal, timelines, and notice requirements.

Section 39.6012, F.S., details the types of tasks and services that must be provided to the parents as well as the type of care that must be provided to the child. The services must be designed to improve the conditions in the home, facilitate the child's safe return to the home, ensure proper care of the child, and facilitate permanency. The case plan must describe each task with which the parent must comply and the services provided that address the identified problem in the home and all available information that is relevant to the child's care.

When determining whether to place a child back in the home, or whether to move forward with another permanency option, the court seeks to determine whether the circumstances that caused the out-of-home placement have been remedied to the extent that the safety, well-being and health of the child are not endangered by an in-home placement.¹⁷ To support the permanency goal, the court continues to monitor a parent's efforts to comply with the tasks assigned in the case plan.¹⁸

If the child's permanency goal is adoption, the case plan describes the steps DCF will take toward that goal.¹⁹ If the parent is subject to an expedited termination of parental rights, such as due to an egregious act committed against the child or a sibling by the parent, the case plan will not have a goal

¹² Department of Children and Families, *Florida's Child Welfare Statistics*, <http://www.dcf.state.fl.us/programs/childwelfare/dashboard/index.shtml> (last visited Feb. 17, 2019).

¹³ s. 39.6011, s. 39.6012, F.S.

¹⁴ s. 39.01(11), F.S.

¹⁵ s. 39.521, F.S.

¹⁶ s. 39.820, F.S. (allowing for a guardian ad litem to be appointed by the court in judicial proceedings to represent the best interests of a child. This includes dependency proceedings under Ch. 39, F.S.).

¹⁷ s. 39.522, F.S.

¹⁸ s. 39.621, F.S.

¹⁹ s. 39.6011(5), F.S.

of reunification.²⁰

Parental Responsibilities and Terminations of Parental Rights

Parents involved in the child welfare system have a number of responsibilities they must carry out in order to be reunified with their children, if that is a permanency goal. A primary responsibility is to comply with the case plan. Lack of compliance with case plan requirements is grounds for termination of parental rights--specifically, a parent's failure to have substantially complied for 12 months after the child's adjudication of dependency or when a child has been in care for 12 of the last 22 months, or a parent's materially breaching the case plan such that noncompliance is likely before the expiration of time to comply. However, generally, if the noncompliance was due to the parent's lack of financial resources or DCF's failure to make reasonable efforts, grounds for termination are not established.²¹

Section 39.6011, F.S., requires the case plan to contain a written notice that a parent's noncompliance with the case plan may lead to the termination of his or her parental rights. The judge also delivers the notice during a shelter hearing²² and adjudicatory hearing.²³

Federal Assessment of State Child Welfare Performance

Federal Measures

The U.S. Department of Health and Human Services (HHS) assesses the performance of states' child welfare systems on seven key measures of safety and permanency. The chart below includes these measures, the federal target, and the state's performance during the first quarter of FY 2018-19. The measures that touch on some aspect of permanency are in the chart below. Florida exceeded the federal target on two of these four permanency measures.²⁴

Federal Measure	Statewide Performance	Federal Target
Percent of children existing to a permanent home within 12 months of entering care	39.60	40.50 or higher
Percent of children exiting to a permanent home within 12 months for those in care 12 to 23 months	53.00	43.60 or higher
Percent of children exiting to a permanent home within 12 months for those in care 24+ months	47.20	30.30 or higher
Percent of children who do no re-enter care within 12 months of moving to permanent home	88.70	91.70 or higher

Child and Family Services Review

HHS, through the Children's Bureau, conducts periodic Child and Family Services Reviews (CFSR) in each state. As authorized by federal law, these reviews assess states' compliance with the federal requirements for child welfare systems. In particular, the Children's Bureau examines whether desired

²⁰ s. 39.01(26), F.S.

²¹ s. 39.806(e), F.S.

²² s. 39.402(18), F.S.,

²³ s. 39.507(7)(c), F.S.

²⁴ Department of Children and Families, Office of Child Welfare, *Federal Indicators*,

<http://www.dcf.state.fl.us/programs/childwelfare/dashboard/federal-indicators.shtml> (last visited Feb..12, 2019).

child outcomes are being achieved and whether the child welfare system is structured appropriately and its processes operate effectively. CFSRs have been taking place every four years.

The Children's Bureau rates whether a state is in "substantial conformity" with each outcome or systemic factor. For a state to be in substantial conformity with a particular outcome, 95 percent or more of the cases reviewed must be rated as having substantially achieved the outcome. The substantial conformity assessment for the systemic factors considers information from a statewide assessment, interviews, and focus groups.²⁵

The report summarizing Florida's results was issued in late 2016. The report indicated that Florida was not in substantial conformity of any of the seven outcomes on which it was measured, which included:

- Safety: children are, first and foremost, protected from abuse and neglect and safely maintained in their homes whenever possible and appropriate,
- Permanency: children have permanency and stability in their living situations, and the continuity of family relationships and connections is preserved for families, and
- Family and child well-being: families have enhanced capacity to provide for their children's needs, and children receive appropriate services to meet their educational needs and adequate services to meet their physical and mental health needs.

The report acknowledged progress the state has made and strengths on which it is building, such as in ensuring children's stability in foster care placements and establishing timely and appropriate permanency goals for children. However, significant challenges remain. For instance, the Florida 2016 CFSR Report discussed the results of the review of 80 individual cases:

Despite establishing timely and appropriate permanency goals, case review results found that agencies and courts struggle to make concerted efforts to achieve identified permanency goals in a timely manner. Delays in achieving reunification and guardianship goals are affected by case plans not being updated timely to reflect the current needs of the family, delays in referral for services, and failure to engage parents. The agency and court do not make concerted efforts to achieve the goal of adoption timely in nearly half of applicable cases. Barriers affecting timely adoptions include the lack of concurrent planning when a parent's compliance level is minimal, and providing parents additional time to work on case plan goals [....] In over half of applicable cases, the agency failed to make concerted efforts to provide services, removed children without providing appropriate services, or did not monitor safety plans and engage the family in needed safety-related services.²⁶

The state was in substantial conformity with three of seven systemic factors, including:

- Quality assurance system,
- Staff and provider training, and
- Agency responsiveness to the community.²⁷

Once a state's review is complete, the state formulates a Performance Improvement Plan to address those outcomes and systemic factors not in substantial conformity.²⁸ Florida has an approved Performance Improvement Plan, which DCF is implementing.

²⁵ U.S. Department of Health and Human Services, Children's Bureau, *Child and Family Services Reviews, Florida Final Report, 2016*, <http://www.centerforchildwelfare.org/ga/CFSRTools/2016%20DFSR%20Final%20Report.pdf> (last visited Apr. 12, 2019).

²⁶ *Id.* at 3-4.

²⁷ *Id.* at 3.

²⁸ The systemic factors include the effectiveness of the statewide child welfare information system; the case review system; the quality assurance system; staff and provider training the service array and resource development; the agency's responsiveness to the community; and foster and adoptive parent licensing, recruitment, and retention.

Effect of Proposed Changes

CS/HB 421 revises ch. 39, F.S., to address barriers to permanency for children in the child welfare system in order to shorten the timeframe for achieving permanency. Specifically, CS/HB 421 requires the court to notify parents of actions required to achieve permanency, limits the continuances available, and expedites service. Additionally, the bill also requires the name and contact information of a child's Guardian ad Litem or Attorney ad Litem to be entered on all orders of the court in dependency proceedings to ensure a child and his or her family know that information.

Parental Case Plan Compliance

Notice

CS/HB 421 adds additional purpose and intent language to ch. 39 to include a recognition on behalf of a parent that it is his or her responsibility to comply with the case plan so permanency for the child can occur no more than one year after removal or adjudication. The responsibility includes notifying parties and the court of barriers to compliance with the case plan.

CS/HB 421 requires additional notification by the court to parents or legal custodians on their responsibilities. For example, the bill requires the court to advise parents or legal custodians of what is expected of them for the child to reach permanency, including taking action to comply with the case plan, keeping in contact with their attorney and case manager, providing updated contact information, and notifying the parties and the court of barriers to completing the case plan. The information is given at the shelter hearing and at the adjudicatory hearing, where the child has been found to be dependent.

The bill also requires the parent to provide the court and all parties with identification and location information of relatives who might be considered for placement of the child at the adjudication hearing.

Additionally, CS/HB 421 requires the case plan to include written notice about the need for parents to take action and their obligation to report barriers to the court if the parties are not actively working to address them, in addition to the other information the case plan must currently include.

Termination of Parental Rights

CS/HB 421 amends s. 39.806(1), F.S., to include that both action and inaction by the parent may cause the parent to have materially breached the case plan thus establishing grounds for termination of parental rights.

Dependency Process Timeframes

CS/HB 421 adds continuances or extensions by the court on its own motion to the calculation of the 60-day limit on continuances or extensions within any 12-month period for proceedings under ch. 39, F.S.

The bill requires that the written order of disposition on the termination of parental rights petition be entered within 30 days of conclusion of the hearing. Currently, there is no statutory timeframe for the entry of this order.

Case Planning and Service Provision

CS/HB 421 requires that all parties and the court work together to achieve permanency expeditiously. If a parent has not agreed to begin case plan services immediately, CS/HB 421 mandates that referrals for services outlined in the case plan be made as soon as possible but not more than 7 days after the date of case plan approval, unless otherwise specified or approved by the court.

Additionally, the bill specifies that DCF must provide referral information for voluntary services at the conclusion of the shelter hearing to allow parents or legal custodians to begin the services as soon as possible. DCF must also include strategies in the case plan to help parents overcome barriers.

Guardian ad Litem Program

CS/HB 421 specifies that the name and contact information of the child's Guardian ad Litem or Attorney ad Litem should be included on all orders of the court. The bill also requires DCF to provide copies of the case plan and family functioning assessment to all parties, which includes the Guardian ad Litem.

Post-Disposition Change of Custody

The bill amends s. 39.522, F.S., on postdisposition change of custody to allow this proceeding only *until* the child reaches permanency. Under the bill, any other postdisposition changes of custody *after* permanency are governed by s. 39.621, F.S.

The bill has an effective date of October 1, 2019.

B. SECTION DIRECTORY:

Section 1: Provides a short title for the act.

Section 2: Amends s. 39.001, F.S., relating to purposes of chapter.

Section 3: Amends s. 39.0136, F.S., relating to time limitations; continuances.

Section 4: Amends s. 39.402, F.S., relating to placement in a shelter.

Section 5: Amends s. 39.507, F.S., relating to adjudicator hearings; orders of adjudication.

Section 6: Amends s. 39.521, F.S., relating to disposition hearings; powers of disposition.

Section 7: Amends s. 39.522, F.S., relating to postdisposition change of custody.

Section 8: Amends s. 39.6011, F.S., relating to case plan development.

Section 9: Amends s. 39.6012, F.S., relating to case plan tasks; services.

Section 10: Amends s. 39.6013, F.S., relating to case plan amendments.

Section 11: Amends s. 39.621, F.S., relating to permanency determination by the court.

Section 12: Amends s. 39.806, F.S., relating to grounds for termination of parental rights.

Section 13: Amends s. 39.811, F.S., relating to powers of disposition; orders of disposition.

Section 14: Provides an effective date.

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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 2, 2019, the Appropriations Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Provides that the act may be cited as “ A Year is a Long Time in the Life of a Child Act”
- Removes the provision requiring the court to advise the parents of their continued duty to inform DCF of any relatives that should be considered for placement.
- Removes requirement that all case plans and barrier reporting to the courts be delivered *in writing*.
- Removes requirement for the courts to hold hearings every 60 days.
- Removes language exempting the court from updating the case plan at the permanency hearing if the child will achieve permanency within 60 days after the hearing.
- Provides an appropriation to make IT modifications required to implement the bill.

On April 16, 2019, the Health and Human Services Committee adopted an amendment that removed an appropriation from the bill. The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.