

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 604

INTRODUCER: Senator Bean

SUBJECT: Servicemembers Civil Relief Act

DATE: January 27, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<b>Favorable</b>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 604 amends this state’s child welfare statutes to protect the rights of a parent, custodian, or legal guardian who, because of his or her military service, must be absent from his or her child or from child-welfare-related court proceedings.

More particularly, the bill:

- Provides that the absence of a deployed or soon-to-be-deployed parent, custodian, or legal guardian responsible for a child’s welfare may not be considered in determining whether the child has been abandoned;
- Requires the Department of Children and Families to ensure that the federal Servicemembers Civil Relief Act (SCRA) is observed in cases where a parent, because of his or her service, is unable to take custody of his or her child or appear before the court in person; and
- Declares that ch. 39, F.S., pertaining to child welfare, does not supersede the requirements of SCRA or its implementing regulations.

The bill does not have a fiscal impact on state or local governments and has an effective date of July 1, 2020.

**II. Present Situation:**

**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 with the child.<sup>1</sup> And, under ch. 39, F.S., a child who is found by the court to be abandoned is thus found to be “dependent.”<sup>2</sup>

Upon verification that a child has been abandoned, the department may file a dependency petition and require the parents to engage in services to ameliorate the state’s concerns and protect the child. During the delivery of services and with the court’s supervision, the department 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, the department has the option to petition the court to terminate parental rights at any time.<sup>3</sup>

Florida’s statutory definition of “abandonment” does not expressly exclude deployment or anticipated deployment of a parent or caregiver from being considered when determining whether a child has been abandoned. As defined, the term expressly provides that 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. The definition additionally provides that a surrendered newborn, a “child in need of services,” or a “family in need of services” is not considered abandoned/abandonment, and will not meet the statutory definition required for a child protective investigation.<sup>4</sup>

### **Federal Law vs. State Law**

While primary responsibility for child welfare rests with states, a number of federal laws have been enacted that affect how states operate their child welfare systems. Section 39.0137, F.S., specifically provides that ch. 39, F.S., does not supersede the requirements of the Indian Child Welfare Act (ICWA)<sup>5</sup> and the Multi-Ethnic Placement Act (MEPA).<sup>6</sup>

### **Legal Provisions Protecting Servicemembers**

The Servicemembers Civil Relief Act is a federal law that applies to civil proceedings. The act protects 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.<sup>7</sup> The SCRA allows a servicemember to request a delay in a court or agency proceeding that may adversely affect his or her rights during his or her military service.<sup>8</sup>

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<sup>1</sup> Section 39.01(1), F.S. For the purposes of s. 39.01(1), F.S., “‘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.”

<sup>2</sup> See s. 39.01(15)(a), F.S.

<sup>3</sup> Section 39.806(1), F.S.

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

<sup>5</sup> 25 U.S.C. ss. 1901, et seq.

<sup>6</sup> Pub. L. No. 103-382.

<sup>7</sup> Servicemembers Civil Relief Act, 50 U.S.C. s. 3902.

<sup>8</sup> *Id.*

While the SCRA applies to all civil proceedings, the SCRA was amended in 2014 and 2016 to provide servicemembers with additional protections in child custody proceedings.<sup>9</sup> 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 permanent 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>10</sup>

Servicemembers must also receive notice both annually and prior to deployment of the child custody protections under the SCRA and courts are to construe the SCRA liberally in favor of servicemembers.<sup>11</sup>

States may provide more protections to servicemembers<sup>12</sup> than what is provided under the SCRA, as Florida does. For example, because the SCRA only applies to call-ups by the president, Florida law expands SCRA protections to governor-ordered National Guard call-ups if the service exceeds 17 days.<sup>13</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>14</sup> Florida law also allows active duty servicemembers to terminate real estate contracts if certain requirements are met.<sup>15</sup>

As a federal law, the SCRA preempts conflicting state law even if state law does not expressly say so.<sup>16</sup> Currently, the SCRA is expressly cited in several Florida statutes that provide:

- 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.<sup>17</sup>
- 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.<sup>18</sup>
- 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.<sup>19</sup>

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<sup>9</sup> Jennifer K. Elsea, *The Servicemember Civil Relief Act (SCRA): Section-by-Section Summary*, (Updated March 25, 2019) <https://fas.org/sfp/crs/natsec/R45283.pdf>.

<sup>10</sup> Servicemembers Civil Relief Act, 50 U.S.C. s. 3938.

<sup>11</sup> 50 U.S.C. s. 3938a.

<sup>12</sup> 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.

<sup>13</sup> Section 250.5201, F.S.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See U.S. CONST. art VI, cl. 2.

<sup>17</sup> Section 61.076(2), F.S.

<sup>18</sup> Section 61.733(1), F.S.

<sup>19</sup> Section 61.749(1), F.S.

- 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.<sup>20</sup>

Currently, Florida's child welfare statutes do not specifically state that the SCRA preempts state law. However, because the SCRA is a federal law, it will preempt state law even if it is not explicitly stated in Florida's child welfare law.

### **III. Effect of Proposed Changes:**

SB 604 amends this state's child-welfare statutes to protect the rights of a parent, custodian, or legal guardian who, because of his or her military service, must be absent from his or her child or from child-welfare-related court proceedings.

More particularly, the bill:

- Provides that the absence of a deployed or soon-to-be-deployed parent, custodian, or legal guardian responsible for a child's welfare may not be considered in determining whether the child has been abandoned;
- Requires the Department of Children and Families to ensure that the federal Servicemembers Civil Relief Act (SCRA) is observed in cases where a parent, because of his or her service, is unable to take custody of his or her child or appear before the court in person; and
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The bill does not have a fiscal impact on state or local governments and has an effective date of July 1, 2020.

### **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.

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<sup>20</sup> Section 250.83, F.S.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 39.01 and 39.0137 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.)

None.

B. Amendments:

None.