

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1571 Juvenile Court Proceedings

**SPONSOR(S):** Judiciary Committee, Silvers and others

**TIED BILLS:** IDEN./SIM. BILLS: SB 1440

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	18 Y, 0 N	Leshko	Hall
2) Judiciary Committee	21 Y, 0 N, As CS	Leshko	Kramer

### SUMMARY ANALYSIS

Following the onset of the COVID-19 pandemic in 2020, the Florida Supreme Court (FSC) established the Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19 (Workgroup) to, among other things, identify whether certain court proceedings could continue to be conducted remotely even after the threat posed by COVID-19 dissipated. The Workgroup determined that “permanent, broader authorization for remote proceedings was warranted based on the positive outcomes and efficiencies observed during the pandemic.” The FSC authorized the Workgroup and then the Steering Committee on Families and Children to propose necessary rule amendments to implement this recommendation.

In July 2022, the FSC amended the Florida Rules of Juvenile Procedure in response to the recommendations of the Steering Committee to provide permanent authorization for the remote conduct of certain dependency hearings. The FSC made various amendments to the Florida Rules of Juvenile Procedure that generally expand the scope of hearings that may be held remotely via communication technology or in a hybrid format and to require that notices and summons contain the appropriate instructions regarding how to attend a hearing if attendance will be via communication technology.

All dependency and termination of parental rights proceedings are governed by the Florida Rules of Juvenile Procedure. Current law generally requires parties to appear in person at various juvenile court hearings and proceedings and allows notice to be provided by way of a party’s permanent mailing address.

CS/HB 1571 amends various sections of law related to juvenile court proceedings to bring Florida statutes in line with the recently amended Rules of Juvenile Procedure, including by:

- Authorizing persons to appear at or attend dependency proceedings through audio or audio-video communication technology;
- Requiring parties to provide their primary e-mail address to the court for notice purposes;
- Allowing parties to consent to service or notice by e-mail;
- Requiring notices and summons to include instructions for parties to attend hearings through audio or audio-video communication technology when applicable;
- Requiring notice that failure to appear at hearings either in person or through audio-video communication technology constitutes consent to adjudicating a child as dependent or the termination of parental rights;
- Allowing for 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 means of audio-video communication technology; and
- Requiring that for a juvenile delinquency proceeding, a summons must provide instructions on how to attend the hearing if it is to be held through audio or audio-video communication technology.

The bill may have an indeterminate negative fiscal impact on state government based on the need for technology updates required to provide increased use of audio and audio-video communications for certain court hearings.

Provides an effective date of upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Florida Supreme Court Amendments to the Florida Rules of Juvenile Procedure

Following the onset of the COVID-19 pandemic in 2020, the Florida Supreme Court (FSC) established the Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19 (Workgroup) to, among other things, identify whether certain court proceedings could continue to be conducted remotely even after the threat posed by COVID-19 dissipated.<sup>1</sup>

The Workgroup determined that “permanent, broader authorization for remote proceedings was warranted based on the positive outcomes and efficiencies observed during the pandemic.” The FSC authorized the Workgroup and then the Steering Committee on Families and Children to propose necessary rule amendments to implement this recommendation. The Steering Committee was further directed to seek input from the Juvenile Court Rules Committee and the Family Law Rules Committee of the Florida Bar.<sup>2</sup>

In July 2022, the FSC amended the Florida Rules of Juvenile Procedure in response to the recommendations of the Steering Committee to provide permanent authorization for the remote conduct of certain dependency hearings.<sup>3</sup>

The FSC created Rule 8.002 to define the terms “appear or appearance,” “audio communication technology,” “audio-video communication technology,” “communication technology,” “hybrid proceeding or conducted in a hybrid format,” “in person proceeding or conducted in person,” “location or place,” “present or presence,” and “remote proceeding or conducted remotely.” The definition of “present or presence” is the act of appearing before the court in person or via communication technology.

The FSC also amended Rule 8.255, concerning general provisions for hearings, to provide that:

- Evidentiary proceedings must be conducted in person unless the parties agree that a proceeding should be conducted remotely or conducted in a hybrid format, or the court orders it upon good cause shown.
- All other proceedings may be conducted remotely or in a hybrid format upon agreement of the parties or by court order unless good cause is otherwise shown.
- The court may consider the following factors in determining whether good cause exists: the consent of the parties, the time-sensitivity of the matter, the nature of the relief sought, the resources of the parties, the anticipated duration of the testimony, the need and ability to review and identify documents during testimony, the probative value of the testimony, the geographic location of the witnesses, the cost and inconvenience in requiring the physical presence of the witnesses, the need for confrontation of the witnesses, the need to observe the demeanor of the witnesses, the potential for unfair surprise, and any other matter relevant to the request.
- A party who participates in a hearing conducted remotely or conducted in a hybrid format must be given the opportunity to privately and confidentially communicate with counsel during the proceedings.
- Typically, a witness must be physically present when testifying at a hearing or a trial, but the court may permit the witness to testify by communication technology<sup>4</sup> when the proceeding is conducted remotely, in a hybrid fashion, or as otherwise permitted.<sup>5</sup>

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<sup>1</sup> In re: Amends. to Fla. Rules of Juv. Proc., Fla. Fam. L. Rules of Proc., & Fla. Supreme Ct. Approved Fam. L. Forms, No. SC22-1, 2022 WL 2721400, at 1 (Fla. July 14, 2022).

<sup>2</sup> *Id.*

<sup>3</sup> *Supra* note 1.

<sup>4</sup> “Communication technology” includes both audio communication technology and audio-video communication technology.

<sup>5</sup> *Supra* note 1.

The FSC made additional amendments to the Florida Rules of Juvenile Procedure that generally expand the scope of hearings that may be held remotely via communication technology or in a hybrid format and to require that notices and summons contain the appropriate instructions regarding how to attend a hearing if attendance will be via communication technology.

### Procedures for Dependency Proceedings

Section 39.013, F.S., establishes procedures for conducting dependency proceedings. Those procedures provide that all dependency hearings must be conducted according to the Florida Rules of Juvenile Procedure.<sup>6</sup> This section is currently silent on the specific format a court may use to conduct a dependency hearing, whether in person, through audio-video communication technology, or through audio communication technology.

#### *Permanent mailing address designation*

Section 39.0131, F.S., provides that each party to a dependency proceeding must provide the court a permanent mailing address, which is used by the court and the petitioner for notice purposes unless and until the party notifies the court and petitioner of a new address.

#### *Notice, process, and service*

Section 39.502, F.S., provides that all parents must be notified of all dependency proceedings or hearings unless parental rights have been terminated. Notice in cases involving shelter hearings and hearings resulting from medical emergencies must be delivered in a format that is most likely to result in actual notice to the parents. In other dependency proceedings, the clerk issues a summons to appear for a hearing, which must be served on all parties other than the petitioner.<sup>7</sup> Additionally, at the conclusion of any hearing, the court must provide written notice containing the next scheduled hearing date to the parent or legal custodian of the child.<sup>8</sup> A relative may also request notification of the date, time, and location of all proceedings and hearings, as long as the relative's involvement is not impeding the dependency process or detrimental to the child's wellbeing.<sup>9</sup>

#### *Placement in a shelter*

Section 39.402, F.S., outlines the process for sheltering a child, conducting a shelter hearing,<sup>10</sup> and entering a shelter order. Among other things, it provides that at the conclusion of the shelter hearing, the court shall notify the parties in writing of the next scheduled hearing to review the shelter placement. The hearing must be held no later than 30 days after the child is sheltered, in conjunction with the arraignment hearing.<sup>11</sup>

#### *Arraignment Hearings*

When a child has been sheltered by order of the court, an arraignment hearing must be held no later than 28 days after the shelter hearing.<sup>12</sup> Section 39.506(3), F.S., outlines the process and procedures for arraignment hearings, including:

- That failure of a person served with notice to personally appear at the arraignment hearing constitutes the person's consent to a dependency adjudication.

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<sup>6</sup> S. 39.013(1), F.S.

<sup>7</sup> S. 39.502(1) and (4-9), F.S.

<sup>8</sup> S. 39.502(18), F.S.

<sup>9</sup> S. 39.502(19), F.S.

<sup>10</sup> Rule 8.305 of the Fla. Rules of Juv. Proc. was amended to require communication technology information or a conference line phone number be included in notice provided to the parents or legal custodians so that they may attend a subsequent hearing remotely. *Supra* note 1.

<sup>11</sup> S. 39.402(16), F.S.

<sup>12</sup> S. 39.506(1), F.S.

- If a person appears for the arraignment hearing and the court orders that person to personally appear at the adjudicatory hearing for dependency, stating the date, time, and place of the adjudicatory hearing, then that person's failure to appear for the scheduled adjudicatory hearing constitutes consent to a dependency adjudication.<sup>13</sup>
- At the arraignment hearing, each party shall provide to the court a permanent mailing address. The court shall advise each party that this address will be used by the court and the petitioner for notice purposes unless and until the party notifies the court and the petitioner in writing of a new mailing address.<sup>14</sup>

### *Disposition Hearings*

A disposition hearing<sup>15</sup> is conducted in accordance with s. 39.521, F.S., if the court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing, or if the parents or legal custodians have consented to the finding of dependency or admitted to the allegations in the petition, have failed to appear for the arraignment hearing after proper notice, or have not been located despite a diligent search having been conducted. The procedures detailed in this section provide that the written order of disposition, among other things, must include the date, time, and location of the next scheduled review hearing, which must occur within the earlier of:

- Ninety days after the disposition hearing;
- Ninety days after the court accepts the case plan;
- Six months after the date of the last review hearing; or
- Six months after the date of the child's removal from his or her home, if no review hearing has been held since the child's removal from the home.<sup>16</sup>

### *Procedures, notice, and process relating to termination of parental rights proceedings*

Section 39.801, F.S., establishes procedures for conducting termination of parental rights proceedings, and provides that all such proceedings must be conducted according to the Florida Rules of Juvenile Procedure.<sup>17</sup> Additionally, it provides that before the court may terminate parental rights certain requirements must be met, including, the requirement that notice of the date, time, and place of the advisory hearing for the petition to terminate parental rights and a copy of the petition must be personally served upon:

- The parents;
- The legal custodians;
- A living relative of the child if the parents are dead;
- Any person who has physical custody;
- A grandparent entitled to priority for adoption;
- Certain prospective parents; and
- The guardian ad litem.<sup>18</sup>

If the person served with notice fails to personally appear at the advisory hearing, the failure to personally appear shall constitute consent for termination of parental rights by the person. If a parent appears for the advisory hearing and the court orders that parent to personally appear at the adjudicatory hearing for the petition for termination of parental rights, stating the date, time, and location of said hearing, then failure of that parent to personally appear at the adjudicatory hearing shall constitute consent for termination of parental rights.<sup>19</sup>

### Procedures for Delinquency Proceedings

<sup>13</sup> S. 39.506(3), F.S.

<sup>14</sup> S. 39.506(4), F.S.

<sup>15</sup> Rule 8.304 of the Fla. Rules of Juv. Proc. was amended to require that communication technology information to facilitate remote attendance be included in notice of the next scheduled hearing. *Supra* note 1.

<sup>16</sup> S. 39.521(1)(e)6., F.S.

<sup>17</sup> S. 39.801(1), F.S.

<sup>18</sup> S. 39.801(3)(a), F.S.

<sup>19</sup> S. 39.801(3)(d), F.S.

## *Process and service*

Section 985.319, F.S., provides that for a juvenile delinquency proceeding, a petitioner may request that the clerk issue a summons to the child whom the petitioner is alleging committed a delinquent act or violation of law.<sup>20</sup> A summons must include a copy of the petition attached and shall require the person on whom it is served to appear for a hearing at a time and place specified.<sup>21</sup>

### Victims or Witnesses Under the Age of 18 or Who Have an Intellectual Disability

Section 92.54, F.S., establishes a process by which the trial court may order that the testimony of a victim or witness under the age of 18 or who has an intellectual disability<sup>22</sup> be taken outside of the courtroom and shown by means of closed-circuit television. Testimony is permitted in this form when there is a substantial likelihood that the victim or witness will suffer at least moderate emotional or mental harm if required to testify in open court due to the presence of the defendant.<sup>23</sup>

During the victim's or witness's testimony by closed-circuit television, the court may require the defendant to view the testimony from the courtroom. The court must ensure that the defendant can hear and observe the victim or witness, but that the victim or witness cannot hear or see the defendant.<sup>24</sup>

### **Effect of Proposed Changes**

CS/HB 1571 amends s. 39.013, F.S., to provide that an individual's appearance or attendance at dependency proceedings may be through his or her physical appearance or attendance or, by agreement of the parties or at the discretion of the court, through audio or audio-video communication technology, unless the court determines that appearance through audio or audio-video communication technology is inconsistent with the U.S. Constitution, the State Constitution, a statute, a rule of court, or a court order.

The bill amends s. 39.0131, F.S., to provide that, in addition to providing a permanent mailing address, each party to a dependency proceeding must provide the court with a primary e-mail address, to be used by the court and the petitioner for notice purposes unless and until the party notifies the court and petitioner of a new e-mail address. The bill authorizes a court to excuse a party from providing an e-mail address for good cause. The bill requires a court to excuse an unrepresented incarcerated party from the requirement to provide an e-mail address.

The bill amends s. 39.402, F.S., to provide that if a hearing to review the child's placement will be held through audio or audio-video communication technology, the written notice must include all relevant information needed to attend the proceeding.

The bill amends s. 39.502, F.S., to allow a party to consent to service or notice by e-mail by providing a primary e-mail address to the clerk of court. The bill further provides that if the hearing is to be conducted through audio or audio-video communication technology, the instructions for appearance must also be included in notice of the hearing.

The bill amends s. 39.506, F.S., to provide that if a person appears for an arraignment hearing and the court orders that person to appear, either physically or through audio-video communication technology, at the adjudicatory hearing for dependency, stating the date, time, place, and instructions for appearance through audio-video communication technology at the adjudicatory hearing, then that person's failure to appear for the scheduled adjudicatory hearing constitutes consent to a dependency

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<sup>20</sup> S. 985.319(2), F.S.

<sup>21</sup> S. 985.319(3), F.S.

<sup>22</sup> Rule 8.104 of the Fla. Rules of Juv. Proc., was amended to allow for the testimony of a victim or witness under the age of 16 to be taken outside the courtroom and shown by means of closed-circuit television or by audio-video communication technology. *Supra* note 1.

<sup>23</sup> S. 92.54(1), F.S.

<sup>24</sup> S. 92.54(4), F.S.

adjudication. The bill further provides that, at the arraignment hearing, each party shall provide a primary e-mail address in addition to a permanent mailing address to be used for notice purposes. The bill authorizes a court to excuse a party from providing an e-mail address for good cause. The bill requires a court to excuse an unrepresented incarcerated party from the requirement to provide an e-mail address.

The bill amends s. 39.521, F.S., to require that the written order of disposition, in addition to providing the date, time, and location of the next scheduled review hearing, must include instructions for appearance through audio or audio-video communication technology, if applicable.

The bill amends s. 39.801(3), F.S., to require that before the court may terminate parental rights, it must notify specified persons, including the parents or legal custodians of the child, of the date, time, and place of the advisory hearing, and if applicable, include instructions for appearance through audio-video communication technology. The bill also provides that a party may consent to service or notice by e-mail by providing a primary e-mail address to the clerk of the court. Additionally, the bill provides that if a person served with notice fails to appear physically or through audio-video communication the failure to appear constitutes consent for termination of parental rights by the person. The bill provides that a parent who appears for the advisory hearing and the court orders that person to appear, either physically or through audio-video communication technology, at the adjudicatory hearing, stating the date, time, place, and instructions for appearance through audio-video communication technology at the adjudicatory hearing, then that person's failure to appear for the scheduled adjudicatory hearing constitutes consent to termination of parental rights.

The bill amends s. 92.54, F.S., to provide that, in addition to the use of closed-circuit television, a court may order that the testimony of a victim or witness under the age of 18 or who has an intellectual disability be taken outside of the courtroom and shown by means of audio-video communication technology.

Lastly, the bill amends s. 985.319, F.S., to provide that for a juvenile delinquency proceeding, a summons must provide instructions on how to attend the hearing if it is to be held through audio or audio-video communication technology.

The bill provides an effective date of upon becoming a law.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 39.013, F.S., relating to procedures and jurisdiction; right to counsel.

**Section 2:** Amends s. 39.0131, F.S., relating to permanent mailing address designation.

**Section 3:** Amends s. 39.402, F.S., relating to placement in a shelter.

**Section 4:** Amends s. 39.502, F.S., relating to notice, process, and service.

**Section 5:** Amends s. 39.506, F.S., relating to arraignment hearings.

**Section 6:** Amends s. 39.521, F.S., relating to disposition hearings; powers of disposition.

**Section 7:** Amends s. 39.801, F.S., relating to procedures and jurisdiction; notice; service of process.

**Section 8:** Amends s. 92.54, F.S., relating to use of closed-circuit television in proceedings involving a victim or witness under the age of 18 or who has an intellectual disability.

**Section 9:** Amends s. 985.319, F.S., relating to process and service.

**Section 10:** Provides an effective date of upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on state government based on the need for technology updates required to provide increased use of audio and audio-video communications for certain court hearings.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On April 11, 2023, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Allowed for certain proceedings to take place remotely or in a hybrid format by agreement of the parties.
- Allowed for appearance at certain proceedings by audio communication technology.
- Required the court to excuse an unrepresented incarcerated party from the requirement to provide a primary e-mail address.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.