

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 197 The Servicemembers Civil Relief Act  
**SPONSOR(S):** Local, Federal & Veterans Affairs Subcommittee, Payne  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	14 Y, 0 N	Woodruff	Brazzell
2) Local, Federal & Veterans Affairs Subcommittee	10 Y, 0 N, As CS	Renner	Miller
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Chapter 39, F.S., creates the dependency system that is charged with protecting child welfare. 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.

Abandonment of a child occurs when a parent, legal custodian, or caregiver has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial relationship with the child even when being able to do so.

Florida statutes define "servicemember" as any person serving as a member of the United States Armed Forces on active duty or state active duty and all members of the Florida National Guard and United States Reserve Forces.

The Servicemembers Civil Relief Act (SCRA) is a federal law that applies to civil proceedings. The act protects active duty servicemembers by allowing for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

The bill amends the definition of "abandoned" or "abandonment" in s. 39.01(1), F.S., to prohibit the absence of a parent, legal custodian, or caregiver responsible for a child's welfare, who is a servicemember, by reason of deployment or anticipated deployment from being considered or used as a factor in determining abandonment.

Additionally, the bill amends s. 39.0137, F.S., to include the SCRA as one of the specific federal laws which ch. 39, F.S., does not supersede and requires the Department of Children and Families (DCF) to ensure that the SCRA is observed in cases where a parent, legal custodian, or caregiver is unable to take custody of his or her child or appear at a court proceeding in person because of his or her military service.

The bill does not have a fiscal impact on state or local governments.

The bill has an effective date of July 1, 2020.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

#### **Florida's Child Welfare System**

Chapter 39, F.S., creates the dependency system that is charged with protecting child welfare. 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. If the problems cannot be addressed, the child welfare system finds safe out-of-home placements for these children.

To serve families and children, the Department of Children and Families (DCF) contracts for foster care and related services with lead agencies, also known as community-based care organizations (CBCs). The outsourced provision of child welfare services was intended to increase local community ownership of service delivery and design.<sup>1</sup> DCF, through the CBCs, administers a system of care for children<sup>2</sup> to:

- Prevent children's separation from their families;
- Intervene to allow children to remain safely in their own homes;
- Reunify families who have had children removed from their care, if possible and appropriate;
- Ensure safety and normalcy for children who are separated from their families;
- Enhance the well-being of children through educational stability and timely health care;
- Provide permanency; and
- Develop their independence and self-sufficiency.

#### *Abandonment*

A child is considered abandoned if the parent, legal custodian, or caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship<sup>3</sup> with the child.<sup>4</sup> The incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment. A surrendered newborn, a "child in need of services,"<sup>5</sup> or a "family in need of services"<sup>6</sup> is not considered abandonment and will not meet the statutory definition required for a child protective investigation.<sup>7</sup>

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<sup>1</sup> Department of Children and Families, *Community-Based Care*, <http://www.dcf.state.fl.us/service-programs/community-based-care/> (last visited Nov. 1, 2019).

<sup>2</sup> S. 409.145(1), F.S.

<sup>3</sup> "Establish or maintain a substantial positive relationship," includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish a substantial and positive relationship with the child. See s. 39.01(1), F.S.

<sup>4</sup> S. 39.01(1), F.S.

<sup>5</sup> A "child in need of services" is defined in s. 984.03(9), F.S., as a child for whom there is no pending investigation into an allegation or suspicion of abuse, neglect, or abandonment; no pending referral alleging the child is delinquent; or no current supervision by the Department of Juvenile Justice or the Department of Children and Families for an adjudication of dependency or delinquency. The child must also be found by the court to have persistently run away from home despite reasonable efforts to remedy the child's behavior; to be habitually truant from school despite reasonable efforts to remedy the situation; or to have persistently disobeyed the reasonable and lawful demands of the child's parents or legal custodians, and to be beyond their control, despite efforts to remedy the behavior.

<sup>6</sup> A "family in need of services" is defined in s. 984.03(25), F.S., as a family that has a child who is running away; who is persistently disobeying reasonable and lawful demands of the parent or legal custodian and is beyond the control of the parent or legal custodian; or who is habitually truant from school or engaging in serious behaviors that places the child at risk of future abuse, neglect, or abandonment or at risk of entering the juvenile justice system. The child must be referred to a law enforcement agency, the Department of Juvenile Justice, or an agency contracted to provide services to children in need of services.

<sup>7</sup> *Supra* note 4.

If DCF verifies a child has been abandoned, then it may file a dependency petition and require the parents to engage in services to ameliorate the state's concerns and protect the child.<sup>8</sup> During the delivery of services and with the court's supervision, DCF may place the child in out-of-home care until reunification with the parent is in the child's best interest. Because a verified finding of abandonment establishes grounds for termination of parental rights, DCF has the option to petition the court to terminate parental rights at any time.<sup>9</sup>

From September 2018 through September 2019, there were 2,984 children alleged<sup>10</sup> to be abandoned, with 865 verified as abandoned after a child protective investigation.<sup>11</sup>

Currently, Florida's statutory definition of abandonment does not explicitly exclude deployment or anticipated deployment<sup>12</sup> of a parent or caregiver from being considered when determining whether a child has been abandoned.

### *Federal Law*

While states bear primary responsibility for child welfare, numerous federal laws have been enacted that affect how states operate their child welfare systems. Section 39.0137, F.S., specifically states that ch. 39, F.S., does not supersede the requirements of two of them: the Indian Child Welfare Act<sup>13</sup> and the Multi-Ethnic Placement Act.<sup>14</sup>

### **Servicemembers in Florida**

Florida statutes define "servicemember" as any person serving as a member of the United States Armed Forces<sup>15</sup> on active duty or state active duty<sup>16</sup> and all members of the Florida National Guard and United States Reserve Forces.<sup>17</sup>

As of June 2019, 64,915 Floridians were serving in the United States Armed Forces and 37,003 serving in Florida's National Guard and United States Reserve Forces.<sup>18</sup>

### **Legal Protections for Servicemembers**

#### *The Servicemembers Civil Relief Act*

The Servicemembers Civil Relief Act (SCRA) is a federal law that applies to civil proceedings. The act protects servicemembers<sup>19</sup> by allowing for the temporary suspension of judicial and administrative

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<sup>8</sup> S. 39.501(1), F.S.

<sup>9</sup> S. 39.806(1)(b), F.S.

<sup>10</sup> These allegations included situations where there were no indicators of abandonment, the allegation was not substantiated, or the allegation was verified.

<sup>11</sup> Department of Children and Families, *Child Welfare Dashboard, Alleged Maltreatments – Statewide*, <https://www.myflfamilies.com/programs/childwelfare/dashboard/alleged-maltreatments.shtml> (last visited Nov. 1, 2019).

<sup>12</sup> 50 U.S.C. s. 3938(e) defines "deployment" as the movement or mobilization of a servicemember to a location for a period of longer than 60 days and not longer than 540 days pursuant to temporary or permanent official orders that are designated as unaccompanied for which dependent travel is not authorized or that otherwise do not permit the movement of family members to that location.

<sup>13</sup> 25 U.S.C. ss. 1901, et seq.

<sup>14</sup> Pub. L. No. 103-382.

<sup>15</sup> The United States Armed Forces consists of the Army, Marine Corps, Navy, Air Force, and Coast Guard. See 10 U.S.C. s. 101.

<sup>16</sup> "State active duty" means full-time duty in active military service of the State of Florida when ordered by the Governor or Adjutant General to preserve the public peace, execute the laws of the state, suppress insurrection, repel invasion, enhance security and respond to terrorist threats or attacks, respond to an emergency, enforce the law, carry out counter-drug operations, provide training, provide for the security of the rights or lives of the public, protect property, or conduct ceremonies. The term also includes the period during which a person in active military service is absent from duty as a result of illness, being wounded, being on leave, or other lawful cause.

<sup>17</sup> S. 250.01, F.S.

<sup>18</sup> Defense Manpower Data Center, *DOD Personnel, Workforce Reports & Publications*, [https://www.dmdc.osd.mil/appj/dwp/dwp\\_reports.jsp](https://www.dmdc.osd.mil/appj/dwp/dwp_reports.jsp) (last visited Oct. 22, 2019).

<sup>19</sup> Servicemembers Civil Relief Act, 50 U.S.C. §3911 defines a servicemember as a member of the uniformed services, which includes the Armed Forces and the commissioned corps of the National Oceanic and Atmospheric Administration and the Public Health Service.

proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.<sup>20</sup> The purpose is to enable servicemembers to “devote their entire energy to the defense needs of the Nation.”<sup>21</sup> The SCRA allows a servicemember to request a delay in court or agency proceeding that may affect his or her rights if harm would result if the case were not delayed.<sup>22</sup>

While the SCRA applies to all civil proceedings, the SCRA was amended in 2014 and 2016 to provide servicemembers with additional protections, beyond the stay provisions, in child custody proceedings. Child custody may become an issue in a child welfare proceeding if the court is determining which parent should have custody over the child when the other parent cannot protect the child’s safety and well-being. The act protects servicemembers from losing custody of their children due to military deployment and prohibits state courts from considering current or future deployments as the sole factor in determining the best interest of the child when contemplating a permanent change in child custody.<sup>23</sup> Additionally, servicemembers must receive notice both annually and prior to deployment of the child custody protections under the SCRA.<sup>24</sup>

Courts are to construe the SCRA liberally in favor of servicemembers but retain discretion to deny relief in certain cases.<sup>25</sup>

### *State Protections for Servicemembers*

States may provide more protections to servicemembers than what is provided under the SCRA, and Florida law does so. For example, because the SCRA only applies to National Guard call-ups by the President, Florida law expands SCRA protections to governor-ordered National Guard call-ups if the service exceeds 17 days.<sup>26</sup> In these situations, the court may stay any civil action or proceeding up to 30 days on its own motion, and must stay the proceeding upon motions of either party, unless it finds the ability to prosecute or defend the action is not materially affected by reason of the active duty status.<sup>27</sup> Florida law also allows active duty servicemembers to terminate real estate contracts if certain requirements are met.<sup>28</sup>

### *Interplay of the SCRA and State Law*

As a federal law, the SCRA supersedes state law even if not explicitly listed in state law. However, several Florida statutes explicitly reference the SCRA. For example, under s. 61.076(2)(b), F.S., if one of the parties to a divorce has performed at least 10 years of credible service in the military and the division of marital property includes division of military retirement benefits, then the final judgement must include certification that the SCRA was observed if the decree was issued while the member was on active duty and was not represented in court. Additionally, under s. 61.733(1), F.S., unless prohibited by the SCRA, the court may issue a temporary order granting custodial responsibility after a deploying parent receives notice of deployment; however, the temporary custody may only last until the deployment terminates. Further, under s. 61.749(1), F.S., a court may modify or terminate a temporary grant of custodial responsibility on motion of a deploying parent if modification or termination is consistent with the SCRA and is in child’s best interest.

Florida statutes also provide a monetary penalty if a person violates any provision of state law that protects members of the United States Armed Forces, the United States Reserve Forces, or the

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The SCRA only applies to a member of the National Guard if that member has been called to active service authorized by the President or Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency.

<sup>20</sup> 50 U.S.C. §3902.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> 50 U.S.C. § 3938.

<sup>24</sup> Pub. L. No. 114-328, div. A § 573, 130 Stat. 2141 (2016).

<sup>25</sup> *Boone v. Lightner*, 319 U.S. 561, 575 (1943).

<sup>26</sup> S. 250.5201, F.S.

<sup>27</sup> *Id.*

<sup>28</sup> S. 689.27(2), F.S.

National Guard or any provision of federal law affording protections to such servicemembers over which a state court has concurrent jurisdiction.<sup>29</sup>

Additionally, s. 250.83, F.S., explicitly states that if any other provision of law conflicts with the SCRA or the provisions of Florida law related to military affairs, the SCRA or the provisions of Florida law related to military affairs, whichever is applicable, shall control.

Currently, Florida's child welfare statutes, ch. 39, F.S., do not explicitly state that the SCRA prevails over state law. However, because the SCRA is a federal law, it will supersede state law even if it is not explicitly stated in Florida's child welfare law.

### **Effect of Proposed Changes**

The bill amends the definition of "abandoned" or "abandonment" in s. 39.01(1), F.S., to add that the absence of a parent, legal custodian, or caregiver responsible for a child's welfare, who is a servicemember, by reason of deployment or anticipated deployment as defined in 50 U.S.C. s. 39.28(e),<sup>30</sup> may not be considered or used as a factor in determining abandonment of a child.

The bill also amends s. 39.0137, F.S., to include the SCRA as one of the specific federal laws which ch. 39, F.S., does not supersede and requires DCF to ensure that the SCRA is observed in cases where a parent, legal custodian, or caregiver is unable to take custody of his or her child or appear at a court proceeding in person because of his or her military service. While dependency attorneys and judges are currently obligated to abide by the SCRA, including this language in statute may ensure that compliance with the SCRA happens sooner or to a greater degree.

The bill is effective July 1, 2020.

#### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 39.01, F.S., relating to definitions.

**Section 2.** Amends s. 39.0137, F.S., relating to federal law; rulemaking authority.

**Section 3.** Provides an effective date of July 1, 2020.

## **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:**

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<sup>29</sup> S. 250.905, F.S.

<sup>30</sup> *Supra* note 12.

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Rulemaking authority is not required to implement this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On December 11, 2019, the Local, Federal & Veterans Affairs Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment corrects punctuation of the term “abandonment” to clarify that the absence of the parent, legal custodian, or caregiver is due to the deployment or anticipated deployment as defined in the U.S. Code. The strike-all amendment also adds “legal custodians” and “caregivers” to section 2 of the bill to be consistent with other provisions of the bill.

This analysis is drafted to the committee substitute as approved by the Local, Federal & Veterans Affairs Subcommittee.