

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1377 Adoption of Children in Dependency Court

**SPONSOR(S):** Stevenson

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 1322

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

### SUMMARY ANALYSIS

The Florida Adoption Act, Ch. 63, F.S., applies to all adoptions, whether through a private entity or through the state dependency system. Ch. 63 seeks to provide a stable and permanent home for an adoptable child promptly while preventing the disruption of a child's placement, and holding parents accountable for meeting the needs of the child.

For a child in the dependency system whose specific permanency goal is adoption, state-funded community-based care lead agencies are generally responsible for finding an adoptive family. However, s. 63.082, F.S., allows a private adoption entity to intervene in a child welfare case to instead place a dependent child with prospective adoptive parents chosen by the child's parent or the private adoption entity. The court must provide written notice to the parent of his or her right to participate in a private adoption plan at several points throughout the dependency process. The process involves, in part, a consideration of how the proposed adoption meets best interest factors outlined in statute. Upon the court's determination that the prospective adoptive parents are appropriate and that the adoption appears to be in the best interest of the minor child, the court must promptly order the transfer of custody of the child to the prospective adoptive parents. Following the transition, the private adoption entity is responsible for supervising the adoption process. As such, the private adoption entity must update the court every 90 days as to the status of the adoption.

HB 1377 amends s. 63.082, F.S., related to interventions by private adoption agencies in dependency court. The bill seeks to limit a parent's ability to execute a consent to private adoption later in a dependency case which may negatively impact the child at issue. The bill also allows the court greater discretion regarding a private adoption entity's ability to intervene in the dependency process. Additionally, the bill grants the court greater discretion and authority related to accepting a home study from prospective adoptive parents and requires the court to give greater consideration to keeping the child in his or her current placement, under certain conditions. The bill also requires the Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a national study of adoption intervention and provide a report by January 1, 2024.

The bill provides an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Florida's Dependency System

Ch. 39, F.S., creates the state dependency system, which is charged with protecting the welfare of children in Florida. Florida's dependency system identifies children and families in need of services through reports to the central abuse hotline and through child protective investigations. The Department of Children and Families (DCF) and the 18 DCF subcontracted community-based care lead agencies (CBCs) throughout Florida<sup>1</sup> work with families to address the problems endangering children and provide resources when possible. If the concerns for the subject child's welfare are not remedied, DCF and the CBCs work to find safe out-of-home placements for him or her.

DCF's practice model is based on the safety of the child within the home by using in-home services, such as parenting, coaching, and counseling, to maintain and strengthen the child's natural support system while keeping the child in his or her own home and environment.

DCF contracts with CBCs for case management, out-of-home services, and related services. The outsourced provision of child welfare services is intended to increase local community ownership of service delivery and design. CBCs contract with a number of subcontractors for case management and direct care services to children and families under the supervision of DCF.

DCF retains in-house responsibility for a number of child welfare functions, including:

- Operating the central abuse hotline;
- Performing child protective investigations; and
- Providing children's legal services.<sup>2</sup>

Ultimately, DCF is responsible for program oversight and the overall performance of the child welfare system.<sup>3</sup>

##### *Child Welfare Outcomes*

The Child Welfare Outcomes Report (Report) is an annual report which presents data on national performance and child welfare-related contextual factors relevant to specific state performance.<sup>4</sup> The Report includes data and statistics about the performance of individual states in seven outcome categories identified in close consultation with state and local child welfare agency administrators, child advocacy organizations, child welfare researchers, state legislators, and other experts in the child welfare field,<sup>5</sup> including:

- Reducing recurrence of child abuse and/or neglect.
- Reducing the incidence of child abuse and/or neglect in foster care.
- Increasing permanency for children in foster care.
- Reducing time in foster care to reunification without increasing reentry.
- Reducing time in foster care to adoption.
- Increasing placement stability.

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<sup>1</sup> These 18 CBCs together serve the state's 20 judicial circuits.

<sup>2</sup> Ch. 39, F.S.

<sup>3</sup> *Id.*

<sup>4</sup> The U.S. Department of Health and Human Services (HHS) created the Child Welfare Outcomes Report to meet requirements of Section 203(a) of the Adoption and Safe Families Act of 1997 (ASFA). ASFA created Section 479A of the Social Security Act (the Act) to require HHS to issue an annual report that assesses state performance in operating child protection and child welfare programs under Titles IV-B and IV-E of the Act.

<sup>5</sup> Child Welfare Outcomes 2019: Report to Congress, Executive Summary, pg. IV,

<https://www.acf.hhs.gov/sites/default/files/documents/cb/cwo-report-to-congress-2019.pdf>,

- Reducing placements of young children in group homes or institutions.

The 2019 Report revealed that the national median performance over time on achieving timely reunifications<sup>6</sup> has declined consistently over the preceding five years, with a 7.1-percent decline in performance from 2015-2019. The Report also found that states were more likely to complete adoptions between 12 and 23 months from the child’s entry into foster care.<sup>7</sup> In 2019, Florida was only one of two states, along with Utah, to report that at least ten percent of adoptions occurred in under 12 months.<sup>8</sup>

### *Dependency Process*

Under current law, any person who knows or suspects that a child has been abused, abandoned, or neglected must report such knowledge or suspicion to the Florida Abuse Hotline.<sup>9</sup> The Florida Abuse Hotline<sup>10</sup> receives more than 350,000 child-related calls annually.<sup>11</sup> Calls received are screened to determine if the criteria are met which warrant initiating a protective investigation. Statewide, there are more than 240,000 child protective investigations conducted annually.<sup>12</sup>

When a child protective investigation necessitates the removal of a child from his or her home, a series of dependency court proceedings are triggered and must occur in order to adjudicate the child “dependent” and subsequently place the child in out-of-home care. Main steps in the dependency process include:

- An initial call or report of suspected abuse, abandonment, or neglect to the Florida Abuse Hotline.
- A child protective investigation in response to the abuse hotline report to determine the safety of the child.
- The court issuing a finding that the child is “dependent” and requires removal for his or her safety and welfare.
- Case planning for the parents to address the problems which resulted in the child’s dependency.
- Placement in out-of-home care, if necessary.
- Reunification with the child’s parent or another option to establish permanency, such as adoption.<sup>13</sup>

## The Dependency Court Process

Dependency Proceeding	Description of Process	Controlling Statute
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<sup>6</sup> For the Child Welfare Outcomes Reports, a reunification is considered to be timely if it occurs in less than 12 months from the date of entry into foster care. *Id.* at pg. 44.

<sup>7</sup> *Id.* at 47.

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

<sup>9</sup> S. 39.201(1), F.S.

<sup>10</sup> Department of Children and Families, *Florida Abuse Hotline- Overview*, <https://www2.myflfamilies.com/service-programs/abuse-hotline/overview.shtm>, (last visited Mar. 11, 2023).

<sup>11</sup> Child Welfare Key Indicators Monthly Report, *System Overview*, [https://www2.myflfamilies.com/service-programs/child-welfare/kids/results-oriented-accountability/performanceManagement/docs/KI\\_Monthly\\_Report\\_December%202022.pdf](https://www2.myflfamilies.com/service-programs/child-welfare/kids/results-oriented-accountability/performanceManagement/docs/KI_Monthly_Report_December%202022.pdf) (last visited Mar. 11, 2023).

<sup>12</sup> *Id.*

<sup>13</sup> The state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents accountable for meeting the needs of children. S. 63.022, F.S.

Removal	A child protective investigation determines the child's home is unsafe, and the child is removed.	s. 39.401, F.S.
Shelter Hearing	A shelter hearing occurs within 24 hours after removal. The judge determines whether to keep the child out-of-home.	s. 39.401, F.S.
Petition for Dependency	A petition for dependency occurs within 21 days of the shelter hearing. This petition seeks to find the child dependent.	s. 39.501, F.S.
Arraignment Hearing and Shelter Review	An arraignment and shelter review occurs within 28 days of the shelter hearing. This allows the parent to admit, deny, or consent to the allegations within the petition for dependency and allows the court to review any shelter placement.	s. 39.506, F.S.
Adjudicatory Trial	An adjudicatory trial is held within 30 days of arraignment. The judge determines whether a child is dependent during trial.	s. 39.507, F.S.
Disposition Hearing	If the child is found dependent, disposition occurs within 15 days of arraignment or 30 days of adjudication. The judge reviews the case plan and placement of the child. The judge orders the case plan for the family and the appropriate placement of the child.	s. 39.506, F.S. s. 39.521, F.S.
Postdisposition hearing	The court may change temporary placement at a postdisposition hearing any time after disposition but before the child is residing in the permanent placement approved at a permanency hearing.	s. 39.522, F.S.
Judicial Review Hearings	The court must review the case plan and placement every 6 months, or upon motion of a party.	s. 39.701, F.S.
Petition for Termination of Parental Rights	Once the child has been out-of-home for 12 months, if DCF determines that reunification is no longer a viable goal, termination of parental rights is in the best interest of the child, and other requirements are met, a petition for termination of parental rights is filed.	s. 39.802, F.S. s. 39.8055, F.S. s. 39.806, F.S. s. 39.810, F.S.
Advisory Hearing	This hearing is set as soon as possible after all parties have been served with the petition for termination of parental rights. The hearing allows the parent to admit, deny, or consent to the allegations within the petition for termination of parental rights.	s. 39.808, F.S.
Adjudicatory Hearing	An adjudicatory trial shall be set within 45 days after the advisory hearing. The judge determines whether to terminate parental rights to the child at this trial.	s. 39.809, F.S.

### Permanency

When children are placed in out-of-home care, child welfare agencies must find safe, permanent homes for them as quickly as possible. In most cases, children are reunified with their families upon the parents' completion of a specific case plan. When reunification is not possible, DCF will seek to place a child in a permanent home with relatives or with a possible adoptive family. Florida law requires a permanency hearing to occur no later than 12 months after the child was removed from the home or within 30 days after a court determined that reasonable efforts to return the child to either parent are not required or not possible, whichever occurs first.<sup>14</sup> The purpose of the permanency hearing is for the court to determine when the child will achieve permanency or whether modifying the permanency goal is in the child's best interest.<sup>15</sup> A permanency hearing must be held at least every 12 months for any child who continues to be supervised by DCF or awaits adoption.<sup>16</sup>

The permanency goals under Florida law, listed in order of preference are:

- Reunification;

<sup>14</sup> S. 39.621(1), F.S.

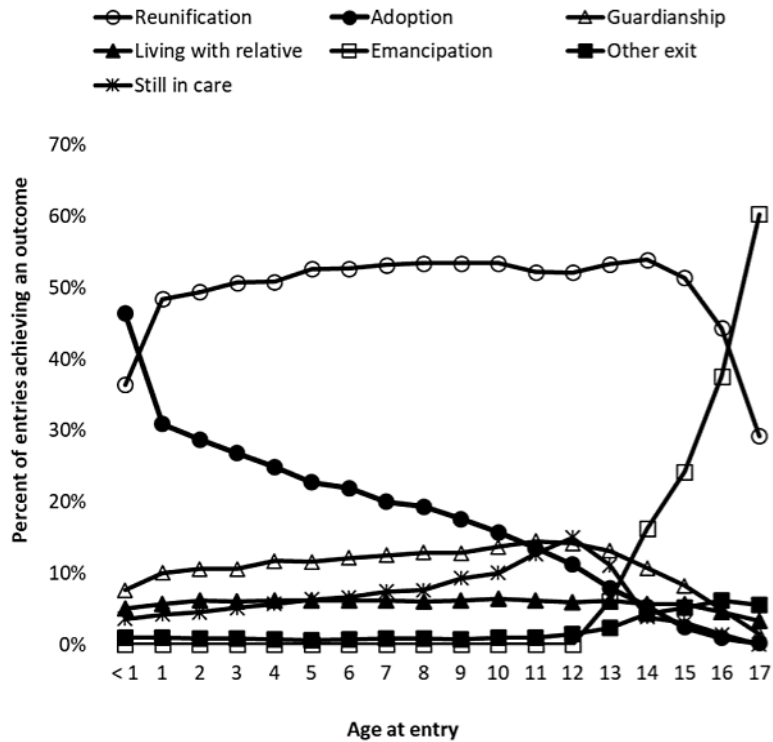
<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

- Adoption, if a petition for termination of parental rights has been or will be filed;
- Permanent guardianship under s. 39.6221, F.S.;
- Permanent placement with a fit and willing relative under 39.6231, F.S.; or
- Placement in another planned permanent living arrangement under s. 39.6241, F.S.<sup>17</sup>

### Permanency Outcomes by Age of Entry

The federal Department of Health and Human Services analyzed national permanency outcomes for children in the foster care system using state reported data.<sup>18</sup> The graph below illustrates the outcomes of children exiting care, broken down by age at entry into the dependency system.



- Reunification is the most likely outcome for children who enter care between ages 1 and 16.
- Children under age 1 who enter care are the only group for whom adoption is the most likely outcome. The likelihood of adoption decreases the older the child is when entering care.
- Guardianship likelihood increases the older the child is when entering care, until age 13.
- Most likely to still be in care after 4 years are those who enter care between ages 9 and 13.
- Emancipation likelihood increases the older the age of entry, for entry between ages 13 and 17.

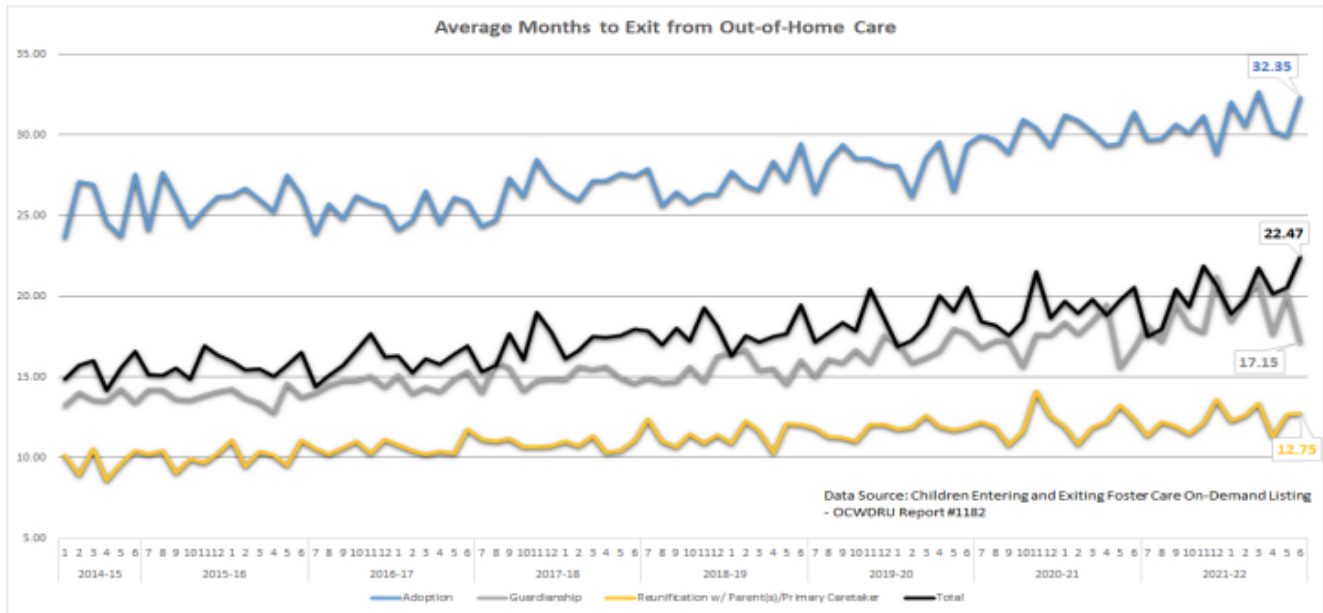
Children who enter foster care between the ages of 9 and 13 who do not reunify within the first two years are more likely to stay in foster care longer, either waiting to be adopted or aging out of care without being adopted. For youth entering at age 16 or older, aging out of care is the most likely outcome. Aging out of care generally means a youth reached the state’s legal age of adulthood without achieving permanency. Additionally, older children who are not reunified within the first year are significantly less likely to be reunified in subsequent years when compared to younger children who enter care and do not reunify in the first year.

### Length of Stay by Permanency Outcome

<sup>17</sup> S. 39.621(3), F.S.

<sup>18</sup> U.S. Department of Health and Human Services, *Administration for Children and Families, ACYF-CB-IM-21-01*, <https://www.acf.hhs.gov/sites/default/files/documents/cb/im2101.pdf> (last visited Mar. 13, 2023).

Overall, the length of stay for children that exited out-of-home care has been steadily increasing and is nearly eight months longer than it was in January 2014.<sup>19</sup> Children who exit to adoption have the longest average length of stay in the child welfare system, currently at 32.35 months.



### Adoption from the Child Welfare System

Adoption is a method of achieving permanency for children in the dependency system who are unable to be reunified with their parents. Research indicates that children generally have better outcomes through adoption than through placement in long-term foster care.<sup>20</sup>

CBCs deliver adoption services for children in the dependency system.<sup>21</sup> For example, CBCs provide pre- and post-adoption services and administer maintenance adoption subsidies, which provide ongoing financial support for children adopted out of the foster care system.

### The Florida Adoption Act

The Florida Adoption Act, ch. 63, F.S., applies to all adoptions, whether private or from the child welfare system, involving the following entities:<sup>22</sup>

- Department of Children and Families (DCF);
- Child-placing agencies licensed by DCF under s. 63.202, F.S.;
- Child-caring agencies registered under s. 409.176, F.S.;
- An attorney licensed to practice in Florida; or
- A child-placing agency licensed in another state which is qualified by DCF to place children in Florida.

Chapter 63, F.S., provides extensive legislative intent for the purpose and process of adoption,<sup>23</sup> and for cooperation between private adoption entities and DCF in matters relating to permanent placement options for children in the care of DCF whose parents wish to place the child up for adoption through a

<sup>19</sup> DCF, *Child Welfare Key Indicators Monthly Report*, Feb. 2023 [https://www2.myflfamilies.com/service-programs/child-welfare/kids/results-oriented-accountability/performanceManagement/docs/KI\\_Monthly\\_Report\\_Jan2023.pdf](https://www2.myflfamilies.com/service-programs/child-welfare/kids/results-oriented-accountability/performanceManagement/docs/KI_Monthly_Report_Jan2023.pdf) (last visited Mar. 9, 2023), p. 39.

<sup>20</sup> Evan B. Donaldson Adoption Institute, *Keeping the Promise: Critical Need for Post-Adoption Services to Enable Children and Families to Succeed*, Oct. 2010, p. 8.

<sup>21</sup> S. 409.986(1), F.S.

<sup>22</sup> S. 63.032(3), F.S.

<sup>23</sup> S. 63.022, F.S.

private adoption plan.<sup>24</sup> While the dependency system uses adoption as a way to achieve permanency for children after the rights of the parents are terminated, ch. 63, F.S., allows a child welfare-involved parent whose parental rights have not been terminated to work with a private adoption entity to choose a permanent home and adoptive parents for his or her child.

### *Intervention by an Adoption Entity into a Dependency Proceeding*

S. 63.082, F.S., allows a private adoption entity to intervene in a ch. 39, F.S., dependency matter. The intervention process allows a child welfare-involved parent to have his or her dependent child removed from the child's current placement and adopted by other adoptive parents chosen by the birth parent or private adoption entity. Alternatively, a child-welfare involved parent could also choose to have his or her child adopted by the child's current foster parents.

The court must provide written notice to the child welfare-involved parent of the right to participate in a private adoption plan at several points during the dependency process, including:

- At the arraignment hearing held pursuant to s. 39.506, F.S.;
- Detailed in the order approving the case plan pursuant to s. 39.603, F.S.; and
- Specified in the order that changes the permanency goal to adoption and termination of parental rights pursuant to s. 39.621, F.S.<sup>25</sup>

For a child already under DCF care and supervision, a birth parent's consent for placement of a minor with a private adoption entity or qualified adoptive parents is valid, binding, and should be enforced by the court.<sup>26</sup> After the parent executes the consent, the process is as follows:

- The court permits the adoption entity to intervene in the dependency case.<sup>27</sup>
- The adoption entity provides the court with a copy of the preliminary home study of the prospective adoptive parents and any other evidence of the suitability of the proposed placement.<sup>28</sup>
- The dependency court holds a hearing to determine if the required documents to intervene have been filed and whether a change in the child's placement is appropriate.<sup>29</sup>
- Upon the court's determination that the prospective adoptive parents are appropriate and that the adoption appears to be in the best interest of the minor child, the court immediately orders transfer of custody of the minor child to the prospective adoptive parents, under the supervision of the adoption entity.<sup>30</sup> The court may establish reasonable requirements for the transfer of custody in the transfer order, including a reasonable period of time to transition final custody to the prospective adoptive parents. DCF administration rule requires the adoption entity to prepare a transition plan in conjunction with the CBC or subcontractor, the current caregiver, and prospective adoptive parents. The transition must respect the child's developmental stage and psychological needs, ensure the child has all of his or her belongings, and allow for a gradual transition from the caregiver's home.<sup>31</sup>
- DCF provides information to the prospective adoptive parents when they receive placement of the dependent child regarding approved parent training classes. The department files an acknowledgment of the parent's receipt of this information with the court.
- The adoption entity keeps the dependency court informed of the status of the adoption proceedings at least every 90 days from the date of the order changing placement of the child until the date the adoption is finalized.<sup>32</sup>

### *Home Studies in Adoption Intervention*

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<sup>24</sup> S. 63.022(5), F.S.

<sup>25</sup> S. 63.082(6)(g), F.S.

<sup>26</sup> S. 63.082(6)(a), F.S.

<sup>27</sup> S. 63.082(6)(b), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> S. 63.082(6)(c), F.S.

<sup>30</sup> S. 63.072(d), F.S.

<sup>31</sup> R. 65C-16.019, F.A.C.

<sup>32</sup> S. 63.082(6)(f), F.S.



The adoption entity intervening in the dependency case must provide the court a copy of the preliminary home study of the prospective adoptive parents and any other evidence of the suitability of the placement. Unless the court believes the home study did not provide adequate information to determine the best interests of the child, the court must deem the home study sufficient as a matter of law.<sup>33</sup>

### *Best Interest Standards*

S. 63.022 F.S., requires the best interests of the child to be the primary guiding factor for a court in an adoption proceeding.<sup>34</sup> S. 63.082(6)(e), F.S., expressly enumerates the factors to be considered in determining the best interest of the child in an adoption intervention. To determine whether the child's best interests are served by transferring custody to the prospective adoptive parent or private adoption entity selected by the child's parent, the court must consider:

- The permanency offered;
- The established bonded relationship between the child and the current caregiver in any potential adoptive home in which the child has been residing;
- The stability of the potential adoptive home in which the child has been residing as well as the desirability of maintaining continuity of placement;
- The importance of maintaining sibling relationships, if possible;
- The reasonable preferences and wishes of the child, if the court deems the child to be of sufficient maturity, understanding, and experience to express a preference;
- Whether a petition for termination of parental rights has been filed pursuant to s. [39.806\(1\)\(f\)](#), (g), or (h);
- What is best for the child; and
- The right of the parent to determine an appropriate placement for the child.

### Placement Transitions

While it is important to minimize the number of placement transitions in a child's case, a change in placement may be necessary in some situations, like when a child is being adopted by a family other than the one with whom the child is currently living. However, poorly executed or improperly timed transitions of even necessary placement changes may adversely affect a child's healthy development and capacity to attach to others.<sup>35</sup> Additionally, visitation with a future caregiver does not establish the same bond that develops with a caregiver who provides day-to-day care.<sup>36</sup>

Once a child establishes an attachment to a caregiver such that the caregiver becomes the child's psychological parent, transitioning to another caregiver's home to another should occur in a way that is as emotionally protective to reduce placement change trauma.<sup>37</sup> One approach to accomplishing this is placement transition planning. Placement transition planning may be used for any move from one caregiver to another. Placement transition planning and visitation should be tailored to the individual child's circumstances, and consideration must be given to certain factors, including the child's age and level of attachment to the current caregiver.

Special consideration should be given to transitioning infants and toddlers who are removed from their placement during developmental phases that may be adverse to such change. Given an infant or toddler's lack of verbal skills and ability to express concerns and understand what is happening to

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<sup>33</sup> S. 63.082(6)(b), F.S.

<sup>34</sup> S. 63.022(2), F.S.

<sup>35</sup> Vogler, P., Crivello, G., & Woodhead, M., *Early Childhood Transitions Research: A Review of Concepts, Theory, and Practice*, <https://files.eric.ed.gov/fulltext/ED522697.pdf> (last visited Mar. 18, 2023).

<sup>36</sup> See Segal, J., Glenn, M., & Robinson, L., *What is Secure Attachment and Bonding?*, <https://www.helpguide.org/articles/parenting-family/what-is-secure-attachment-and-bonding.htm> (last visited Mar. 18, 2023).

<sup>37</sup> Hudson et al., *Healthy Beginnings, Healthy Futures: A Judges Guide*, ABA Center on Children and the Law, National Council of Juvenile and Family Court Judges, & Zero to Three National Policy Center, 2009, [https://www.americanbar.org/content/dam/aba/administrative/child\\_law/healthy\\_beginnings.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/child_law/healthy_beginnings.authcheckdam.pdf) (last visited Mar. 18, 2023).



them, special care and attention must be implemented for proceedings involving young children.<sup>38</sup> As such, transitions are of special concern given that the fundamental task in early childhood is the formation of attachment. Poorly-implemented transitions may inhibit a child's ability to form attachments and create necessary bonds.

Research indicates that the earliest bonds formed by children with their caregivers have a tremendous impact that continues throughout life.<sup>39</sup> Typical attachment stages include:

- 0-8 weeks: The stage for developing secure attachment is being set. During this pre-attachment period the mother will 'warm up' the emotional bond with her sensitive and consistent responses. The infant may distinguish between caregivers but in general displays little preference. Baby separation anxiety in relation to the mother has not kicked in yet.
- 2-6 months: The child starts to distinguish more clearly between known and unknown figures. The child starts to get a sense of how his or her mother will react when they are anxious or distressed.
- 6-11 months: The baby has developed a clear understanding as to who his or her primary caregiver is.
- 18-24 months: The child's attachment behavior is very clear. The child is very conscious of good strategies for reaching the desired proximity of his or her caregiver.<sup>40</sup>

### *Objection to Placement Changes in Dependency System*

S. 39.522, F.S., allows any party to a dependency case<sup>41</sup> or the current caregiver, rather than just the parents or other legal custodians, to object to a need for a change of placement at postdisposition. If a party or current caregiver objects to a change of placement, the court is required to hear from all parties as to why a change of placement is not in the child's best interests. When determining whether a change of legal custody or placement is in the child's best interests, the court must consider the best interest factors in s. 39.01375, F.S., and the report filed by the multidisciplinary team (MDT), if applicable, unless the change of custody or placement is made pursuant to an adoption intervention under s. 63.082(6), F.S. The court must consider the priority of placements established under s. 39.4021, F.S.<sup>42</sup>, when making a decision regarding a child in out-of-home care.

The court must conduct a hearing if a long-term caregiver objects to DCF moving a child from the caregiver's home. There is a rebuttable presumption that it is in the child's best interest to remain permanently in the current placement if:

- The child has been in the same safe and stable placement for 9 consecutive months or more.
- Reunification is not a permanency option for the child.
- The caregiver is able, willing, and eligible for consideration as an adoptive parent or permanent custodian for the child.
- The caregiver is not requesting the change in physical placement.
- The change in physical placement being sought is not to reunify the child with a parent or sibling or transition the child to a relative caregiver.

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<sup>38</sup> Child Advocates, *Smooth Transitions for Young Children in Foster Care*, <https://www.childadvocates.net/smooth-transitions-young-children-foster-care/> (last visited Mar. 18, 2023).

<sup>39</sup> Winson, R. & Chicot, R. *The Importance of Early Bonding on the Long-Term Mental Health and Resilience of Children*. (2016 Feb. 24). London J. Prim. Care. 2016; 8(1): 12-14. doi: 10.1080/17571472.2015.1133012.

<sup>40</sup> Positive Parenting Ally, *Psychology Attachment Behavior*, <https://www.positive-parenting-ally.com/psychology-attachment.html> (last visited Mar. 18, 2023).

<sup>41</sup> S. 39.01, F.S., defines "party" as the parent or parents of the child, the petitioner, the department, the guardian ad litem or the representative of the guardian ad litem program when the program has been appointed, and the child.

<sup>42</sup> The priority of placements is:

- 1. Nonoffending parent.
- 2. Relative caregiver.
- 3. Adoptive parent of the child's sibling, when the department or community-based care lead agency is aware of such sibling.
- 4. Fictive kin with a close existing relationship to the child.
- 5. Nonrelative caregiver that does not have an existing relationship with the child.
- 6. Licensed foster care.
- 7. Group or congregate care.

If DCF or a CBC is considering moving a child from a placement where the caregiver meets the criteria for the rebuttable presumption, it must notify the caregiver of the intent to move the child and convene an MDT staffing at least 21 days before the intended move, unless an emergency situation exists. If the MDT participants do not reach a unanimous consensus, DCF's official position must be provided to all parties. The caregiver must notify the court and DCF of its objection to DCF's official position and the intent to request an evidentiary hearing within 5 days of receiving notice of the placement move. After receiving the caregiver's objection, neither DCF nor the CBC may move the child unless there is an emergency situation, defined as there being an imminent risk to the health or safety of the child, other children, or others in the home or facility if the child remains in the placement.

The court must conduct an initial case status hearing within 7 days of receiving written notice of the caregiver's objection to moving the child. At the status hearing, the court must:

- Grant party status to the caregiver for the limited purpose of filing a motion for a hearing on the objection and presenting evidence.
- Appoint an attorney for child who is the subject of the custody proceeding.
- Advise the caregiver of the right to counsel for the evidentiary hearing.
- Appoint a court-selected neutral and independent licensed professional with expertise in the science and research of child-parent bonding.

### **Effect of Proposed Changes**

HB 1377 amends s. 63.082, F.S., related to interventions by a private adoption entity in a dependency proceeding. The bill limits a parent's ability to execute a consent to adopt through a private entity later in a dependency case. The bill allows a court greater discretion regarding the ability of a private adoption entity to intervene and greater discretion to accept and assign weight to a home study for prospective adoptive parents. The bill also requires a court to give greater consideration to keeping a child in his or her current placement with their longer-term caregiver, under certain conditions. Further, the bill requires greater consideration of the child's needs in a transition if custody of the child is transferred to the prospective adoptive parents or a private adoption entity. Lastly, the bill requires a national study of adoption intervention to be conducted by OPPAGA and a report to be created and presented by January 1, 2024.

The bill invalidates any adoption consent executed by a parent after a petition for the termination of parental rights is filed against that parent or that parent's rights are terminated by the dependency court under chapter 39. As such, a parent in the midst of a termination of his or her parental rights may not dictate who the child is adopted to.

The bill gives the court the authority to determine whether to allow for the intervention of a private adoption agency, rather than requiring such intervention. The bill revises the requirements for the hearing on the motion to intervene and requires the court to determine whether:

- The fee and compensation structure of the adoption entity creates any undue financial incentive for the parent to consent or for the adoption entity to intervene, and
- The preliminary home study is adequate and provides the information required to make a best interests determination.

As such, the bill gives the court increased ability for transparency in the dependency adoption process. This will prevent children from being plucked out of the dependency system and adopted out to the highest bidder. Further, this will keep the emphasis on the child's well-being and, hopefully, limit the disruption to the child's everyday life.

Under the bill, the hearing on the motion to intervene is an evidentiary hearing.

### Home Study

The bill removes current law that limits the court's ability to consider whether a home study submitted by the adoption entity is sufficient. Instead, the bill requires the court to determine that the home study

is adequate and provides the necessary information by which the court should conduct its analysis of the validity and reliability of the offered home study.

### Best Interest Factors

In determining whether the change of placement to the potential adoptive parents is in the best interests of the child, the court must consider and weigh the following factors:

- The permanency offered by *each placement*,
- The bond with the *current caregiver*,
- The stability of the current placement if it is a potential adoptive home and the desirability of maintaining that placement.

### Rebuttable Presumption of Remaining with Current Caregiver Under Certain Conditions

The bill includes findings and intent language regarding minimizing the trauma of a child in the child welfare system and to reduce the disruption of stable, potential adoptive placements. It establishes a rebuttable presumption that it is in the child's best interest to remain in the current placement rather than be subject to transition to a new home under an adoption intervention; however, the following criteria must be met:

- The child has been in his or her current placement for at least 9 continuous months or 15 of the last 24 months immediately preceding the filing of the motion to intervene, and
- The current placement is a prospective adoptive placement.

If the above criteria are met, the court must grant party status to the current caregiver who is a prospective adoptive placement for the limited purpose of filing motions and presenting evidence pursuant to this subsection. This limited party status expires upon the issuance of a final order on the motion to intervene and the change of placement of the child.

To rebut the presumption, the intervening party must prove by competent and substantial evidence that it is in the best interest of the child to disrupt the current stable prospective adoptive placement based on the best interest factors discussed above, as well as any others considered relevant by the court.

### Transition Plan

The bill requires any transfer of custody to the prospective adoptive parents to be completed in accord with a transition plan developed by DCF in cooperation with the child's current caregiver and the prospective adoptive parents. The purpose of the plan is to minimize the trauma of removal from the current placement.

### Study of Adoption Intervention by Private Adoption Entities by OPPAGA

The bill requires the Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) to review the state processes that allow private adoption entities to intervene or participate in dependency cases. The study must review, at a minimum:

- Processes and requirements for intervention or participation of private adoption entities in dependency cases;
- Any statutory fee limits for intervention adoption services, including attorney fees, recruitment fees, marketing fees, matching fees, and counseling fees; and
- Any regulations on marketing and client recruitment methods or strategies.

DCF must give OPPAGA names and contact information for licensed child-caring agencies and child-placing agencies by July 15, 2023. By October 1, 2023, these organizations must provide OPPAGA with the data required under the bill. OPPAGA must submit the analysis and report to the President of the Senate and the Speaker of the House of Representatives by January 1, 2024.

The bill has an effective date of July 1, 2023.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 63.082, F.S., relating to execution of consent to adoption or affidavit of nonpaternity; family social and medical history; revocation of consent.

**Section 2:** Creates an unnumbered section of law.

**Section 3:** Provides an effective date of July 1, 2023.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

Under the bill, DCF, through its CBCs, will need to prepare the transition plans for a child who is being adopted and is transitioning from their current placement. Under current DCF rule, these plans are prepared by the private adoption entity, though the CBC remains involved in the process. It is estimated that there will be no significant fiscal impact to the DCF for this new requirement.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Private adoption entities involved in interventions may conduct fewer interventions, if parents who would otherwise have executed a consent after the filing of a termination of parental rights petition do not choose to execute consents for adoption earlier in the process.

Some caregivers from whom children are placed with a different adoptive families under the current statute will have an opportunity to be a party to the adoption intervention case, which may require the involvement of counsel.

CBCs will have additional responsibilities for the creation of transition plans for children transitioning to new placements under the bill.

**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:**

The department has sufficient rule-making authority to implement the provisions of the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**