

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 601 Adoption Proceedings
SPONSOR(S): Children, Families & Seniors Subcommittee, Roth
TIED BILLS: **IDEN./SIM. BILLS:** SB 1206

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	17 Y, 0 N, As CS	Woodruff	Brazzell
2) Civil Justice & Property Rights Subcommittee	15 Y, 0 N	Mathews	Jones
3) Health & Human Services Committee	20 Y, 0 N	Woodruff	Calamas

SUMMARY ANALYSIS

Adoption is one method of achieving permanency for children who have suffered abuse, abandonment, or neglect and are unable to be reunified with their parents. Chapter 63, F.S., governs adoption proceedings, regardless of whether the child is being adopted from the child welfare system or through a private adoption entity.

When a dependent child is available for adoption, the Department of Children and Families (DCF) receives applications to adopt the child. When two families apply to adopt the same child, DCF routes conflicting applications through the adoption applicant review committee (AARC) for resolution. DCF then reviews the decision of the AARC and issues its consent for adoption to one applicant while communicating its denial to the other applicant through a certified letter. The applicant who receives DCF's consent to adopt may then file a petition to adopt the child under Ch. 63, F.S. A denied applicant can seek review of DCF's decision through the administrative review hearing process under Ch. 120, F.S. In addition to the administrative review, the denied applicant may also file a petition to adopt the child under Ch. 63, F.S., and argue DCF unreasonably withheld its consent to adopt. Therefore, there can potentially be three legal proceedings simultaneously addressing the adoption of a child.

Currently, for a child in the custody of DCF, a parent may consent to placement of the child with a private adoption agency or qualified adoptive parent when parental rights have not yet been terminated. After the parent executes the consent to adopt, the private adoption agency may intervene as a party to the dependency case to place the child with a prospective adoptive parent.

CS/HB 601 reduces the number of simultaneous adoption actions that can be filed by multiple parties to adopt the same child. The bill authorizes a dependency court to review DCF's decision to deny an application to adopt and eliminates the requirement for a denied applicant to initiate an administrative review of DCF's decision under Ch. 120, F.S.

The bill requires a preliminary home study for all prospective adopters of a minor child who is under the supervision of DCF, or otherwise subject to the jurisdiction of the dependency court, regardless of whether that individual is a stepparent or relative.

The bill has a significant, positive, recurring fiscal impact on state government. There is no fiscal impact on local government.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida's Child Welfare System

Chapter 39, F.S., creates the dependency system charged with protecting child welfare. Florida's child welfare system identifies children and families in need of services through reports to the central abuse hotline and child protective investigations. 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 involved in the dependency process.¹ If problems cannot be addressed, the child welfare system finds safe out-of-home placements for these children.

DCF contracts for case management, out-of-home care, and related services with community-based care lead agencies (CBCs). Using CBCs to provide child welfare services is designed to increase local community ownership of service delivery and design.²

Child Welfare Adoptions

Adoption is one method of achieving permanency for children who have suffered abuse, abandonment, or neglect and are unable to be reunified with their parents. To become a licensed adoptive parent, an individual or couple must complete a licensing study class and complete a home study.³ Chapter 63, F.S., governs adoption proceedings, regardless of whether the child is being adopted from the child welfare system or through private adoption.

The federal Department of Health and Human Services assesses the performance of a state's child welfare system on key measures of safety and permanency. One measure is the percent of children exiting to a permanent home within 12 months of entering care. Currently, 36.97% of children in Florida's child welfare system achieve permanency within 12 months of entering care. This is below the federal target of 40.50%.⁴ Out of the children who achieved permanency within 12 months of entering care, 392 (or 7.7%) achieved permanency through adoption.⁵

Between January 1, 2020, and December 31, 2020, 2,759 children (or 53.8% of children legally free for adoption) had been adopted from Florida's child welfare system.⁶

Selection of Adoptive Placement

DCF's ability to place a child in its custody for adoption and the court's review of the placement is controlled by s. 39.812, F.S. DCF may place a child in its custody in a home, and DCF's consent alone is sufficient for the placement. The dependency court retains jurisdiction over any child in DCF's custody until the child is adopted. When DCF has custody of a child for subsequent adoption, the dependency court has jurisdiction to review the status of the child and the progress toward permanent adoptive placement. As part of this continuing jurisdiction, s. 39.811(9), F.S., allows the dependency court to review the appropriateness of the adoptive placement of the child after the child's Guardian ad Litem shows good cause.

¹ S. 39.001, F.S.

² S. 39.001(4), F.S.

³ Florida Department of Children and Families, *How Do I Become a Foster Parent?*, <https://www.myflfamilies.com/service-programs/foster-care/how-do-i.shtml> (last visited Mar. 30, 2021).

⁴ Florida Department of Children and Families, Florida's Child Welfare Statistics, Children Entering Care Who Achieve Permanency within 12 Months, <https://www.myflfamilies.com/programs/childwelfare/dashboard/permanency-within-12.shtml> (last visited Mar. 30, 2021).

⁵ *Id.*

⁶ Florida Department of Children and Families, Florida's Child Welfare Statistics, Adoptions Achieved, <https://www.myflfamilies.com/programs/childwelfare/dashboard/adoptions-achieved.shtml> (last visited Mar. 30, 2021).

When a dependent child is available for adoption, DCF receives applications to adopt the child. DCF does not select some applicants because their adoption home studies are denied. When there are two or more families with approved home studies, DCF routes these conflicting applications through the adoption applicant review committee (AARC) for resolution. DCF then reviews the decision of the AARC and issues its consent for adoption to one applicant while communicating its denial to the other applicants through a certified letter. These letters are considered final agency action, which gives an unsuccessful applicant a point of entry to seek review of DCF's decision through an administrative review hearing process under Ch. 120, F.S.

Florida law also permits individuals whom DCF declines consent for adoption of a child to initiate a new Ch. 63, F.S., legal proceeding by filing a petition for adoption. The petitioner must demonstrate DCF unreasonably withheld its consent to adopt a child. Because Ch. 63, F.S., permits anyone who meets statutory requirements to adopt a child, and any petition may argue DCF unreasonably withheld its consent for an adoption, multiple parties may file a Ch. 63, F.S., petition to adopt the same child.

In addition to the route offered through Ch. 63, F.S., an additional option for families denied the ability to adopt is through the Ch.120, F.S., process. Chapter 120, F.S., administrative review hearings are heard by designated hearing officers within DCF. This means that Ch. 120, F.S., hearings may be being held concurrently with Ch. 63, F.S., hearings held by Title V courts. Assignment of adoption disputes to the Ch. 120, F.S., process arose due to the opinion in *Department of Children & Family Services v. I.B. and D.B.*, 891 So. 2d 1168 (Fla. 1st DCA 2005).⁷

Administrative appeals can delay permanency. From a sample of 25 Ch. 120, F.S., contested adoption matters between 2018 and 2019, the average length of time between the receipt of a hearing request and entry of a final order was 213 days.⁸ In the last five years, out of 206 administrative review hearings, only one decision was overturned through the administrative review process.⁹

Appeal of the outcome of the administrative review process to a district court of appeal causes additional delays, adding, on average, an additional 120 days.

Therefore, there may potentially be three proceedings simultaneously addressing the adoption of a child:

- A Ch. 120, F.S., administrative review hearing to review DCF's consent.
- A Ch. 63, F.S., adoption proceeding filed by the family who has DCF's consent.
- A Ch. 63, F.S., adoption proceeding filed by an applicant who asserts DCF unreasonably withheld its consent.

Multiple competing adoption petitions require additional court hearings to resolve the conflict and may lead to a delay of the child's adoption. These court proceedings often occur concurrently with the administrative hearing process, which can lead to disparate results. The circuit court judge is responsible for resolving disparate results.

Home Studies in Ch. 63, F.S., Intervention Proceedings

For a child in the custody of DCF, current law allows a parent to execute a consent for placement of a minor with an adoption entity¹⁰ or qualified adoptive parent when parental rights have not yet been terminated. The adoption consent is valid, binding, and enforceable by the court. After the parent

⁷ The Department of Children & Family Services (DCFS) appealed an administrative judge's decision finding a DCFS rule that prohibited an administrative review of DCFS decision was invalid. The First District Court of Appeals held that the rule was invalid because statute did not confer authority on DCFS to promulgate such a rule.

⁸ Florida Department of Children and Families, *Agency Analysis of 2021 House Bill 601* (Feb. 22, 2021).

⁹ Email from Deborah Lacombe, Special Counsel, Guardian ad Litem Program, re: HB 601/SB1206, (Mar. 19, 2021).

¹⁰ S. 63.032(3), F.S., defines adoption entity as DCF, a child caring-agency registered under s. 409.176, F.S., an intermediary, a Florida child-placing agency licensed under s. 63.202, F.S., or a child-placing agency licensed in another state which is licensed by DCF to place children in Florida.

executes the consent to adopt, the adoption entity may intervene in the dependency case to place the child with a prospective adoptive parent. The adoption entity is required to provide the court with a copy of the preliminary home study of the prospective adoptive parent and any other evidence showing the placement would be stable for the child.

Although s. 63.082(6), F.S., does not allow exceptions for the completion of a preliminary home study before the court transfers custody of the child to the prospective adoptive parent, parties have been able to intervene and accomplish a modification of placement without presenting the court with a home study by relying on s. 63.092(3), F.S. This section does not require a preliminary home study in a nondependency proceeding if the petitioner for adoption is a stepparent or relative.¹¹

As a result, relatives who do not pass DCF home studies because of safety concerns or disqualifying background offenses are permitted to intervene in a dependency action to obtain placement of a child.¹² For example, DCF reports one recent case where a relative failed five DCF home studies, yet the trial court held that she did not need to complete a home study to intervene in a dependency proceeding.¹³ DCF has no ability to ensure the safety of the child in these instances because upon modification of placement the adoption entity takes over supervision of the child pursuant to s. 63.082(6)(f), F.S.

Effect of Proposed Changes

Selection of Adoptive Placement

CS/HB 601 makes changes to current law to reduce the number of simultaneous adoption actions filed by multiple parties to adopt the same child. The bill also creates timeframes when a denied applicant may seek a court's review of DCF's decision to adopt a specific child.

The bill amends s. 39.811(9), F.S., to require the dependency court to review DCF's decision to deny an application to adopt upon motion for review by the denied applicant. As such, the bill eliminates the ability for a denied applicant to initiate an administrative review of DCF's decision under Ch. 120, F.S.

The bill amends s. 39.812(4), F.S., to allow a denied applicant to file a motion for the dependency court to review DCF's decision within 30 days of the issuance of DCF's written notification of denial. The motion to review must allege that DCF unreasonably withheld its consent to the adoption and must request that the court allow the denied applicant to file a petition to adopt the child under Ch. 63, F.S., without DCF's consent. The bill requires the dependency court to hold a hearing within 30 days after the filing of the motion to review to determine whether DCF abused its discretion in denying the application to adopt. The court must enter a written order within 15 days after conclusion of the hearing either denying the motion or finding that DCF unreasonably withheld its consent and authorize the denied applicant to file petition to adopt the child under Ch. 63, F.S., without DCF's consent.

Home Studies in Ch. 63, F.S., Intervention Proceedings

The bill amends s. 63.082, F.S., requiring a preliminary home study for all prospective parents, regardless of whether that individual is a stepparent or relative. This change will ensure that individuals who have failed a home study to be a placement under Ch. 39, F.S., cannot use Ch. 63, F.S., to become a placement for the child. This change promotes placements that are in the child's best interest.

B. SECTION DIRECTORY:

Section 1: Amending s. 39.812, F.S., relating to postdisposition relief; petition for adoption.

Section 2: Amending s. 63.062, F.S., relating to persons required to consent to adoption; affidavit of nonpaternity; waiver of venue.

¹¹ S. 63.032(16), F.S., defines relative as a person related by blood to the person being adopted within the third degree.

¹² Ss. 63.082(6) and 63.092(3), F.S.

¹³ Florida Department of Children and Families, *Agency Bill Analysis of 2021 SB 1206* (Feb. 22, 2021).

Section 3: Amending s. 63.82, F.S., relating to execution of consent to adoption or affidavit of nonpaternity; family social and medical history; revocation of consent.

Section 4: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DCF estimates a cost avoidance of \$1,189,745 if the changes related to the adoption selection process are implemented based on a review of cases from 2019.¹⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Community-based care lead agencies may experience a positive fiscal impact if the changes in the bill speed up permanency for children in their care.

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:

DCF has sufficient rulemaking authority to implement the bill's provisions.

¹⁴ *Supra* note 8.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2021, the Children, Families, and Seniors Subcommittee adopted two amendments and reported the bill favorably as amended. The amendments:

- Ensure that a review of DCF's decision to deny an adoption application is reviewable only by the dependency court and not the Ch. 120 process.
- Require a preliminary home study for all prospective parents seeking to adopt a child from the child welfare system through an adoption intervention, even if that prospective parent is a stepparent or relative.

The analysis is drafted to the amended bill as passed by the Children, Families, and Seniors Subcommittee.