

1 A bill to be entitled
2 An act relating to child welfare; amending s. 39.01,
3 F.S.; providing a definition; conforming cross-
4 references; amending s. 39.522, F.S.; specifying a
5 condition for return; amending s. 39.6011, F.S.;
6 requiring certain parties to a case plan to
7 communicate effectively; requiring the court to be
8 notified if ineffective communication takes place;
9 amending s. 39.701, F.S.; requiring a foster parent or
10 legal custodian to disclose to the court any
11 communication not in compliance with the case plan;
12 providing for agency and caregiver recommendations for
13 a change in visitation; requiring a court and citizen
14 review panel to determine whether certain parties
15 communicate effectively; providing factors for when a
16 court must return a child to the custody of the
17 parents; creating s. 775.0851, F.S.; providing a
18 definition; providing enhanced penalties for certain
19 offenses committed against a foster parent; amending
20 ss. 39.302, 39.521, 39.6012, 322.09, 394.495, 627.746,
21 934.255, and 960.065, F.S.; conforming cross-
22 references; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:
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26 Section 1. Subsections (20) through (87) of section 39.01,
27 Florida Statutes, are renumbered as subsections (21) through
28 (88) respectively, subsection (10) and present subsection (37)
29 are amended, and a new subsection (20) is added to that section,
30 to read:

31 39.01 Definitions.—When used in this chapter, unless the
32 context otherwise requires:

33 (10) "Caregiver" means the parent, legal custodian,
34 permanent guardian, adult household member, or other person
35 responsible for a child's welfare as defined in this section
36 ~~subsection (54)~~.

37 (20) "Conditions for return" means the minimum conditions
38 that must exist with respect to a specific family's
39 circumstances, including, but not limited by, the home
40 environment, behavior, protective capacity, and safety
41 resources, to allow for reunification to occur with the use of
42 an in-home safety plan.

43 ~~(38)-(37)~~ "Institutional child abuse or neglect" means
44 situations of known or suspected child abuse or neglect in which
45 the person allegedly perpetrating the child abuse or neglect is
46 an employee of a private school, public or private day care
47 center, residential home, institution, facility, or agency or
48 any other person at such institution responsible for the child's
49 care as defined in this section ~~subsection (54)~~.

50 Section 2. Subsection (2) of section 39.522, Florida

51 Statutes, is amended to read:

52 39.522 Postdisposition change of custody.—The court may
53 change the temporary legal custody or the conditions of
54 protective supervision at a postdisposition hearing, without the
55 necessity of another adjudicatory hearing.

56 (2) In cases where the issue before the court is whether a
57 child should be reunited with a parent, the court shall review
58 the conditions for return, which include, but are not limited
59 to, the parent demonstrating necessary changes in protective
60 capacity, and determine whether the circumstances that caused
61 the out-of-home placement and issues subsequently identified
62 have been remedied to the extent that the return of the child to
63 the home with an in-home safety plan prepared or approved by the
64 department will not be detrimental to the child's safety, well-
65 being, and physical, mental, and emotional health.

66 Section 3. Paragraphs (b) through (d) of subsection (4)
67 are redesignated as paragraphs (c) through and (e),
68 respectively, and a new paragraph (b) is added to subsection (4)
69 of that section to read:

70 39.6011 Case plan development.—

71 (4) The case plan must describe:

72 (b) The responsibility of the parents and caregivers to
73 communicate effectively, which includes, but is not limited to,
74 refraining from harassing communication, to promote the safety,
75 well-being, and physical, mental, and emotional health of the

76 | child. A parent or caregiver shall notify the court if
 77 | ineffective communication takes place;

78 | Section 4. Paragraphs (a), (c), and (d) of subsection (2)
 79 | of section 39.701, Florida Statutes, are amended to read:

80 | 39.701 Judicial review.—

81 | (2) REVIEW HEARINGS FOR CHILDREN YOUNGER THAN 18 YEARS OF
 82 | AGE.—

83 | (a) Social study report for judicial review.—Before every
 84 | judicial review hearing or citizen review panel hearing, the
 85 | social service agency shall make an investigation and social
 86 | study concerning all pertinent details relating to the child and
 87 | shall furnish to the court or citizen review panel a written
 88 | report that includes, but is not limited to:

89 | 1. A description of the type of placement the child is in
 90 | at the time of the hearing, including the safety of the child
 91 | and the continuing necessity for and appropriateness of the
 92 | placement.

93 | 2. Documentation of the diligent efforts made by all
 94 | parties to the case plan to comply with each applicable
 95 | provision of the plan.

96 | 3. The amount of fees assessed and collected during the
 97 | period of time being reported.

98 | 4. The services provided to the foster family or legal
 99 | custodian in an effort to address the needs of the child as
 100 | indicated in the case plan.

- 101 5. A statement that either:
- 102 a. The parent, though able to do so, did not comply
- 103 substantially with the case plan, and the agency
- 104 recommendations;
- 105 b. The parent did substantially comply with the case plan;
- 106 or
- 107 c. The parent has partially complied with the case plan,
- 108 with a summary of additional progress needed and the agency
- 109 recommendations.
- 110 6. A statement from the foster parent or legal custodian
- 111 providing any material evidence concerning the return of the
- 112 child to the parent or parents, including, but not limited to,
- 113 any communication that is not in compliance with the case plan.
- 114 7. A statement concerning the frequency, duration, and
- 115 results of the parent-child visitation, if any, and the agency
- 116 and caregiver recommendations for an expansion or restriction of
- 117 future visitation.
- 118 8. The number of times a child has been removed from his
- 119 or her home and placed elsewhere, the number and types of
- 120 placements that have occurred, and the reason for the changes in
- 121 placement.
- 122 9. The number of times a child's educational placement has
- 123 been changed, the number and types of educational placements
- 124 which have occurred, and the reason for any change in placement.
- 125 10. If the child has reached 13 years of age but is not

126 yet 18 years of age, a statement from the caregiver on the
127 progress the child has made in acquiring independent living
128 skills.

129 11. Copies of all medical, psychological, and educational
130 records that support the terms of the case plan and that have
131 been produced concerning the parents or any caregiver since the
132 last judicial review hearing.

133 12. Copies of the child's current health, mental health,
134 and education records as identified in s. 39.6012.

135 (c) Review determinations.—The court and any citizen
136 review panel shall take into consideration the information
137 contained in the social services study and investigation and all
138 medical, psychological, and educational records that support the
139 terms of the case plan; testimony by the social services agency,
140 the parent, the foster parent or legal custodian, the guardian
141 ad litem or surrogate parent for educational decisionmaking if
142 one has been appointed for the child, and any other person
143 deemed appropriate; and any relevant and material evidence
144 submitted to the court, including written and oral reports to
145 the extent of their probative value. These reports and evidence
146 may be received by the court in its effort to determine the
147 action to be taken with regard to the child and may be relied
148 upon to the extent of their probative value, even though not
149 competent in an adjudicatory hearing. In its deliberations, the
150 court and any citizen review panel shall seek to determine:

151 1. If the parent was advised of the right to receive
152 assistance from any person or social service agency in the
153 preparation of the case plan.

154 2. If the parent has been advised of the right to have
155 counsel present at the judicial review or citizen review
156 hearings. If not so advised, the court or citizen review panel
157 shall advise the parent of such right.

158 3. If a guardian ad litem needs to be appointed for the
159 child in a case in which a guardian ad litem has not previously
160 been appointed or if there is a need to continue a guardian ad
161 litem in a case in which a guardian ad litem has been appointed.

162 4. Who holds the rights to make educational decisions for
163 the child. If appropriate, the court may refer the child to the
164 district school superintendent for appointment of a surrogate
165 parent or may itself appoint a surrogate parent under the
166 Individuals with Disabilities Education Act and s. 39.0016.

167 5. The compliance or lack of compliance of all parties
168 with applicable items of the case plan, including the parents'
169 compliance with child support orders.

170 6. The compliance or lack of compliance with a visitation
171 contract between the parent and the social service agency for
172 contact with the child, including the frequency, duration, and
173 results of the parent-child visitation and the reason for any
174 noncompliance.

175 7. The frequency, kind, and duration of contacts among

176 | siblings who have been separated during placement, as well as
177 | any efforts undertaken to reunite separated siblings if doing so
178 | is in the best interest of the child.

179 | 8. The compliance or lack of compliance of the parent in
180 | meeting specified financial obligations pertaining to the care
181 | of the child, including the reason for failure to comply, if
182 | applicable.

183 | 9. Whether the child is receiving safe and proper care
184 | according to s. 39.6012, including, but not limited to, the
185 | appropriateness of the child's current placement, including
186 | whether the child is in a setting that is as family-like and as
187 | close to the parent's home as possible, consistent with the
188 | child's best interests and special needs, and including
189 | maintaining stability in the child's educational placement, as
190 | documented by assurances from the community-based care provider
191 | that:

192 | a. The placement of the child takes into account the
193 | appropriateness of the current educational setting and the
194 | proximity to the school in which the child is enrolled at the
195 | time of placement.

196 | b. The community-based care agency has coordinated with
197 | appropriate local educational agencies to ensure that the child
198 | remains in the school in which the child is enrolled at the time
199 | of placement.

200 | 10. A projected date likely for the child's return home or

201 other permanent placement.

202 11. When appropriate, the basis for the unwillingness or
203 inability of the parent to become a party to a case plan. The
204 court and the citizen review panel shall determine if the
205 efforts of the social service agency to secure party
206 participation in a case plan were sufficient.

207 12. For a child who has reached 13 years of age but is not
208 yet 18 years of age, the adequacy of the child's preparation for
209 adulthood and independent living. For a child who is 15 years of
210 age or older, the court shall determine if appropriate steps are
211 being taken for the child to obtain a driver license or
212 learner's driver license.

213 13. If amendments to the case plan are required.
214 Amendments to the case plan must be made under s. 39.6013.

215 14. Whether the parent and caregiver communicate
216 effectively to promote the safety, well-being, and physical,
217 mental, and emotional health of the child, which includes, but
218 is not limited to, refraining from harassing communication.

219 (d) Orders.—

220 1. Based upon the criteria set forth in paragraph (c) and
221 the recommended order of the citizen review panel, if any, the
222 court shall determine whether or not the social service agency
223 shall initiate proceedings to have a child declared a dependent
224 child, return the child to the parent, continue the child in
225 out-of-home care for a specified period of time, or initiate

226 termination of parental rights proceedings for subsequent
227 placement in an adoptive home. Amendments to the case plan must
228 be prepared as prescribed in s. 39.6013. If the court finds that
229 the prevention or reunification efforts of the department will
230 allow the child to remain safely at home or be safely returned
231 to the home, the court shall allow the child to remain in or
232 return to the home after making a specific finding of fact that
233 the reasons for the creation of the case plan have been remedied
234 to the extent that the child's safety, well-being, and physical,
235 mental, and emotional health will not be endangered.

236 2. The court shall return the child to the custody of the
237 parents at any time it determines that:

238 a. A party has provided evidence that conditions for
239 return have been met, including, but not limited to, a
240 demonstrated change in the parent's protective capacity;

241 b. A party has ~~they have~~ substantially complied with the
242 case plan, and is likely to complete it in a reasonable amount
243 of time; and

244 c. ~~if~~ The court is satisfied that reunification will not
245 be detrimental to the child's safety, well-being, and physical,
246 mental, and emotional health.

247 3. If, in the opinion of the court, the social service
248 agency has not complied with its obligations as specified in the
249 written case plan, the court may find the social service agency
250 in contempt, shall order the social service agency to submit its

251 plans for compliance with the agreement, and shall require the
252 social service agency to show why the child could not safely be
253 returned to the home of the parents.

254 4. If, at any judicial review, the court finds that the
255 parents have failed to substantially comply with the case plan
256 to the degree that further reunification efforts are without
257 merit and not in the best interest of the child, on its own
258 motion, the court may order the filing of a petition for
259 termination of parental rights, whether or not the time period
260 as contained in the case plan for substantial compliance has
261 expired.

262 5. Within 6 months after the date that the child was
263 placed in shelter care, the court shall conduct a judicial
264 review hearing to review the child's permanency goal as
265 identified in the case plan. At the hearing the court shall make
266 findings regarding the likelihood of the child's reunification
267 with the parent or legal custodian. In making such findings, the
268 court shall consider the level of the parent or legal
269 custodian's compliance with the case plan and demonstrated
270 change in protective capacities compared to that necessary to
271 achieve timely reunification within 12 months after the removal
272 of the child from the home. The court shall also consider the
273 frequency, duration, manner, and level of engagement of the
274 parent or legal custodian's visitation with the child in
275 compliance with the case plan. If the court makes a written

276 finding that it is not likely that the child will be reunified
277 with the parent or legal custodian within 12 months after the
278 child was removed from the home, the department must file with
279 the court, and serve on all parties, a motion to amend the case
280 plan under s. 39.6013 and declare that it will use concurrent
281 planning for the case plan. The department must file the motion
282 within 10 business days after receiving the written finding of
283 the court. The department must attach the proposed amended case
284 plan to the motion. If concurrent planning is already being
285 used, the case plan must document the efforts the department is
286 taking to complete the concurrent goal.

287 6. The court may issue a protective order in assistance,
288 or as a condition, of any other order made under this part. In
289 addition to the requirements included in the case plan, the
290 protective order may set forth requirements relating to
291 reasonable conditions of behavior to be observed for a specified
292 period of time by a person or agency who is before the court;
293 and the order may require any person or agency to make periodic
294 reports to the court containing such information as the court in
295 its discretion may prescribe.

296 Section 5. Section 775.0851, Florida Statutes, is created
297 to read:

298 775.0851 Offenses against a foster parent;
299 reclassification of offenses.-

300 (1) For purposes of this section, the term "foster parent"

301 means a caregiver whose home is licensed under s. 409.175, and
302 who takes custody of a child for a period of time to care for
303 the child's safety, well-being, and physical, mental, and
304 emotional health after the child has been removed from the
305 custody of his or her legal parents.

306 (2) The degree of an offense is reclassified as provided
307 in subsection (3) if a person knowingly commits the offense
308 against a foster parent while he or she is caring for a child
309 who has been placed in his or her home, such offense is related
310 to the foster parent's custody of that child, and the offense is
311 a violation of:

312 (a) Section 784.011, relating to assault;

313 (b) Section 784.021, relating to aggravated assault;

314 (c) Sections 784.03 and 784.041(1), relating to battery
315 and felony battery;

316 (d) Section 784.045, relating to aggravated battery;

317 (e) Section 784.048, relating to stalking; or

318 (f) Section 794.011, relating to sexual battery.

319 (3) (a) A misdemeanor of the second degree is reclassified
320 as a misdemeanor of the first degree.

321 (b) A misdemeanor of the first degree is reclassified as a
322 felony of the third degree.

323 (c) A felony of the third degree is reclassified as a
324 felony of the second degree.

325 (d) A felony of the second degree is reclassified as a

326 felony of the first degree.

327 (e) A felony of the first degree is reclassified as a life
328 felony.

329 (4) For purposes of sentencing under chapter 921 and
330 determining incentive gain-time eligibility under chapter 944, a
331 felony offense that is reclassified under this section is ranked
332 one level above the ranking specified in s. 921.0022 or s.
333 921.0023 for the offense committed.

334 Section 6. Subsection (1) of section 39.302, Florida
335 Statutes, is amended to read:

336 39.302 Protective investigations of institutional child
337 abuse, abandonment, or neglect.—

338 (1) The department shall conduct a child protective
339 investigation of each report of institutional child abuse,
340 abandonment, or neglect. Upon receipt of a report that alleges
341 that an employee or agent of the department, or any other entity
342 or person covered by s. 39.01 ~~s. 39.01(37) or (54)~~, acting in an
343 official capacity, has committed an act of child abuse,
344 abandonment, or neglect, the department shall initiate a child
345 protective investigation within the timeframe established under
346 s. 39.201(5) and notify the appropriate state attorney, law
347 enforcement agency, and licensing agency, which shall
348 immediately conduct a joint investigation, unless independent
349 investigations are more feasible. When conducting investigations
350 or having face-to-face interviews with the child, investigation

351 visits shall be unannounced unless it is determined by the
352 department or its agent that unannounced visits threaten the
353 safety of the child. If a facility is exempt from licensing, the
354 department shall inform the owner or operator of the facility of
355 the report. Each agency conducting a joint investigation is
356 entitled to full access to the information gathered by the
357 department in the course of the investigation. A protective
358 investigation must include an interview with the child's parent
359 or legal guardian. The department shall make a full written
360 report to the state attorney within 3 working days after making
361 the oral report. A criminal investigation shall be coordinated,
362 whenever possible, with the child protective investigation of
363 the department. Any interested person who has information
364 regarding the offenses described in this subsection may forward
365 a statement to the state attorney as to whether prosecution is
366 warranted and appropriate. Within 15 days after the completion
367 of the investigation, the state attorney shall report the
368 findings to the department and shall include in the report a
369 determination of whether or not prosecution is justified and
370 appropriate in view of the circumstances of the specific case.

371 Section 7. Paragraph (c) of subsection (1) of section
372 39.521, Florida Statutes, is amended to read:

373 39.521 Disposition hearings; powers of disposition.—

374 (1) A disposition hearing shall be conducted by the court,
375 if the court finds that the facts alleged in the petition for

376 dependency were proven in the adjudicatory hearing, or if the
377 parents or legal custodians have consented to the finding of
378 dependency or admitted the allegations in the petition, have
379 failed to appear for the arraignment hearing after proper
380 notice, or have not been located despite a diligent search
381 having been conducted.

382 (c) When any child is adjudicated by a court to be
383 dependent, the court having jurisdiction of the child has the
384 power by order to:

385 1. Require the parent and, when appropriate, the legal
386 guardian or the child to participate in treatment and services
387 identified as necessary. The court may require the person who
388 has custody or who is requesting custody of the child to submit
389 to a mental health or substance abuse disorder assessment or
390 evaluation. The order may be made only upon good cause shown and
391 pursuant to notice and procedural requirements provided under
392 the Florida Rules of Juvenile Procedure. The mental health
393 assessment or evaluation must be administered by a qualified
394 professional as defined in s. 39.01, and the substance abuse
395 assessment or evaluation must be administered by a qualified
396 professional as defined in s. 397.311. The court may also
397 require such person to participate in and comply with treatment
398 and services identified as necessary, including, when
399 appropriate and available, participation in and compliance with
400 a mental health court program established under chapter 394 or a

401 treatment-based drug court program established under s. 397.334.
402 Adjudication of a child as dependent based upon evidence of harm
403 as defined in s. 39.01 ~~s. 39.01(35)(g)~~ demonstrates good cause,
404 and the court shall require the parent whose actions caused the
405 harm to submit to a substance abuse disorder assessment or
406 evaluation and to participate and comply with treatment and
407 services identified in the assessment or evaluation as being
408 necessary. In addition to supervision by the department, the
409 court, including the mental health court program or the
410 treatment-based drug court program, may oversee the progress and
411 compliance with treatment by a person who has custody or is
412 requesting custody of the child. The court may impose
413 appropriate available sanctions for noncompliance upon a person
414 who has custody or is requesting custody of the child or make a
415 finding of noncompliance for consideration in determining
416 whether an alternative placement of the child is in the child's
417 best interests. Any order entered under this subparagraph may be
418 made only upon good cause shown. This subparagraph does not
419 authorize placement of a child with a person seeking custody of
420 the child, other than the child's parent or legal custodian, who
421 requires mental health or substance abuse disorder treatment.

422 2. Require, if the court deems necessary, the parties to
423 participate in dependency mediation.

424 3. Require placement of the child either under the
425 protective supervision of an authorized agent of the department

426 in the home of one or both of the child's parents or in the home
427 of a relative of the child or another adult approved by the
428 court, or in the custody of the department. Protective
429 supervision continues until the court terminates it or until the
430 child reaches the age of 18, whichever date is first. Protective
431 supervision shall be terminated by the court whenever the court
432 determines that permanency has been achieved for the child,
433 whether with a parent, another relative, or a legal custodian,
434 and that protective supervision is no longer needed. The
435 termination of supervision may be with or without retaining
436 jurisdiction, at the court's discretion, and shall in either
437 case be considered a permanency option for the child. The order
438 terminating supervision by the department must set forth the
439 powers of the custodian of the child and include the powers
440 ordinarily granted to a guardian of the person of a minor unless
441 otherwise specified. Upon the court's termination of supervision
442 by the department, further judicial reviews are not required if
443 permanency has been established for the child.

444 4. Determine whether the child has a strong attachment to
445 the prospective permanent guardian and whether such guardian has
446 a strong commitment to permanently caring for the child.

447 Section 8. Paragraph (c) of subsection (1) of section
448 39.6012, Florida Statutes, is amended to read:

449 39.6012 Case plan tasks; services.—

450 (1) The services to be provided to the parent and the

451 tasks that must be completed are subject to the following:

452 (c) If there is evidence of harm as defined in s. 39.01 ~~s.~~
453 ~~39.01(35)(g)~~, the case plan must include as a required task for
454 the parent whose actions caused the harm that the parent submit
455 to a substance abuse disorder assessment or evaluation and
456 participate and comply with treatment and services identified in
457 the assessment or evaluation as being necessary.

458 Section 9. Subsection (4) of section 322.09, Florida
459 Statutes, is amended to read:

460 322.09 Application of minors; responsibility for
461 negligence or misconduct of minor.—

462 (4) Notwithstanding subsections (1) and (2), if a
463 caregiver of a minor who is under the age of 18 years and is in
464 out-of-home care as defined in s. 39.01 ~~s. 39.01(49)~~, an
465 authorized representative of a residential group home at which
466 such a minor resides, the caseworker at the agency at which the
467 state has placed the minor, or a guardian ad litem specifically
468 authorized by the minor's caregiver to sign for a learner's
469 driver license signs the minor's application for a learner's
470 driver license, that caregiver, group home representative,
471 caseworker, or guardian ad litem does not assume any obligation
472 or become liable for any damages caused by the negligence or
473 willful misconduct of the minor by reason of having signed the
474 application. Before signing the application, the caseworker,
475 authorized group home representative, or guardian ad litem shall

476 | notify the caregiver or other responsible party of his or her
477 | intent to sign and verify the application.

478 | Section 10. Paragraph (p) of subsection (4) of section
479 | 394.495, Florida Statutes, is amended to read:

480 | 394.495 Child and adolescent mental health system of care;
481 | programs and services.—

482 | (4) The array of services may include, but is not limited
483 | to:

484 | (p) Trauma-informed services for children who have
485 | suffered sexual exploitation as defined in s. 39.01 ~~§~~.
486 | ~~39.01(77)(g)~~.

487 | Section 11. Section 627.746, Florida Statutes, is amended
488 | to read:

489 | 627.746 Coverage for minors who have a learner's driver
490 | license; additional premium prohibited.—An insurer that issues
491 | an insurance policy on a private passenger motor vehicle to a
492 | named insured who is a caregiver of a minor who is under the age
493 | of 18 years and is in out-of-home care as defined in s. 39.01 ~~§~~.
494 | ~~39.01(49)~~ may not charge an additional premium for coverage of
495 | the minor while the minor is operating the insured vehicle, for
496 | the period of time that the minor has a learner's driver
497 | license, until such time as the minor obtains a driver license.

498 | Section 12. Paragraph (c) of subsection (1) of section
499 | 934.255, Florida Statutes, is amended to read:

500 | 934.255 Subpoenas in investigations of sexual offenses.—

HB 899

2019

501 (1) As used in this section, the term:

502 (c) "Sexual abuse of a child" means a criminal offense
503 based on any conduct described in s. 39.01 ~~s. 39.01(71)~~.

504 Section 13. Subsection (5) of section 960.065, Florida
505 Statutes, is amended to read:

506 960.065 Eligibility for awards.—

507 (5) A person is not ineligible for an award pursuant to
508 paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that
509 person is a victim of sexual exploitation of a child as defined
510 in s. 39.01 ~~s. 39.01(77)(g)~~.

511 Section 14. This act shall take effect October 1, 2019.