

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 Appropriations Subcommittee on Health and Human Services

BILL: CS/SB 646

INTRODUCER: Children, Families, and Elder Affairs Committee and Senators Book and Rader

SUBJECT: Child Welfare

DATE: April 3, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Sneed</u>	<u>Kidd</u>	<u>AHS</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 646 makes a number of changes related to the care of children and young adults in out-of-home care and by foster parents. The bill summarizes current requirements into a Foster Children's Bill of Rights. The bill provides roles and responsibilities for the Department of Children and Families (department), the community-based care lead agencies and other agency staff, and those of caregivers, to ensure that children and young adults in out-of-home care are informed of these rights. The bill also codifies the role and responsibilities of the Foster Children's Ombudsman to serve as an autonomous entity within the department, to receive and resolve complaints from children in out-of-home care. The bill requires the department to establish a statewide toll-free telephone number for the Foster Children's Ombudsman and post the number on the homepage of the department's website.

The bill clarifies roles and responsibilities of foster parents and other caregivers of children in out-of-home care. The bill requires caseworkers to inform foster parents of the costs and requirements for child care and requires each community-based care lead agency to develop a plan to recruit and retain foster homes.

The bill has an indeterminate, though expected minimal, impact on state expenditures.

The bill takes effect October 1, 2019.

II. Present Situation:

Florida Law

Currently, the provisions of Florida law pertaining to dependent children are contained in chapter 39, F.S. Statements of legislative intent with regard to child safety and protection found in ch. 39, F.S., include the provisions that:

- Judicial procedures, as well as other procedures to assure due process to children and other parties, are conducted fairly in order to protect constitutional and other legal rights;
- The health and well-being of all children under the care of the state are promoted; and
- The child's family ties are preserved and strengthened whenever possible by only removing the child from parental custody when his or her welfare or public safety cannot be otherwise assured.¹

Current law also stipulates that all children of this state are afforded general protections to include:

- Protection from abuse, neglect, and exploitation;
- A permanent and stable home;
- A safe and nurturing environment which will preserve a sense of personal dignity and integrity;
- Adequate nutrition, shelter, and clothing;
- Effective treatment for physical, social, and emotional needs;
- Equal opportunity and access to education, recreation and other community resources;
- Access to preventive services; and
- An independent, trained advocate, when intervention is necessary, and a skilled guardian or caregiver in a safe environment when alternative placement is necessary.²

Pursuant to s. 39.013(2), F.S., the circuit court has exclusive original jurisdiction of all proceedings under chapter 39, for children voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, or the department, and for the adoption of children whose parental rights have been terminated. Jurisdiction attaches when the initial shelter petition, dependency petition, or termination of parental rights petition is filed, or when a child is taken into the custody of the department.

Currently, decisions on how to properly care for dependent children and how to assess need for such services as counseling, education, and vocational training are discretionary judgmental decisions made pursuant to broad authority vested in the department by the Legislature and have been found by the courts to be immune from tort liability.

In *Department of Health and Rehabilitative Services³ v. B.J.M.*, 656 So. 2d 906 (Fla. 1995), the Florida Supreme Court (court) held that the decisions of HRS regarding placement of juveniles

¹ Section 39.001(1), F.S.

² Section 39.001(3), F.S.

³ The Department of Health and Rehabilitative Services (HRS) became the Department of Children and Family Services (DCFS) in 1996. See Chapter 1996-403, L.O.F. The Department was subsequently renamed the Department of Children and Families (DCF) in 2012. See Chapter 2012-84, L.O.F.

and rehabilitative services provided to juveniles constituted performance of discretionary governmental functions for which the state was immune. The court found that:

Decisions on how to properly care for a dependent child or rehabilitate a delinquent juvenile, and to assess the need for counseling, education, and vocational training are discretionary judgmental decisions to be made pursuant to the broad discretion vested in HRS by the Legislature. These decisions represent the cutting edge of HRS policy. Additionally, it is apparent that both the nature of and the amount of services that may be provided is limited by HRS resources, and by the legislative-executive policy decisions as to what resources to provide and how those resources may be utilized....

HRS, along with other governmental agencies in this state, must constantly take into account practical considerations, such as budgetary constraints, when deciding how to allocate its limited funds among a virtually unlimited number of needs. (citation omitted) As a result, in setting up its programs and providing services, HRS is to a great extent financially “strait-jacketed.” When there are thousands of children in need and resources provide for only a fraction, decisions as to allocation may be difficult and sometimes arbitrary. For the courts to impose liability for tort damages on HRS for decisions as to the provision of services would not only “saddle [it] with a potentially crushing burden of financial liability, but would also [cause] the judicial branch of government to trespass into the domain of the legislative branch.”⁴

To further support its decision that HRS’s failure to provided certain services was shielded immunity, the court looked to express provisions of s. 39.455 (1)(2), F.S.⁵ The subsection reads:

- In no case shall employees or agents of the department or a social service agency acting in good faith be liable for damages as a result of failing to provide services agreed to under the case plan unless the failure to provide such services occurs as a result of bad faith or malicious purpose, or occurs in a manner exhibiting wanton and willful disregard of human rights, safety, or property.
- The inability or failure of the department or of a social service agency or the employees or agents of the social service agency to provide the services agreed to under the case plan shall not render the state or the social service agency liable for damages unless such failure to provide services occurs in a manner exhibiting wanton or willful disregard of human rights, safety, or property.

Statutorily Created Bill of Rights in Florida

Currently there are several “Bills of Rights” delineated in Florida Statutes. Typically these provisions enunciate certain rights, and in some cases responsibilities, of particular classes of individuals. Some specifically permit a cause of action for violation of the rights, some

⁴ See *Department of Health and Rehabilitative Services v. B.J.M.*, 656 So. 2d 906 (Fla. 1995), available at <https://law.justia.com/cases/florida/supreme-court/1995/83067-0.html> (last visited Feb. 26, 2019).

⁵ Now renumbered as s. 39.011(1)(2), F.S.

specifically disallow a remedy, and others are silent. Rights in statute include, but are not limited to:

- Florida Patients' Bill of Rights and Responsibilities⁶
- Bill of Rights of Persons Who are Developmentally Disabled⁷
- Rights of Mental Health Patients⁸
- Nursing Home Resident Rights⁹
- Residents' Bill of Rights for Assisted Living Facilities¹⁰
- Residents' Bill of Rights for Adult Family-Care Homes¹¹
- Residents' Rights in Continuing Care Facilities¹²

Foster Children's Bill of Rights in Other States

Foster Children Bills of Rights that have been enacted in states are typically designed to inform foster children of their rights within the child welfare system. Many children's bill of rights provide that they must be posted in a place where children will see them and include provisions requiring foster children to be informed about why they are in foster care and how the process will proceed. In addition, participation in extracurricular or community activities, efforts to maintain educational stability, access to guardians ad litem, access to mental, behavioral and physical health care, access to or communication with siblings and family members are major features of the foster children's bill of rights.

According to the National Conference of State Legislatures (NCSL), as of August 2016, a Foster Children's Bill of Rights has been enacted in 15 states and Puerto Rico. Also, during the 2014 legislative session, ten states introduced fifteen bills (six enacted) either seeking to enact a bill of rights or otherwise extending or defining the rights of foster children and parents including independent living services for older youth, educational consistency and enrollment, foster child input into evaluations of out-of-home care placements, and extracurricular activities.¹³

Foster Children's Ombudsman

The department created an ombudsman position in the 2016-2017 fiscal year with the intent to listen and be a voice for children and youth involved in the child welfare system. The ombudsman receives complaints about placement, care, and services, assisting in mediating concerns. The ombudsman is a resource to identify and explain relevant policies or procedures to children, young adults, and their caregivers.

⁶ Section 381.026, F.S.

⁷ Section 393.13, F.S.

⁸ Section 394.459, F.S.

⁹ Section 400.022, F.S.

¹⁰ Section 429.28, F.S.

¹¹ Section 429.85, F.S.

¹² Section 651.083, F.S.

¹³ National Conference of State Legislatures (NCSL), *Foster Care Bill of Rights* (August 25, 2016), available at <http://www.ncsl.org/research/human-services/foster-care-bill-of-rights.aspx#Children> (last visited Feb. 27, 2019).

The Rilya Wilson Act

Rilya Wilson disappeared from state custody in January 2001. The child's caregiver maintained that someone from the department removed Rilya from her home sometime in January 2001. The department was unaware that the child was missing until April 2002 due to casework failures. While her caregiver was sentenced to 55 years in prison in 2013 for her disappearance, Rilya remains missing.¹⁴

With the disappearance of Rilya Wilson, the responsibility of the state to ensure the safety of the children while in the state's care received heightened attention. Frequent and continuous face-to-face contact with children who are in the custody or under the supervision of the state has been identified as a mechanism for ensuring the children's safety and well-being. The current requirement that each child in the custody or supervision of the state receive a monthly home visit offers child protection staff a regular opportunity to check on the well-being of the child.

For a number of children, the increased visibility that participation in early education and childcare programs provides can minimize further abuse, neglect, or abandonment. Participation in these programs can also be an important ingredient in reversing the developmental effects that abuse, neglect, and abandonment can have on children. Early education and child care programs are provided in Florida through the school readiness program under ss. 1001.213 and 1002.82, F.S. With the establishment of the school readiness program, the different early education and child care programs and their funding sources were merged for the delivery of a comprehensive program of school readiness services to be designed and administered through local early learning coalitions.¹⁵ The school readiness program is housed with the Office of Early Learning.

Historically, children who have been abused, neglected, or abandoned and are being served through the dependency system have received one of the highest priorities for child care service. This is due, at least in part, to the interpretation of earlier statutory language that these children were to be provided the highest priority. Current law requires each early learning coalition to give priority for participation in the school readiness program according to specified criteria with an at-risk child being second on the priority list.¹⁶

The cost of participating in the school readiness program is subsidized in part or fully by the funding of the coalition for eligible children. Criteria have been established for the children who are to receive priority for participating in the program at no cost or at a subsidized rate. The cost of child care shall be assumed by the licensed out-of-home caregiver to the extent that subsidized child care is unavailable.¹⁷

III. Effect of Proposed Changes:

Section 1 amends s. 39.4085, F.S., relating to goals for children in out-of-home care, to create a Foster Children's Bill of Rights for children who are in, and for young adults who are leaving,

¹⁴ David Ovalle, *Geralyn Graham get 55 years in Rilya Wilson foster child abuse case*, MIAMI HERALD, Feb. 12, 2013), available at <http://www.miamiherald.com/latest-news/article1947207.html>. (last visited Feb. 28, 2019).

¹⁵ Section 1002.83, F.S.

¹⁶ Section 1002.87, F.S.

¹⁷ Rule 65C-13.030, F.A.C.

out-of-home care. The section does not create any new rights, but codifies and places current rights into one section of the law. The bill also provides roles and responsibilities for the department, the community-based care lead agencies and other agency staff, as well as caregivers, related to ensuring that children and young adults in out-of-home care are informed of these rights. The bill authorizes the department to adopt rules to implement the section.

Section 2 creates s. 39.4088, F.S., relating to the Florida Children's Ombudsman, to codify and provide duties for an already existing entity within the department which is currently staffed with one position. The ombudsman is required to collect certain specified data related to complaints received and must compile and post that information on the department's website. The ombudsman, in consultation with other entities, is required to develop information explaining the rights to children and young adults in out-of-home care. The department is required to establish a statewide toll-free telephone number for the ombudsman and make the number available on the department's website homepage. The department is given rulemaking authority to implement the section.

Section 3 amends s. 39.6011, F. S., relating to case plan development, to require that information related to their rights be provided to a child who has attained 14 years of age or is otherwise of an appropriate age and capacity to understand be included in the case plan. Documentation that consumer credit report checks were requested for the child as required by federal law and that information related to that report was provided to the child.

The bill also requires that if the child is 14 years of age, or is otherwise of an appropriate age and capacity to understand, he or she must be involved in the case planning process. The child may express a placement preference, choose individuals to be on the case planning team and must sign the case plan unless there is reason to waive the signature. A copy of the case plan must be provided to the child. A copy of the case plan must also be provided to the caregiver if the child is placed in a licensed foster home.

Section 4 amends s. 39.604, F.S., relating to the Rilya Wilson Act, to require that when children are placed in a licensed foster home and are required to be enrolled in an early education or child care program under this section, the caseworker shall inform the caregiver of the amount of the subsidy provided by an early learning coalition, that this amount may not be sufficient to pay the full cost of the services, and that the caregiver will be responsible for paying the difference between the subsidy and the full cost charged by the early education or child care program.

Section 5 amends 39.701, F.S., relating to judicial reviews, to require that the social study report required for each judicial review must include documentation that the child has been provided with a copy of the bill of rights, that the rights have been reviewed with the child, and signed acknowledgement by the child or caregiver that the child has been provided with an explanation of the rights.

Section 6 amends s. 409.145, F.S., relating to the care of children, quality parenting, and the reasonable and prudent parent standard, to require that caregivers:

- Pay the difference between the subsidy from an early learning coalition and the full cost charged by an early education or child care program;

- Ensure that the child in the caregiver's care is aware of and understands his or her rights under s. 309.4085, F.S.; and
- Assist a child in contacting the Florida Children's Ombudsman, if necessary.

The department and other providers are responsible for providing a caregiver with information on treatment plans and how the caregiver can support a treatment plan as well as information on how the caregiver can manage behavioral issues.

Section 7 amends s. 409.145, F.S., relating to the licensure of family foster homes, residential child-caring agencies, and child placing agencies, to provide that the requirements for licensure and operation shall include provisions to safeguard the rights of children established under the bill of rights.

Section 8 amends s. 409.1753, F.S., relating to foster care, to clarify that each community-based care lead agency must provide each foster home with a telephone number for the foster parent to call during normal working hours whenever immediate assistance is needed and the child's caseworker is unavailable. Current law is unclear as to whether this is a duty for the department or the lead agency.

Section 9 amends s. 409.988, F.S., relating to community-based care lead agency duties, to require each lead agency to recruit and retain foster homes. Each lead agency must:

- Develop a plan to recruit and retain foster homes using best practices identified by the department and specify how the lead agency complies with s. 409.1753, F.S.;
- Annually submit such plan to the department for approval;
- Provide to the department a quarterly report detailing the number of licensed foster homes and beds and occupancy rate; and
- Conduct exit interviews with foster parents who voluntarily give up their license to determine the reasons for giving up their license and identify suggestions for how to better recruit and retain foster homes, and provide a quarterly summary of such interviews to the department.

Section 10 amends s. 39.6013, F.S., relating to case plan amendments, to conform a reference to changes made by the act.

Section 11 provides an effective date of October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the department, the bill is expected to have an indeterminate, yet minimal impact on state expenditures to establish and manage a toll-free number for the Florida Children's Ombudsman.¹⁸

The department currently has a Children's Ombudsman position that will be responsible for the additional duties included in the bill regarding maintaining the toll-free number, collecting and reporting data annually, and developing a brochure. The additional workload can be performed within existing department resources.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 39.4085, 39.6011, 39.604, 39.701, 409.145, 409.175, 409.1753, 409.988, and 39.6013.

¹⁸ Department of Children and Families, *Senate Bill 646 Agency Analysis* (February 8, 2019) (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹⁹ *Id.*

The bill creates section 39.4088 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Children, Families, and Elder Affairs Committee on March 4, 2019:

The CS:

- Makes several technical changes to the bill to conform to current state and federal law and adds the right of a child to be informed about any funds being held in the master trust on his or her behalf.
- Changes a credit reporting provision relating to credit report checks for children in care to reflect the federal requirement that reports be requested from all three credit reporting agencies.

B. Amendments:

None.