

**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 Rules

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BILL: CS/SB 1440

INTRODUCER: Rules Committee and Senator Book

SUBJECT: Court Proceedings

DATE: April 19, 2023

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Tuszynski</u>	<u>Cox</u>	<u>CF</u>	<b>Favorable</b>
3.	<u>Davis</u>	<u>Twogood</u>	<u>RC</u>	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1440 amends several statutes to authorize the use of audio or audio-video communication technology in dependency and delinquency proceedings. This technology allows people to appear in proceedings remotely, rather than in person. When the parties agree or a court authorizes someone to appear remotely, he or she must receive instructions for the use of the technology.

The bill also requires each party in a dependency case to provide a primary e-mail address that, in addition to a permanent mailing address, will be used by the court for notice purposes.

The bill is based on procedures for using audio or audio-video technology that were used by the state court system during the height of the COVID-19 pandemic.

The bill takes effect upon becoming a law.

**II. Present Situation:**

To help ensure public safety during the COVID-19 pandemic of 2020, state courts limited in-person appearances to essential matters before the trial courts. The courts authorized many court

proceedings to be conducted remotely, rather than in person, which allowed attorneys and parties to appear by using video or audio technology.<sup>1</sup>

A workgroup<sup>2</sup> was established by the Florida Supreme Court to study whether certain remote proceedings, which produced effective results, should continue after the COVID-19 epidemic. The workgroup concluded “that permanent, broader authorization for remote proceedings was warranted” due to the positive results that were observed during the pandemic. Additional court-appointed committees having subject matter expertise made recommendations to the Court to amend court rules and authorize remote proceedings. The Court adopted the proposed amendments on July 14, 2022.<sup>3</sup>

### **Florida’s Child Welfare System - Generally**

Chapter 39, F.S., creates Florida’s dependency system that is charged with protecting the welfare of children; this system is often referred to as the “child welfare system.” The DCF Office of Child and Family Well-Being works in partnership with local communities and the courts to ensure the safety, timely permanency, and well-being of children.

Child welfare services are directed toward the prevention of abandonment,<sup>4</sup> abuse,<sup>5</sup> and neglect<sup>6</sup> of children.<sup>7</sup> The DCF practice model is based on the safety of the child within his or her home, using in-home services such as parenting coaching and counseling to maintain and strengthen that child’s natural supports in his or her home environment. Such services are coordinated by the DCF-contracted community-based care lead agencies (CBC).<sup>8</sup> The DCF remains responsible

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<sup>1</sup> The Supreme Court of Florida, *In Re: Amendment to Florida Rules of Juvenile Procedure, Florida Family Law Rules of Procedure, and Florida Supreme Court Approved Family Law Forms* (July 14, 2022), available at <https://casetext.com/case/in-re-amendments-to-fla-rules-of-juvenile-procedure-9151> (last visited on April 1, 2023).

<sup>2</sup> The workgroup was officially named the “Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19.”

<sup>3</sup> The Supreme Court of Florida, *supra* note 1.

<sup>4</sup> Section 39.01(1), F.S., defined to mean a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the 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, or both. For purposes of this subsection, “establish or maintain a substantial and 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 or maintain a substantial and positive relationship with a child

<sup>5</sup> Section 39.01(2), F.S., defined to mean any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired. Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

<sup>6</sup> *See s. 39.01(50)*, F.S., defined, in part, to mean when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child’s physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired.

<sup>7</sup> Section 39.001(8), F.S.

<sup>8</sup> Section 409.986(1), F.S.; *See generally* The Department of Children and Families (The DCF), *About Community-Based Care*, available at <https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/about-community-based-care> (last viewed March 29, 2023).

for a number of child welfare functions, including operating the central abuse hotline, performing child protective investigations, and providing children's legal services.<sup>9</sup> Ultimately, the DCF is responsible for program oversight and the overall performance of the child welfare system.<sup>10</sup>

### ***Department of Children and Families***

The DCF's statutory mission is to work in partnership with local communities to protect the vulnerable, promote strong and economically self-sufficient families, and advance personal and family recovery and resiliency.<sup>11</sup> The DCF must develop a strategic plan to fulfill this mission and establish measurable goals, objectives, performance standards, and quality assurance requirements to ensure the DCF is accountable to taxpayers.<sup>12</sup>

The DCF is required to provide services relating to:

- Adult protection.
- Child care regulation.
- Child welfare.
- Domestic violence.
- Economic self-sufficiency.
- Homelessness.
- Mental health.
- Refugees.
- Substance abuse.<sup>13</sup>

The DCF must also deliver services by contract through private providers to the extent allowed by law and funding.<sup>14</sup> These private providers include CBCs delivering child welfare services and managing entities (MEs) delivering behavioral health services.<sup>15</sup>

### ***Dependency Case Process***

When child welfare necessitates that the DCF remove a child from the home to ensure his or her safety, a series of dependency court proceedings must occur to place that child in an out-of-home placement, adjudicate the child dependent, and, if necessary, terminate parental rights and free that child for adoption. Steps in the dependency process usually include:

- A report to the Florida Abuse Hotline.
- A child protective investigation to determine the safety of the child.
- The court finding the child dependent.
- Case planning for the parents to address the problems resulting in their child's dependency.
- Placement in out-of-home care, if necessary.

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<sup>9</sup> Office of Program Policy Analysis and Government Accountability, *Child Welfare System Performance Mixed in First Year of Statewide Community-Based Care*, Report 06-50, June 2006, p. 2, available at <https://oppaga.fl.gov/Documents/Reports/06-50.pdf> (last viewed March 29, 2023).

<sup>10</sup> *Id.*

<sup>11</sup> Section 20.19(1)(a), F.S.

<sup>12</sup> Section 20.19(1)(b), F.S.

<sup>13</sup> Section 20.19(4)(a), F.S.,

<sup>14</sup> Section 20.19(1)(c), F.S.

<sup>15</sup> Part V of ch. 409, F.S., and s. 394.9082, F.S.

- Reunification with the child’s parent or another option to establish permanency, such as adoption after termination of parental rights.<sup>16</sup>

Dependency Proceeding	Description of Process	Controlling Statute(s)
Removal	The DCF may remove a child from his or her home after a protective investigation determines that conditions in that child’s home are unsafe and a safety plan cannot make the conditions safe.	s. 39.401, F.S.
Shelter Hearing	The court must hold a shelter hearing within 24 hours after removal. At this hearing, the judge determines whether there was probable cause to remove the child and whether to keep the child out-of-home.	s. 39.401, F.S.
Petition for Dependency	The DCF must file a petition for dependency 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	The court must hold an arraignment and shelter review within 28 days of the shelter hearing. The hearing allows the parent to admit, deny, or consent to the allegations within the petition for dependency and allows the court to review any previous shelter placement.	s. 39.506, F.S.
Adjudicatory Trial	The court must hold an adjudicatory trial within 30 days of arraignment. The judge determines whether a child is dependent during this trial.	s. 39.507, F.S.
Disposition Hearing	The court must hold a disposition hearing within 15 days of arraignment (if the parents admit or consent to adjudication) or 30 days of adjudication if a court finds the child dependent. At this hearing, the judge reviews the case plan and placement of the child and orders the case plan and the appropriate placement of the child.	s. 39.506, F.S. s. 39.521, F.S.
Postdisposition Change of Custody Hearing	The court may change the temporary out-of-home placement of a child 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 at least every 6 months, or upon motion of a party.	s. 39.701, F.S.
Petition for Termination of Parental Rights	If the DCF determines that reunification is no longer a viable goal and 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.

<sup>16</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. Section 63.022, F.S.

Dependency Proceeding	Description of Process	Controlling Statute(s)
Advisory Hearing	The court must hold an advisory hearing 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	The court must hold an adjudicatory trial 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.

Chapter 92, F.S., governs witness, records, and documents. Chapter 985, F.S., governs juvenile justice proceedings. These chapters have not been updated to permit the use of audio-video technology or provide e-mail addresses for receiving correspondence from the courts.

**III. Effect of Proposed Changes:**

The bill amends several statutes in ch. 39, F.S., to authorize the use of audio or audio-video communication technology when agreed to by the parties or at the discretion of the court. When audio or audio-video communication is permitted, instructions for its use must also be provided. The bill requires parties to provide a primary e-mail address in addition to a permanent mailing address for the court to use in contacting the party. However, the court may excuse a party from this requirement to provide an e-mail address if good cause is shown, but must excuse the party from providing the e-mail address if the party is incarcerated and is not represented by an attorney.

**Section 1 – Section 39.013(13), F.S., - Dependency Jurisdiction and Procedures**

Section 39.013, F.S., sets forth jurisdiction requirements and the general procedures that govern dependency cases. A new subsection is added which specifies that an individual’s appearance or attendance at dependency proceedings may be made through physical appearance or attendance or, by agreement of the parties or at the court’s discretion, through audio or audio-video communication technology, unless the court determines that it is inconsistent with the U. S. Constitution, the State Constitution, a statute, a rule of court, or a court order.

**Section 2 – Section 39.0131, F. S. – Permanent Mailing and Primary E-mail Address Designation**

Section 39.0131, F.S., requires each party in a dependency action, upon first appearance before the court, to provide a permanent mailing address which will be used for notice purposes. New language is added that also requires a party to provide a primary e-mail address. However, the court *may* excuse a party from providing an e-mail address for good cause shown. The court *must* excuse a party from providing an e-mail address if he or she is incarcerated and not represented by an attorney.

**Section 3 – Section 39.402(16), F.S., Shelter Placements**

Section 39.402, F.S., sets forth the procedures that must be followed when a child is being placed into a shelter. “Shelter” means a placement with a relative or a nonrelative, or in a licensed home or facility, for the temporary care of a child who is alleged to be or who has been found to be dependent.<sup>17</sup> Section 39.402(16), F.S., states that at the conclusion of a shelter hearing, the court must notify all parties in writing of the next scheduled hearing to review the shelter placement. This provision is amended to provide that, if the next hearing will be held using audio or audio-video communication technology, the written notice must include all relevant information that is needed to attend the proceeding.

**Section 4 – Section 39.502(1), (4), (5), (18), and (19), F.S. – Notice, Process, and Service to Parents in Dependency Matters*****Section 39.502(1), F.S.***

Section 39.502, F.S., outlines the requirements for providing notice, process, and service of dependency petitions.<sup>18</sup> Unless parental rights have been terminated, parents must be notified of all proceedings or hearings involving their child. This statute is amended to authorize a party to consent to service or notice by e-mail by giving a primary e-mail address to the clerk of court.

***Section 39.502(4), F.S.***

This statute is amended to provide that, when a summons is issued notifying the person to appear for a hearing, if audio or audio-video communication technology is applicable, the summons must also include instructions for appearing at the hearing through the use of the audio-video communication technology.

***Section 39.502(5), F.S.***

This subsection is amended to allow a party to consent to service by e-mail by providing a primary e-mail address to the clerk of the court.

***Section 39.502(18), F.S.***

At the conclusion of any hearing, the court must provide the parent or legal custodian of the child a written notice containing the date of the next scheduled hearing. This provision is amended to provide that, if the hearing is going to be conducted through audio or audio-video communication technology, the instructions for an appearance must also be included.

***Section 39.502(19), F.S.***

The attorney for the Department of Children and Families is required to provide oral or written notice to a relative who requests notification of the date, time, and location of the proceeding and hearings. This statute is amended to state that, if applicable, the attorney must provide relatives with instructions for appearance through audio or audio-video communication technology.

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<sup>17</sup> Section 39.01(78), F.S.

<sup>18</sup> A dependency petition is filed by the Department of Children and Families to initiate proceedings to determine whether a child is dependent. Section 39.501, F.S.

**Section 5 – Section 39.506(3) and (4), F.S. – Arraignment Hearings**

Section 39.506(3), F.S., states that, if a person served with notice does not “personally” appear at an arraignment hearing, he or she consents to a dependency adjudication. The document containing the notice to respond or appear must contain language stating that their failure to “personally” appear at the arraignment hearing constitutes consent to the adjudication of the child or children as dependent and may ultimately result in the loss of custody of the child or children. If a person appears for an arraignment hearing and the court orders that person to “personally” appear at the adjudicatory hearing for dependency, then the failure to appear for the adjudicatory hearing constitutes consent to a dependency adjudication.

This provision is amended to delete references to “personally” appear and permits an appearance either physically or through audio-video communication technology. If the audio-video communication technology is used, the instructions for using that technology must be provided.

Section 39.506(4), F.S., is amended to require each party at an arraignment hearing to provide the court with a permanent mailing address. This subsection is amended to require each party to also provide a primary e-mail address. However, the court may, for good cause shown, excuse a person from providing a primary e-mail address if he or she is incarcerated and not represented by an attorney.

**Section 6 – Section 39.521, F.S. – Disposition Hearings and Powers of Disposition**

A disposition hearing is a hearing in which the court determines which protection services are the most appropriate for a child as well as placement of the child in dependency cases.<sup>19</sup> The court must include in its written order of disposition several findings, including the date, time, and location of the next scheduled review hearing. The statute is amended to provide that if the next hearing is conducted by the use of audio or audio-video communications technology, instructions for an appearance must accompany the written order of disposition.

**Section 7 – Section 39.801(3), F.S. - Termination of Parental Rights; Notice and Service of Notice**

Before a court may terminate parental rights, notice of the date, time, and place of the advisory hearing must be served upon certain persons listed in the statute, including the parents and legal custodians of the child. The statute is amended to state that, if it is applicable, instructions for appearance through audio-video communications technology, must also be included.

Additionally, the statute is amended to permit a party to consent to service or notice by e-mail by providing a primary e-mail address to the clerk of the court. If a person served with notice fails to appear at the advisory hearing, either physically or, by agreement of the parties or at the discretion of the court, through audio-video communications technology, that failure to appear constitutes consent for termination of parental rights. If the court permits an appearance through the use of audio-video communication technology, instructions for that appearance must be included.

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<sup>19</sup> Section 39.01(24), F.S.

The existing references in the statute to someone “personally” appearing are removed and new language is supplied authorizing physical appearance or an appearance through audio-video communication technology.

**Section 8 – Section 92.54, F.S. – Victim and Witness Testimony Taken Outside a Courtroom and Shown by Closed-Circuit Television**

Section 92.54, F.S., authorizes a court to order the testimony of a victim or witness under the age of 18, or who has an intellectual disability, to be taken outside of the courtroom and shown by closed-circuit television. The statute is amended to also permit the testimony to be shown by means of audio-video communication technology.

**Section 9 – Section 985.319, F.S., Process and Service**

Chapter 985, F.S., contains the laws governing juvenile justice. Proceedings that seeks to find that a child has committed a delinquent act or violated a law are initiated by the filing of a petition for delinquency by the state attorney. After the petition is filed, the clerk’s office issues a summons that requires the person served to appear for a hearing at a certain time and place. This statute is amended to permit the hearing to be held through the use of audio or audio-video communication technology. If the hearing is held using that technology, the summons must provide instructions on how to attend the hearing.

The bill takes effect upon becoming a law.

**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.

E. Other Constitutional Issues:

None identified.



**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

By allowing individuals to appear remotely through the use of audio or audio-video equipment, there could be a significant savings to people who would otherwise need to take time away from their jobs to appear in court.

**C. Government Sector Impact:**

According to the Office of the State Courts Administrator, the effect on the judicial workload will not be significant because the courts already allow appearances using audio-video communication technology. The actual effect on the court system workload will depend on how many courts ultimately use this technology to allow court appearances, but that effect is not currently known.<sup>20</sup>

Because the data needed to quantify the increase in the workload is not available, the fiscal impact of this legislation cannot be accurately determined.<sup>21</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 39.013, 39.0131, 39.402, 39.502, 39.506, 39.521, 39.801, 92.54, and 985.319 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Rules on April 19, 2023:**

The committee substitute differs from the underlying bill by allowing certain proceedings such as shelter and disposition hearings to take place remotely using *either* audio or audio-video communication technology as agreed to by the parties or at the court's discretion. The technology for arraignment and termination of parental rights hearings is

<sup>20</sup> Office of the State Courts Administrator, *Senate Bill 1440 Judicial Impact Statement* (March 14, 2023)

<http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=31409&yr=2023> (on file with the Senate Committee on Judiciary).

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

not changed and continues to require audio-video technology so that the judge may actually see the parties.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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