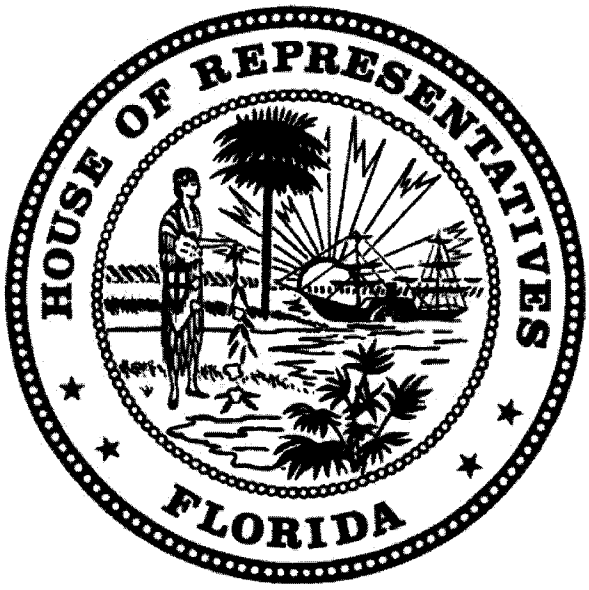

Children, Families & Seniors Subcommittee

Monday, March 13, 2017
2:00 PM – 6:00 PM
12 HOB

Richard Corcoran
Speaker

Gayle Harrell
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Children, Families & Seniors Subcommittee

Start Date and Time:	Monday, March 13, 2017 02:00 pm
End Date and Time:	Monday, March 13, 2017 06:00 pm
Location:	12 HOB
Duration:	4.00 hrs

Consideration of the following bill(s):

HB 899 Comprehensive Transitional Education Programs by Stevenson
HB 981 Pub. Rec./Department of Elderly Affairs by Gonzalez
HB 1117 Temporary Assistance For Needy Families Applicant Drug Screening by Latvala
HB 1121 Child Welfare by Stevenson

Consideration of the following proposed committee bill(s):

PCB CFS 17-02 -- Child Welfare
PCB CFS 17-03 -- Ratification of a Department of Elder Affairs Rule

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Friday, March 10, 2017.

By request of the Chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Friday, March 10, 2017.

NOTICE FINALIZED on 03/09/2017 4:09PM by Ellerkamp.Donna

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 899 Comprehensive Transitional Education Programs
SPONSOR(S): Stevenson
TIED BILLS: **IDEN./SIM. BILLS:** SB 714

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee		Roth	Brazzell
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The Agency for Persons with Disabilities (APD) is responsible for providing services to persons with developmental disabilities. A developmental disability is defined as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

A Comprehensive Transitional Education Program (CTEP) is a group of jointly operating centers or units that provide a sequential series of educational care, training, treatment, habilitation, and rehabilitation services to persons who have developmental disabilities and who have severe or moderate maladaptive behaviors. Carlton Palms Educational Center (Carlton Palms) is the state's only CTEP and is located in Mt. Dora, Florida. Carlton Palms provides 24-hour care for children and adults with intellectual and developmental disabilities, many of whom are dually diagnosed with mental and/or emotional disorders.

Under recently-issued federal Medicaid waiver guidelines, effective March 2019, the Medicaid Home and Community-Based Services (HCBS) waiver funding will no longer be paid for services provided at Carlton Palms. Additionally, there has been a shift for states to provide care to persons with developmental disabilities in home and community-based settings and move away from settings with institutional characteristics such as Carlton Palms.

As a result of state and federal reforms, as well as in response to incidents of verified abuse and neglect at Carlton Palms over the last several years, APD and Carlton Palms entered into an amended settlement agreement on November 10, 2016, agreeing that APD will not approve any new admissions of APD clients to Carlton Palms and that Carlton Palms will not accept any new residents. Furthermore, Carlton Palms will work with families, guardians, and other states or countries to transition its residents safely back to their places of origin or other agreed-upon locations for further services.

HB 899 adds CTEPs to the list of entities for which receivership proceedings may be initiated by APD. Additionally, the bill provides that after July 1, 2017, new CTEPs may not be licensed in Florida. Lastly, the bill provides that after December 31, 2019, no licenses for existing CTEPs may be renewed.

As of July 1, 2017, APD will not be able to license any new CTEPs in the state of Florida, and as of December 31, 2019, APD will not be able to renew any existing CTEP licenses. As a result, the 186 current residents at Carlton Palms must be transitioned out of Carlton Palms before Carlton Palms can no longer renew its license.

The bill does not appear to have a fiscal impact on state or local government. See fiscal comments.

The bill provides an effective date upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Agency for Persons with Disabilities

The Agency for Persons with Disabilities (APD) is responsible for providing services to persons with developmental disabilities. A developmental disability is defined as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.[1]

Individuals who meet Medicaid eligibility requirements may choose to receive services in the community through the state's Medicaid Home and Community-Based Services (HCBS) waiver for individuals with developmental disabilities administered by APD or in an Intermediate Care Facility for the Developmentally Disabled (ICF/DD).[2]

The HCBS waiver, known as iBudget Florida, offers 27 supports and services to assist individuals to live in the community. Examples of services provided include residential habilitation, behavioral services, companion, adult day training, employment services, and physical therapy.[3] Services provided through the HCBS waiver enable children and adults to live in their own home, a family home, or in a licensed residential setting, such as a group home, foster home, or residential habilitation center, thereby avoiding institutionalization.

While the majority of individuals served by APD live in the community, a small number live in Intermediate Care Facilities for the Developmentally Disabled (ICF/DD). ICF/DD's are defined in s. 393.063(25), F.S., as a residential facility licensed and certified by the Agency for Health Care Administration pursuant to part VIII of ch. 400. ICF/DD's are considered institutional placements. As of March 2017, there are approximately 2,806 private and public ICF beds in Florida.[4]

Comprehensive Transitional Education Program

A Comprehensive Transitional Education Program (CTEP) is a group of jointly operating centers or units that provide a sequential series of educational care, training, treatment, habilitation, and rehabilitation services to persons who have developmental disabilities and who have severe or moderate maladaptive behaviors.[5]

CTEPs serve individuals with developmental disabilities with the most intensive of behavioral needs.[6] A CTEP is designed to provide services to such individuals with the ultimate objective of allowing them to return to other less intensive settings within their own communities.[7] There are presently two CTEPs

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[1] S. 393.063(12), F.S.
[2] S. 393.0662, F.S.
[3] Agency for Persons with Disabilities, Quarterly Report on Agency Services to Floridians with Developmental Disabilities and Their Costs: First Quarter Fiscal Year 2015-16, November 2015.
[4] Email from Robert Brown, Legislative Affairs Director, Agency for Persons with Disabilities, RE: updated agency analysis (March 6, 2017), on file with the Children, Families, and Seniors Subcommittee staff.
[5] S. 393.18, F.S.
[6] Agency for Persons with Disabilities, *2016 Agency Legislative Bill Analysis for HB 4037*, November 9, 2015 (on file with Children, Families, and Seniors Subcommittee staff).
[7] *Id.*

licensed in Florida, and both licenses are held by the same organization, Bellwether Behavioral Health, which operates the Carlton Palms Educational Center in Lake County.[8]

Prior to July 1, 2016, pursuant to s. 393.18, F.S., APD was only authorized to license CTEPs that were already in operation by July 1, 1989, or owned real property zoned and registered with APD to operate a CTEP by July 1, 1989. The statute also authorized licensure of facilities that provided residential services for children if those children had developmental disabilities needing special behavioral services and the residential facility served children with an open case in the child welfare system as of July 1, 2010. APD has interpreted this as a prohibition against licensing newer facilities.

The 2016 Legislature amended s. 393.18, F.S., to delete licensing requirements that had restricted APD's ability to license new CTEP providers. This means APD may now license new CTEP providers. No new providers been licensed as CTEP's.

Carlton Palms Educational Center

Carlton Palms Educational Center (Carlton Palms) is the state's only CTEP and is located in Mt. Dora, Florida.[9] Carlton Palms provides 24-hour care for children and adults with intellectual and developmental disabilities (IDD), many of whom are dually diagnosed with mental and/or emotional disorders.[10] Typical diagnoses include:

- Autism;
- Pervasive Developmental Disorder;
- Prader-Willi;
- Attention Deficit Hyperactivity Disorder;
- Schizophrenia;
- Depression;
- Psychosis;
- Obsessive-Compulsive Disorder; and
- Pica.[11]

Carlton Palms provides services to people whose severe behavioral challenges require safe and effective treatment.[12] Individuals are referred to Carlton Palms for intensive treatment when other placements and programs have failed.[13] As of February 17, 2017, there were 186 residents at Carlton Palms.[14]

Between 2001 and 2016, there were more than 140 Department of Children and Families (DCF) neglect or abuse reports involving Carlton Palms.[15] Carlton Palms has an extensive history of complaints and regulatory action.[16]

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[8] Agency for Persons with Disabilities, *2017 Agency Legislative Bill Analysis for HB 899*, February 23, 2017 (on file with Children, Families, and Seniors Subcommittee staff).
[9] Bellwether Behavioral Health website, Carlton Palms Educational Center, available at http://bellbh.com/programs/florida-program/carlton-palms-education-center/ (last viewed March 4, 2017).
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Email from Robert Brown, Legislative Affairs Director, Agency for Persons with Disabilities, RE: Can I get update on Carlton Palms closure? (February 27, 2017), on file with the Children, Families, and Seniors Subcommittee staff.
[15] Carol Marbin Miller, *After Latest Abuse Case, Florida Moves to Close Home for Disabled*, MIAMI HERALD, (June 23, 2016), available at http://www.miamiherald.com/news/article85592982.html (last viewed March 9, 2017).
[16] APD has filed 4 administrative complaints against the facility since 2011, detailing inadequate training of staff, physical violence, inadequate care, and inadequate supervision of residents while in the care and custody of Carlton Palms. APD has twice sought moratoria on new admissions to the facility, once in 2012 and most recently in September of 2014. In this most recent administrative complaint, DOAH Case No: 14-004853, APD sought the maximum fine allowed by law, $10,000, as well as a moratorium on new admissions. APD has settled each of these administrative complaints without the imposition of a moratorium.

Under recently-issued federal Medicaid waiver guidelines, effective March 2019, the Medicaid Home and Community-Based Services (HCBS) waiver funding will no longer pay for services provided at Carlton Palms.[17] Additionally, there has been a shift for states to provide care to persons with developmental disabilities in home and community-based settings and move away from settings with institutional characteristics such as Carlton Palms.[18] The intent of the rule is to ensure individuals receiving long-term services and support through HCBS programs under the 1915(c), 1915(i) and 1915(k) Medicaid authorities, have full access to benefits of community living and the opportunity to receive services in the most integrated setting appropriate.[19] Furthermore, the rule intends to enhance the quality of HCBS and provide protections to participants,[20] by helping participants be active in their community, providing them a home-like environment, and enabling them to make personal choices.[21]

As a result of state and federal reforms, as well as the prior incidents of verified abuse and neglect at Carlton Palms over the last several years, APD and Carlton Palms entered into an amended settlement agreement on November 10, 2016, and agreed that APD will not approve any new admissions of APD clients to Carlton Palms and that Carlton Palms will not accept any new residents. [22] Furthermore, Carlton Palms will work will families, guardians, and other states or countries to transition its residents safely back to their places of origin or other agreed upon locations for further services.[23] As of February 17, 2017, 11 APD residents have been discharged from Carlton Palms.[24]

Receivership

A receiver is "[a] disinterested person appointed by a court, or by a corporation or other person, for the protection or collection of property that is the subject of diverse claims."[25] The power to appoint a receiver is one that is inherent in a court of equity.[26] Pursuant to s. 393.0678(1), F.S., APD may petition a court for the appointment of a receiver for a residential habilitation center or a group home facility owned and operated by a corporation or partnership when certain conditions exist:

- A person is operating a facility without a license and refuses to make an application for a license;
- The licensee is closing the facility or has informed the department that it intends to close the facility, and adequate arrangements have not been made for relocation of the residents within seven days, exclusive of weekends and holidays, of the closing of the facility;
- The agency determines that conditions exist in the facility which presents an imminent danger to the health, safety, or welfare of the residents of the facility or which present a substantial probability that death or serious physical harm would result; or
- The licensee cannot meet its financial obligations to provide food, shelter, care, and utilities.

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[17] The guidelines will become effective in March 2019. Medicaid Program; State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice and Home and Community-Based Services (HCBS) Waivers; Final Rule, 79 Fed. Reg. 2948 (Jan. 16, 2014). The effective date of the final regulations was March 17, 2014, and the regulations allow states up to five years to bring their home and community-based programs into compliance with the home and community-based settings requirements.
[18] 42 CFR 441.301.
[19] Agency for Health Care Administration Presentation, *Home and Community-Based Settings and Transition Planning*, August 2014, slide 4, available at http://ahca.myflorida.com/Medicaid/hcbs_waivers/docs/AHCA_HCBS_Rule_Overview_and_Transition_Planning_2014.pdf (last viewed March 11, 2017).
[20] *Id.*
[21] Agency for Health Care Administration, *Home and Community-Based Settings Rule*, 2017, available at http://ahca.myflorida.com/Medicaid/hcbs_waivers/index.shtml, (last viewed March 11, 2017).
[22] Amended Settlement Agreement between Agency for Persons with Disabilities and Carlton Palms Educational Center, November 10, 2016, p. 1.
[23] *Id.* at p. 4.
[24] Supra, at FN 14.
[25] *Black's Law Dictionary* (10th ed. 2014).
[26] *Granada Lakes Villas Condominium Assoc., Inc. v. Metro-Dade Investments*, 125 So.3d 756 (Fla. 2013).

Upon taking receivership for a residential habilitation center or a group home facility, APD must make provisions for the continued health, safety, and welfare of all residents of the facility.[27]

Effect of Proposed Changes

HB 899 adds CTEPs to the list of entities for which receivership proceedings may be initiated by APD. Additionally, the bill provides that after July 1, 2017, new CTEPs may not be licensed in Florida. Lastly, the bill provides that after December 31, 2019, the license for existing CTEPs may not be renewed.

As a result, the 186 current residents at Carlton Palms must be transitioned out of Carlton Palms before Carlton Palms can no longer renew its license.

The bill provides an effective date upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 393.0678, F.S., relating to receivership proceedings.
Section 2: Amends s. 393.18, F.S., relating to comprehensive transitional education program.
Section 3: Provides an effective date upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The settlement agreement between APD and Carlton Palms limits new admissions only to emergency placements; it also requires Carlton Palms to work to transfer residents to other faciliites. Thus, independently of this bill, Carlton Palms' census is expected to decline over time. Residents transitioning from Carlton Palms will need new residences, and Carlton Palms may choose to develop smaller homes to serve them.

D. FISCAL COMMENTS:

None.

[27] S. 393.0678(3), F.S.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to comprehensive transitional education programs; amending s. 393.0678, F.S.; authorizing the Agency for Persons with Disabilities to petition for the appointment of a receiver for a comprehensive transitional education program; amending s. 393.18, F.S.; prohibiting the licensure of new comprehensive transitional education programs after a specified date; prohibiting the renewal of existing comprehensive transitional education program licenses after a specified date; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 393.0678, Florida Statutes, is amended to read:

393.0678 Receivership proceedings.—

(1) The agency may petition a court of competent jurisdiction for the appointment of a receiver for a comprehensive transitional education program, a residential habilitation center, or a group home facility owned and operated by a corporation or partnership when any of the following conditions exist:

(a) Any person is operating a facility without a license and refuses to make application for a license as required by s.

393.067.

(b) The licensee is closing the facility or has informed the department that it intends to close the facility; and adequate arrangements have not been made for relocation of the residents within 7 days, exclusive of weekends and holidays, of the closing of the facility.

(c) The agency determines that conditions exist in the facility which present an imminent danger to the health, safety, or welfare of the residents of the facility or which present a substantial probability that death or serious physical harm would result therefrom. Whenever possible, the agency shall facilitate the continued operation of the program.

(d) The licensee cannot meet its financial obligations to provide food, shelter, care, and utilities. Evidence such as the issuance of bad checks or the accumulation of delinquent bills for such items as personnel salaries, food, drugs, or utilities constitutes prima facie evidence that the ownership of the facility lacks the financial ability to operate the home in accordance with the requirements of this chapter and all rules promulgated thereunder.

Section 2. Section 393.18, Florida Statutes, is amended to read:

393.18 Comprehensive transitional education program.—A comprehensive transitional education program serves individuals who have developmental disabilities, severe maladaptive

behaviors, severe maladaptive behaviors and co-occurring complex medical conditions, or a dual diagnosis of developmental disability and mental illness. Services provided by the program must be temporary in nature and delivered in a manner designed to achieve the primary goal of incorporating the principles of self-determination and person-centered planning to transition individuals to the most appropriate, least restrictive community living option of their choice which is not operated as a comprehensive transitional education program. The supervisor of the clinical director of the program licensee must hold a doctorate degree with a primary focus in behavior analysis from an accredited university, be a certified behavior analyst pursuant to s. 393.17, and have at least 1 year of experience in providing behavior analysis services for individuals in developmental disabilities. The staff must include behavior analysts and teachers, as appropriate, who must be available to provide services in each component center or unit of the program. A behavior analyst must be certified pursuant to s. 393.17.

(1) Comprehensive transitional education programs must include the following components:

(a) Intensive treatment and education.—This component provides intensive behavioral and educational programming for individuals whose conditions preclude placement in a less restrictive environment due to the threat of danger or injury to

themselves or others. Continuous-shift staff are required for this component.

(b) Intensive training and education.—This component provides concentrated psychological and educational programming that emphasizes a transition toward a less restrictive environment. Continuous-shift staff are required for this component.

(c) Transition.—This component provides educational programs and any support services, training, and care that are needed to avoid regression to more restrictive environments while preparing them for more independent living. Continuous-shift staff are required for this component.

(2) Components of a comprehensive transitional education program are subject to the license issued under s. 393.067 to a comprehensive transitional education program and may be located on a single site or multiple sites as long as such components are located within the same agency region.

(3) Comprehensive transitional education programs shall develop individual education plans for each school-aged person with maladaptive behaviors, severe maladaptive behaviors and co-occurring complex medical conditions, or a dual diagnosis of developmental disability and mental illness who receives services from the program. Each individual education plan shall be developed in accordance with the criteria specified in 20 U.S.C. ss. 401 et seq., and 34 C.F.R. part 300. Educational

components of the program, including individual education plans, to the extent possible, must be integrated with the programs of the referring school district of each school-aged resident.

(4) The total number of persons in a comprehensive transitional education program who are being provided with services may not exceed 120 residents, and each residential unit within the component centers of a program authorized under this section may not exceed 15 residents. However, a program that was authorized to operate residential units with more than 15 residents before July 1, 2015, may continue to operate such units.

(5) Any licensee that has executed a settlement agreement with the agency that is enforceable by the court must comply with the terms of the settlement agreement or be subject to discipline as provided by law or rule.

(6) The agency may approve the proposed admission or readmission of individuals into a comprehensive transitional education program for up to 2 years subject to a specific review process. The agency may allow an individual to reside in this setting for a longer period of time if, after a clinical review is conducted by the agency, it is determined that remaining in the program for a longer period of time is in the best interest of the individual.

(7) After July 1, 2017, new comprehensive transitional education programs may not be licensed. After December 31, 2019,

the license for an existing comprehensive transitional education program may not be renewed.

Section 3. This act shall take effect upon becoming a law.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 899 (2017)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Children, Families & Seniors Subcommittee

Representative Stevenson offered the following:

Amendment (with title amendment)

Remove lines 124-127

T I T L E A M E N D M E N T

Remove lines 6-11 and insert:

comprehensive transitional education program; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 981 Pub. Rec./Department of Elderly Affairs
SPONSOR(S): Gonzalez
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee		Langston	Brazzell
2) Oversight, Transparency & Administration Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

In 2016, the Legislature enacted s. 744.2004, F.S., in Part II of ch. 744, requiring the Office of Public and Professional Guardians to review and, if determined legally sufficient, investigate any complaint that a professional guardian has violated the standards of practice established by the office. As of March 9, 2017, the Office of Public and Professional Guardians had received 125 complaints about public and professional guardians.

HB 981 makes confidential and exempt from Florida's public records laws the name or identity of a person filing a formal administrative complaint under part II of chapter 744, F.S., the name and identity of a ward, all personal health and financial records of a ward, and all photographs and video recordings, when such records or information is held by the Department of Elderly Affairs (Department) in connection with a complaint filed under part II of chapter 744, F.S. Such information and records remain confidential and exempt during any subsequent investigation of a complaint.

The public records exemption established in the bill may only be pierced by court order. Additionally, the bill provides that the Department may provide the protected records to any law enforcement agency, any other regulatory agency in the performance of its official duties and responsibilities, or the clerk of circuit court when reviewing an initial or annual guardianship report.

The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2022, unless reviewed and saved from repeal by the Legislature.

The bill also provides a statement of public necessity as required by the Florida Constitution.

The bill may have an insignificant negative fiscal impact on the state court system.

The bill provides that the act will take effect July 1, 2017.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records Laws

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a) of the Florida Constitution.[1] The general law must state with specificity the public necessity justifying the exemption[2] and must be no more broad than necessary to accomplish its purpose.[3]

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. If a record is exempt, the specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., s. 286.011, F.S., or article I, section 24 of the Florida Constitution. If records are only exempt from the Public Records Act and not confidential, the exemption does not prohibit the showing of such information, but simply exempts them from the mandatory disclosure requirements in section 119.07(1)(a), F.S.

Furthermore, the Open Government Sunset Review Act[4] (Act) provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[5]

During the legislative review process, the following questions must be considered about the exemption:

- What specific records or meetings are affected by the exemption?
- What specific parties does the exemption affect?
- What is the public purpose of the exemption?
- Can the information contained in the records or meetings be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?[6]

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[1] FLA. CONST. art. I, s. 24(c).
[2] This portion of a public records exemption is commonly referred to as a "public necessity statement."
[3] FLA. CONST. art. I, s. 24(c).
[4] S. 119.15, F.S.
[5] S. 119.15(6)(b), F.S.
[6] S. 119.15(6)(a), F.S.

The Act also requires the automatic repeal of a public records exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.[7]

Public and Professional Guardians

Guardianship is a concept whereby a "guardian" acts for another, called a "ward," whom the law regards as incapable of managing his or her own affairs due to age or incapacity.[8] There are two main forms of guardianship: guardianship over the person or guardianship over the property, which may be limited or plenary.[9] For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. If the adult is competent, this can be accomplished voluntarily. However, when an individual's mental competence is in question, an involuntary guardianship may be established through the adjudication of incompetence which is determined by a court appointed examination committee.[10] A person serving as a public guardian is considered a professional guardian for purposes of regulation, education, and registration.[11]

Regulation of Public and Professional Guardians

The Legislature created the Statewide Public Guardianship Office in 1999 to provide oversight for all public guardians.[12] In 2016, the Legislature renamed the Statewide Public Guardianship Office within the Department of Elder Affairs (Department) as the Office of Public and Professional Guardians (Office) and expanded the Office's responsibilities.[13] The expansion of the Office's oversight of professional guardians followed reports of abuse and inappropriate behavior by professional guardians.[14] The Office now regulates professional guardians with certain disciplinary and enforcement powers.[15] Specifically, s. 744.2004, F.S., requires the Office to review and, if determined legally sufficient, investigate any complaint that a professional guardian has violated the standards of practice established by the Office. There are currently 17 public guardian offices throughout the state and 514 professional guardians registered with the Office.[16] [17]

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[7] S. 119.15(3), F.S.
[8] Section 744.102(9), F.S.
[9] Section 744.2005, F.S.
[10] Section 744.102(12), F.S.
[11] Section 744.102(17), F.S.
[12] Chapter 99-277 L.O.F.
[13] *See* CS/CS/CS/SB 232 (2016) and Chapter No. 2016-40, L.O.F.
[14] *See, e.g.*, Florida Supreme Court Commission on Fairness, Committee on Guardianship Monitoring, 2003, *available at* http://flcourts.org/core/fileparse.php/260/urlt/guardianshipmonitoring.pdf (last visited March 9, 2017) (reviewed how effectively guardians were fulfilling their duties and obligations. The committee received input from citizens that there was abuse, neglect, and misuse of ward's funds. As a result, the committee stated that, though the majority of guardians are law-abiding and are diligently fulfilling their complex responsibilities, a small percentage are not properly handling guardianship matters, and as a result, monitoring is necessary.); Department of Elder Affairs, Guardianship Task Force – 2004 Final Report, *available at* http://elderaffairs.state.fl.us/doea/pubguard/GTF2004FinalReport.pdf (last visited March 9, 2017) (advocated for additional oversight of professional guardians); Michael E. Miller, *Florida's Guardians Often Exploit the Vulnerable Residents They're Supposed to Protect*, MIAMI NEWTIMES, May 8, 2014, *available at* http://www.miaminewtimes.com/2014-05-08/news/florida-guardian-elderly-fraud/full/ (last visited March 9, 2017) (provided anecdotal evidence of fraud within the guardianship system, noting that the appointed court monitor for Broward County has uncovered hundreds of thousands of dollars that guardians have misappropriated from their wards, and, over the course of two years, Palm Beach County's guardianship fraud hotline has investigated over 100 cases; and Barbara Peters Smith, *the Kindness of Strangers – Inside Elder Guardianship in Florida*, SARASOTA HERALD-TRIBUNE, December 6, 2014, *available at* http://guardianship.heraldtribune.com/default.aspx (last visited March 9, 2017) (three-part series published in December 2014 details abuses occurring in guardianships based on an evaluation of guardianship court case files and interviews with wards, family and friends caught in the system against their will.).
[15] Section 744.2004, F.S.
[16] Department of Elder Affairs; 2017 Agency Legislative Bill Analysis for HB 981; February 28, 2017; on file with the Children, Families & Seniors Subcommittee.
[17] According to the Department of Elderly Affairs, there have been 125 complaints filed against public and professional guardians. The Office has received one public records request relating to such complaints. Email received by professional staff from the Department of Elderly Affairs on March 9, 2017.

Confidentiality of Records Held by the Office of Public and Professional Guardians

Section 744.2104, F.S., requires any medical, financial, or mental health records held by an agency, or the court and its agencies, or financial audits of guardianship records prepared by the clerk of the court to be provided to the Office upon its request, if such records or financial audits are necessary to investigate a guardian as a result of a complaint filed with the Office, to evaluate the public guardianship system, to assess the need for additional public guardianship, or to develop required reports. Any confidential or exempt information provided to the Office must continue to be held confidential or exempt as otherwise provided by law.

All records held by the Office relating to the medical, financial, or mental health of vulnerable adults,[18] persons with a developmental disability,[19] or persons with a mental illness,[20] are confidential and exempt from s. 119.07(1), F.S., and Article I, section 24(a) of the State Constitution.[21]

Effect of the Bill

HB 981 makes confidential and exempt[22] from Florida's public records laws the name or identity of a person filing a formal administrative complaint under part II of chapter 744, F.S., the name and identity of a ward, all personal health and financial records of a ward, and all photographs and video recordings, when such records or information is held by the Department of Elderly Affairs (Department) in connection with a complaint filed under part II of chapter 744, F.S. Such information and records remain confidential and exempt during any subsequent investigation of a complaint.

The public records exemption established in the bill may only be pierced by court order. Additionally, the bill provides that the Department may provide the protected records to any law enforcement agency, any other regulatory agency in the performance of its official duties and responsibilities, or the clerk of circuit court when reviewing an initial or annual guardianship report.

The bill includes a public necessity statement, whereby the Legislature finds that it is necessary to exempt information about a complainant and ward held by the Department, which is related to a complaint or obtained during an investigation of a professional guardian, to prevent unwarranted damage to the reputation of the complainant or ward and to protect the safety of such individuals from retaliation. Furthermore, the bill provides that it is necessary to exempt such information, because the release of the information could obstruct an investigation and impair the ability of the Department to effectively and efficiently administer the Office or impair the ability of a law enforcement agency, regulatory agency in the performance of its official duties and responsibilities, or the clerk of circuit court to carry out their statutory duties.

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[18] "Vulnerable adult" is defined as a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. Section 415.102(28), F.S.

[19] "Developmental disability" is defined as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely. Section 393.063(12), F.S.

[20] "Mental illness" is defined as an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with the person's ability to meet the ordinary demands of living. The term does not include a developmental disability as defined in chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse. Section 394.455(28), F.S.

[21] Section 744.2104(2), F.S.

[22] There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att'y Gen. Fla. 85-692 (1985).

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2022, unless saved from repeal by reenactment by the Legislature.

The bill's effective date is July 1, 2017.

B. SECTION DIRECTORY:

Section 1. Creates s. 744.211, F.S., relating to confidentiality.
Section 2. Provides a public necessity statement.
Section 3. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The courts may see a workload increase associated with requests for court orders to release personal health or financial information of wards, the identity of complainants, or photographs and video recordings related to complaints against a professional guardians and the attendant investigations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Any individual seeking the confidential and exempt information by court order will incur the attendant court costs.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement:

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meetings exemption. The bill expands the current public records exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement:

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. The bill expands the current public records exemption; and accordingly, it includes a public necessity statement.

Breadth of Exemption:

Article I, section 24(c) of the Florida Constitution requires a newly created public records or public meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill's expanded public records exemption does not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

HB 981 protects records created on or after the effective date of the bill. It will not protect records created prior to the effective date of the bill. As of March 9, 2017, the Office has received 125 complaints about professional guardians.[23]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[23] Email received from Alec Yarger, Re: HB 981, March 9, 2017 (on file with Children, Families & Seniors subcommittee staff

A bill to be entitled

An act relating to public records; creating s. 744.2111, F.S.; providing an exemption from public records requirements for certain identifying information of complainants and wards held by the Department of Elderly Affairs; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 744.2111, Florida Statutes, is created to read:

744.2111 Confidentiality.—

(1) The following are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, when held by the Department of Elderly Affairs in connection with a complaint filed and any subsequent investigation conducted pursuant to this part, unless the disclosure is required by court order:

(a) The names or identities of a complainant and ward.

(b) All personal health and financial records of a ward.

(c) All photographs and video recordings.

(2) Except as otherwise provided in this section,

information held by the department, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation is completed or ceases to be active, unless the disclosure is required by court order.

(3) This section does not prohibit the department from providing such information to any law enforcement agency, any other regulatory agency in the performance of its official duties and responsibilities, or the clerk of the circuit court pursuant to s. 744.368.

(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that information about a complainant and ward held by the Department of Elderly Affairs related to a complaint or obtained during the course of an investigation conducted pursuant to part II of Chapter 744, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

(2)(a) The Legislature finds that the release of identifying information about a complainant and ward could cause unwarranted damage to the reputation of such individual, especially if the information associated with the individual is inaccurate. Furthermore, if the complainant and ward are

identifiable, public access to such information could jeopardize the safety of such individuals by placing them at risk for retaliation by the professional guardian against whom a complaint has been made.

(b) Additionally, the investigation of a complaint conducted by the Department of Elderly Affairs may lead to the filing of an administrative, civil, or criminal proceeding or may affect the department's decision regarding a registration. The release of identifying information could obstruct an investigation and impair the ability of the Department of Elderly Affairs to effectively and efficiently administer part II of Chapter 744, Florida Statutes. The release of identifying information could jeopardize the integrity of the investigation and impair the ability of a law enforcement agency, regulatory agency in the performance of its official duties and responsibilities, or the clerk of the circuit court, to carry out their statutory duties.

Section 3. This act shall take effect July 1, 2017.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 981 (2017)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Committee/Subcommittee hearing bill: Children, Families & Seniors Subcommittee

Representative Gonzalez offered the following:

Amendment (with title amendment)

Remove line 35 and insert:

(4) The exemption under this section applies to all documents received by the department in connection with a complaint before, on, or after July 1, 2017.

(5) This section is subject to the Open Government Sunset

T I T L E A M E N D M E N T

Remove line 6 and insert:

Department of Elderly Affairs; providing applicability; providing for future

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1117 Temporary Assistance For Needy Families Applicant Drug Screening
SPONSOR(S): Latvala
TIED BILLS: **IDEN./SIM. BILLS:** SB 1392

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee		Langston	Brazzell
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The Temporary Assistance for Needy Families (TANF) program is a block grant that provides states, territories, and tribes federal funds each year to cover benefits, administrative expenses, and services targeted to needy families. States receive block grants to operate their individual programs and to accomplish the goals of the TANF program. Florida's Temporary Cash Assistance (TCA) Program is funded through the TANF block grant and provides cash assistance to needy families with children that meet eligibility requirements.

Federal law regarding the use of TANF funds allows states to test welfare recipients for use of controlled substances and sanction those recipients who test positive. Fifteen states, including Florida, have laws imposing drug testing or screening for TANF applicants or recipients. Some laws apply to all applicants; other laws limit testing to those instances where there is a reason to believe the applicant or recipient is engaging in illegal drug activity or has a substance use disorder; and other laws require a specific screening process.

In 2011, Florida enacted s. 414.0652, F.S., which required all TANF applicants to submit to a drug test as a condition of eligibility to receive TCA benefits. However, the United States District Court for the Middle Court of Florida declared s. 414.0652, F.S., facially unconstitutional and permanently prohibited the state from reinstating and enforcing the law. Additionally, the United States Court of Appeals for the Eleventh Circuit held that this statute violated the Fourth Amendment for its unreasonable search of applicants without evidence of "a more prevalent, unique, or different drug problem among TANF applicants than in the general population." This law is not currently being implemented.

HB 1117 creates s. 414.0653, F.S., which requires DCF to drug test applicants for TANF benefits with a prior felony conviction or history of arrests for a drug-related offense. DCF must provide notice of the drug-screening policy to applicants. Individuals who fail the drug test may not receive TCA for two to three years, depending on when they fail the test, unless they successfully complete a drug treatment program. The bill specifies that a child remains eligible for benefits if a parent fails a drug test and provides conditions for designating a protective payee.

In addition, the bill requires DCF to increase the amount of the initial TANF benefit to reimburse individuals who have a negative initial drug test. The bill also provides procedures for testing and retesting, as well as conditions for an individual to reapply for TANF benefits.

The bill will have a significant negative fiscal impact on DCF.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Temporary Assistance for Needy Families (TANF)

Under the federal welfare reform legislation of 1996, the Temporary Assistance for Needy Families (TANF) program replaced the welfare programs known as Aid to Families with Dependent Children, the Job Opportunities and Basic Skills Training program, and the Emergency Assistance program. The law ended federal entitlement to assistance and instead created TANF as a block grant that provides states, territories, and tribes federal funds each year. These funds cover benefits, administrative expenses, and services targeted to needy families. TANF became effective July 1, 1997, and was reauthorized in 2006 by the Deficit Reduction Act of 2005. States receive block grants to operate their individual programs and to accomplish the goals of the TANF program.

Florida's Temporary Cash Assistance Program

The Temporary Cash Assistance (TCA) Program provides cash assistance to families with children under the age of 18 or under age 19[1] if full time secondary school students, that meet the technical, income, and asset requirements. The purpose of the TCA Program is to help families become self-supporting while allowing children to remain in their own homes. In November 2016, 12,517 adults and 65,855 children received TCA.[2]

Categories of TCA

Florida law specifies two categories of families who are eligible for TCA: those families that are work-eligible and may receive TCA for the full-family, and those families who are eligible to receive child-only TCA. Within the full-family cases, the parent or parents are required to comply with work requirements to receive TCA for the parent(s) and child(ren). Additionally, there are two types of child-only TCA:

- Where the child has not been adjudicated dependent, but is living with a relative,[3] or still resides with his or her custodial parent, but that parent is not eligible to receive TCA;[4] and
- The Relative Caregiver Program, where the child has been adjudicated dependent and has been placed with relatives by the court. These relatives are eligible for a payment that is higher than the typical child-only TCA.

The majority of cash assistance benefits are provided to child-only cases, through the Relative Caregiver Program or to work-eligible cases where the adult is ineligible due to sanction for failure to meet TCA work requirements. In November 2016, 35,350 of the 47,204 families receiving TCA were child-only cases.[5] In November 2016, there were 11,854 families receiving TCA through full-family cases containing an adult, 520 of which were two-parent families; these are the families who are subject to work requirements.[6]

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[1] Parents, children and minor siblings who live together must apply together. Additionally, pregnant women may also receive TCA, either in the third trimester of pregnancy if unable to work, or in the 9th month of pregnancy.
[2] Department of Children and Families, Monthly Flash Report Caseload Data: November 2016, http://eww.dcf.state.fl.us/ess/reports/docs/flash2005.xls (last visited January 30, 2017).
[3] Grandparents or other relatives receiving child-only payments are not subject to the TANF work requirement or the TANF time limit.
[4] Child-only families also include situations where a parent is receiving federal Supplemental Security Income (SSI) payments, situations where the parent is not a U.S. citizen and is ineligible to receive TCA due to his or her immigration status, and situations where the parent has been sanctioned for noncompliance with work requirements.
[5] *Supra*, note 2.
[6] Id.

Administration

Various state agencies and entities work together through a series of contracts or memorandums of understanding to administer the TCA Program.

- The Department of Children and Families (DCF) is the recipient of the federal TANF block grant. DCF monitors eligibility and disperses benefits.
- CareerSource Florida, Inc. is the state's workforce policy and investment board. CareerSource Florida has planning and oversight responsibilities for all workforce-related programs.
- The Department of Economic Opportunity (DEO) implements the policy created by CareerSource.[7] DEO submits financial and performance reports ensuring compliance with federal and state measures and provides training and technical assistance to Regional Workforce Boards.
- Regional Workforce Boards (RWBs) provide a coordinated and comprehensive delivery of local workforce services. The RWBs focus on strategic planning, policy development and oversight of the local workforce investment system within their respective areas, and contracting with one-stop career centers. The contracts with the RWBs are performance- and incentive- based.

Eligibility Determination

An applicant must meet all eligibility requirements to receive TCA benefits. The initial application for TANF is processed by DCF. DCF determines an applicant's eligibility. Additionally, to be eligible for full-family TCA, applicants must participate in work activities unless they qualify for an exemption.[8] If no exemptions from work requirements apply, DCF refers the applicant to DEO.[9] Upon referral, the participant must complete an in-take application and undergo assessment by RWB staff. Once the assessment is complete, the staff member and participant create the Individual Responsibility Plan (IRP). DCF does not disperse any benefits to the participant until DEO or the RWB confirms that the participant has registered and attended orientation.

Work Requirement

Individuals receiving TCA who are not otherwise exempt from work activity requirements must participate in work activities[10] for the maximum number of hours allowable under federal law.[11] The number of required work or activities hours is determined by calculating the value of the cash benefits and then dividing that number by the hourly minimum wage amount.

Protective Payee

In the event that a TANF recipient is noncompliant with the work activity requirements, DCF has authority to terminate TCA.[12] In the event TCA is terminated for the noncompliant adult, but not the children, DCF establishes a protective payee that will receive the funds on behalf of any children in the home who are under the age of 16.[13] The protective payee shall be designated by DCF and must agree in writing to use the assistance in the best interest of the child or children. Protective payees may include:

- A relative or other individual who is interested in or concerned with the welfare of the child or children;

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[7] S. 445.007(13), F.S.
[8] S. 414.105, F.S.
[9] This is an electronic referral through a system interface between DCF's computer system and DEO's computer system. Once the referral has been entered into the DEO system the information may be accessed by any of the RWBs or One-Stop Career Centers.
[10] 45 C.F.R. § 261.30
[11] S. 445.024, F.S.
[12] S. 414.065, F.S.
[13] Id.

- A member of the community affiliated with a religious, community, neighborhood, or charitable organization; or
- A volunteer or member of an organization who agrees in writing to fulfill the role of protective payee.[14]

Substance Abuse

Substance abuse affects millions of people in the United States each year. Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[15] Substance use disorders occur when the chronic use of alcohol and/or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[16] It is often mistakenly assumed that individuals with substance use disorders lack moral principles or willpower and that they could stop using drugs simply by choosing to change their behavior.[17] In reality, drug addiction is a complex disease, and quitting takes more than good intentions or a strong will. In fact, because drugs change the brain in ways that foster compulsive drug abuse, quitting is difficult, even for those who are ready to do so.[18]

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), a diagnosis of substance use disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.[19] The most common substance use disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.[20]

As DCF does not drug-test TCA recipients, the number of TCA recipients in Florida who are substance users is unknown.

Drug Testing of TANF Recipients

Federal law regarding the use of TANF funds allows states to test welfare recipients for use of controlled substances and sanction those testing positive. [21]

Drug Testing TANF Recipients in Other States

Several other states require drug testing or screening for TANF applicants or recipients. Some laws limit testing to those instances where there is a reason to believe the applicant or recipient is engaging in illegal drug activity or has a substance use disorder, and other laws require a specific screening process. For example:

Alabama requires its Department of Human Resources to administer a drug screening program for any adult applying for TCA who is otherwise eligible, upon reasonable suspicion that the adult uses or is under the influence of a drug.[22] Reasonable suspicion exists if an applicant has a conviction for the use or distribution of a drug within five years prior to the date of the application for TCA or tested positive without a valid prescription as a result of the required drug screening.[23] Maine permits its Department of

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[14] Id.
[15] WORLD HEALTH ORGANIZATION. *Substance Abuse*, http://www.who.int/topics/substance_abuse/en/ (last visited March 4, 2017).
[16] SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, *Substance Use Disorders*, http://www.samhsa.gov/disorders/substance-use (last visited March 4, 2017).
[17] NATIONAL INSTITUTE ON DRUG ABUSE, *Understanding Drug Use and Addiction*, http://www.drugabuse.gov/publications/drugfacts/understanding-drug-abuse-addiction (last visited March 1, 2017).
[18] Id.
[19] *Supra*, note 16.
[20] Id.
[21] Pub. L. 104-193, s. 902; 21 U.S.C. 862(b).
[22] Ala. Code § 38-1-7(b).
[23] Id.

Health and Human Services to administer a drug test to a TANF recipient who, at the time of application, has been convicted of a drug-related felony within the last 20 years.[24]

Arkansas uses an empirically validated screening tool to screen TANF applicants and recipients; if the result of the drug screening tool gives the Department of Workforce Services a reasonable suspicion to believe that the applicant or recipient has engaged in the use of drugs, then the applicant or recipient must be drug tested.[25] Recipients must be screened annually.[26] Similarly, Georgia requires its Department of Human Services (DHS) to screen TCA applicants or recipients if reasonable suspicion exists that such applicant or recipient is using an illegal drug.[27] DHS may use any information it has obtained to determine whether such reasonable suspicion exists, including, but not limited to:

- An applicant's or recipient's demeanor;
- Missed appointments and arrest or other police records;
- Previous employment or application for employment in an occupation or industry that regularly conducts drug screening; and
- Termination from previous employment due to unlawful use of a controlled substance or controlled substance analog or prior drug screening records of the applicant or recipient indicating unlawful use of a controlled substance or controlled substance analog.[28]

Kansas applies the same standard as Georgia for screening and drug testing its TCA applicants and recipients.[29] Mississippi and Utah require all applicants for TANF to complete a written questionnaire to determine the likelihood of a substance abuse problem.[30] If the results indicate a likelihood the person has a substance abuse problem, the applicant must submit to a drug test.[31] The Oklahoma Department of Human Services screens all TANF applicants to determine if they are engaged in the illegal use of a controlled substance using a Substance Abuse Subtle Screening Inventory (SASSI) or other similar screening methods.[32]

From 2012 to 2014, Tennessee phased in suspicion-based drug testing for TANF applicants.[33] Tennessee's Department of Human Services was directed to develop appropriate screening techniques and processes that would establish reasonable cause that an applicant for TANF is using a drug and was also directed to identify and select a screening tool such as SASSI or another similar technique to be employed for this program.[34]

After a previous pilot program that drug tested all TANF recipients was declared unconstitutional, Michigan created a pilot program in 2015 implementing suspicion-based drug screening and testing program in three counties.[35] The participating counties screen applicants and recipients using a valid substance abuse screening tool; if the screening tool gives the department reason to believe the person has a substance abuse problem, the person will be drug tested.[36] West Virginia also implemented a three-year pilot program in 2016 to screen TANF applicants for substance abuse issues if there is reasonable suspicion.[37] Reasonable suspicion exists if, based upon the result of the drug screen, the applicant demonstrates qualities indicative of substance abuse based upon the indicators of

[24] Me. Rev. Stat. tit. 22, § 3762.
[25] Ark. Code Ann. § 20-76-705(1).
[26] Id.
[27] Ga. Code Ann. § 49-4-193(c).
[28] Id.
[29] Kan. Stat. Ann. § 39-709.
[30] Miss. Code. Ann. § 43-17-6; Utah Code Ann. § 35A-3-304.5.
[31] Id.
[32] 56 Okl. St. § 230.52.
[33] Tenn. Code Ann. § 71-3-1202.
[34] Id.
[35] Mich. Comp. Laws Ann. § 400.57z.
[36] Id.
[37] W. Va. Code Ann. § 9-3-6.

the drug screen, or has been convicted of a drug-related offense within the three years immediately prior to an application for TANF.[38]

Additionally, Missouri and North Carolina also drug tests all applicants and recipients of TANF for whom they have reasonable cause to believe based on an initial screening that they are engaged in illegal use.[39] Neither state specifies the type of screening which may give rise to a reasonable suspicion in statute.

Constitutional Challenges for Suspicionless Drug Testing of TANF Recipients

The U.S. Supreme Court has held one suspicion-less drug test unconstitutional. In Chandler v. Zell, the state of Georgia required all candidates for designated state offices to certify that they had taken a drug test and the result was negative in order to run for state office.[40] In ruling the drug testing unconstitutional, the court held that,

> Where the risk to public safety is substantial and real, blanket suspicionless searches calibrated to the risk may rank as 'reasonable'...But where, as in this case, public safety is not genuinely in jeopardy, the Fourth Amendment precludes the suspicionless search.[41]

In 1999, the State of Michigan enacted a pilot program for suspicion-less drug testing of all family assistance recipients with the intent for the program eventually to become effective statewide.[42] Welfare recipients challenged the new law authorizing suspicion-less drug testing in federal court. The federal district court found that the law was an unconstitutional violation of an individual's right to privacy under the Fourth Amendment. The court specifically ruled that drug testing was unconstitutional when applied universally or randomly without reasonable suspicion of drug use.[43]

Lebron v. Wilkens

In 2011, the Florida Legislature passed HB 353,[44] which created s. 414.0652, F.S., requiring DCF to drug test each individual applying for temporary cash assistance as a condition of eligibility for those benefits.

Under s. 414.0652, F.S., all individuals included within the cash assistance group covered by the TANF application were required to submit to testing with the exception of children under the age of 18. The bill requires all parents to be tested including minor parents who are not required to live with a parent, legal guardian, or other adult caretaker. It also disqualifies individuals from receiving TANF benefits if they tested positive for controlled substances. The initial disqualification is for one year from the date of the positive test; however, upon showing proof of completing the program, the individual may exercise a one-time option reapply for TANF benefits within six months from the date of the positive test. Upon a subsequent positive test, the individual is disqualified from receiving TANF benefits for three years from the date of that positive test.

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[38] Id.
[39] Mo. Ann. Stat. § 208.027.; N.C. Gen. Stat. Ann. § 108A-29.1.
[40] Chandler v. Miller, 520 U.S. 305 (1997).
[41] Id. at 323.
[42] P.A. 1999, No. 17, codified as s. 400.57l, Michigan Compiled Statutes Annotated.
[43] Marchwinski v. Howard, 113 F. Supp. 2d 1134 (E. D. Mich. 2000). On appeal a panel of the Sixth Circuit first reversed the District Court, finding the required testing did not violate the Fourth Amendment to the U.S. Constitution. Marchwinski v. Howard, 309 F. 3d 330 (6th Cir. 2002). That decision was vacated for the entire court to consider the case. Marchwinski, vacated 319 F. 3d 258. The appellate court deadlocked 6-6 to reverse so the lower court decision stood affirmed. Marchwinski, affirmed after rehearing *en banc*, 60 Fed. Appx. 601, 2003 WL 1870916 (6th Cir. 2003).
[44] Ch. 81-2011, Laws of Fla.

Section 414.0652, F.S., was challenged in a class action lawsuit by TANF recipients and was declared unconstitutional by the United States District Court for the Middle District of Florida and the United States Court of Appeals for the Eleventh Circuit

On December 31, 2013, the Middle District Court issued summary judgement for the plaintiff on the grounds that the State had failed to establish a special need to drug test all TANF applicants. The Court declared the statute facially unconstitutional and permanently prohibited the State from reinstating and enforcing the law.[45] The Middle District was highly critical of any suspicionless drug test. The legal question before the Middle District was whether s. 414.0652, F.S., which required all applicants for TANF benefits to submit to suspicionless drug testing, was constitutional under the Fourth and Fourteenth Amendments.[46] A drug test is a search under the Fourth Amendment, as applicable to the states through the Fourteenth Amendment.[47] The Fourth and Fourteenth Amendments do not prohibit all searches; only unreasonable searches; for a search to be reasonable, it ordinarily must be based on individualized suspicion of wrongdoing.[48] Because there was no suspicion of wrongdoing as the basis for the search, the state was required to prove that there was a substantial special need to drug test all TANF recipients.[49] The state argued that the following interests qualify as special needs sufficiently substantial to permit an exception to the Fourth Amendment in this case:

- Ensuring TANF participants' job readiness;
- Ensuring the TANF program meets its child-welfare and family-stability goals; and
- Ensuring that public funds are used for their intended purposes and not to undermine public health.[50]

The Middle District found these goals and objectives laudable, but "insufficient to place the entire Florida TANF population into that 'closely guarded category' of citizens for whom the Supreme Court has sanctioned suspicionless, mandatory drug testing."[51] Additionally, the Middle District found that the state had not shown that suspicionless and warrantless drug testing was necessary to address alleged concerns.[52] On December 3, 2014, the U.S. Eleventh Circuit Court of Appeals affirmed the ruling of the Middle District, and held that s. 414.0652, F.S., the state did not "meet its burden of establishing a substantial special need to drug test all TANF applicants without any suspicion" and violated the Fourth Amendment for its unreasonable search of applicants without evidence of "a more prevalent, unique, or different drug problem among TANF applicants than in the general population."[53]

Effect of Proposed Changes

HB 1117 creates s. 414.0653, F.S., which requires DCF to test for drug use TANF applicants who have a previous conviction for committing or attempting to commit a felony related to drug abuse prevention and control as listed in ch. 893, F.S., or a documented history of multiple arrests for drug use or possession within the past ten years. Unlike the state's previous suspicionless drug test under s. 414.0652, F.S., this requirement, like those in the other states that drug test TANF applicants and recipients is limited to only *certain* applicants and recipients. The drug test must be consistent with s. 112.0455, F.S. Individuals must be tested at the time of application, and such recipients must be tested every two months thereafter. The bill requires the applicant to be responsible for the cost of the drug test.

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[45] Lebron v. Wilkins, 990 F. Supp. 2d 1280, 1299 (M.D. Fla. 2013).
[46] Id. at 1287.
[47] Id. at 1288.
[48] Id.
[49] Id.
[50] Id. at 1291.
[51] Id.
[52] Id.
[53] Lebron v. Sec'y of the Fla. DCF, 772 F.3d 1352, 1355 (11th Cir. 2014)

DCF must notify applicants of the drug-screening policy, and each individual to be tested is required to sign a written acknowledgement that he or she understood the notice.

If an individual fails the drug test, DCF must provide him or her a list of state-licensed substance abuse treatment programs where the applicant resides. The bill states that the applicant, not the department or the state, is responsible for paying for substance abuse treatment.

The bill allows a parent whose TCA benefits have been denied or terminated in accordance with the requirements of this bill to designate an immediate family member or another individual to receive TCA for his or her minor child. The designated individual must be approved by the Department before the minor child's TCA benefits are reassigned to that individual. The designated individual must also undergo drug testing before being approved to receive benefits on behalf of the child.

DCF currently averages 26,213 TANF applications per month which include an adult household member.[54] Based on limited data from the Department of Corrections, DCF estimates that 1.56% of current adult TANF recipients have a drug conviction.[55] This percentage does not include adult recipients with multiple arrests for drug use or possession or misdemeanor drug convictions at local and county jail facilities.[56] Due to a lack of available data on the number of TANF individuals who have been arrested, but not convicted, on drug charges, the total number of drug tests required is anticipated to be higher.[57]

B. SECTION DIRECTORY:

Section 1: Creates s. 414.0653, F.S., relating to drug screening applicants for Temporary Assistance for Needy Families.
Section 2: Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.

2. Expenditures:
DCF will be responsible for reimbursing individuals who test negative for controlled substances for the cost of the drug test.[58]

Based on drug testing costs in 2011, DCF estimates a potential cost for a bundled rate between $28.50 and $40 per person.[59] Additionally, DCF estimates a conservative minimum of 408 new applicants per month would be tested.[60] Assuming that in addition to the new applicants tested each month, 1.56% of approximately 12,890 temporary cash assistance recipients would need to be tested on an ongoing basis, the total annual recurring cost for drug testing would be $213,975.[61] However, DCF notes that the number of individuals meeting the criteria for testing is likely to be higher.[62]

[5454] Department of Children and Families, Agency Analysis of 2017 House Bill 1117. (on file with Children Families and Seniors Subcommittee staff).
[55] Id.
[56] Id.
[57] Id.
[58] Id.
[59] Id.
[60] Id.
[61] Id.
[62] Id.

DCF also estimates a nonrecurring cost of $377,396 to $471,744 to modify the ACCESS Management System, and FLORIDA system to identify the disqualified individuals.[63] .

DCF will incur minimal costs to mail notices to individuals and protective payees for each drug test.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.

2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

TCA applicants will need to pay for the initial drug test. This is estimated to cost between $28.50 and $40.00. As TCA is a program for individuals with very low incomes, this could present a financial hardship for some applicants.

Individuals testing positive for drugs will not be reimbursed for the drug test. They also will be unable to receive TCA for two or three years, depending upon when they test positive.

The protective payee who may be designated to receive TANF benefits on behalf of the disqualified individual's children must also be drug tested before being approved to receive the benefits, though the bill does not authorize the protective payee to be reimbursed for the cost of the test if he or she tests negative.

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:
Federal law regarding the use of TANF funds allows states to test welfare recipients for use of controlled substances and sanction those testing positive. However, the state's current law (s. 414.0652, F.S.) was determined in 2014 by the U.S. Eleventh Circuit Court of Appeals to violate the Fourth Amendment for its unreasonable search of applicants without evidence of "a more prevalent, unique, or different drug problem among TANF applicants than in the general population."

Due to this ruling, the state's suspicionless TANF drug testing program in s. 414.0652, F.S, is not being implemented by DCF. Other states have successfully implemented "suspicion based" TANF drug testing programs, which predicate drug testing on a previous conviction for a drug-related felony or a reasonable suspicion that an applicant or recipient has a substance abuse problem.

[63] Id. FLORIDA programming will need to create new sanction coding and notices, identification of a secure electronic method for communication of drug testing results, and data extracts for reporting purposes. The high-level estimate range is 3,226 to 4,032 hours.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that the state is not responsible for providing or paying for treatment for individuals who fail a drug test administered under this section. However, state-funded substance abuse treatment services are available through the Medicaid program and through DCF's mental health and substance abuse program. This could be read as a prohibition on the state furnishing any state-funded substance abuse treatment services to such individuals, or that the state is not obligated to furnish such services but may in fact do so. The section could be revised to more clearly express the intended policy option.

DCF will need to establish a process to identify individuals subject to drug testing. To do so, DCF suggests granting it additional legislative authority to access criminal justice information and criminal justice information systems as defined in s. 943.045, F.S., to include screening for past drug infractions.[64]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[64] Id.

A bill to be entitled

An act relating to Temporary Assistance for Needy Families applicant drug screening; creating s. 414.0653, F.S.; requiring the Department of Children and Families to perform a drug test on an applicant for TANF benefits with a prior felony conviction or history of arrests for a drug-related offense; requiring the department to provide notice of the drug-screening policy; requiring the department to increase the amount of the initial TANF benefit under certain circumstances; providing procedures for testing and retesting; requiring the department to provide information concerning local substance abuse treatment programs to certain individuals; providing conditions for an individual to reapply for TANF benefits; specifying that a child remains eligible for benefits if a parent fails a drug test; providing conditions for designating another protective payee; providing rulemaking authority to the department; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 414.0653, Florida Statutes, is created to read:

414.0653 Drug screening for applicants for Temporary Assistance for Needy Families.—

(1)(a) The department shall require a drug test consistent with s. 112.0455, to be administered at the time of application for benefits and every 2 months after that date, to screen each individual who applies for Temporary Assistance for Needy Families (TANF) who:

1. Has a previous conviction of committing or attempting to commit a felony listed in chapter 893, relating to drug abuse prevention and control.

2. Has a documented history of multiple arrests for drug use or possession within the past 10 years.

The cost of drug testing is the responsibility of the individual tested.

(b) An individual who tests positive for controlled substances as a result of a drug test required under this subsection is ineligible to receive TANF benefits for 2 years after the date of the positive drug test unless the individual meets the requirements of paragraph (2)(g).

(2) The department shall:

(a) Provide notice of drug testing required pursuant to subsection (1) to each individual at the time of application. The notice must advise the individual that drug testing will be conducted as a condition for receiving TANF benefits and that the individual must bear the cost of testing. If the individual tests negative for controlled substances, the department shall

increase the amount of the initial TANF benefit by the amount paid by the individual for the drug testing. The individual shall be advised that the required drug testing may be avoided if the individual does not apply for TANF benefits. Dependent children under the age of 18 are exempt from the drug-testing requirement.

(b) Advise each individual to be tested, before the test is conducted, that he or she may, but is not required to, advise the agent administering the test of any prescription or over-the-counter medication he or she is taking.

(c) Require each individual to be tested to sign a written acknowledgment that he or she has received and understood the notice and advice provided under paragraphs (a) and (b).

(d) Assure each individual being tested a reasonable degree of dignity while producing and submitting a sample for drug testing, consistent with the state's need to ensure the reliability of the sample.

(e) Inform an individual who tests positive for a controlled substance and is deemed ineligible for TANF benefits that the individual may reapply for those benefits 2 years after the date of the positive drug test unless the individual meets the requirements of paragraph (g). If the individual tests positive again, he or she is ineligible to receive TANF benefits for 3 years after the date of the second positive drug test unless the individual meets the requirements of paragraph (g).

(f) Provide any individual who tests positive with a list of licensed substance abuse treatment providers available in the area in which he or she resides that meet the requirements of s. 397.401 and are licensed by the department. Neither the department nor the state is responsible for providing or paying for substance abuse treatment as part of the screening conducted under this section.

(g) An individual who tests positive under this section and is denied TANF benefits as a result may reapply for those benefits after 6 months if the individual can document the successful completion of a substance abuse treatment program offered by a provider that meets the requirements of s. 397.401 and is licensed by the department. An individual who has met the requirements of this paragraph and reapplies for TANF benefits must also pass an initial drug test and meet the requirements of subsection (1). Any drug test conducted while the individual is undergoing substance abuse treatment must meet the requirements of subsection (1). The cost of any drug testing and substance abuse treatment provided under this section shall be the responsibility of the individual being tested and receiving treatment. An individual who fails the drug test required under subsection (1) may reapply for benefits under this paragraph only once.

(3) If a parent is deemed ineligible for TANF benefits as a result of failing a drug test conducted under this section:

(a) The dependent child's eligibility for TANF benefits is not affected.

(b) An appropriate protective payee shall be designated to receive benefits on behalf of the child.

(c) The parent may choose to designate another individual to receive benefits for the parent's minor child. The designated individual must be an immediate family member or, if an immediate family member is not available or the family member declines the option, another individual, approved by the department, may be designated. The designated individual must also undergo drug testing before being approved to receive benefits on behalf of the child. If the designated individual tests positive for controlled substances, he or she is ineligible to receive benefits on behalf of the child.

(4) The department shall adopt rules to implement this section.

Section 2. This act shall take effect July 1, 2017.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Committee/Subcommittee hearing bill: Children, Families & Seniors Subcommittee

Representative Latvala offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsections (1) and (2) of section 414.0652, Florida Statutes, are amended to read:

414.0652 Drug screening for applicants for Temporary Assistance for Needy Families.—

(1)(a) The department shall require a drug test consistent with s. 112.0455 to screen each individual who applies for Temporary Assistance for Needy Families (TANF)~~.~~ who:

1. Has been convicted of committing or attempting to commit a drug-related felony as provided by chapter 893 within the last 10 years.

2. The department has a reasonable suspicion is engaging in the illegal use of a controlled substance.

(b) The cost of drug testing is the responsibility of the individual tested.

~~(a) An individual subject to the requirements of this section includes any parent or caretaker relative who is included in the cash assistance group, including an individual who may be exempt from work activity requirements due to the age of the youngest child or who may be exempt from work activity requirements under s. 414.065(4).~~

(c) ~~(b)~~ An individual who tests positive for controlled substances as a result of a drug test required under this section is ineligible to receive TANF benefits for 1 year after the date of the positive drug test unless the individual meets the requirements of paragraph (2)(h) ~~(j)~~.

(2) The department shall:

(a) Provide notice of drug testing to each individual at the time of application. The notice must advise the individual that drug testing will be conducted as a condition for receiving TANF benefits and that the individual must bear the cost of testing. If the individual tests negative for controlled substances, the department shall increase the amount of the initial TANF benefit by the amount paid by the individual for the drug testing. The individual shall be advised that the required drug testing may be avoided if the individual does not

apply for TANF benefits. Dependent children under the age of 18 are exempt from the drug-testing requirement.

~~(b) Require that for two-parent families, both parents must comply with the drug-testing requirement.~~

~~(c) Require that any teen parent who is not required to live with a parent, legal guardian, or other adult caretaker relative in accordance with s. 414.095(14)(c) must comply with the drug-testing requirement.~~

(b) ~~(d)~~ Advise each individual to be tested, before the test is conducted, that he or she may, but is not required to, advise the agent administering the test of any prescription or over-the-counter medication he or she is taking.

(c) ~~(e)~~ Require each individual to be tested to sign a written acknowledgment that he or she has received and understood the notice and advice provided under paragraphs (a) and (b) ~~(d)~~.

(d) ~~(f)~~ Assure each individual being tested a reasonable degree of dignity while producing and submitting a sample for drug testing, consistent with the state's need to ensure the reliability of the sample.

(e) ~~(g)~~ Specify circumstances under which an individual who fails a drug test has the right to take one or more additional tests.

(f) ~~(h)~~ Inform an individual who tests positive for a controlled substance and is deemed ineligible for TANF benefits

that the individual may reapply for those benefits 1 year after the date of the positive drug test unless the individual meets the requirements of paragraph (h) ~~(j)~~. If the individual tests positive again, he or she is ineligible to receive TANF benefits for 3 years after the date of the second positive drug test unless the individual meets the requirements of paragraph (h) ~~(j)~~.

(g) ~~(i)~~ Provide any individual who tests positive with a list of licensed substance abuse treatment providers available in the area in which he or she resides that meet the requirements of s. 397.401 and are licensed by the department. Neither the department nor the state is responsible for providing or paying for substance abuse treatment as part of the screening conducted under this section.

(h) ~~(j)~~ An individual who tests positive under this section and is denied TANF benefits as a result may reapply for those benefits after 6 months if the individual can document the successful completion of a substance abuse treatment program offered by a provider that meets the requirements of s. 397.401 and is licensed by the department. An individual who has met the requirements of this paragraph and reapplies for TANF benefits must also pass an initial drug test and meet the requirements of subsection (1). Any drug test conducted while the individual is undergoing substance abuse treatment must meet the requirements of subsection (1). The cost of any drug testing and substance

abuse treatment provided under this section shall be the responsibility of the individual being tested and receiving treatment. An individual who fails the drug test required under subsection (1) may reapply for benefits under this paragraph only once.

Section 2. This act shall take effect on July 1, 2017.

T I T L E A M E N D M E N T;

Remove everything before the enacting clause and insert: An act relating to Temporary Assistance for Needy Families applicant drug screening; amending s. 414.0652, F.S.; requiring the Department of Children and Families to perform a drug test on an applicant for TANF benefits with a prior drug-related felony conviction or that the department has reasonable suspicion is engaging in the illegal use of a controlled substance; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1121 Child Welfare
SPONSOR(S): Stevenson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1044

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee		Tuszynski	Brazzell
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Chapter 39, F.S., creates Florida's child welfare system that aims to protect children and prevent abuse, abandonment, and neglect. The Department of Children and Families (DCF) Office of Child Welfare works in partnership with local communities and the courts to ensure the safety, timely permanency and well-being of children.

DCF's child welfare practice model (model) standardizes the approach to risk assessment and decision making used to determine a child's safety. The model seeks to achieve the goals of safety, permanency, and child and family well-being. The model emphasizes parent engagement and empowerment as well as the training and support of child welfare professionals to assess child safety and emphasizes a family-centered practice with the goal of keeping children in their homes whenever possible.

HB 1121 makes multiple changes to the child welfare statutes to protect vulnerable children. The bill:

- Improves the assessment of risk for children by changing the process that DCF and the dependency court use to assess and order services for substance exposed newborns and children who enter households already under investigation or under the dependency court's jurisdiction;
- Expedites permanency for children by making changes to the procedures the dependency court and DCF use to identify and locate prospective parents requiring an inquiry and search much earlier in the dependency case; and
- Fosters more meaningful engagement of families by making changes that facilitate more participation by a child in his or her case planning, streamline processes for child protective investigators, and align statute with current practice to include conditions for return and Family Functioning Assessments.

The bill also:

- Allows DCF to use confidential abuse registry information and investigation records for residential group home employment screening, to align with foster home screening requirements;
- Defines "Child Welfare Trainer" and grants DCF rulemaking authority to create requirements for child welfare trainers;
- Permits hospitals and physician's offices to release patient records to DCF or its contracted entities for the purpose of investigations of or services for cases of abuse, neglect, or exploitation of children or vulnerable adults;
- Repeals obsolete sections of law related to residential group care, including provisions dealing with equitable reimbursement for group care services and reimbursement methodology; and
- Makes conforming cross reference changes based on the provisions of the bill.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides for an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida's Child Welfare System

Chapter 39, F.S., creates Florida's child welfare system that aims to protect children and prevent abuse, abandonment, and neglect.[1] The Department of Children and Families (DCF) Office of Child Welfare works in partnership with local communities and the courts to ensure the safety, timely permanency and well-being of children.

DCF's practice model is based on preserving and strengthening the child's family ties whenever possible, removing the child from his or her home only when his or her welfare and safety cannot be adequately safeguarded otherwise.[2] DCF contracts with community-based care lead agencies to coordinate case management and services for families within the dependency system.

Practice Model

DCF's child welfare practice model (model) standardizes the approach to risk assessment and decision making used to determine a child's safety.[3] The model seeks to achieve the goals of safety, permanency, and child and family well-being.[4] The model emphasizes parent engagement and empowerment as well as the training and support of child welfare professionals to assess child safety,[5] and emphasizes a family-centered practice with the goal of keeping children in their homes whenever possible.[6]

Community-Based Care Organizations and Services

DCF contracts for case management, out-of-home care, and related services with lead agencies, also known as community-based care organizations (CBCs). The model of using CBCs to provide child welfare services is designed to increase local community ownership of service delivery and design.[7]

DCF, through the CBCs, is required to administer a system of care[8] for children that is directed toward:

- Prevention of separation of children from their families;
- Intervention to allow children to remain safely in their own homes;
- Reunification of families who have had children removed from their care;
- Safety for children who are separated from their families;
- Focus on the well-being of children through emphasis on educational stability and timely health care;
- Permanency; and
- Transition to independence and self-sufficiency.

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[1] S. 39.001(8), F.S.
[2] S. 39.001(4), F.S.
[3] The Department of Children and Families, *2013 Year in Review*, available at: http://www.dcf.state.fl.us/admin/publications/year-in-review/2013/page19.shtml (last accessed March 6, 2017).
[4] The Department of Children and Families, *Florida's Child Welfare Practice Model*, available at: http://www.myflfamilies.com/service-programs/child-welfare/child-welfare-practice-model (last accessed March 7, 2017).
[5] Supra, FN 3.
[6] The Department of Children and Families, *2012 Year in Review*, available at: http://www.dcf.state.fl.us/admin/publications/year-in-review/2012/page9.shtml (last accessed March 7, 2017).
[7] Community-Based Care, The Department of Children and Families, accessible at http://www.myflfamilies.com/service-programs/community-based-care (last viewed February 12, 2016).
[8] S. 409.145(1), F.S.

CBCs are responsible for providing foster care and related services. These services include, but are not limited to, counseling, domestic violence services, substance abuse services, family preservation, emergency shelter, and adoption.[9] The CBC must give priority to services that are evidence-based and trauma informed.[10] CBCs contract with a number of subcontractors for case management and direct care services to children and their families.[11] There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.[12]

Dependency Case Process

When child welfare necessitates that DCF remove a child from his or her home, a series of dependency court proceedings must occur to adjudicate the child dependent and place him or her in out-of-home care, as indicated by the chart below.

Proceeding	Description	Statute
Removal	The child's home is determined to be 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.
Dependency Adjudicatory Trial	An adjudicatory trial is held within 30 days of arraignment, to determine whether a child is dependent.	s. 39.507, F.S.
Disposition Hearing	Disposition occurs within 15 days of arraignment or 30 days of adjudication. The judge reviews and orders the case plan for the family and the appropriate placement of the child.	ss. 39. 506 and 39.521, 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 (TPR)	After 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 TPR is filed.	ss. 39.802, 39.8055, 39.806, and 39.810, F.S.
Advisory Hearing	This hearing is set as soon as possible after all parties have been served with the petition for TPR. The hearing allows the parent to admit, deny, or consent to the allegations within the petition for TPR.	s. 39.808, F.S.
TPR Adjudicatory Trial	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.

Throughout the dependency process, multiple child welfare stakeholders, including case managers, Guardians ad Litem, service providers, and the court monitor a child's well-being and safety.

[9] Id.
[10] S. 409.988(3), F.S.
[11] Supra, FN 7.
[12] Community Based Care Lead Agency Map, The Department of Children and Families, available at: http://www.myflfamilies.com/service-programs/community-based-care/cbc-map (last accessed March 6, 2017).

HB 1121 makes multiple changes to the child welfare statutes to protect vulnerable children. The bill improves the assessment of risk for children by making changes to the process that DCF and the dependency court use to assess substance exposed newborns and children who enter households already under investigation or under the dependency court's jurisdiction. The bill expedites permanency for children by making changes to the procedures the dependency court and DCF use to identify and locate prospective parents requiring inquiry and searches much earlier in the dependency case. The bill also fosters more meaningful engagement of families by making multiple changes that facilitate more participation by a child in his or her case planning, streamline processes for child protective investigators, and align statute with current practice.

Determination of Paternity and Diligent Searches

Current Situation

Statute defines "parent" to mean a woman who gives birth to a child and a man whose consent to the adoption[13] of the child would be required.[14] If a child has been legally adopted, the term "parent" means the adoptive mother or father of the child.[15] The term does not include an individual whose parental relationship to the child has been legally terminated or a prospective parent.[16]

If the identity or location of a parent is unknown, the court is required to conduct an inquiry to identify or locate that parent. This inquiry requirement is found in the sections of statute relating to dependency adjudication[17] and termination of parental rights (TPR),[18] but there is no requirement for this paternity inquiry during a shelter hearing. [19] In both sections where required, the court must inquire:[20]

- Whether the mother of the child was married at the probable time of conception of the child or at the time of birth of the child.
- Whether the mother was cohabiting with a male at the probable time of conception of the child.
- Whether the mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father.
- Whether the mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.
- Whether any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother resided at the time of or since conception of the child, or in which the child has resided or resides.

A diligent search is required when the identity or location of a prospective parent is unknown. Currently, diligent search requirements under ss. 39.503(6) and 39.803(6) are not the same. A diligent search under s. 39.503(6), F.S., must include:

- A search of an electronic database designed for locating persons;
- Inquiries of all offices of program areas of DCF likely to have information about the parent or prospective parent;
- Inquiries of other state and federal agencies likely to have information about the parent or prospective parent;
- Inquiries of appropriate utility and postal providers;
- A thorough search of at least one electronic database specifically designed for locating persons; and
- Inquiries of appropriate law enforcement agencies.

[13] S. 63.062(1) F.S
[14] S. 39.01(49), F.S.
[15] Id.
[16] Id.
[17] S. 39.503, F.S.
[18] S. 39.803, F.S.
[19] S. 39.402(8), F.S.
[20] S. 39.503(1), F.S.

However, a diligent search under s. 39.803(6), F.S., does not require the search of an electronic database, and a search of the Florida Putative Father Registry is not currently required under either section.

If the court's inquiry and a subsequent diligent search identify a prospective parent, that person must be given the opportunity to become a party to the proceedings by completing a sworn affidavit of parenthood and filing it with the court or DCF.[21] A prospective parent who files a sworn affidavit of parenthood shall be considered a parent for all purposes under the statute unless the other parent contests the determination of parenthood.[22] When a prospective parent contests recognition as a parent, current statute requires the dependency court to delay determination of maternity or paternity until proceedings under a separate chapter relating to determination of parentage are final.[23]

Effect of Proposed Language

The bill creates a definition of "legal father" to mean a man married to the mother at the time of conception or birth of the child, unless paternity has been otherwise determined by a court of competent jurisdiction. If no man was married to the mother at the time of birth or conception of the child, then "legal father" means a man named on the birth certificate of the child or determined by a court order or administrative proceeding to be the father of the child. The bill also revises the definition of "parent" to reflect this new language.

The bill requires the court, when conducting a paternity inquiry at adjudication of dependency and TPR, to do so under oath and to inquire whether a man is named on the birth certificate of the child or whether a man has been determined by a court order or administrative proceeding to be the father of the child. The bill also requires a trial court to conduct the same paternity inquiry under oath at the shelter hearing to determine the identity and location of the legal father. These changes will expedite permanency by requiring a paternity inquiry during the earliest step in the dependency process involving the court, the shelter hearing, and by including expanded instances of paternity determination to identify legal fathers sooner in the process.

The bill allows a court to order scientific testing within the dependency proceeding to determine the maternity or paternity of a child if an identified prospective parent does not file a sworn affidavit of parenthood or if the other parent contests the determination of parenthood. If the court finds the prospective parent to be a parent as a result of the scientific testing, the bill requires the court to enter a judgment of maternity or paternity, assess the cost of the scientific testing to the parent, and enter an amount of child support to be paid.

The bill requires a search of the Florida Putative Father Registry when conducting a diligent search. The bill also aligns the various diligent search requirements in different sections of ch. 39, F.S. This requires a search of at least one electronic database, as well as the Florida Putative Father Registry, when conducting a diligent search for a prospective parent whose location or identity are unknown and clarifies that DCF is the state agency administering Title IV-B and IV-E funds such that it shall be provided access to the federal and state locator services pursuant to federal law.[24] The bill also permits a trial court to proceed with a dependency case without further notice to prospective parents if a diligent search fails to identify and locate him or her.

If the court has ordered that no further notice is required to a prospective parent that a diligent search has failed to identify or locate, the bill provides that personal service and notice relating to the petition to terminate parental rights does not need to be provided to that prospective parent. The bill requires that, if there is not an identified legal father, notice of the petition for termination of parental rights must be provided to any prospective father that has been identified and located unless the prospective father

[21] S. 39.503(8), F.S.
[22] Id.
[23] Ch. 742, F.S.
[24] 42 U.S.C. s. 653(c)(4)

executes, and the court accepts, an affidavit of non-paternity or a consent to termination of his parental rights.

These changes relating to paternity and diligent search will expedite permanency for children whose adoption or other permanency plans are delayed by the inability to identify or locate prospective parents by moving the initial inquiry of paternity to the start of the case and allowing more efficient procedures when DCF is unable to locate prospective parents.

Adjudication of Dependency

Current Situation

Statute requires that a dependency case have only one order of adjudication.[25] The order of adjudication establishes the legal status of the child as dependent and may be based on the conduct of one parent, both parents, or a legal custodian.[26] If the court holds a subsequent evidentiary hearing on allegations against the other parent, the court can supplement the adjudicatory order, the disposition order, and the case plan.[27] This supplemental order grants the court jurisdiction over the other parent and allows the court to order services for that parent.

In certain areas of the state, based on a holding from the Fifth District Court of Appeal (DCA), [28] a child can be adjudicated dependent as to the first parent based upon evidence of *risk of harm* but cannot be adjudicated dependent as to the second parent unless *actual harm* is proven. The court held that a supplemental evidentiary hearing on dependency adjudication must address whether the parent had actually abused or neglected the child, not whether the child was at substantial risk of imminent abuse or neglect. [29]

In contrast, the Third DCA[30] rejected the Fifth DCA's reasoning and held that a court can supplement the adjudicatory order where a child is at substantial risk of abuse, abandonment, or neglect.[31]

Effect of Proposed Language

The bill requires a court to determine whether each parent has engaged in conduct that places the child at substantial risk of imminent abuse, abandonment, or neglect. If an initial evidentiary hearing is conducted with only one parent present or having been served, the evidentiary hearing shall address the abuse, abandonment, or neglect alleged in the petition regardless of whether any of the allegations are made against the second parent. The bill further clarifies that the petitioner is not required to show actual harm by the second parent in order for the court to make supplemental findings regarding the conduct of the second parent. This change will protect children in the circuits of the Fifth DCA by allowing risk of harm, the same standard required by the initial adjudication, by a second parent to be sufficient to supplement an order of adjudication and order services for the second parent.

[25] S. 39.507(7)(a), F.S.
[26] Id.
[27] S. 39.507(7)(b), F.S.
[28] Including Circuits 5 (Hernando, Lake, Marion, Citrus, and Sumter), 7 (Flagler, Putnam, St. Johns, and Volusia), 9 (Orange and Osceola), and 18 (Brevard and Seminole).
[29] P.S. v. Department of Children and Families, 4 So. 3d 719 (Fla. 5th DCA 2009).
[30] Including Miami-Dade and Monroe Counties.
[31] (D.A. v. Department of Children & Family Services, 84 So. 3d 1136 (Fla. 3d DCA 2012).

Safety Assessments for Children Born or Moving Into a Household

Current Situation

DCF's current policy regarding new children in households with an active investigation or ongoing services requires the CPI or Case Manager to add any new child(ren) in a household to the child welfare case and assess the new child as part of the Family Functioning Assessment.[32] DCF requires an ongoing assessment as to how the parent will manage the care of the new child, the family conditions that led to the safety plan, how the birth of the child or addition of the child will affect those family conditions, and the new child's need for protection.[33] In the case of a child born into or entering a home with ongoing case management or judicial oversight, DCF must assess the family and plan services prior to the birth of the child. This must include an assessment for whether this new infant will be vulnerable to the identified danger in the home and what influences an infant will have on the management of the safety plan and whether the current level of intrusiveness is still appropriate.

Effect of Proposed Language

The bill requires DCF to add a child to a current investigation and assess that child's safety when he or she is born or moves into a household with an active investigation. The bill also requires DCF to assess a child's safety and provide notice to the court if a child is born or moves into a family that is under the court's jurisdiction. DCF must complete an assessment of the family to determine how the addition of a child will impact family functioning at least 30 days before a child is expected to be born or move into a household. If the birth or addition will occur in fewer than 30 days, DCF must complete an assessment within 72 hours after learning of the pregnancy or potential addition. The assessment must be filed with the court. DCF is required to complete a progress update and file the progress update with the court once a child is born or moves into the household. The bill grants the court the discretion to hold a hearing on the progress update filed by DCF. The bill also provides that DCF must adopt rules to implement this subsection.

Additionally, the bill requires DCF to provide post-placement supervision for no less than 6 months in any home in which the child is reunified to align with the requirement that the dependency court maintain jurisdiction for 6 months after reunification.

Conditions for Return

Current Situation

DCF began the transition in 2013 to a new practice model that focused on child safety within the child's home and timely reunification for children removed from their homes when conditions allowed reunification with services.[34] In 2014, as part of a major effort to reform the child welfare system with SB 1666 (2014),[35] the Legislature required child protective investigators (CPI) to implement an in-home safety plan whenever present or impending danger is identified within a home and a removal is not necessary,[36] and for cases with judicial oversight, required DCF to file all safety plans with the court.[37] In-home safety plans are required to be specific, sufficient, feasible and sustainable to ensure child safety while the child remains in the home.[38]

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[32] Department of Children and Families, Proposed Bill Agency Analysis of 2017 "Pathway to Permanency", p. 3 (unpublished) (on file with Children, Families, & Seniors Subcommittee staff).
[33] Id.
[34] Supra, FN 3.
[35] Ch. 14-244, Laws of Fla.
[36] Ch. 14-244, Laws of Fla.; s. 39.301(9)(a)6., F.S.
[37] Ch. 14-244, Laws of Fla.; s. 39.501(3)(a), F.S.
[38] S. 39.301(9)(a)6.a., F.S.

In addition to safety plans, DCF is required to file a predisposition study (PDS) with the court prior to the disposition hearing that details services that may have prevented removal or services that may be needed at the time of reunification.[39] The PDS does not specifically assess conditions for return or the potential use of an in-home safety plan to provide protections that would allow a child to be placed back in his or her home. DCF uses the Family Functioning Assessment (FFA) as the PDS.

When determining whether to place a child back into his or her home or whether to move forward with another permanency option, the court uses the PDS and the case plan to determine whether a parent has achieved substantial compliance with the tasks ordered in the case plan to the extent that the safety, well-being, and the physical, mental and emotional health of the child is not endangered by the return of the child to the home.[40] Acceptable conditions for return with an in-home safety plan may occur much sooner than substantial compliance with a case plan, as substantial compliance with services may not occur until many months into the dependency case.

Effect of Proposed Language

This bill updates language to align with current practice and support the use and review of the FFA and concurrent safety plan(s) by judges during the disposition hearing and judicial reviews so that a child may be reunited with his or her parent more quickly with the use of an in-home safety plan.

The bill removes reference to the term "predisposition study" and replaces it with "family functioning assessment." The bill requires that a written case plan and a family functioning assessment prepared by an authorized agent of DCF must be approved by the court. The bill requires DCF to file the case plan and the family functioning assessment with the court, serve a copy of the case plan on the parents of the child, and provide a copy of the case plan to the guardian ad litem program and to all other parties:

- Not less than 72 hours before the disposition hearing if the disposition hearing occurs on or after the 60th day after the child was placed in out-of-home care; or
- If the disposition hearing occurs before the 60th day after the child was placed in out-of-home care and a case plan has not been submitted, the case plan must be filed and served not less than 72 hours before the case plan acceptance hearing, which must occur within 30 days after the disposition hearing.

The bill updates what the family functioning assessment must contain, to include evidence and circumstances of maltreatment, active danger threats in the home, an assessment of adult functioning, an assessment of parenting practices, an assessment of child functioning, a safety analysis describing the capacity for an in-home safety plan, and conditions for return.

The bill allows the court to grant an exception to the requirement for a family functioning assessment to be filed upon finding that all of the family and child information required in the assessment is available in other documents filed with the court.

When determining whether a child should be reunified with a parent, the bill requires the court to determine whether the circumstances that caused the out-of-home placement have been remedied to the extent that the safety, well-being and physical, and mental and emotional health of the child are not endangered by the return of the child with an in-home safety plan. This moves away from the lengthier standard of substantial compliance and allows faster reunification by allowing a child to be returned as soon as the cause of the out-of-home placement is addressed and the parent is able to be safely reunified with an in-home safety plan.

[39] S. 39.521(1), F.S.
[40] S. 39.522, F.S.

This bill also provides expanded judicial enforcement by allowing the court to issue an order to show cause to DCF as to why it should not return the child to the custody of the parents upon the presentation of evidence that the conditions for return of the child have been met.

Safety Planning for Domestic Violence and Injunctions

Current Situation

In the case of domestic violence, child protective investigators are required to implement a separate safety plan for the perpetrator of the domestic violence and must seek issuance of a protective injunction if the perpetrator is not the parent, guardian, or legal custodian of the child.[41] This injunction protects the child victims of domestic violence by allowing the court to order the perpetrator to:[42]

- Refrain from further abuse and domestic violence;
- Participate in treatment;
- Limit contact and communication with the child victim or other children in the home;
- Refrain from contact with the child;
- Require supervision of contact with the child;
- Vacate the home; and/or
- Comply with a safety plan.

There are instances where a perpetrator of domestic violence is unable to be located to receive or participate in a safety plan or receive service for an injunction. There are also instances where dependency proceedings and injunction proceedings regarding the same children are heard by different judges. This may require DCF to take the same witness testimony on two separate occasions in front of two separate judges increasing the chance for differing court findings and results.

Effect of Proposed Language

The bill amends the title of s. 39.504, F.S., from "injunction pending disposition of petition; penalty" to "injunction; penalty."

The bill would require CPIs to implement a safety plan for the perpetrator only if the CPI is able to locate the perpetrator. The bill would relieve CPIs of the requirement to see seek an issuance of an injunction if DCF intends to file a shelter or dependency petition. This shelter or dependency petition would protect a child victim of domestic violence, as a dependency court is able to order all of the same protections provided by an injunction once a shelter or dependency petition is filed. After filing an affidavit of diligent search by DCF, the bill would allow the court to issue an injunction based on the sworn petition and affidavits when DCF is unable to locate the alleged perpetrator.

For cases with dependency court involvement, the bill would require the same judge to hear both the dependency and the injunction proceeding and also allow the court to consider a sworn petition, testimony, or an affidavit. HB 1121 would also allow the court to hear all relevant and material evidence at the injunction hearing, including oral and written reports, to the extent of its probative value even though it would not be competent evidence at an adjudicatory hearing. These changes would align current procedure with the concept of the Unified Family Court.[43]

[41] S.39.301(9)(a), F.S.
[42] S. 39.504(4), F.S.
[43] *See* In re: Report of the Family Court Steering Committee, 794 So. 2d 518 (Fla. 2001)("Family Courts IV").

Case Planning

Current Situation

DCF must develop a case plan with input from all parties to the dependency case that details the problems being addressed as well as the goals, tasks, services, and responsibilities required to ameliorate the concerns of the state.[44] The case plan follows the child from the provision of voluntary services through dependency, or termination of parental rights.[45] Once a child is found dependent, a judge reviews the case plan, and if the judge accepts the case plan as drafted, orders the case plan to be followed.[46]

Section 39.6011, F.S., details the development of the case plan and who must be involved, such as the parent, guardian ad litem, and if appropriate, the child. This section also details what must be in the case plan, such as descriptions of the identified problems, the permanency goal, timelines, and notice requirements.

Recent changes in federal law require children age 14 years and older the opportunity to participate in the development of case plans.[47] However, the new federal language does not provide for the protection of confidential information that might be shared at a case planning conference. There are currently no statutory safeguards in Florida law related to the confidentiality of information shared at a case planning conference.

Effect of Proposed Language

The bill allows DCF to discuss confidential information during the case planning conference in the presence of individuals who participate in the staffing and requires all individuals who participate in the staffing to maintain the confidentiality of all information shared.

Permanent Guardianship

Current Situation

When reunification with a parent or adoption is not in the best interest of the child as a permanency option, the dependency court may place the child in a permanent guardianship, if certain conditions are met.[48] Permanent guardians are intended to be permanent placements while the legal parent-child relationship is maintained, including the child's inheritance rights, the parents' right to consent to a child's adoption, and the parents' responsibility to provide financial, medical, and other support to the child.[49] Once a case closes in permanent guardianship, the court terminates supervision of the case while maintaining jurisdiction.[50] Statute is silent regarding a permanent guardian moving from his or her current geographical location.

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[44] Ss, 39.6011 and 39.6012, F.S.
[45] S. 39.01(11), F.S.
[46] S. 39.521, F.S.
[47] 42 U.S.C. s. 675(1)(B).
[48] S. 39.6221, F.S.; Permanent guardianship of a dependent child.—
(1) If a court determines that reunification or adoption is not in the best interest of the child, the court may place the child in a permanent guardianship with a relative or other adult approved by the court if all of the following conditions are met:
(a) The child has been in the placement for not less than the preceding 6 months.
(b) The permanent guardian is suitable and able to provide a safe and permanent home for the child.
(c) The court determines that the child and the relative or other adult are not likely to need supervision or services of the department to ensure the stability of the permanent guardianship.
(d) The permanent guardian has made a commitment to provide for the child until the child reaches the age of majority and to prepare the child for adulthood and independence.
(e) The permanent guardian agrees to give notice of any change in his or her residential address or the residence of the child by filing a written document in the dependency file of the child with the clerk of the court.
[49] S. 39.6221(6), F.S.
[50] S. 39.6221(5), F.S.

In 2015, the Fourth DCA held that the provisions of s. 61.13001, F.S., which relates to parental relocation in dissolution of marriage or time-sharing cases, apply to permanent guardianship placements.[51] As a result, if a permanent guardian in that circuit wishes to relocate more than 50 miles from his or her current residence, the guardian must either obtain the parents' agreement to the relocation or file with the circuit court a petition to relocate and potentially present his or her case at a hearing. Under limited circumstances, a parent may petition the court to reopen a case closed in permanent guardianship and request reunification. However, under Ch. 39, F.S., permanent guardians are not considered parties to the dependency case and are unable to file any pleadings.[52]

Effect of Proposed Language

The bill states that for any child placed in permanent guardianship under Ch. 39, F.S., the requirements of s. 61.13001, F.S., do not apply. This allows the permanent guardian of a child to move freely.

Termination of Parental Rights

Current Situation

When a parent fails to remedy the issues within their family that brought a child into the dependency system, DCF may file a Petition for Termination of Parental Rights (TPR).[53] This step must be taken for a child to be adopted, as the legal ties to his or her parents must be severed before an adoption can take place. DCF has grounds to terminate a parent's rights if his or her conduct caused the child to be placed in out-of-home care in Florida on three or more occasions.[54] A child's prior placements in out-of-home care in a state other than Florida cannot serve as a basis for the termination of parental rights.

While TPRs are usually filed against both parents, a single-parent TPR is permitted when certain grounds for termination are proven, such as incarceration, egregious conduct, and chronic substance abuse.[55] A single-parent TPR severs the legal relationship between one parent and his or her child, while maintaining that legal relationship with the other parent. Current TPR grounds such as a parent's conduct that demonstrates that continued involvement with the child threatens the child's life, safety, well-being, or physical, mental, or emotional health[56] and a conviction that requires the parent to register as a sexual predator[57] are not included.

Effect of Proposed Language

The bill expands section 39.806(1)(l) F.S., to establish a ground for termination of parental rights where on three or more occasions the child or another child of the parent has been placed in out-of-home care pursuant to the law of any state, territory, or jurisdiction of the United States that is substantially similar to Ch. 39, F.S. The bill also expands the grounds for a single-parent termination to include both conduct that demonstrates continued involvement threatens the child and a conviction that requires registration as a sexual predator. These changes will further protect and expedite permanency for children by expanding the grounds for two-parent and single-parent TPR.

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[51] T.B. v. Department of Children & Families, 189 So. 3d 150 (Fla. 4th DCA 2015).
[52] S. 39.01(51), F.S.; "Party" means 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.
[53] S. 39.8055, F.S.
[54] S. 39.806(1)(l), F.S.
[55] S. 39.811(6), F.S.
[56] S. 39.806(1)(c), F.S.
[57] S. 39.806(1)(n), F.S.

Substance Exposed Newborns

Current Situation

Drug abuse during pregnancy creates adverse health effects in newborns termed Neonatal Abstinence Syndrome (NAS).[58] Newborns with NAS suffer from withdrawal symptoms such as tremors, abdominal pain, weight loss, sweating, incessant crying, rapid breathing, sleep disturbance and seizures.[59] The incidence of NAS has increased substantially in the past decade.[60]

In 2012 the legislature created the Statewide Task Force on Prescription Drug Abuse and Newborns to begin addressing the growing problem of NAS.[61] The 15-member Task Force was composed of medical professionals, law enforcement, prevention experts and state legislators. This Task Force was charged by the Legislature with examining the scope of NAS in Florida, its long-term effects and the costs associated with caring for drug exposed babies, and which drug prevention and intervention strategies work best with pregnant mothers.[62] The task force made multiple policy recommendations including education initiatives, drug screening initiatives for pregnant women, immunity provisions for pregnant women, and collaboration with communities and social welfare agencies.[63]

The dependency court has wide discretion as to what case plan tasks and services a parent may be ordered to participate in based on the particular case and facts.[64] This means a dependency court may not order a substance abuse disorder assessment or compliance with treatment in cases in which there is evidence of a substance abuse disorder.

Effect of Proposed Language

The bill requires the court to order any parent whose actions relating to substance abuse have caused harm to a child, such as being born substance-exposed, to submit to a substance abuse disorder evaluation or assessment and participate and comply with treatment services identified by the assessment or evaluation. The bill also states that adjudication of a child as dependent based upon evidence of harm as defined in s. 39.01(30) (g), F.S.,[65] demonstrates good cause for such order. This removes discretion from a dependency court to order this particular task in circumstances when an adjudication of dependency is based on harm caused by substance abuse.

The bill also requires DCF to include an evaluation or assessment and participation and compliance with treatment services identified by the assessment or evaluation as a required case plan task to align with the requirement of an order for evaluation and treatment.

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[58] McQueen, K. and Murphy-Oikonen, J, *Neonatal Abstinence Syndrome*, The New England Journal of Medicine, Review Article, December 22, 2016, available at: http://www.nejm.org/doi/pdf/10.1056/NEJMra1600879 (last accessed March 10, 2017).
[59] Id.
[60] Id.
[61] Id.
[62] Id.
[63] Florida Office of the Attorney General, Statewide Task Force on Prescription Drug Abuse & Newborns, 2014 Progress Report, available at: http://myfloridalegal.com/webfiles.nsf/WF/RMAS-9GUKBJ/$file/Progress-Report-Online-2014.pdf (last accessed March 10, 2017).
[64] *See* s. 39.521, F.S.
[65] Exposes a child to a controlled substance or alcohol. Exposure to a controlled substance or alcohol is established by:
1. A test, administered at birth, which indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant; or
2. Evidence of extensive, abusive, and chronic use of a controlled substance or alcohol by a parent when the child is demonstrably adversely affected by such usage.

Relative Caregiver Program

Current Situation

The Relative Caregiver Program (RCP) provides temporary cash assistance to individuals who meet eligibility rules and have custody of a relative child under age 18 who has been placed in his or her home through the dependency system.[66] The intent of the RCP is to provide relative caregivers who could not otherwise afford to take the child into their homes, a means to avoid exposing the child to the trauma of shelter or foster care.

The RCP provides one type of child-only cash assistance. Payments are based on the child's age and any countable income.[67] DCF ceases to provide child-only RCP benefits when the parent or step-parent resides in the home with the relative caregiver and the child. DCF terminates the benefits in this situation based on the requirement in s. 414.095(2)(a)5., F.S., that parents who live with their minor children to be included in the eligibility determination and households containing a parent are considered work-eligible households. Through rule 65C-28.008(2)(d), F.A.C., DCF terminates payments through the RCP if the parent is in the home for 30 consecutive days.[68] However, at least one court has ruled that caregivers may continue to receive the Relative Caregiver Program benefits while the parent resides in the home, because the prohibition against the parent residing in the home is not in statute and DCF rules cannot be used to establish an eligibility guideline not included in the statute. Court orders in such cases result in DCF being required to make disallowed Temporary Assistance for Needy Families payments violating federal rules.

Effect of Proposed Language

The bill places the prohibition against a parent or stepparent of the dependent child in statute, maintaining the possibility for payment if the relative or nonrelative caregiver is caring for a minor parent and the minor parent's child. If ineligible for the RCP, the caregiver may still be eligible for other assistance programs.

This bill also clarifies that the program will be established, implemented and operated by rule as deemed necessary by DCF, and that DCF determines eligibility for the Relative Caregiver Program.

Other Changes

The bill also:

- Allows DCF to use confidential abuse registry information and investigation records for residential group home employment screening, to align with foster home screening requirements. Currently, statute does not clearly authorize access to this information and records for group home employee employment screening.
- Defines a "Child Welfare Trainer" to mean a person providing training for the purposes of child welfare professionals earning certification and grants DCF rulemaking authority to implement the section, including creating requirements for child welfare trainers. The Joint Administrative Procedures Committee had previously indicated that DCF did not have sufficient rule authority to create such requirements.
- Permits hospitals, licensed under Ch. 395, F.S., and physician's offices to release patient records to DCF or its contracted entities for the purpose of investigations of or services for cases of abuse, neglect, or exploitation of children or vulnerable adults, as some providers have been hesitant to release these records without additional statutory authority.

[66] S. 39.5085(2), F.S.
[67] Rule 65C-28.008(2)(g), F.A.C.
[68] However, a relative may receive the RCP payment for a minor parent who is in his or her care, as well as for that minor parent's child, if both children have been adjudicated dependent and meet all other eligibility requirements.

- Repeals obsolete sections of law related to residential group care, including provisions dealing with equitable reimbursement for group care services and reimbursement methodology; and
- Makes conforming cross reference changes based on the provisions of the bill.

The bill provides for an effective date of July 1, 2017.

B. SECTION DIRECTORY:

Section 1: Amends s. 39.01, F.S. relating to definitions.
Section 2: Amends s. 39.201, F.S., relating to mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.
Section 3: Amends s. 39.301, F.S., relating to initiation of protective investigations.
Section 4: Amends s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment, or neglect.
Section 5: Amends s. 39.402, F.S., relating to placement in a shelter.
Section 6: Amends s. 39.503, F.S., relating to identity or location of parent unknown; special procedures.
Section 7: Amends s. 39.504, F.S., relating to injunction pending disposition of petition; penalty.
Section 8: Amends s. 39.507, F.S., relating to adjudicatory hearings; orders of adjudication.
Section 9: Amends s. 39.5085, F.S., relating to relative caregiver program.
Section 10: Amends s. 39.521, F.S., relating to disposition hearings; powers of disposition.
Section 11: Amends s. 39.522, F.S., relating to postdisposition change of custody.
Section 12: Amends s. 39.6011, F.S., relating to case plan development.
Section 13: Amends s. 39.6012, F.S., relating to case plan tasks; services
Section 14: Amends s. 39.6221, F.S., relating to permanent guardianship of a dependent child.
Section 15: Amends s. 39.701, F.S., relating to judicial review.
Section 16: Amends s. 39.801, F.S., relating to procedures and jurisdiction; notice; service of process.
Section 17: Amends s. 39.803, F.S., relating to identity or location of parent unknown after filing of termination of parental rights petition; special procedures.
Section 18: Amends s. 39.806, F.S., relating to grounds for termination of parental rights.
Section 19: Amends s. 39.811, F.S., relating to powers of disposition; order of disposition.
Section 20: Amends s. 395.3025, F.S., relating to patient and personnel records; copies; examination.
Section 21: Amends s. 402.40, F.S., relating to child welfare training and certification.
Section 22: Amends s. 456.057, F.S., relating to ownership and control of patient records; report or copies of records to be furnished; disclosure of information.
Section 23: Repeals s. 409.141, F.S., relating to equitable reimbursement methodology.
Section 24: Repeals s. 409.1677, F.S., relating to model comprehensive residential services programs.
Section 25: Amends s. 39.524, F.S., relating to safe-harbor placement.
Section 26: Amends s. 394.495, F.S., relating to child and adolescent mental health system of care; programs and services.
Section 27: Amends s. 409.1678, F.S., relating to specialized residential options for children who are victims of sexual exploitation.
Section 28: Amends s. 960.065, F.S., relating to eligibility for awards.
Section 29: Amends s. 409.1679, F.S., relating to additional requirements; reimbursement methodology.
Section 30: Amends s. 1002.3305, F.S., relating to College-Preparatory Boarding Academy Pilot Program for at-risk students.
Section 31: Amends s. 483.181, F.S., acceptance, collection, identification, and examination of specimens.
Section 32: Provides for an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill requires DCF to develop a process to perform abuse registry checks for residential group care employees. Statewide, there are slightly more than 300 group care providers. DCF estimates that existing staff can absorb the increased workload.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have an indeterminate positive fiscal impact on the expenditures paid by CBCs for paternity testing where a prospective parent is determined to be the parent and assessed the cost of the testing.

The cost of a paternity test can range from $50-$500, depending on the type of test. During FY 2015-2016, DCF's Children's Legal Services served more than 52,414 children. It is unknown how many of those children were the subject of paternity testing. Assuming Children's Legal Services serves the same number of children each year:

- If only 5% of the children (2,620) required paternity testing and the testing identified the child's parent such that the testing cost could be assessed against that parent, DCF and its CBCs would save $131,000-$1,310,000 annually.
- If 10% of the children (5,241) required paternity testing and the testing identified the child's parent, DCF and its CBCs would save $262,050-$2,620,500 annually.

Conversely, the bill will have an indeterminate negative fiscal impact on those parents assessed the cost of testing.

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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to child welfare; amending s. 39.01, F.S.; defining the term "legal father" and redefining the term "parent"; amending s. 39.201, F.S.; providing that central abuse hotline information may be used for employment screening of residential group home caregivers; amending s. 39.301, F.S.; requiring a safety plan to be issued for a perpetrator of domestic violence only if the perpetrator can be located; specifying what constitutes reasonable efforts; requiring that a child new to a family under investigation be added to the investigation and assessed for safety; amending s. 39.302, F.S.; conforming a cross-reference; providing that central abuse hotline information may be used for certain employment screenings; amending s. 39.402, F.S.; requiring a court to inquire as to the identity and location of a child's legal father at the shelter hearing; specifying what types of information fall within the scope of such inquiry; amending s. 39.503, F.S.; requiring a court to conduct under oath the inquiry to determine the identity or location of an unknown parent; requiring a court to seek additional information relating to a legal father's identity in such inquiry; requiring the diligent search to

determine a parent's or prospective parent's location to include a search of the Florida Putative Father Registry; authorizing the court to order scientific testing to determine parentage if certain conditions exist; amending s. 39.504, F.S.; requiring the same judge to hear a pending dependency proceeding and an injunction proceeding; providing that the court may enter an injunction based on specified evidence; amending s. 39.507, F.S.; requiring a court to consider maltreatment allegations against a parent in an evidentiary hearing relating to a dependency petition; amending s. 39.5085, F.S.; revising eligibility guidelines for the Relative Caregiver Program with respect to relative and nonrelative caregivers; amending s. 39.521, F.S.; providing new time guidelines for filing with the court and providing copies of case plans and family functioning assessments; providing for assessment and program compliance for a parent who caused harm to a child by exposing the child to a controlled substance; providing in-home safety plan requirements; providing requirements for family functioning assessments; providing supervision requirements after reunification; amending s. 39.522, F.S.; providing conditions for returning a child home with an in-home

safety plan; amending s. 39.6011, F.S.; providing requirements for confidential information in a case planning conference; providing restrictions; amending s. 39.6012, F.S.; providing for assessment and program compliance for a parent who caused harm to a child by exposing the child to a controlled substance; amending s. 39.6221, F.S.; providing that relocation requirements for parents in dissolution proceedings do not apply to permanent guardianships; amending s. 39.701, F.S.; providing safety assessment requirements for children coming into a home under court jurisdiction; granting rulemaking authority; amending s. 39.801, F.S.; providing an exception to the notice requirement regarding the advisory hearing for a petition to terminate parental rights; amending s. 39.803, F.S.; requiring a court to conduct under oath the inquiry to determine the identity or location of an unknown parent after the filing of a termination of parental rights petition; requiring a court to seek additional information relating to a legal father's identity in such inquiry; revising minimum requirements for the diligent search to determine the location of a parent or prospective parent; authorizing the court to order scientific testing to determine parentage if certain conditions exist;

amending s. 39.806, F.S.; revising circumstances under which grounds for the termination of parental rights may be established; amending s. 39.811, F.S.; revising circumstances under which the rights of one parent may be terminated without terminating the rights of the other parent; amending s. 395.3025, F.S.; revising requirements for access to patient records; amending s. 402.40, F.S.; defining the term "child welfare trainer"; providing rulemaking authority; amending s. 456.057, F.S.; revising requirements for access to patient records; repealing s. 409.141, F.S., relating to equitable reimbursement methodology; repealing s. 409.1677, F.S., relating to model comprehensive residential services programs; amending ss. 39.524, 394.495, 409.1678, and 960.065, F.S.; conforming cross-references; amending ss. 409.1679 and 1002.3305, F.S.; conforming provisions to changes made by the act; reenacting s. 483.181(2), F.S., relating to acceptance, collection, identification, and examination of specimens, to incorporate the amendment made to s. 456.057, F.S., in a reference thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (35) through (80) of section 39.01, Florida Statutes, are redesignated as subsections (36) through (81), respectively, a new subsection (35) is added to that section, and subsections (10) and (32) and present subsection (49) of that section are amended, to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(10) "Caregiver" means the parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child's welfare as defined in subsection (48) ~~(47)~~.

(32) "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect in which the person allegedly perpetrating the child abuse or neglect is an employee of a private school, public or private day care center, residential home, institution, facility, or agency or any other person at such institution responsible for the child's care as defined in subsection (48) ~~(47)~~.

(35) "Legal father" means a man married to the mother at the time of conception or birth of their child, unless paternity has been otherwise determined by a court of competent jurisdiction. If no man was married to the mother at the time of birth or conception of the child, the term "legal father" means a man named on the birth certificate of the child pursuant to s. 382.013(2), a man determined by a court order to be the father

of the child, or a man determined by an administrative proceeding to be the father of the child.

(50) ~~(49)~~ "Parent" means a woman who gives birth to a child and a man whose consent to the adoption of the child would be required under s. 63.062(1). "Parent" also means a man married to the mother at the time of conception or birth of their child, unless paternity has been otherwise determined by a court of competent jurisdiction. If no man was married to the mother at the time of birth or conception of the child, the term "legal father" means a man named on the birth certificate of the child pursuant to s. 382.013(2), a man determined by court order to be the father of the child, or a man determined by an administrative proceeding to be the father of the child. If a child has been legally adopted, the term "parent" means the adoptive mother or father of the child. For purposes of this chapter only, when the phrase "parent or legal custodian" is used, it refers to rights or responsibilities of the parent and, only if there is no living parent with intact parental rights, to the rights or responsibilities of the legal custodian who has assumed the role of the parent. The term does not include an individual whose parental relationship to the child has been legally terminated, or an alleged or prospective parent, unless:

(a) The parental status falls within the terms of s. 39.503(1) or s. 63.062(1); or

(b) Parental status is applied for the purpose of

determining whether the child has been abandoned.

Section 2. Subsection (6) of section 39.201, Florida Statutes, is amended to read:

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.—

(6) Information in the central abuse hotline may not be used for employment screening, except as provided in s. 39.202(2)(a) and (h) or s. 402.302(15). Information in the central abuse hotline and the department's automated abuse information system may be used by the department, its authorized agents or contract providers, the Department of Health, or county agencies as part of the licensure or registration process pursuant to ss. 402.301-402.319 and ss. 409.175-409.176. Pursuant to s. 39.202(2)(q), the information in the central abuse hotline may also be used by the Department of Education for purposes of educator certification discipline and review. Additionally, in accordance with s. 409.145(2)(e), the information in the central abuse hotline may be used for employment screening for caregivers at residential group homes.

Section 3. Paragraph (a) of subsection (9) of section 39.301, Florida Statutes, is amended, and subsection (23) is added to that section, to read:

39.301 Initiation of protective investigations.—

(9)(a) For each report received from the central abuse hotline and accepted for investigation, the department or the

sheriff providing child protective investigative services under s. 39.3065, shall perform the following child protective investigation activities to determine child safety:

1. Conduct a review of all relevant, available information specific to the child and family and alleged maltreatment; family child welfare history; local, state, and federal criminal records checks; and requests for law enforcement assistance provided by the abuse hotline. Based on a review of available information, including the allegations in the current report, a determination shall be made as to whether immediate consultation should occur with law enforcement, the child protection team, a domestic violence shelter or advocate, or a substance abuse or mental health professional. Such consultations should include discussion as to whether a joint response is necessary and feasible. A determination shall be made as to whether the person making the report should be contacted before the face-to-face interviews with the child and family members.

2. Conduct face-to-face interviews with the child; other siblings, if any; and the parents, legal custodians, or caregivers.

3. Assess the child's residence, including a determination of the composition of the family and household, including the name, address, date of birth, social security number, sex, and race of each child named in the report; any siblings or other children in the same household or in the care of the same

adults; the parents, legal custodians, or caregivers; and any other adults in the same household.

4. Determine whether there is any indication that any child in the family or household has been abused, abandoned, or neglected; the nature and extent of present or prior injuries, abuse, or neglect, and any evidence thereof; and a determination as to the person or persons apparently responsible for the abuse, abandonment, or neglect, including the name, address, date of birth, social security number, sex, and race of each such person.

5. Complete assessment of immediate child safety for each child based on available records, interviews, and observations with all persons named in subparagraph 2. and appropriate collateral contacts, which may include other professionals. The department's child protection investigators are hereby designated a criminal justice agency for the purpose of accessing criminal justice information to be used for enforcing this state's laws concerning the crimes of child abuse, abandonment, and neglect. This information shall be used solely for purposes supporting the detection, apprehension, prosecution, pretrial release, posttrial release, or rehabilitation of criminal offenders or persons accused of the crimes of child abuse, abandonment, or neglect and may not be further disseminated or used for any other purpose.

6. Document the present and impending dangers to each

child based on the identification of inadequate protective capacity through utilization of a standardized safety assessment instrument. If present or impending danger is identified, the child protective investigator must implement a safety plan or take the child into custody. If present danger is identified and the child is not removed, the child protective investigator shall create and implement a safety plan before leaving the home or the location where there is present danger. If impending danger is identified, the child protective investigator shall create and implement a safety plan as soon as necessary to protect the safety of the child. The child protective investigator may modify the safety plan if he or she identifies additional impending danger.

a. If the child protective investigator implements a safety plan, the plan must be specific, sufficient, feasible, and sustainable in response to the realities of the present or impending danger. A safety plan may be an in-home plan or an out-of-home plan, or a combination of both. A safety plan may include tasks or responsibilities for a parent, caregiver, or legal custodian. However, a safety plan may not rely on promissory commitments by the parent, caregiver, or legal custodian who is currently not able to protect the child or on services that are not available or will not result in the safety of the child. A safety plan may not be implemented if for any reason the parents, guardian, or legal custodian lacks the

capacity or ability to comply with the plan. If the department is not able to develop a plan that is specific, sufficient, feasible, and sustainable, the department shall file a shelter petition. A child protective investigator shall implement separate safety plans for the perpetrator of domestic violence, if the investigator is able to locate the perpetrator to implement a safety plan, and for the parent who is a victim of domestic violence as defined in s. 741.28. Reasonable efforts to locate a perpetrator include, but are not limited to, a diligent search pursuant to the same requirements as in s. 39.503. If the perpetrator of domestic violence is not the parent, guardian, or legal custodian of any child in the home and if the department does not intend to file a shelter petition or dependency petition that will assert allegations against the perpetrator as a parent of a child in the home ~~the child~~, the child protective investigator shall seek issuance of an injunction authorized by s. 39.504 to implement a safety plan for the perpetrator and impose any other conditions to protect the child. The safety plan for the parent who is a victim of domestic violence may not be shared with the perpetrator. If any party to a safety plan fails to comply with the safety plan resulting in the child being unsafe, the department shall file a shelter petition.

b. The child protective investigator shall collaborate with the community-based care lead agency in the development of the safety plan as necessary to ensure that the safety plan is

specific, sufficient, feasible, and sustainable. The child protective investigator shall identify services necessary for the successful implementation of the safety plan. The child protective investigator and the community-based care lead agency shall mobilize service resources to assist all parties in complying with the safety plan. The community-based care lead agency shall prioritize safety plan services to families who have multiple risk factors, including, but not limited to, two or more of the following:

(I) The parent or legal custodian is of young age;

(II) The parent or legal custodian, or an adult currently living in or frequently visiting the home, has a history of substance abuse, mental illness, or domestic violence;

(III) The parent or legal custodian, or an adult currently living in or frequently visiting the home, has been previously found to have physically or sexually abused a child;

(IV) The parent or legal custodian or an adult currently living in or frequently visiting the home has been the subject of multiple allegations by reputable reports of abuse or neglect;

(V) The child is physically or developmentally disabled; or

(VI) The child is 3 years of age or younger.

c. The child protective investigator shall monitor the implementation of the plan to ensure the child's safety until

the case is transferred to the lead agency at which time the lead agency shall monitor the implementation.

(23) If, at any time during a child protective investigation, a child is born into a family under investigation or a child moves into the home under investigation, the child protective investigator shall add the child to the investigation and assess the child's safety pursuant to subsection (7) and paragraph (9)(a).

Section 4. Subsections (1) and (7) of section 39.302, Florida Statutes, are amended to read:

39.302 Protective investigations of institutional child abuse, abandonment, or neglect.—

(1) The department shall conduct a child protective investigation of each report of institutional child abuse, abandonment, or neglect. Upon receipt of a report that alleges that an employee or agent of the department, or any other entity or person covered by s. 39.01(32) or (48) ~~s. 39.01(32) or (47)~~, acting in an official capacity, has committed an act of child abuse, abandonment, or neglect, the department shall initiate a child protective investigation within the timeframe established under s. 39.201(5) and notify the appropriate state attorney, law enforcement agency, and licensing agency, which shall immediately conduct a joint investigation, unless independent investigations are more feasible. When conducting investigations or having face-to-face interviews with the child, investigation

visits shall be unannounced unless it is determined by the department or its agent that unannounced visits threaten the safety of the child. If a facility is exempt from licensing, the department shall inform the owner or operator of the facility of the report. Each agency conducting a joint investigation is entitled to full access to the information gathered by the department in the course of the investigation. A protective investigation must include an interview with the child's parent or legal guardian. The department shall make a full written report to the state attorney within 3 working days after making the oral report. A criminal investigation shall be coordinated, whenever possible, with the child protective investigation of the department. Any interested person who has information regarding the offenses described in this subsection may forward a statement to the state attorney as to whether prosecution is warranted and appropriate. Within 15 days after the completion of the investigation, the state attorney shall report the findings to the department and shall include in the report a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.

(7) When an investigation of institutional abuse, neglect, or abandonment is closed and a person is not identified as a caregiver responsible for the abuse, neglect, or abandonment alleged in the report, the fact that the person is named in some capacity in the report may not be used in any way to adversely

affect the interests of that person. This prohibition applies to any use of the information in employment screening, licensing, child placement, adoption, or any other decisions by a private adoption agency or a state agency or its contracted providers.

(a) However, if such a person is a licensee of the department and is named in any capacity in three or more reports within a 5-year period, the department may review those reports and determine whether the information contained in the reports is relevant for purposes of determining whether the person's license should be renewed or revoked. If the information is relevant to the decision to renew or revoke the license, the department may rely on the information contained in the report in making that decision.

(b) Likewise, if a person is employed as a caregiver in a residential group home licensed pursuant to s. 409.175 and is named in any capacity in three or more reports within a 5-year period, all reports may be reviewed for the purposes of the employment screening required pursuant to s. 409.145(2)(e).

Section 5. Paragraph (c) of subsection (8) of section 39.402, Florida Statutes, is amended to read:

39.402 Placement in a shelter.—

(8)

(c) At the shelter hearing, the court shall:

1. Appoint a guardian ad litem to represent the best interest of the child, unless the court finds that such

representation is unnecessary;

2. Inform the parents or legal custodians of their right to counsel to represent them at the shelter hearing and at each subsequent hearing or proceeding, and the right of the parents to appointed counsel, pursuant to the procedures set forth in s. 39.013; ~~and~~

3. Give the parents or legal custodians an opportunity to be heard and to present evidence; and

4. Inquire of those present at the shelter hearing as to the identity and location of the legal father. In determining who the legal father of the child may be, the court shall inquire under oath of those present at the shelter hearing whether they have any of the following information:

a. Whether the mother of the child was married at the probable time of conception of the child or at the time of birth of the child.

b. Whether the mother was cohabiting with a male at the probable time of conception of the child.

c. Whether the mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father.

d. Whether the mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.

e. Whether any man has acknowledged or claimed paternity

of the child in a jurisdiction in which the mother resided at the time of or since conception of the child or in which the child has resided or resides.

f. Whether a man is named on the birth certificate of the child pursuant to s. 382.013(2).

g. Whether a man has been determined by a court order to be the father of the child.

h. Whether a man has been determined by an administrative proceeding to be the father of the child.

Section 6. Subsections (1), (6), and (8) of section 39.503, Florida Statutes, are amended, subsection (9) is added to that section, and subsection (7) of that section is republished, to read:

39.503 Identity or location of parent unknown; special procedures.—

(1) If the identity or location of a parent is unknown and a petition for dependency or shelter is filed, the court shall conduct under oath the following inquiry of the parent or legal custodian who is available, or, if no parent or legal custodian is available, of any relative or custodian of the child who is present at the hearing and likely to have any of the following information:

(a) Whether the mother of the child was married at the probable time of conception of the child or at the time of birth of the child.

(b) Whether the mother was cohabiting with a male at the probable time of conception of the child.

(c) Whether the mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father.

(d) Whether the mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.

(e) Whether any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother resided at the time of or since conception of the child, or in which the child has resided or resides.

(f) Whether a man is named on the birth certificate of the child pursuant to s. 382.013(2).

(g) Whether a man has been determined by a court order to be the father of the child.

(h) Whether a man has been determined by an administrative proceeding to be the father of the child.

(6) The diligent search required by subsection (5) must include, at a minimum, inquiries of all relatives of the parent or prospective parent made known to the petitioner, inquiries of all offices of program areas of the department likely to have information about the parent or prospective parent, inquiries of other state and federal agencies likely to have information about the parent or prospective parent, inquiries of appropriate

utility and postal providers, a thorough search of at least one electronic database specifically designed for locating persons, a search of the Florida Putative Father Registry, and inquiries of appropriate law enforcement agencies. Pursuant to s. 453 of the Social Security Act, 42 U.S.C. s. 653(c)(4), the department, as the state agency administering Titles IV-B and IV-E of the act, shall be provided access to the federal and state parent locator service for diligent search activities.

(7) Any agency contacted by a petitioner with a request for information pursuant to subsection (6) shall release the requested information to the petitioner without the necessity of a subpoena or court order.

(8) If the inquiry and diligent search identifies a prospective parent, that person must be given the opportunity to become a party to the proceedings by completing a sworn affidavit of parenthood and filing it with the court or the department. A prospective parent who files a sworn affidavit of parenthood while the child is a dependent child but no later than at the time of or before ~~prior to~~ the adjudicatory hearing in any termination of parental rights proceeding for the child shall be considered a parent for all purposes under this section unless the other parent contests the determination of parenthood. If the prospective parent does not file a sworn affidavit of parenthood or if the other parent contests the determination of parenthood, the court may, after considering

the best interest of the child, order scientific testing to determine the maternity or paternity of the child. The court shall assess the cost of the maternity or paternity determination as a cost of litigation. If the court finds the prospective parent to be a parent as a result of the scientific testing, the court shall enter a judgment of maternity or paternity, shall assess the cost of the scientific testing to the parent, and shall enter an amount of child support to be paid by the parent as determined under s. 61.30. If the known parent contests the recognition of the prospective parent as a parent, the prospective parent shall not be recognized as a parent until proceedings to determine maternity or paternity ~~under chapter 742~~ have been concluded. However, the prospective parent shall continue to receive notice of hearings as a participant until ~~pending results of the chapter 742~~ proceedings to determine maternity or paternity have been concluded.

(9) If the diligent search under subsection (5) fails to identify and locate a prospective parent, the court shall so find and may proceed without further notice.

Section 7. Section 39.504, Florida Statutes, is amended to read:

39.504 Injunction ~~pending disposition of petition~~; penalty.—

(1) At any time after a protective investigation has been initiated pursuant to part III of this chapter, the court, upon

the request of the department, a law enforcement officer, the state attorney, or other responsible person, or upon its own motion, may, if there is reasonable cause, issue an injunction to prevent any act of child abuse. Reasonable cause for the issuance of an injunction exists if there is evidence of child abuse or if there is a reasonable likelihood of such abuse occurring based upon a recent overt act or failure to act. If there is a pending dependency proceeding regarding the child whom the injunction is sought to protect, the judge hearing the dependency proceeding must also hear the injunction proceeding regarding the child.

(2) The petitioner seeking the injunction shall file a verified petition, or a petition along with an affidavit, setting forth the specific actions by the alleged offender from which the child must be protected and all remedies sought. Upon filing the petition, the court shall set a hearing to be held at the earliest possible time. Pending the hearing, the court may issue a temporary ex parte injunction, with verified pleadings or affidavits as evidence. The temporary ex parte injunction pending a hearing is effective for up to 15 days and the hearing must be held within that period unless continued for good cause shown, which may include obtaining service of process, in which case the temporary ex parte injunction shall be extended for the continuance period. The hearing may be held sooner if the alleged offender has received reasonable notice.

(3) Before the hearing, the alleged offender must be personally served with a copy of the petition, all other pleadings related to the petition, a notice of hearing, and, if one has been entered, the temporary injunction. If the petitioner is unable to locate the alleged offender for service after a diligent search pursuant to the same requirements as in s. 39.503 and the filing of an affidavit of diligent search, the court may enter the injunction based on the sworn petition and any affidavits. At the hearing, the court may base its determination on a sworn petition, testimony, or an affidavit and may hear all relevant and material evidence, including oral and written reports, to the extent of its probative value even though it would not be competent evidence at an adjudicatory hearing. Following the hearing, the court may enter a final injunction. The court may grant a continuance of the hearing at any time for good cause shown by any party. If a temporary injunction has been entered, it shall be continued during the continuance.

(4) If an injunction is issued under this section, the primary purpose of the injunction must be to protect and promote the best interests of the child, taking the preservation of the child's immediate family into consideration.

(a) The injunction applies to the alleged or actual offender in a case of child abuse or acts of domestic violence. The conditions of the injunction shall be determined by the

court, which may include ordering the alleged or actual offender to:

1. Refrain from further abuse or acts of domestic violence.

2. Participate in a specialized treatment program.

3. Limit contact or communication with the child victim, other children in the home, or any other child.

4. Refrain from contacting the child at home, school, work, or wherever the child may be found.

5. Have limited or supervised visitation with the child.

6. Vacate the home in which the child resides.

7. Comply with the terms of a safety plan implemented in the injunction pursuant to s. 39.301.

(b) Upon proper pleading, the court may award the following relief in a temporary ex parte or final injunction:

1. Exclusive use and possession of the dwelling to the caregiver or exclusion of the alleged or actual offender from the residence of the caregiver.

2. Temporary support for the child or other family members.

3. The costs of medical, psychiatric, and psychological treatment for the child incurred due to the abuse, and similar costs for other family members.

This paragraph does not preclude an adult victim of domestic

violence from seeking protection for himself or herself under s. 741.30.

(c) The terms of the final injunction shall remain in effect until modified or dissolved by the court. The petitioner, respondent, or caregiver may move at any time to modify or dissolve the injunction. Notice of hearing on the motion to modify or dissolve the injunction must be provided to all parties, including the department. The injunction is valid and enforceable in all counties in the state.

(5) Service of process on the respondent shall be carried out pursuant to s. 741.30. The department shall deliver a copy of any injunction issued pursuant to this section to the protected party or to a parent, caregiver, or individual acting in the place of a parent who is not the respondent. Law enforcement officers may exercise their arrest powers as provided in s. 901.15(6) to enforce the terms of the injunction.

(6) Any person who fails to comply with an injunction issued pursuant to this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(7) The person against whom an injunction is entered under this section does not automatically become a party to a subsequent dependency action concerning the same child.

Section 8. Paragraph (b) of subsection (7) of section 39.507, Florida Statutes, is amended to read:

39.507 Adjudicatory hearings; orders of adjudication.—

(7)

(b) However, the court must determine whether each parent or legal custodian identified in the case abused, abandoned, or neglected the child or engaged in conduct that placed the child at substantial risk of imminent abuse, abandonment, or neglect ~~in a subsequent evidentiary hearing~~. If a second parent is served and brought into the proceeding after the adjudication, and an ~~the~~ evidentiary hearing for the second parent is conducted ~~subsequent to the adjudication of the child~~, the court shall supplement the adjudicatory order, disposition order, and the case plan, as necessary. The petitioner is not required to prove actual harm or actual abuse by the second parent in order for the court to make supplemental findings regarding the conduct of the second parent. The court is not required to conduct an evidentiary hearing for the second parent in order to supplement the adjudicatory order, the disposition order, and the case plan if the requirements of s. 39.506(3) or (5) are satisfied. With the exception of proceedings pursuant to s. 39.811, the child's dependency status may not be retried or readjudicated.

Section 9. Paragraph (a) of subsection (2) of section 39.5085, Florida Statutes, is amended to read:

39.5085 Relative Caregiver Program.—

(2)(a) The Department of Children and Families shall

establish, ~~and~~ operate, and implement the Relative Caregiver Program ~~pursuant to eligibility guidelines established in this section as further implemented~~ by rule of the department. The Relative Caregiver Program shall, within the limits of available funding, provide financial assistance to:

1. Relatives who are within the fifth degree by blood or marriage to the parent or stepparent of a child and who are caring full-time for that dependent child in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement with the relative under this chapter.

2. Relatives who are within the fifth degree by blood or marriage to the parent or stepparent of a child and who are caring full-time for that dependent child, and a dependent half-brother or half-sister of that dependent child, in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement with the relative under this chapter.

3. Nonrelatives who are willing to assume custody and care of a dependent child in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement with the nonrelative caregiver under this chapter. The court must find that a proposed placement under this subparagraph is in the best interest of the child.

4. The relative or nonrelative caregiver may not receive a Relative Caregiver Program payment if the parent or stepparent of the child resides in the home. However, a relative or nonrelative may receive the Relative Caregiver Program payment for a minor parent who is in his or her care, as well as for the minor parent's child, if both children have been adjudicated dependent and meet all other eligibility requirements. If the caregiver is currently receiving the payment, the Relative Caregiver Program payment must be terminated no later than the first of the following month after the parent or stepparent moves into the home, allowing for 10-day notice of adverse action.

The placement may be court-ordered temporary legal custody to the relative or nonrelative under protective supervision of the department pursuant to s. 39.521(1)(c)3. ~~s. 39.521(1)(b)3.~~, or court-ordered placement in the home of a relative or nonrelative as a permanency option under s. 39.6221 or s. 39.6231 or under former s. 39.622 if the placement was made before July 1, 2006. The Relative Caregiver Program shall offer financial assistance to caregivers who would be unable to serve in that capacity without the caregiver payment because of financial burden, thus exposing the child to the trauma of placement in a shelter or in foster care.

Section 10. Subsections (1), (2), (6), and (7) of section

39.521, Florida Statutes, are amended to read:

39.521 Disposition hearings; powers of disposition.—

(1) A disposition hearing shall be conducted by the court, 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 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.

(a) A written case plan and a family functioning assessment ~~predisposition study~~ prepared by an authorized agent of the department must be approved by ~~filed with~~ the court. The department must file the case plan and the family functioning assessment with the court, serve a copy of the case plan on~~,~~ ~~served upon~~ the parents of the child, and provide a copy of the case plan ~~provided~~ to the representative of the guardian ad litem program, if the program has been appointed, and provide a copy ~~provided~~ to all other parties:

1. Not less than 72 hours before the disposition hearing, if the disposition hearing occurs on or after the 60th day after the child was placed in out-of-home care. All such case plans must be approved by the court.

2. Not less than 72 hours before the case plan acceptance hearing, if the disposition hearing occurs before the 60th day

after the date the child was placed in out-of-home care and a case plan has not been submitted pursuant to this paragraph, or if the court does not approve the case plan at the disposition hearing.~~,~~ The case plan acceptance hearing must occur ~~the court must set a hearing~~ within 30 days after the disposition hearing to review and approve the case plan.

(b) The court may grant an exception to the requirement for a family functioning assessment ~~predisposition study~~ by separate order or within the judge's order of disposition upon finding that all the family and child information required by subsection (2) is available in other documents filed with the court.

(c) ~~(b)~~ When any child is adjudicated by a court to be dependent, the court having jurisdiction of the child has the power by order to:

1. Require the parent and, when appropriate, the legal custodian and the child to participate in treatment and services identified as necessary. The court may require the person who has custody or who is requesting custody of the child to submit to a mental health or substance abuse disorder assessment or evaluation. The order may be made only upon good cause shown and pursuant to notice and procedural requirements provided under the Florida Rules of Juvenile Procedure. The mental health assessment or evaluation must be administered by a qualified professional as defined in s. 39.01, and the substance abuse

assessment or evaluation must be administered by a qualified professional as defined in s. 397.311. The court may also require such person to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a mental health court program established under chapter 394 or a treatment-based drug court program established under s. 397.334. Adjudication of a child as dependent based upon evidence of harm as defined in s. 39.01(30)(g) demonstrates good cause, and the court shall require the parent whose actions caused the harm to submit to a substance abuse disorder assessment or evaluation and to participate and comply with treatment and services identified in the assessment or evaluation as being necessary. In addition to supervision by the department, the court, including the mental health court program or the treatment-based drug court program, may oversee the progress and compliance with treatment by a person who has custody or is requesting custody of the child. The court may impose appropriate available sanctions for noncompliance upon a person who has custody or is requesting custody of the child or make a finding of noncompliance for consideration in determining whether an alternative placement of the child is in the child's best interests. Any order entered under this subparagraph may be made only upon good cause shown. This subparagraph does not authorize placement of a child with a person seeking custody of the child,

other than the child's parent or legal custodian, who requires mental health or substance abuse disorder treatment.

2. Require, if the court deems necessary, the parties to participate in dependency mediation.

3. Require placement of the child either under the protective supervision of an authorized agent of the department in the home of one or both of the child's parents or in the home of a relative of the child or another adult approved by the court, or in the custody of the department. Protective supervision continues until the court terminates it or until the child reaches the age of 18, whichever date is first. Protective supervision shall be terminated by the court whenever the court determines that permanency has been achieved for the child, whether with a parent, another relative, or a legal custodian, and that protective supervision is no longer needed. The termination of supervision may be with or without retaining jurisdiction, at the court's discretion, and shall in either case be considered a permanency option for the child. The order terminating supervision by the department must set forth the powers of the custodian of the child and include the powers ordinarily granted to a guardian of the person of a minor unless otherwise specified. Upon the court's termination of supervision by the department, further judicial reviews are not required if permanency has been established for the child.

(d) ~~(c)~~ At the conclusion of the disposition hearing, the

court shall schedule the initial judicial review hearing which must be held no later than 90 days after the date of the disposition hearing or after the date of the hearing at which the court approves the case plan, whichever occurs earlier, but in no event shall the review hearing be held later than 6 months after the date of the child's removal from the home.

(e) ~~(d)~~ The court shall, in its written order of disposition, include all of the following:

1. The placement or custody of the child.

2. Special conditions of placement and visitation.

3. Evaluation, counseling, treatment activities, and other actions to be taken by the parties, if ordered.

4. The persons or entities responsible for supervising or monitoring services to the child and parent.

5. Continuation or discharge of the guardian ad litem, as appropriate.

6. The date, time, and location of the next scheduled review hearing, which must occur within the earlier of:

a. Ninety days after the disposition hearing;

b. Ninety days after the court accepts the case plan;

c. Six months after the date of the last review hearing; or

d. 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.

7. If the child is in an out-of-home placement, child support to be paid by the parents, or the guardian of the child's estate if possessed of assets which under law may be disbursed for the care, support, and maintenance of the child. The court may exercise jurisdiction over all child support matters, shall adjudicate the financial obligation, including health insurance, of the child's parents or guardian, and shall enforce the financial obligation as provided in chapter 61. The state's child support enforcement agency shall enforce child support orders under this section in the same manner as child support orders under chapter 61. Placement of the child shall not be contingent upon issuance of a support order.

8.a. If the court does not commit the child to the temporary legal custody of an adult relative, legal custodian, or other adult approved by the court, the disposition order shall include the reasons for such a decision and shall include a determination as to whether diligent efforts were made by the department to locate an adult relative, legal custodian, or other adult willing to care for the child in order to present that placement option to the court instead of placement with the department.

b. If no suitable relative is found and the child is placed with the department or a legal custodian or other adult approved by the court, both the department and the court shall consider transferring temporary legal custody to an adult

relative approved by the court at a later date, but neither the department nor the court is obligated to so place the child if it is in the child's best interest to remain in the current placement.

For the purposes of this section, "diligent efforts to locate an adult relative" means a search similar to the diligent search for a parent, but without the continuing obligation to search after an initial adequate search is completed.

9. Other requirements necessary to protect the health, safety, and well-being of the child, to preserve the stability of the child's educational placement, and to promote family preservation or reunification whenever possible.

(f) ~~(e)~~ If the court finds that an in-home safety plan prepared or approved by the department ~~the prevention or reunification efforts of the department~~ will allow the child to remain safely at home or that conditions for return have been met and an in-home safety plan prepared or approved by the department will allow the child to be safely returned to the home, the court shall allow the child to remain in or return to the home after making a specific finding of fact that ~~the reasons for removal have been remedied to the extent that~~ the child's safety, well-being, and physical, mental, and emotional health will not be endangered.

(g) ~~(f)~~ If the court places the child in an out-of-home

placement, the disposition order must include a written determination that the child cannot safely remain at home with reunification or family preservation services and that removal of the child is necessary to protect the child. If the child is removed before the disposition hearing, the order must also include a written determination as to whether, after removal, the department made a reasonable effort to reunify the parent and child. Reasonable efforts to reunify are not required if the court finds that any of the acts listed in s. 39.806(1)(f)-(l) have occurred. The department has the burden of demonstrating that it made reasonable efforts.

1. For the purposes of this paragraph, the term "reasonable effort" means the exercise of reasonable diligence and care by the department to provide the services ordered by the court or delineated in the case plan.

2. In support of its determination as to whether reasonable efforts have been made, the court shall:

a. Enter written findings as to whether prevention or reunification efforts were indicated.

b. If prevention or reunification efforts were indicated, include a brief written description of what appropriate and available prevention and reunification efforts were made.

c. Indicate in writing why further efforts could or could not have prevented or shortened the separation of the parent and child.

3. A court may find that the department made a reasonable effort to prevent or eliminate the need for removal if:

a. The first contact of the department with the family occurs during an emergency;

b. The appraisal by the department of the home situation indicates a substantial and immediate danger to the child's safety or physical, mental, or emotional health which cannot be mitigated by the provision of preventive services;

c. The child cannot safely remain at home, because there are no preventive services that can ensure the health and safety of the child or, even with appropriate and available services being provided, the health and safety of the child cannot be ensured; or

d. The parent is alleged to have committed any of the acts listed as grounds for expedited termination of parental rights under s. 39.806(1)(f)-(l).

4. A reasonable effort by the department for reunification has been made if the appraisal of the home situation by the department indicates that the severity of the conditions of dependency is such that reunification efforts are inappropriate. The department has the burden of demonstrating to the court that reunification efforts were inappropriate.

5. If the court finds that the prevention or reunification effort of the department would not have permitted the child to remain safely at home, the court may commit the child to the

temporary legal custody of the department or take any other action authorized by this chapter.

(2) The family functioning assessment ~~predisposition study~~ must provide the court with the following documented information:

(a) Evidence of maltreatment and the circumstances accompanying the maltreatment.

(b) Identification of all danger threats active in the home.

(c) An assessment of the adult functioning of the parents.

(d) An assessment of general parenting practices and the parent's disciplinary approach and behavior management methods.

(e) An assessment of the parent's behavioral, emotional, and cognitive protective capacities.

(f) An assessment of child functioning.

(g) A safety analysis describing the capacity for an in-home safety plan to control the conditions that result in the child being unsafe and the specific actions necessary to keep the child safe.

(h) Identification of the conditions for return which would allow the child to be placed safely back into the home with an in-home safety plan and any safety management services necessary to ensure the child's safety.

~~(a) The capacity and disposition of the parents to provide the child with food, clothing, medical care, or other remedial~~

~~care recognized and permitted under the laws of this state in lieu of medical care, and other material needs.~~

~~(b) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.~~

~~(c) The mental and physical health of the parents.~~

~~(d) The home, school, and community record of the child.~~

(i) ~~(e)~~ The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

~~(f) Evidence of domestic violence or child abuse.~~

~~(g) An assessment defining the dangers and risks of returning the child home, including a description of the changes in and resolutions to the initial risks.~~

~~(h) A description of what risks are still present and what resources are available and will be provided for the protection and safety of the child.~~

~~(i) A description of the benefits of returning the child home.~~

~~(j) A description of all unresolved issues.~~

(j) ~~(k)~~ Child welfare ~~A Florida Abuse Hotline Information System (FAHIS)~~ history and criminal records check for all caregivers, family members, and individuals residing within the household from which the child was removed from the State Automated Child Welfare Information System (SACWIS).

(k) ~~(l)~~ The complete report and recommendation of the child protection team of the Department of Health or, if no report exists, a statement reflecting that no report has been made.

(l) ~~(m)~~ All opinions or recommendations from other professionals or agencies that provide evaluative, social, reunification, or other services to the parent and child.

(m) ~~(n)~~ A listing of appropriate and available safety management ~~prevention and reunification~~ services for the parent and child to prevent the removal of the child from the home or to reunify the child with the parent after removal~~, including the availability of family preservation services~~ and an explanation of the following:

1. If the services were or were not provided.

2. If the services were provided, the outcome of the services.

3. If the services were not provided, why they were not provided.

4. If the services are currently being provided and if they need to be continued.

~~(o) A listing of other prevention and reunification services that were available but determined to be inappropriate and why.~~

~~(p) Whether dependency mediation was provided.~~

(n) ~~(q)~~ If the child has been removed from the home and there is a parent who may be considered for custody pursuant to

this section, a recommendation as to whether placement of the child with that parent would be detrimental to the child.

(o) ~~(r)~~ If the child has been removed from the home and will be remaining with a relative, parent, or other adult approved by the court, a home study report concerning the proposed placement shall be provided to the court ~~included in the predisposition report~~. Before recommending to the court any out-of-home placement for a child other than placement in a licensed shelter or foster home, the department shall conduct a study of the home of the proposed legal custodians, which must include, at a minimum:

1. An interview with the proposed legal custodians to assess their ongoing commitment and ability to care for the child.

2. Records checks through the State Automated Child Welfare Information System (SACWIS), and local and statewide criminal and juvenile records checks through the Department of Law Enforcement, on all household members 12 years of age or older. In addition, the fingerprints of any household members who are 18 years of age or older may be submitted to the Department of Law Enforcement for processing and forwarding to the Federal Bureau of Investigation for state and national criminal history information. The department has the discretion to request State Automated Child Welfare Information System (SACWIS) and local, statewide, and national criminal history

checks and fingerprinting of any other visitor to the home who is made known to the department. Out-of-state criminal records checks must be initiated for any individual who has resided in a state other than Florida if that state's laws allow the release of these records. The out-of-state criminal records must be filed with the court within 5 days after receipt by the department or its agent.

3. An assessment of the physical environment of the home.

4. A determination of the financial security of the proposed legal custodians.

5. A determination of suitable child care arrangements if the proposed legal custodians are employed outside of the home.

6. Documentation of counseling and information provided to the proposed legal custodians regarding the dependency process and possible outcomes.

7. Documentation that information regarding support services available in the community has been provided to the proposed legal custodians.

8. The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

The department may not place the child or continue the placement of the child in a home under shelter or postdisposition placement if the results of the home study are unfavorable,

unless the court finds that this placement is in the child's best interest.

(p) ~~(s)~~ If the child has been removed from the home, a determination of the amount of child support each parent will be required to pay pursuant to s. 61.30.

~~(t) If placement of the child with anyone other than the child's parent is being considered, the predisposition study shall include the designation of a specific length of time as to when custody by the parent will be reconsidered.~~

Any other relevant and material evidence, including other written or oral reports, may be received by the court in its effort to determine the action to be taken with regard to the child and may be relied upon to the extent of its probative value, even though not competent in an adjudicatory hearing. Except as otherwise specifically provided, nothing in this section prohibits the publication of proceedings in a hearing.

(6) With respect to a child who is the subject in proceedings under this chapter, the court may issue to the department an order to show cause why it should not return the child to the custody of the parents upon the presentation of evidence that the conditions for return of the child have been met ~~expiration of the case plan, or sooner if the parents have substantially complied with the case plan~~.

(7) The court may enter an order ending its jurisdiction

over a child when a child has been returned to the parents, provided the court shall not terminate its jurisdiction or the department's supervision over the child until 6 months after the child's return. The department shall supervise the placement of the child after reunification for at least 6 months with each parent or legal custodian from whom the child was removed. The court shall determine whether its jurisdiction should be continued or terminated in such a case based on a report of the department or agency or the child's guardian ad litem, and any other relevant factors; if its jurisdiction is to be terminated, the court shall enter an order to that effect.

Section 11. Subsections (2) and (3) of section 39.522, Florida Statutes, are amended to read:

39.522 Postdisposition change of custody.—The court may change the temporary legal custody or the conditions of protective supervision at a postdisposition hearing, without the necessity of another adjudicatory hearing.

(2) In cases where the issue before the court is whether a child should be reunited with a parent, the court shall review the conditions for return and determine whether the circumstances that caused the out-of-home placement and issues subsequently identified have been remedied ~~parent has substantially complied with the terms of the case plan~~ to the extent that the return of the child to the home with an in-home safety plan prepared or approved by the department will not be

detrimental to the child's safety, well-being, and physical, mental, and emotional health ~~of the child is not endangered by the return of the child to the home~~.

(3) In cases where the issue before the court is whether a child who is placed in the custody of a parent should be reunited with the other parent upon a finding that the circumstances that caused the out-of-home placement and issues subsequently identified have been remedied to the extent that the return of the child to the home of the other parent with an in-home safety plan prepared or approved by the department will not be detrimental to the child ~~of substantial compliance with the terms of the case plan~~, the standard shall be that the safety, well-being, and physical, mental, and emotional health of the child would not be endangered by reunification and that reunification would be in the best interest of the child.

Section 12. Subsection (1) of section 39.6011, Florida Statutes, is amended to read:

39.6011 Case plan development.—

(1) The department shall prepare a draft of the case plan for each child receiving services under this chapter. A parent of a child may not be threatened or coerced with the loss of custody or parental rights for failing to admit in the case plan of abusing, neglecting, or abandoning a child. Participating in the development of a case plan is not an admission to any allegation of abuse, abandonment, or neglect, and it is not a

consent to a finding of dependency or termination of parental rights. The case plan shall be developed subject to the following requirements:

(a) The case plan must be developed in a face-to-face conference with the parent of the child, any court-appointed guardian ad litem, and, if appropriate, the child and the temporary custodian of the child.

(b) Notwithstanding s. 39.202, the department may discuss confidential information during the case planning conference in the presence of individuals who participate in the conference. All individuals who participate in the conference shall maintain the confidentiality of all information shared during the case planning conference.

(c) ~~(b)~~ The parent may receive assistance from any person or social service agency in preparing the case plan. The social service agency, the department, and the court, when applicable, shall inform the parent of the right to receive such assistance, including the right to assistance of counsel.

(d) ~~(c)~~ If a parent is unwilling or unable to participate in developing a case plan, the department shall document that unwillingness or inability to participate. The documentation must be provided in writing to the parent when available for the court record, and the department shall prepare a case plan conforming as nearly as possible with the requirements set forth in this section. The unwillingness or inability of the parent to

participate in developing a case plan does not preclude the filing of a petition for dependency or for termination of parental rights. The parent, if available, must be provided a copy of the case plan and be advised that he or she may, at any time before the filing of a petition for termination of parental rights, enter into a case plan and that he or she may request judicial review of any provision of the case plan with which he or she disagrees at any court hearing set for the child.

Section 13. Subsection (1) of section 39.6012, Florida Statutes, is amended to read:

39.6012 Case plan tasks; services.—

(1) The services to be provided to the parent and the tasks that must be completed are subject to the following:

(a) The services described in the case plan must be designed to improve the conditions in the home and aid in maintaining the child in the home, facilitate the child's safe return to the home, ensure proper care of the child, or facilitate the child's permanent placement. The services offered must be the least intrusive possible into the life of the parent and child, must focus on clearly defined objectives, and must provide the most efficient path to quick reunification or permanent placement given the circumstances of the case and the child's need for safe and proper care.

(b) The case plan must describe each of the tasks with which the parent must comply and the services to be provided to

the parent, specifically addressing the identified problem, including:

1. The type of services or treatment.

2. The date the department will provide each service or referral for the service if the service is being provided by the department or its agent.

3. The date by which the parent must complete each task.

4. The frequency of services or treatment provided. The frequency of the delivery of services or treatment provided shall be determined by the professionals providing the services or treatment on a case-by-case basis and adjusted according to their best professional judgment.

5. The location of the delivery of the services.

6. The staff of the department or service provider accountable for the services or treatment.

7. A description of the measurable objectives, including the timeframes specified for achieving the objectives of the case plan and addressing the identified problem.

(c) If there is evidence of harm as defined in s. 39.01(30)(g), the case plan must include as a required task for the parent whose actions caused the harm that the parent submit to a substance abuse disorder assessment or evaluation and participate and comply with treatment and services identified in the assessment or evaluation as being necessary.

Section 14. Subsection (7) is added to section 39.6221,

Florida Statutes, to read:

39.6221 Permanent guardianship of a dependent child.—

(7) The requirements of s. 61.13001 do not apply to permanent guardianships established under this section.

Section 15. Paragraph (h) is added to subsection (1) of section 39.701, Florida Statutes, to read:

39.701 Judicial review.—

(1) GENERAL PROVISIONS.—

(h) If a child is born into a family that is under the court's jurisdiction or a child moves into a home that is under the court's jurisdiction, the department shall assess the child's safety and provide notice to the court.

1. The department shall complete an assessment to determine how the addition of a child will impact family functioning. The assessment must be completed at least 30 days before a child is expected to be born or to move into a home, or within 72 hours after the department learns of the pregnancy or addition if the child is expected to be born or to move into the home in less than 30 days. The assessment shall be filed with the court.

2. Once a child is born into a family or a child moves into the home, the department shall complete a progress update and file it with the court.

3. The court has the discretion to hold a hearing on the progress update filed by the department.

4. The department shall adopt rules to implement this subsection.

Section 16. Subsection (3) of section 39.801, Florida Statutes, is amended to read:

39.801 Procedures and jurisdiction; notice; service of process.—

(3) Before the court may terminate parental rights, in addition to the other requirements set forth in this part, the following requirements must be met:

(a) 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 following persons, specifically notifying them that a petition has been filed:

1. The parents of the child.

2. The legal custodians of the child.

3. If the parents who would be entitled to notice are dead or unknown, a living relative of the child, unless upon diligent search and inquiry no such relative can be found.

4. Any person who has physical custody of the child.

5. Any grandparent entitled to priority for adoption under s. 63.0425.

6. Any prospective parent who has been identified under s. 39.503 or s. 39.803, unless a court order has been entered pursuant to s. 39.503(4) or (9) or s. 39.803(4) or (9) which

indicates no further notice is required. Except as otherwise provided in this section, if there is not a legal father, notice of the petition for termination of parental rights must be provided to any known prospective father who is identified under oath before the court or who is identified by a diligent search of the Florida Putative Father Registry. Service of the notice of the petition for termination of parental rights may not be required if the prospective father executes an affidavit of nonpaternity or a consent to termination of his parental rights which is accepted by the court after notice and opportunity to be heard by all parties to address the best interests of the child in accepting such affidavit.

7. The guardian ad litem for the child or the representative of the guardian ad litem program, if the program has been appointed.

The document containing the notice to respond or appear must contain, in type at least as large as the type in the balance of the document, the following or substantially similar language: "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS NOTICE."

(b) If a party required to be served with notice as prescribed in paragraph (a) cannot be served, notice of hearings must be given as prescribed by the rules of civil procedure, and service of process must be made as specified by law or civil actions.

(c) Notice as prescribed by this section may be waived, in the discretion of the judge, with regard to any person to whom notice must be given under this subsection if the person executes, before two witnesses and a notary public or other officer authorized to take acknowledgments, a written surrender of the child to a licensed child-placing agency or the department.

(d) If the person served with notice under this section fails to personally appear at the advisory hearing, the failure to personally appear shall constitute consent for termination of parental rights by the person given notice. 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.

Section 17. Section 39.803, Florida Statutes, is amended, to read:

39.803 Identity or location of parent unknown after filing

of termination of parental rights petition; special procedures.—

(1) If the identity or location of a parent is unknown and a petition for termination of parental rights is filed, the court shall conduct under oath the following inquiry of the parent who is available, or, if no parent is available, of any relative, caregiver, or legal custodian of the child who is present at the hearing and likely to have the information:

(a) Whether the mother of the child was married at the probable time of conception of the child or at the time of birth of the child.

(b) Whether the mother was cohabiting with a male at the probable time of conception of the child.

(c) Whether the mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father.

(d) Whether the mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.

(e) Whether any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother resided at the time of or since conception of the child, or in which the child has resided or resides.

(f) Whether a man is named on the birth certificate of the child pursuant to s. 382.013(2).

(g) Whether a man has been determined by a court order to

be the father of the child.

(h) Whether a man has been determined by an administrative proceeding to be the father of the child.

(2) The information required in subsection (1) may be supplied to the court or the department in the form of a sworn affidavit by a person having personal knowledge of the facts.

(3) If the inquiry under subsection (1) identifies any person as a parent or prospective parent, the court shall require notice of the hearing to be provided to that person.

(4) If the inquiry under subsection (1) fails to identify any person as a parent or prospective parent, the court shall so find and may proceed without further notice.

(5) If the inquiry under subsection (1) identifies a parent or prospective parent, and that person's location is unknown, the court shall direct the petitioner to conduct a diligent search for that person before scheduling an adjudicatory hearing regarding the petition for termination of parental rights to the child unless the court finds that the best interest of the child requires proceeding without actual notice to the person whose location is unknown.

(6) The diligent search required by subsection (5) must include, at a minimum, inquiries of all known relatives of the parent or prospective parent, inquiries of all offices of program areas of the department likely to have information about the parent or prospective parent, inquiries of other state and

federal agencies likely to have information about the parent or prospective parent, inquiries of appropriate utility and postal providers, a thorough search of at least one electronic database specifically designed for locating persons, a search of the Florida Putative Father Registry, and inquiries of appropriate law enforcement agencies. Pursuant to s. 453 of the Social Security Act, 42 U.S.C. s. 653(c)(4), the department, as the state agency administering Titles IV-B and IV-E of the act, shall be provided access to the federal and state parent locator service for diligent search activities.

(7) Any agency contacted by petitioner with a request for information pursuant to subsection (6) shall release the requested information to the petitioner without the necessity of a subpoena or court order.

(8) If the inquiry and diligent search identifies a prospective parent, that person must be given the opportunity to become a party to the proceedings by completing a sworn affidavit of parenthood and filing it with the court or the department. A prospective parent who files a sworn affidavit of parenthood while the child is a dependent child but no later than at the time of or before ~~prior to~~ the adjudicatory hearing in the termination of parental rights proceeding for the child shall be considered a parent for all purposes under this section. If the prospective parent does not file a sworn affidavit of parenthood or if the other parent contests the

determination of parenthood, the court may, after considering the best interests of the child, order scientific testing to determine the maternity or paternity of the child. The court shall assess the cost of the paternity determination as a cost of litigation. If the court finds the prospective parent to be a parent as a result of the scientific testing, the court shall enter a judgment of maternity or paternity, shall assess the cost of the scientific testing to the parent, and shall enter an amount of child support to be paid by the parent as determined under s. 61.30. If the known parent contests the recognition of the prospective parent as a parent, the prospective parent shall not be recognized as a parent until proceedings to establish paternity have been concluded. However, the prospective parent shall continue to receive notice of hearings as a participant until proceedings to establish paternity have been concluded.

(9) If the diligent search under subsection (5) fails to identify and locate a prospective parent, the court shall so find and may proceed without further notice.

Section 18. Paragraph (l) of subsection (1) of section 39.806, Florida Statutes, is amended, and subsections (2) and (3) are republished, to read:

39.806 Grounds for termination of parental rights.—

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

(l) On three or more occasions the child or another child

of the parent or parents has been placed in out-of-home care pursuant to this chapter or the law of any state, territory, or jurisdiction of the United States which is substantially similar to this chapter, and the conditions that led to the child's out-of-home placement were caused by the parent or parents.

(2) Reasonable efforts to preserve and reunify families are not required if a court of competent jurisdiction has determined that any of the events described in paragraphs (1)(b)-(d) or paragraphs (1)(f)-(m) have occurred.

(3) If a petition for termination of parental rights is filed under subsection (1), a separate petition for dependency need not be filed and the department need not offer the parents a case plan having a goal of reunification, but may instead file with the court a case plan having a goal of termination of parental rights to allow continuation of services until the termination is granted or until further orders of the court are issued.

Section 19. Subsection (6) of section 39.811, Florida Statutes, is amended to read:

39.811 Powers of disposition; order of disposition.—

(6) The parental rights of one parent may be severed without severing the parental rights of the other parent only under the following circumstances:

(a) If the child has only one surviving parent;

(b) If the identity of a prospective parent has been

established as unknown after sworn testimony;

(c) If the parent whose rights are being terminated became a parent through a single-parent adoption;

(d) If the protection of the child demands termination of the rights of a single parent; or

(e) If the parent whose rights are being terminated meets any of the criteria specified in s. 39.806(1)(c), (d), (f), (g), (h), (i), (j), (k), (l), (m), or (n) ~~and (f)-(m)~~.

Section 20. Paragraph (g) of subsection (4) of section 395.3025, Florida Statutes, is amended, and subsection (8) of that section is republished, to read:

395.3025 Patient and personnel records; copies; examination.—

(4) Patient records are confidential and must not be disclosed without the consent of the patient or his or her legal representative, but appropriate disclosure may be made without such consent to:

(g) The Department of Children and Families, ~~or~~ its agent, or its contracted entity, for the purpose of investigations of or services for cases of abuse, neglect, or exploitation of children or vulnerable adults.

(8) Patient records at hospitals and ambulatory surgical centers are exempt from disclosure under s. 119.07(1), except as provided by subsections (1)-(5).

Section 21. Subsections (2) and (6) of section 402.40,

Florida Statutes, are amended to read:

402.40 Child welfare training and certification.—

(2) DEFINITIONS.—As used in this section, the term:

(a) "Child welfare certification" means a professional credential awarded by a department-approved third-party credentialing entity to individuals demonstrating core competency in any child welfare practice area.

(b) "Child welfare services" means any intake, protective investigations, preprotective services, protective services, foster care, shelter and group care, and adoption and related services program, including supportive services and supervision provided to children who are alleged to have been abused, abandoned, or neglected or who are at risk of becoming, are alleged to be, or have been found dependent pursuant to chapter 39.

(c) "Child welfare trainer" means any person providing training for the purposes of child welfare professionals earning certification.

(d) ~~(c)~~ "Core competency" means the minimum knowledge, skills, and abilities necessary to carry out work responsibilities.

(e) ~~(d)~~ "Person providing child welfare services" means a person who has a responsibility for supervisory, direct care, or support-related work in the provision of child welfare services pursuant to chapter 39.

(f) ~~(e)~~ "Preservice curriculum" means the minimum statewide training content based upon the core competencies which is made available to all persons providing child welfare services.

(g) ~~(f)~~ "Third-party credentialing entity" means a department-approved nonprofit organization that has met nationally recognized standards for developing and administering professional certification programs.

(6) ADOPTION OF RULES.—The Department of Children and Families shall adopt rules necessary to carry out ~~the provisions of~~ this section, including the requirements for child welfare trainers.

Section 22. Paragraph (a) of subsection (7) of section 456.057, Florida Statutes, is amended to read:

456.057 Ownership and control of patient records; report or copies of records to be furnished; disclosure of information.—

(7)(a) Except as otherwise provided in this section and in s. 440.13(4)(c), such records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient, the patient's legal representative, or other health care practitioners and providers involved in the patient's care or treatment, except upon written authorization from the patient. However, such records may be furnished without written authorization under the following circumstances:

1. To any person, firm, or corporation that has procured or furnished such care or treatment with the patient's consent.

2. When compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical records shall be furnished to both the defendant and the plaintiff.

3. In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient's legal representative by the party seeking such records.

4. For statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient or provided written permission is received from the patient or the patient's legal representative.

5. To a regional poison control center for purposes of treating a poison episode under evaluation, case management of poison cases, or compliance with data collection and reporting requirements of s. 395.1027 and the professional organization that certifies poison control centers in accordance with federal law.

6. To the Department of Children and Families, its agent, or its contracted entity, for the purpose of investigations of or services for cases of abuse, neglect, or exploitation of children or vulnerable adults.

Section 23. Section 409.141, Florida Statutes, is repealed.

Section 24. Section 409.1677, Florida Statutes, is repealed.

Section 25. Subsection (1) of section 39.524, Florida Statutes, is amended to read:

39.524 Safe-harbor placement.—

(1) Except as provided in s. 39.407 or s. 985.801, a dependent child 6 years of age or older who has been found to be a victim of sexual exploitation as defined in s. 39.01 ~~s. 39.01(70)(g)~~ must be assessed for placement in a safe house or safe foster home as provided in s. 409.1678 using the initial screening and assessment instruments provided in s. 409.1754(1). If such placement is determined to be appropriate for the child as a result of this assessment, the child may be placed in a safe house or safe foster home, if one is available. However, the child may be placed in another setting, if the other setting is more appropriate to the child's needs or if a safe house or safe foster home is unavailable, as long as the child's behaviors are managed so as not to endanger other children served in that setting.

Section 26. Paragraph (p) of subsection (4) of section 394.495, Florida Statutes, is amended to read:

394.495 Child and adolescent mental health system of care; programs and services.—

(4) The array of services may include, but is not limited to:

(p) Trauma-informed services for children who have suffered sexual exploitation as defined in s. 39.01 ~~s. 39.01(70)(g)~~.

Section 27. Paragraph (c) of subsection (1) and paragraphs (a) and (b) of subsection (6) of section 409.1678, Florida Statutes, are amended to read:

409.1678 Specialized residential options for children who are victims of sexual exploitation.—

(1) DEFINITIONS.—As used in this section, the term:

(c) "Sexually exploited child" means a child who has suffered sexual exploitation as defined in s. 39.01 ~~s. 39.01(70)(g)~~ and is ineligible for relief and benefits under the federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.

(6) LOCATION INFORMATION.—

(a) Information about the location of a safe house, safe foster home, or other residential facility serving victims of sexual exploitation, as defined in s. 39.01 ~~s. 39.01(70)(g)~~, which is held by an agency, as defined in s. 119.011, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such confidential and exempt information held by an agency before, on, or after the effective date of the exemption.

(b) Information about the location of a safe house, safe foster home, or other residential facility serving victims of sexual exploitation, as defined in s. 39.01 ~~s. 39.01(70)(g)~~, may be provided to an agency, as defined in s. 119.011, as necessary to maintain health and safety standards and to address emergency situations in the safe house, safe foster home, or other residential facility.

Section 28. Subsection (5) of section 960.065, Florida Statutes, is amended to read:

960.065 Eligibility for awards.—

(5) A person is not ineligible for an award pursuant to paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that person is a victim of sexual exploitation of a child as defined in s. 39.01 ~~s. 39.01(70)(g)~~.

Section 29. Section 409.1679, Florida Statutes, is amended to read:

409.1679 Additional requirements; reimbursement methodology.—

(1) Each program established under s. 409.1676 ~~ss. 409.1676 and 409.1677~~ must meet the following expectations, which must be included in its contracts with the department or lead agency:

(a) No more than 10 percent of the children served may move from one living environment to another, unless the child is returned to family members or is moved, in accordance with the

treatment plan, to a less-restrictive setting. Each child must have a comprehensive transitional plan that identifies the child's living arrangement upon leaving the program and specific steps and services that are being provided to prepare for that arrangement. Specific expectations as to the time period necessary for the achievement of these permanency goals must be included in the contract.

(b) Each child must receive a full academic year of appropriate educational instruction. No more than 10 percent of the children may be in more than one academic setting in an academic year, unless the child is being moved, in accordance with an educational plan, to a less-restrictive setting. Each child must demonstrate academic progress and must be performing at grade level or at a level commensurate with a valid academic assessment.

(c) Siblings must be kept together in the same living environment 100 percent of the time, unless that is determined by the provider not to be in the children's best interest. When siblings are separated in placement, the decision must be reviewed and approved by the court within 30 days.

(d) The program must experience a caregiver turnover rate and an incidence of child runaway episodes which are at least 50 percent below the rates experienced in the rest of the state.

(e) In addition to providing a comprehensive assessment, the program must provide, 100 percent of the time, any or all of

the following services that are indicated through the assessment: residential care; transportation; behavioral health services; recreational activities; clothing, supplies, and miscellaneous expenses associated with caring for these children; necessary arrangements for or provision of educational services; and necessary and appropriate health and dental care.

(f) The children who are served in this program must be satisfied with the services and living environment.

(g) The caregivers must be satisfied with the program.

(2) ~~Notwithstanding the provisions of s. 409.141,~~ The Department of Children and Families shall fairly and reasonably reimburse the programs established under s. 409.1676 ~~ss. 409.1676 and 409.1677~~ based on a prospective per diem rate, which must be specified annually in the General Appropriations Act. Funding for these programs shall be made available from resources appropriated and identified in the General Appropriations Act.

Section 30. Subsection (11) of section 1002.3305, Florida Statutes, is amended to read:

1002.3305 College-Preparatory Boarding Academy Pilot Program for at-risk students.—

(11) STUDENT HOUSING.—Notwithstanding s. 409.176 ~~ss. 409.1677(3)(d) and 409.176~~ or any other provision of law, an operator may house and educate dependent, at-risk youth in its residential school for the purpose of facilitating the mission

of the program and encouraging innovative practices.

Section 31. For the purpose of incorporating the amendment made by this act to section 456.057, Florida Statutes, in a reference thereto, subsection (2) of section 483.181, Florida Statutes, is reenacted to read:

483.181 Acceptance, collection, identification, and examination of specimens.—

(2) The results of a test must be reported directly to the licensed practitioner or other authorized person who requested it, and appropriate disclosure may be made by the clinical laboratory without a patient's consent to other health care practitioners and providers involved in the care or treatment of the patient as specified in s. 456.057(7)(a). The report must include the name and address of the clinical laboratory in which the test was actually performed, unless the test was performed in a hospital laboratory and the report becomes an integral part of the hospital record.

Section 32. This act shall take effect July 1, 2017.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1121 (2017)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Children, Families & Seniors Subcommittee

Representative Stevenson offered the following:

Amendment (with title amendment)

Remove lines 152-169 and insert:

Section 2. Paragraph (a) of subsection (2) of section 39.202, Florida Statutes, is amended to read:

39.202 Confidentiality of reports and records in cases of child abuse or neglect.—

(2) Except as provided in subsection (4), access to such records, excluding the name of the reporter which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:

(a) Employees, authorized agents, or contract providers of the department, the Department of Health, the Agency for Persons

with Disabilities, the Office of Early Learning, or county agencies responsible for carrying out:

1. Child or adult protective investigations;

2. Ongoing child or adult protective services;

3. Early intervention and prevention services;

4. Healthy Start services;

5. Licensure or approval of adoptive homes, foster homes, child care facilities, facilities licensed under chapter 393, family day care homes, providers who receive school readiness funding under part VI of chapter 1002, or other homes used to provide for the care and welfare of children;

6. Employment screening for caregivers in residential group homes; or

~~7~~6. Services for victims of domestic violence when provided by certified domestic violence centers working at the department's request as case consultants or with shared clients.

Also, employees or agents of the Department of Juvenile Justice responsible for the provision of services to children, pursuant to chapters 984 and 985.

T I T L E A M E N D M E N T

Remove lines 4-5 and insert:

the term "parent"; amending s. 39.202, F.S.; providing that confidential records held by the department concerning reports of child abandonment, abuse, or neglect, including reports made to the central abuse hotline and all records generated as a result of such reports may be accessed for

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1121 (2017)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Children, Families & Seniors Subcommittee

Representative Stevenson offered the following:

Amendment

Remove lines 946-950 and insert:

(j) ~~(k)~~ Child welfare ~~A Florida Abuse Hotline Information System (FAHIS)~~ history from the Statewide Automated Child Welfare Information System (SACWIS) and criminal records check for all caregivers, family members, and individuals residing within the household from which the child was removed.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CFS 17-02 Child Welfare
SPONSOR(S): Children, Families & Seniors Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Children, Families & Seniors Subcommittee		Tuszynski	Brazzell

SUMMARY ANALYSIS

Chapter 39, F.S., creates the child welfare dependency system, administered by the Department of Children and Families' (DCF) Office of Child Welfare in partnership with local communities and the courts. DCF contracts for foster care placement and related services with lead agencies, also known as community-based care organizations (CBC).

DCF is required to administer a system of care that prevents the separation of children from their families and provides interventions to allow children to remain safely in their own homes. However, when it is determined that in-home services are not enough to allow a child to safely remain in his or her home, the child is removed from his or her home and placed with a safe and appropriate temporary out-of-home placement. DCF uses a child welfare practice model that standardized the approach to safety decision making and risk assessment to determine a child's safety.

PCB CFS 17-02 requires DCF to develop, in collaboration with CBCs, service providers, and other community stakeholders, a statewide quality rating system for providers of residential group care and foster homes. The system must promote high quality in services and accommodations by creating measurable minimum quality standards that providers must meet to contract with CBCs. DCF must submit a report to the Governor, President of the Senate, and Speaker of the House on October 1, 2017, and by October 1 of each year thereafter. The initial report must include an update on implementation and a plan for oversight of the implementation of the system and beginning in October of 2019 the report must include a list of providers meeting minimum quality standards, the percentage of children placed with highly rated providers, and any negative actions taken against providers for not meeting minimum quality standards.

The bill requires DCF to not only ensure the quality of contracted services and programs offered to families in the dependency system, but also ensure an adequate array of services available to be delivered through the CBCs.

The bill allows the dependency court to order "maintain and strengthen" in the child's home as a permanency goal for children in the dependency system by adding this goal to the options a dependency court is able to order for children in the dependency system. The bill also revises the definition of "permanency goal" by removing language duplicated in substantive law.

The bill extends the jurisdiction of the dependency court over young adults with a disability until the age of 22. The bill also requires that a child's transition plan must be approved by the court before a child's 18th birthday regardless of whether the child is leaving care at 18 and requires that the transition plan must be attached to the case plan and updated before each judicial review.

The bill has an indeterminate fiscal impact. See fiscal comments.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida's Child Welfare System

Chapter 39, F.S., creates the dependency system that aims to protect children and prevent abuse, abandonment, and neglect.[1] The Department of Children and Families (DCF) Office of Child Welfare works in partnership with local communities and the courts to ensure the safety, timely permanency and well-being of children.

DCF's practice model is based on preserving and strengthening the child's family ties whenever possible, removing the child from his or her home only when his or her welfare and safety cannot be adequately safeguarded otherwise.[2] DCF contracts with community-based care lead agencies (CBC) to coordinate case management and services for families within the dependency system.

The Department of Children and Families' Practice Model

DCF's child welfare practice model (model) standardizes the approach to safety decision making and risk assessment used to determine a child's safety.[3] The model seeks to achieve the goals of safety, permanency, and child and family well-being.[4] The model emphasizes parent engagement and empowerment as well as the training and support of child welfare professionals to assess child safety.[5] Several key practices are used to achieve these goals.[6]

- Engaging the family to build rapport and trust.
- Partner with all involved stakeholders to increase support for the family.
- Plan for child safety by including the family and other partners to develop and implement short-term actions to keep the child safe in the home or, if necessary, in out-of-home care.
- Plan for changes by working with the child, family members, and other team members to identify appropriate interventions and supports necessary to achieve child safety, permanency and well-being.
- Monitor and adapt case plans to help families navigate the dependency system and link them to services aimed at helping maintain child and family well-being.

The model emphasizes a family-centered practice with the goal of keeping children in their homes whenever possible.[7]

Community-Based Care Organizations and Services

DCF contracts for case management, out-of-home care, and related services with lead agencies, also known as community-based care organizations (CBCs). The model of using CBCs to provide child welfare services is designed to increase local community ownership of service delivery and design.[8]

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[1] S. 39.001(8), F.S.
[2] S. 39.001(4), F.S.
[3] The Department of Children and Families, *2013 Year in Review*, available at: http://www.dcf.state.fl.us/admin/publications/year-in-review/2013/page19.shtml (last accessed March 6, 2017).
[4] The Department of Children and Families, *Florida's Child Welfare Practice Model*, available at: http://www.myflfamilies.com/service-programs/child-welfare/child-welfare-practice-model (last accessed March 7, 2017).
[5] Supra, at FN 3.
[6] Supra, at FN 4.
[7] The Department of Children and Families, *2012 Year in Review*, available at: http://www.dcf.state.fl.us/admin/publications/year-in-review/2012/page9.shtml (last accessed March 7, 2017).

DCF, through the CBCs, is required to administer a system of care[9] for children that is directed toward:

- Prevention of separation of children from their families;
- Intervention to allow children to remain safely in their own homes;
- Reunification of families who have had children removed from their care;
- Safety for children who are separated from their families;
- Focus on the well-being of children through emphasis on educational stability and timely health care;
- Permanency; and
- Transition to independence and self-sufficiency.

CBCs are responsible for providing foster care and related services. These services include, but are not limited to, counseling, domestic violence services, substance abuse services, family preservation, emergency shelter, and adoption.[10] The CBC must give priority to services that are evidence-based and trauma informed.[11] CBCs contract with a number of subcontractors for case management and direct care services to children and their families.[12] There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.[13]

Dependency Case Process

When a child is removed from his or her home, a series of dependency court proceedings must occur to adjudicate the child dependent and place him or her in out-of-home care, as indicated by the chart below.

Proceeding	Description	Statute
Removal	The child's home is determined to be 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, to determine whether a child is dependent.	s. 39.507, F.S.
Disposition Hearing	Disposition occurs within 15 days of arraignment or 30 days of adjudication. The judge reviews and orders the case plan for the family and the appropriate placement of the child.	ss. 39. 506 and 39.521, 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.

[8] Community-Based Care, The Department of Children and Families, accessible at http://www.myflfamilies.com/service-programs/community-based-care (last viewed February 12, 2016).
[9] S. 409.145(1), F.S.
[10] Id.
[11] S. 409.988(3), F.S.
[12] Supra. at FN 8.
[13] Community Based Care Lead Agency Map, The Department of Children and Families, available at: http://www.myflfamilies.com/service-programs/community-based-care/cbc-map (last accessed March 6, 2017).

Placements of Children in the Child Welfare System

In-Home with Services

DCF is required to administer a system of care that prevents the separation of children from their families and provides interventions to allow children to remain safely in their own homes.[14] Protective investigators and CBC case managers can refer families for in-home services to allow a child, who would otherwise be unsafe, to remain in his or her own home.

As of December 31, 2016, there were 12,477 children receiving in-home services.[15]

Out of Home Placements

When a child protective investigator determines that in-home services are not enough to allow a child to safely remain in his or her home, the investigator removes the child from his or her home and places the child with a safe and appropriate temporary placement. These temporary placements, referred to as out-of-home care, provide housing and services to children until they can return home to their family or achieve permanency with another family through adoption or guardianship.[16] CBCs must place all children in out-of-home care in the most appropriate available setting after conducting an assessment using child-specific factors.[17]

Relatives and Non-Relative Caregivers

Research indicates that children in the care of relatives and non-relatives, such as grandparents or family friends, benefit from increased placement stability and are less likely to change placements as compared to children placed in general foster care.[18] When possible, child protective investigators and lead agency case managers place the children with a relative or responsible adult that the child knows and with whom they have a relationship.[19] Relative and non-relative caregivers are not required to be licensed, but do undergo a home-study to determine if the home is appropriate to place the child.[20]

As of December 31, 2016, there were 13,056 children placed with relative and non-relative caregivers.

Licensed Out-of-Home Care

When a relative or non-relative caregiver placement is not possible, protective investigators and case managers try to place the children in family foster homes licensed by DCF.[21] A family foster home is a licensed private residence in which children who are unattended by a parent or legal guardian are provided 24-hour care. Such homes include emergency shelter family homes and specialized foster homes for children with special needs.[22] Foster homes are inspected and licensed,[23] and foster parents go through a rigorous interview process before being approved.[24]

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[14] Supra, at FN 9.
[15] Department of Children and Families, DCF Quick Facts, Child Welfare, available at: http://www.dcf.state.fl.us/general-information/quick-facts/cw/ (last accessed March 8, 2017).
[16] Office of Program Policy and Government Accountability, Research Memorandum, Florida's Residential Group Care Program for Children in the Child Welfare System (December 22, 2014) (on file with the Children, Families, and Seniors Subcommittee).
[17] Child-specific factors include age, sex, sibling status, physical, educational, emotional, and developmental needs, maltreatment, community ties, and school placement. (Rule 65C-28.004, F.A.C.)
[18] David Rubin and Downes, K., et al., The Impact of Kinship Care on Behavioral Well-being for Children in Out-of-Home Care (June 2, 2008), available at: http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2654276/ (last accessed March 8, 2017).
[19] Office of Program Policy and Government Accountability, Research Memorandum, Florida's Residential Group Care Program for Children in the Child Welfare System (December 22, 2014) (on file with the Children, Families, and Seniors Subcommittee).
[20] S. 39.521(2)(r), F.S.
[21] Id.
[22] S. 409.175, F.S.
[23] Id.
[24] Florida Department of Children and Families, *Fostering Definitions*, available at: http://www.myflfamilies.com/service-programs/foster-care/definitions (last accessed March 7, 2017).

Some children have extraordinary needs, such as multiple placement disruptions, mental or behavioral health problems, juvenile justice involvement, or disabilities, which may lead case managers to place them in residential group care (RGC). The primary purpose of RGC is to provide a setting that addresses the unique needs of children and youth who require more intensive services than a family setting can provide.[25] RGC placements are licensed by DCF as residential child-caring agencies[26] that provide staffed 24-hour care for children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged.[27] These include maternity homes, runaway shelters, group homes, and emergency shelters.[28] The two primary models of group care are the shift model, with staff working in shifts providing 24-hour supervision, and the family model, which has a house parent or parents that live with and are responsible for 24-hour care of children in the group home.[29]

By law, CBCs must assess any child that meets the following criteria for placement in RGC:

- The child is 11 or older;
- The child has been in licensed family foster care for six months or longer and removed from family foster care more than once; and
- The child has serious behavioral problems or has been determined to be without the options of either family reunification or adoption. [30]

In addition, the CBC must consider psychological evaluations, information provided by professionals with knowledge of the child, and the desires of the child concerning placement.[31] Children who do not meet the specified criteria may still be placed in RGC if it is determined that such placement is the most appropriate for the child.[32]

RGC placement can also serve as a treatment component of the children's mental and behavioral health care. [33] Children in RGC with behavioral health needs receive mental health, substance abuse, and support services that are provided through Medicaid-funded Behavioral Health Overlay Services.[34] Residential group homes also directly employ or contract with therapists and counselors to provide services within the group home setting.[35]

As of December 31, 2016, there were 12,478 children in licensed out-of-home care, including in foster homes and RGC.[36]

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[25] Supra, at FN 19.
[26] Supra, at FN 19.
[27] S. 409.175, F.S.
[28] Id.
[29] Supra, at FN 19.
[30] S. 39.523(1), F.S.
[31] Id.
[32] S. 39.523(4), F.S.
[33] Richard Barth, *Institutions vs. Foster Homes: The Empirical Base for the Second Century of Debate*. Chapel Hill, NC: University of North Carolina, School of Social Work, Jordan Institute for Families (June 17, 2002), available at: http://www.researchgate.net/publication/237273744_vs._Foster_Homes_The_Empirical_Base_for_a_Century_of_Action.
[34] Office of Program Policy and Government Accountability, Research Memorandum, Florida's Child Welfare System: Out-of Home Care (November. 12, 2015) (on file with the Children, Families, and Seniors Subcommittee).
[35] Id.
[36] Supra, at FN 15.

Licensure

DCF licenses most out-of-home placements, including family foster homes, residential child-caring agencies (residential group care), and child-placing agencies.[37] The following placements do not require licensure:[38]

- Relative caregivers;
- Non-relative caregivers;
- An adoptive home which has been approved by the department or by a licensed child-placing agency for children placed for adoption; and
- Persons or neighbors who care for children in their homes for less than 90 days.

Licensure involves meeting rules and regulations pertaining to: [39]

- The good moral character of personnel and foster parents based on background screening, education, training, and experience requirements;
- Operation, conduct, and maintenance;
- The provision of food, clothing, educational opportunities, services, equipment, and individual supplies to assure the healthy physical, emotional, and mental development of the children served;
- The appropriateness, safety, cleanliness, and general adequacy of the premises, including fire prevention and health standards, to provide for the physical comfort, care, and well-being of the children served;
- The ratio of staff to children required to provide adequate care and supervision of the children served; and
- In the case of foster homes, the maximum number of children in the home.

These licensure standards are the minimum requirements that must be met to care for children within the child welfare system. DCF must issue a license for those homes and agencies that meet the minimum licensure standards.[40] However, the issuance of a license does not require a CBC to place a child with any home or agency.[41]

Extended Foster Care

In 2014, the Legislature provided foster youth the option to extend foster care.[42] Previously, youth did not have the option to remain in foster care after their 18th birthday. Now, through extended foster care, they have the option to remain in care until they turn 21 or 22 if the young adult has a disability. [43] Young adults are also eligible to receive financial assistance as they continue pursuing academic and career goals if enrolled in an eligible post-secondary institution.[44] In extended foster care, young adults continue to receive case management services and other supports to provide them with a sound platform for success as independent adults.

[37] S. 409.175, F.S.
[38] Id.
[39] S. 409.175, F.S.
[40] S. 409.175(6)(h), F.S.
[41] S. 409.175(6)(i), F.S.
[42] S. 39.6251, F.S.
[43] The Department of Children and Families, *Extended Foster Care – My Future My Choice*, available at: http://www.myflfamilies.com/service-programs/independent-living/extended-foster-care (last accessed March 7, 2017).
[44] Id.

Transition Plans

During the 6 month period immediately after a dependent child reaches 17 years of age, DCF and the CBCs, in collaboration with the child, his or her caregiver, and any other person the child would like to include must develop a transition plan.[45] These transition plans must address services, housing, health insurance, education, workforce support and employment services, and the maintenance of mentoring relationships and other personal supports.[46] The plan is designed to help transition a child in the dependency system to adulthood. A child's transition plan must be approved by the court "if a child is planning to leave care upon reaching 18 years of age . . . before the child leaves care."[47]

Residential Group Care Quality Standards

Florida Institute for Child Welfare

The Florida Institute for Child Welfare (FICW) published a technical report titled "Improving the Quality of Residential Group Care: A Review of Current Trends, Empirical Evidence, and Recommendations" in July of 2015. This report looked at the current trends and evidence related to residential group care, finding that:

> "Although the appropriate use of RGC has been a subject of longstanding debate, most child welfare experts, including practitioners, researchers, and advocacy groups, acknowledge that for some youth involved in the child welfare system, high quality group care is an essential and even lifesaving intervention."[48]

Based on reviews of current trends and issues, findings from research, and reviews of recommendations proposed by child welfare experts and advocacy groups, the FICW made the following seven recommendations.[49]

1. Develop and implement a basic set of common quality standards for RGC.
2. Increase evaluation efforts to identify and support evidence-based RGC services.
3. Support RGC providers in strengthening efforts to engage families.
4. Explore innovative approaches, including those that are trauma-informed and relationship-based.
5. Increase efforts to identify and implement culturally competent practices that are supported by research.
6. Continue to build upon efforts to strengthen the child welfare workforce.
7. Explore flexible funding strategies that can help facilitate higher quality services and innovative uses of RGC that are consistent with systems of care principles.

The recommendations made by the FICW focus mainly on quality and implementing strategies to facilitate high quality services within RGC.

Group Care Quality Standards Workgroup

Also in 2015, DCF and the Florida Coalition for Children established the Group Care Quality Standards Workgroup (workgroup), with representation from group care providers, CBCs, and DCF. The workgroup reviewed standards-related literature to determine consensus and ensure a high quality of

[45] S. 39.6035(1), F.S.
[46] Id.
[47] S. 39.6035(4), F.S.
[48] Boel-Studt, S. M. (2015). *Improving the Quality of Residential Group Care: A Review of Current Trends, Empirical Evidence, and Recommendations* (Florida Institute for Child Welfare).
[49] Id.

group care standards.[50] The workgroup identified eight specific categories for quality standards with 251 distinct quality standards for residential group care.[51]

The workgroup and FICW started the Quality Standards for Group Care Initiative, which consists of 6 project phases:[52]

1. Development of core quality standards
2. Development of a quality assessment tool
3. Pilot test of the quality assessment tool
4. Field test of the quality assessment tool
5. Implementation of the quality assessment tool
6. Validation of the quality assessment tool.

In September 2015, DCF reviewed and approved the core quality standards, completing Phase 1.[53] The FICW developed a quality assessment tool shortly thereafter, completing phase 2.[54]

On October 31, 2016, a rating scale pilot (phase 3) was implemented in DCF's Central service region with 11 group homes.[55] Once the field test is completed in July 2017, the data will be analyzed and the quality assessment tool will be finalized. Statewide implementation (phase 5) is scheduled for September of 2017 with validation (phase 6) scheduled 1 and 2 years after that.[56]

Effect of Proposed Language

PCB CFS 17-02 extends the jurisdiction of the dependency court over young adults with a disability until the age of 22. The bill language updates the section of law detailing who the court has jurisdiction over to align with the extended foster care statute.[57] The bill requires that a regardless of whether a child is choosing to leave care at age 18, the child's transition plan must be approved by the court before a child's 18th birthday. The PCB also requires that the transition plan must be attached to the case plan and updated before each judicial review. This change in transition plan procedure will ensure that a young adult's transition plan detailing his or her transition out of the dependency system will be completed before his or her 18th birthday, regardless of the decision to leave care or stay in extended foster care. This will provide the court and other parties more time for input and planning.

The bill allows the dependency court to order "maintain and strengthen" a placement in the child's home as a permanency goal for children in the dependency system. This terminology is regularly used as a case plan goal but is not included in statute among the permanency goals the dependency court may order. This change aligns statute with current practice and DCF's practice model. The bill also revises the definition of "permanency goal" to remove provisions already duplicated in substantive law detailing what permanency goals the dependency court may order.

The bill requires DCF to ensure quality of contracted services and programs as well as ensure an adequate array of services available to be delivered through the CBCs. Statute currently vests responsibility in DCF for the quality of contracted services and their delivery in accordance with federal

[50] Group Care Quality Standards Workgroup, *Quality Standards for Group Care*, Florida Department of Children and Families and the Florida Coalition of Children (2015) (on file with Children, Families, and Seniors subcommittee staff).
[51] Id.
[52] Boel-Studt, S., et al., (2016). *Group Care Quality Standards Assessment: Pilot Test Orientation* [PowerPoint slides], (on file with Children, Families, & Seniors Subcommittee staff).
[53] Florida Institute of Child Welfare, Quality Standards for Residential Group Care, A Pilot Test and Initial Validation of a Quality Rating Scale for Florida's Residential Group Homes, available at: http://ficw.fsu.edu/technical-assistance-training/quality-standards-residential-group-care (last accessed March 11, 2017).
[54] Id.
[55] Id.
[56] Supra, FN 52.
[57] S. 39.6251(5)(a), F.S.

and state law. The new language expands that responsibility to not only ensure the quality of services but to also require an adequate array of services to be made available for children and families within the dependency system.

The bill requires DCF to develop, in collaboration with CBCs, service providers, and other community stakeholders, a statewide quality rating system for providers of residential group care and foster homes. The system must promote high quality in services and accommodations by creating measurable minimum quality standards that providers must meet to contract with CBCs. DCF must submit a report to the Governor, President of the Senate, and Speaker of the House on October 1, 2017, and by October 1 of each year thereafter. The initial report must include an update on implementation and a plan for oversight of the implementation of the system and beginning in October of 2019 the report must include a list of providers meeting minimum quality standards, the percentage of children placed with highly rated providers, and any negative actions taken against providers for not meeting minimum quality standards.

The bill provides for an effective date of July 1, 2017.

B. SECTION DIRECTORY:

Section 1: Amends s. 39.01, F.S., relating to definitions.
Section 2: Amends s. 39.013, F.S., relating to procedures and jurisdiction; right to counsel.
Section 3: Amends s. 39.6035, F.S., relating to transition plan.
Section 4: Amends s. 39.621, F.S., relating to permanency determination by the court.
Section 5: Amends s. 409.996, F.S., relating to duties of the Department of Children and Families.
Section 6: Provides for an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill has an indeterminate fiscal impact on state government. See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate fiscal impact on the private sector. See fiscal comments.

D. FISCAL COMMENTS:

The fiscal impact on state government and the private sector is indeterminate. Impacts may relate to possible workload for the department, lead agencies, and providers for developing and implementing a quality rating system for group homes and foster homes. However these impacts may be able to be absorbed within the current system; for instance, DCF is currently piloting an RGC rating system with existing staff and resources.

There may be additional costs for the courts to carry out their duties under the bill, which are also indeterminate.

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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to child welfare; amending s. 39.01, F.S.; redefining the term "permanency goal"; amending s. 39.013, F.S.; extending court jurisdiction to age 22 for young adults with disabilities in foster care; amending s. 39.6035, F.S.; requiring a transition plan to be approved before a child reaches 18 years of age; amending s. 39.621, F.S.; specifying the circumstances under which the permanency goal of maintaining and strengthening the placement with a parent may be used; amending s. 409.996, F.S.; requiring the Department of Children and Families, in collaboration with certain entities, to develop a statewide quality rating system for residential group care providers and foster homes; requiring the system to be implemented by a specified date; providing requirements for the system; requiring the department to submit a report to the Governor and the Legislature by a specified date and annually thereafter; providing requirements for the report; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (52) of section 39.01, Florida Statutes, is amended to read:

39.01 Definitions.—When used in this chapter, unless the

context otherwise requires:

(52) "Permanency goal" means the living arrangement identified for the child to return to or identified as the permanent living arrangement of the child. ~~Permanency goals applicable under this chapter, listed in order of preference, are:~~

~~(a) Reunification;~~

~~(b) Adoption when a petition for termination of parental rights has been or will be filed;~~

~~(c) Permanent guardianship of a dependent child under s. 39.6221;~~

~~(d) Permanent placement with a fit and willing relative under s. 39.6231; or~~

~~(e) Placement in another planned permanent living arrangement under s. 39.6241.~~

The permanency goal is also the case plan goal. If concurrent case planning is being used, reunification may be pursued at the same time that another permanency goal is pursued.

Section 2. Subsection (2) of section 39.013, Florida Statutes, is amended to read:

39.013 Procedures and jurisdiction; right to counsel.—

(2) The circuit court has exclusive original jurisdiction of all proceedings under this chapter, of a child voluntarily placed with a licensed child-caring agency, a licensed child-

placing agency, or the department, and of the adoption of children whose parental rights have been terminated under this chapter. Jurisdiction attaches when the initial shelter petition, dependency petition, or termination of parental rights petition, or a petition for an injunction to prevent child abuse issued pursuant to s. 39.504, is filed or when a child is taken into the custody of the department. The circuit court may assume jurisdiction over any such proceeding regardless of whether the child was in the physical custody of both parents, was in the sole legal or physical custody of only one parent, caregiver, or some other person, or was not in the physical or legal custody of any person when the event or condition occurred that brought the child to the attention of the court. When the court obtains jurisdiction of any child who has been found to be dependent, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 21 years of age, or 22 years of age if the child has a disability, with the following exceptions:

(a) If a young adult chooses to leave foster care upon reaching 18 years of age.

(b) If a young adult does not meet the eligibility requirements to remain in foster care under s. 39.6251 or chooses to leave care under that section.

(c) If a young adult petitions the court at any time before his or her 19th birthday requesting the court's continued

jurisdiction, the juvenile court may retain jurisdiction under this chapter for a period not to exceed 1 year following the young adult's 18th birthday for the purpose of determining whether appropriate services that were required to be provided to the young adult before reaching 18 years of age have been provided.

(d) If a petition for special immigrant juvenile status and an application for adjustment of status have been filed on behalf of a foster child and the petition and application have not been granted by the time the child reaches 18 years of age, the court may retain jurisdiction over the dependency case solely for the purpose of allowing the continued consideration of the petition and application by federal authorities. Review hearings for the child shall be set solely for the purpose of determining the status of the petition and application. The court's jurisdiction terminates upon the final decision of the federal authorities. Retention of jurisdiction in this instance does not affect the services available to a young adult under s. 409.1451. The court may not retain jurisdiction of the case after the immigrant child's 22nd birthday.

Section 3. Subsection (4) of section 39.6035, Florida Statutes, is amended to read:

39.6035 Transition plan.—

(4) ~~If a child is planning to leave care upon reaching 18 years of age,~~ The transition plan must be approved by the court

before the child's 18th birthday and must be attached to the case plan and updated before each judicial review ~~child leaves care and the court terminates jurisdiction~~.

Section 4. Present subsections (2) through (11) of section 39.621, Florida Statutes, are redesignated as subsections (3) through (12), respectively, and a new subsection (2) is added to that section, to read:

39.621 Permanency determination by the court.—

(2) The permanency goal of maintaining and strengthening the placement with a parent may be used in all of the following circumstances:

(a) If a child has not been removed from a parent, even if adjudication of dependency is withheld, the court may leave the child in the current placement with maintaining and strengthening the placement as a permanency option.

(b) If a child has been removed from a parent and is placed with the parent from whom the child was not removed, the court may leave the child in the placement with the parent from whom the child was not removed with maintaining and strengthening the placement as a permanency option.

(c) If a child has been removed from a parent and is subsequently reunified with that parent, the court may leave the child with that parent with maintaining and strengthening the placement as a permanency option.

Section 5. Section 409.996, Florida Statutes, is amended

to read:

409.996 Duties of the Department of Children and Families.—The department shall contract for the delivery, administration, or management of care for children in the child protection and child welfare system. In doing so, the department retains responsibility to ensure ~~for~~ the quality of contracted services and programs and ~~shall ensure~~ that an adequate array of services is available to be ~~are~~ delivered in accordance with applicable federal and state statutes and regulations.

(1) The department shall enter into contracts with lead agencies for the performance of the duties by the lead agencies pursuant to s. 409.988. At a minimum, the contracts must:

(a) Provide for the services needed to accomplish the duties established in s. 409.988 and provide information to the department which is necessary to meet the requirements for a quality assurance program pursuant to subsection (18) and the child welfare results-oriented accountability system pursuant to s. 409.997.

(b) Provide for graduated penalties for failure to comply with contract terms. Such penalties may include financial penalties, enhanced monitoring and reporting, corrective action plans, and early termination of contracts or other appropriate action to ensure contract compliance. The financial penalties shall require a lead agency to reallocate funds from administrative costs to direct care for children.

(c) Ensure that the lead agency shall furnish current and accurate information on its activities in all cases in client case records in the state's statewide automated child welfare information system.

(d) Specify the procedures to be used by the parties to resolve differences in interpreting the contract or to resolve disputes as to the adequacy of the parties' compliance with their respective obligations under the contract.

(2) The department must adopt written policies and procedures for monitoring the contract for delivery of services by lead agencies which must be posted on the department's website. These policies and procedures must, at a minimum, address the evaluation of fiscal accountability and program operations, including provider achievement of performance standards, provider monitoring of subcontractors, and timely followup of corrective actions for significant monitoring findings related to providers and subcontractors. These policies and procedures must also include provisions for reducing the duplication of the department's program monitoring activities both internally and with other agencies, to the extent possible. The department's written procedures must ensure that the written findings, conclusions, and recommendations from monitoring the contract for services of lead agencies are communicated to the director of the provider agency and the community alliance as expeditiously as possible.

(3) The department shall receive federal and state funds as appropriated for the operation of the child welfare system, transmit these funds to the lead agencies as agreed to in the contract, and provide information on its website of the distribution of the federal funds. The department retains responsibility for the appropriate spending of these funds. The department shall monitor lead agencies to assess compliance with the financial guidelines established pursuant to s. 409.992 and other applicable state and federal laws.

(4) The department shall provide technical assistance and consultation to lead agencies in the provision of care to children in the child protection and child welfare system.

(5) The department retains the responsibility for the review, approval or denial, and issuances of all foster home licenses.

(6) The department shall process all applications submitted by lead agencies for the Interstate Compact on the Placement of Children and the Interstate Compact on Adoption and Medical Assistance.

(7) The department shall assist lead agencies with access to and coordination with other service programs within the department.

(8) The department shall determine Medicaid eligibility for all referred children and shall coordinate services with the Agency for Health Care Administration.

(9) The department shall develop, in cooperation with the lead agencies, a third-party credentialing entity approved pursuant to s. 402.40(3), and the Florida Institute for Child Welfare established pursuant to s. 1004.615, a standardized competency-based curriculum for certification training for child protection staff.

(10) The department shall maintain the statewide adoptions website and provide information and training to the lead agencies relating to the website.

(11) The department shall provide training and assistance to lead agencies regarding the responsibility of lead agencies relating to children receiving supplemental security income, social security, railroad retirement, or veterans' benefits.

(12) With the assistance of a lead agency, the department shall develop and implement statewide and local interagency agreements needed to coordinate services for children and parents involved in the child welfare system who are also involved with the Agency for Persons with Disabilities, the Department of Juvenile Justice, the Department of Education, the Department of Health, and other governmental organizations that share responsibilities for children or parents in the child welfare system.

(13) With the assistance of a lead agency, the department shall develop and implement a working agreement between the lead agency and the substance abuse and mental health managing entity

to integrate services and supports for children and parents serviced in the child welfare system.

(14) The department shall work with the Agency for Health Care Administration to provide each Medicaid-eligible child with early and periodic screening, diagnosis, and treatment, including 72-hour screening, periodic child health checkups, and prescribed followup for ordered services, including, but not limited to, medical, dental, and vision care.

(15) The department shall assist lead agencies in developing an array of services in compliance with the Title IV-E waiver and shall monitor the provision of such services.

(16) The department shall provide a mechanism to allow lead agencies to request a waiver of department policies and procedures that create inefficiencies or inhibit the performance of the lead agency's duties.

(17) The department shall directly or through contract provide attorneys to prepare and present cases in dependency court and shall ensure that the court is provided with adequate information for informed decisionmaking in dependency cases, including a face sheet for each case which lists the names and contact information for any child protective investigator, child protective investigation supervisor, case manager, and case manager supervisor, and the regional department official responsible for the lead agency contract. The department shall provide to the court the case information and recommendations

provided by the lead agency or subcontractor. For the Sixth Judicial Circuit, the department shall contract with the state attorney for the provision of these services.

(18) The department, in consultation with lead agencies, shall establish a quality assurance program for contracted services to dependent children. The quality assurance program shall be based on standards established by federal and state law and national accrediting organizations.

(a) The department must evaluate each lead agency under contract at least annually. These evaluations shall cover the programmatic, operational, and fiscal operations of the lead agency and must be consistent with the child welfare results-oriented accountability system required by s. 409.997. The department must consult with dependency judges in the circuit or circuits served by the lead agency on the performance of the lead agency.

(b) The department and each lead agency shall monitor out-of-home placements, including the extent to which sibling groups are placed together or provisions to provide visitation and other contacts if siblings are separated. The data shall identify reasons for sibling separation. Information related to sibling placement shall be incorporated into the results-oriented accountability system required pursuant to s. 409.997 and into the evaluation of the outcome specified in s. 409.986(2)(e). The information related to sibling placement

shall also be made available to the institute established pursuant s. 1004.615 for use in assessing the performance of child welfare services in relation to the outcome specified in s. 409.986(2)(e).

(c) The department shall, to the extent possible, use independent financial audits provided by the lead agency to eliminate or reduce the ongoing contract and administrative reviews conducted by the department. If the department determines that such independent financial audits are inadequate, other audits, as necessary, may be conducted by the department. This paragraph does not abrogate the requirements of s. 215.97.

(d) The department may suggest additional items to be included in such independent financial audits to meet the department's needs.

(e) The department may outsource programmatic, administrative, or fiscal monitoring oversight of lead agencies.

(f) A lead agency must assure that all subcontractors are subject to the same quality assurance activities as the lead agency.

(19) The department and its attorneys have the responsibility to ensure that the court is fully informed about issues before it, to make recommendations to the court, and to present competent evidence, including testimony by the department's employees, contractors, and subcontractors, as well

as other individuals, to support all recommendations made to the court. The department's attorneys shall coordinate lead agency or subcontractor staff to ensure that dependency cases are presented appropriately to the court, giving consideration to the information developed by the case manager and direction to the case manager if more information is needed.

(20) The department, in consultation with lead agencies, shall develop a dispute resolution process so that disagreements between legal staff, investigators, and case management staff can be resolved in the best interest of the child in question before court appearances regarding that child.

(21) The department shall periodically, and before procuring a lead agency, solicit comments and recommendations from the community alliance established in s. 20.19(5), any other community groups, or public hearings. The recommendations must include, but are not limited to:

(a) The current and past performance of a lead agency.

(b) The relationship between a lead agency and its community partners.

(c) Any local conditions or service needs in child protection and child welfare.

(22) The department shall develop, in collaboration with lead agencies, service providers, current and former foster children, and other community stakeholders, a statewide quality rating system for residential group care providers and foster

homes. This system must promote high quality in services and accommodations by creating measurable minimum quality standards that providers must meet to contract with the lead agencies and that foster homes must meet to receive placements. Domains addressed by a quality rating system for residential group care providers may include, but need not be limited to, admissions, service planning and treatment planning, living environment, and program and service requirements. The quality rating system must be implemented by July 1, 2019.

(a) The rating system must include:

1. Delineated levels of quality that are clearly and concisely defined, the domains measured, and criteria which must be met to be placed in each level. The quality rating system must differentiate between shift and family-style models while encouraging a high level of quality in both;

2. Contractual incentives for achieving and maintaining high levels of quality; and

3. A well-defined process for notice, inspection, remediation, appeal, and enforcement.

(b) The department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1 of each year, with the first report due October 1, 2017. The report must, at a minimum, include an update on the development of a statewide quality rating system for residential group care providers and foster homes and a plan

for department oversight of the implementation of the statewide quality rating system for residential group care providers and foster homes by the community-based care lead agencies. Beginning in 2019 and in subsequent years, the report must also contain a list of residential group care providers meeting minimum quality standards and their quality ratings; the percentage of children placed in residential group care with highly rated providers; any negative action taken against contracted providers for not meeting minimum quality standards; the percentages of highly rated foster homes by lead agency; and the percentage of children placed in highly rated foster homes.

Section 6. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CFS 17-03 Ratification of a Department of Elder Affairs Rule
SPONSOR(S): Children, Families & Seniors Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Children, Families & Seniors Subcommittee		Langston	Brazzell

SUMMARY ANALYSIS

PCB CFS 17-03 ratifies an adopted rule promulgated by the Department of Elder Affairs (DOEA) – rule 58M-2.009, F.A.C., titled "Standards of Practice for Professional Guardians" – so that the adopted rule may go into effect.

In 2016, the Legislature passed CS/SB 232 following reports of abuse and inappropriate behavior by professional guardians.[1] The bill directed that the Statewide Public Guardianship Office be renamed the Office of Public and Professional Guardians (OPPG) and expanded the OPPG's oversight of professional guardians, including monitoring and discipline. To implement this new law, DOEA adopted Rule 58M-2.009, F.A.C., establishing standards of practice for professional guardians.

Section 120.54(3), F.S., requires that a rule whose statement of regulatory costs estimates an adverse economic impact exceeding $1 million over the first five years must be ratified by the Legislature before it may go into effect. The SERC that DOEA developed for the adopted rule estimates costs exceeding this threshold. This cost will be borne by wards to pay for the additional work guardians must do to meet requirements regarding fee approval and recordkeeping.

The scope of the bill is limited to this rulemaking procedure and does not adopt the substance of the rule into statute.

The bill has no fiscal impact on state or local governments.

The bill is effective upon coming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Rulemaking Authority and Legislative Ratification

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy.[2] Rulemaking authority is delegated by the Legislature[3] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[4] a rule.[5] To adopt a rule, an agency must have a general or specific grant of authority from the Legislature to implement a specific law through rulemaking.[6] The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[7]

The formal rulemaking process begins by an agency giving notice of the proposed rule.[8] The notice is published by the Department of State in the Florida Administrative Register.[9] The notice of the proposed rule must include:

- An explanation of the purpose and effect;
- The specific legal authority for the rule;
- The full text of the rule;
- A summary of the agency's statement of estimated regulatory costs (SERC), if one is prepared;
- Whether legislative ratification is required; and
- How a party may request a public hearing on the proposed rule.[10]

Statement of Estimated Regulatory Costs (SERC)

Agencies must prepare a SERC if the proposed rule will have a negative impact on small business or if the proposed rule is likely to directly or indirectly increase the total regulatory costs by more than $200,000, within one year of the rule's implementation.[11] The SERC must include an economic analysis projecting a proposed rule's adverse effect on specified aspects of the state's economy or increase in regulatory costs, including estimates of:

- The number of people and entities affected by the proposed rule;
- The cost to the governmental entities to implement and enforce the proposed rule;
- Transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and

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[2] S. 120.52(16), F.S.
[3] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).
[4] S. 120.52(17), F.S.
[5] A rule is an agency statement of general applicability interpreting, implementing, or prescribing law or policy, including the procedure and practice requirements of an agency as well as certain types of forms. *See* s. 120.52(16), F.S., and *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[6] S.120.52(8), F.S., and s. 120.536(1), F.S.
[7] *Sloban v. Florida Board of Pharmacy*,982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[8] S. 120.54(3)(a)1, F.S..
[9] Ss. 120.54(3)(a)2., 120.55(1)(b)2, F.S.
[10] S. 120.54(3)(a)1., F.S.
[11] S. 120.54(1)(b), F.S.

- An analysis of the proposed rule's impact on small[12] businesses, counties, and cities.[13]

The SERC must analyze a rule's potential impact over the five year period from when the rule goes into effect. The economic analysis should show whether the rule, directly or indirectly is:

- Likely to have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment;
- Likely to have an adverse impact on business competitiveness,[14] productivity, or innovation; and
- Likely to increase regulatory costs, including any transactional costs.[15]

The law distinguishes between a rule being "adopted" and becoming enforceable or "effective."[16] A rule must be filed for adoption before it may go into effect and cannot be filed for adoption until completion of the rulemaking process.[17] A rule may be adopted but cannot go into effect until ratified by the Legislature if the analysis shows the projected impact of the proposed rule in any one of these areas will exceed $1 million in the aggregate for the five-year period.[18]

Regulation of Guardians

When an individual is unable to make legal decisions regarding his or her person or property, such as due to nonage, a developmental disability, mental illness, or dementia, the court may appoint a guardian to act on his or her behalf regarding his or her person or property or both.[19] Guardians are subject to the requirements of ch. 744, F.S. There are three main types of guardians: family or friends of the ward, professional guardians, and public guardians. The two types of guardians overseen by the Department of Elder Affairs (DOEA) are public and professional guardians. A professional guardian is a guardian who has at any time rendered services to three or more wards as their guardian; however, a person serving as a guardian for two or more relatives is not considered a professional guardian.[20]

In 2016, the Legislature passed and the Governor signed CS/SB 232 following reports of abuse and inappropriate behavior by professional guardians.[21] The bill directed that the Statewide Public Guardianship Office be renamed the Office of Public and Professional Guardians (OPPG) and

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[12] Section 120.541(2)(b)-(e), F.S. A small city has an unincarcerated population of 10,000 or less. A small county has an unincarcerated population of 75,000 or less. A small business employs less than 200 people, and has a net worth of $5 million or less. *See* ss. 120.52(18), (19), and 288.703(6), respectively.

[13] Section 120.541(2)(a), F.S.

[14] Including the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

[15] S. 120.541(2)(a), F.S.

[16] S. 120.54(3)(e)6., F.S. Before a rule becomes enforceable, thus "effective," the agency first must complete the rulemaking process and file the rule for adoption with the Department of State.

[17] S. 120.54(3)(e), F.S.

[18] S. 120.541(3), F.S.)

[19] S. 744.012(9), F.S.

[20] S. 744.012 F.S

[21] *See, e.g.*, Florida Supreme Court Commission on Fairness, Committee on Guardianship Monitoring, 2003, *available at* http://flcourts.org/core/fileparse.php/260/urlt/guardianshipmonitoring.pdf (last visited March 9, 2017) (reviewed how effectively guardians were fulfilling their duties and obligations. The committee received input from citizens that there was abuse, neglect, and misuse of ward's funds. As a result, the committee stated that, though the majority of guardians are law-abiding and are diligently fulfilling their complex responsibilities, a small percentage are not properly handling guardianship matters, and as a result, monitoring is necessary.); Department of Elder Affairs, Guardianship Task Force – 2004 Final Report, *available at* http://elderaffairs.state.fl.us/doea/pubguard/GTF2004FinalReport.pdf (last visited March 9, 2017) (advocated for additional oversight of professional guardians); Michael E. Miller, *Florida's Guardians Often Exploit the Vulnerable Residents They're Supposed to Protect*, MIAMI NEW TIMES, May 8, 2014, *available at* http://www.miaminewtimes.com/2014-05-08/news/florida-guardian-elderly-fraud/full/ (last visited March 9, 2017) (provided anecdotal evidence of fraud within the guardianship system, noting that the appointed court monitor for Broward County has uncovered hundreds of thousands of dollars that guardians have misappropriated from their wards, and, over the course of two years, Palm Beach County's guardianship fraud hotline has investigated over 100 cases; and Barbara Peters Smith, *the Kindness of Strangers – Inside Elder Guardianship in Florida,* SARASOTA HERALD-TRIBUNE, December 6, 2014, *available at* http://guardianship.heraldtribune.com/default.aspx (last visited March 9, 2017) (three-part series published in December 2014 details abuses occurring in guardianships based on an evaluation of guardianship court case files and interviews with wards, family and friends caught in the system against their will.).

expanded the OPPG's oversight of professional guardians, including monitoring and discipline. The bill directed DOEA to adopt rules relating to OPPG to establish standard of practice for public and professional guardians, receive and investigate complaints, establish procedures for disciplinary oversight, conduct hearings, take administrative action pursuant to ch. 120, F.S., and specify penalties for violations.

On October 18, 2016, DOEA published proposed rules including:[22]

- Rule 58M-2.001, F.A.C., Professional Guardian Registration;
- Rule 58M-2.009, F.A.C., Standards of Practice; and
- Rule 58M-2.011, F.A.C., Disciplinary Action and Guidelines.[23]

The rules were filed for adoption with the Secretary of State on February 9, 2017. Rules 58M-2.001 and 2.011, F.A.C. went into effect on March 1, 2017. However, due to the level of its projected impact, rule 58M-2.009, F.A.C., must be ratified by the Legislature before it may take effect.

Rule 58M-2.009, F.A.C., "Standards of Practice for Professional Guardians"

The standards of practice contained in rule 58M-2.009, F.A.C., include a variety of topics, including requirements pertaining to:

- The professional guardians' relationship with the courts, their wards, friends and family members of their wards, and other service providers;
- Decision making;
- Confidentiality;
- Record keeping;
- The professional guardians' duties and obligations to their wards; and
- The responsibilities of the professional guardian of the property.

DOEA determined that the main economic impact of rule 58M-2.009, F.A.C., was due to requirements that professional guardians receive court approval of their guardianship fees and through increased record keeping requirements that require the professional guardian to:

- Maintain written documentation of all reports from a ward's family, friends, medical service providers or other professionals relevant to a decision made on behalf of a ward (informed consent); and
- Develop a written plan setting forth short-term and long-term objectives for meeting the goals, needs, and preferences of the ward, and maintain the plan in a separate file for each ward, along with other specified documentation.[24]

To determine the economic impact of rule 58M-2.009, F.A.C., DOEA contacted all 506 registered professional guardians and requested their response to a survey to determine the economic impact of the proposed rule. The response rate was 21% (106 professional guardians).

Increased Costs Related to Court Fees

Rule 58M-2.009(22), F.A.C., requires all fees related to the duties of a professional guardian to be reviewed and approved by the court.

Of the 106 respondents to the survey, 97.1% indicated that receiving court approval of their guardianship fees is currently part of their standard practice and procedures.[25] The 2.9% of

[22] Notice of Proposed Rule (on file with Children, Families & Seniors Subcommittee staff).
[23] Id.
[24] Department of Elder Affairs, Statement of Estimated Regulatory Costs

respondents who stated that they do not seek court approval of their guardianship fees estimated an increase of one to two hours per ward annually would be necessary to meet the requirement.[26] Based on DOEA's assumptions,[27] it estimated that the requirement that professional guardians receive court approval of their guardianship fees will increase private sector costs $15,113 to $30,225 in the first year of implementation, and $83,505 to $167,011 over the first five years of implementation of the proposed rule.[28]

Increased Costs Related to Record Keeping

Rule 58M-2.009(6), F.A.C., requires professional guardians to make decisions on behalf of their wards based on informed consent; to that end, the professional guardian must maintain written documentation of all reports from a ward's family, friends, medical service providers, or other professionals relevant to a decision made on behalf of a ward.[29]

Of the respondents, 78% indicated that this requirement is consistent with their current practices.[30] The 22% of respondents stating they did not maintain this documentation estimated that an increase of between half an hour to eight hours per ward annually would be necessary to meet the requirement.[31] DOEA estimated that the requirements for informed consent will increase private sector costs $187,785 to $381,420 in the first year of implementation, and $1,037,631 to $2,107,588 over the first five years of implementation of the proposed rule.[32]

Rule 58M-2.009(13), F.A.C., requires professional guardians to develop a written plan setting forth short-term and long-term objectives for meeting the goals, needs, and preferences of the ward, and that the plan be maintained in a separate file for each ward, along with other enumerated documentation.

Of the respondents to the survey, 73% indicated that this requirement is consistent with their current practices.[33] The 27% of respondents stating they did not maintain this documentation estimated an increase of one to 15 hours per ward annually would be necessary to meet the requirement.[34] DOEA estimated that the initial and ongoing responsibilities imposed on the professional guardians will increase private sector costs $274,901 to $582,673 in the first year of implementation, and $1,519,001 to $3,219,637 over the first five years of implementation of the proposed rule.[35]

However, factors such as the difficulty of estimating the time necessary to comply with new requirements, variation in the annual rate of growth in the number of guardians, and differences in the number of wards served by new versus more experienced guardians could affect the SERC. Using different, more conservative assumptions, an alternate cost analysis resulted in a total cost of implementation of $1.5 million, which, while substantially less, still exceeds the threshold requiring legislative ratification of the proposed rule.[36]

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[25] Id. The high response rate can be explained in part by the statutory interpretation of s. 744.108, F.S., which has led many judicial circuits around the state to decree that the judicial approval of guardianship fees is required by statute.
[26] Id.
[27] DOEA estimated the average professional guardian hourly fee to be $65, the average caseload among professional guardians to be 15.5 wards, and projected annual increase in registered professional guardians of 5%.
[28] Id.
[29] While the proposed rule would require an expansion of reporting requirements for professional guardians, it is the responsibility of the professional guardian in statute to ensure that the ward is involved to the greatest extent possible with decision-making, including any previously executed advance directives.
[30] *Supra*, note 24.
[31] Id.
[32] Id.
[33] Id.
[34] Id.
[35] Id.
[36] These assumptions included: an annual rate of growth in the number of new guardians of 3%; that new guardians would have only 10 wards; that the new guardians would have had a compliance rate similar to existing guardians, and that guardians would need one

Effect of Proposed Changes

PCB CFS 17-03 ratifies Rule 58M-2.009, F.A.C., Standards of Practice for Professional Guardians, solely to meet the condition for effectiveness imposed by s. 120.541(3), F.S. This means that the provisions of this rule will become binding on professional guardians. The bill expressly limits ratification to the effectiveness of the rule. The bill directs the act shall not be codified in the Florida Statutes; it will only be noted in the historical comments to the rule by the Department of State.

The bill is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1: Ratifies Rule 58M-2.009, F.A.C.
Section 2: Provides that the act goes into effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See, section I.A., *infra.*

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 bill meets the final statutory requirement for DOEA to exercise its rulemaking authority concerning the standards of practice for professional guardians. No additional rulemaking authority is required.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the ratification of a Department of Elder Affairs rule; ratifying a specific rule relating to the practice for Professional Guardians for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding the specified thresholds for likely adverse impact or increase in regulatory costs; providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The following rule is ratified for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), Florida Statutes: Rule 58M-2.009, Florida Administrative Code, titled "Standards of Practice for Professional Guardians" as filed for adoption with the Department of State pursuant to the certification package dated February 9, 2017.

(2) This act serves no other purpose and shall not be codified in the Florida Statutes. After this act becomes law, its enactment and effective dates shall be noted in the Florida Administrative Code, the Florida Administrative Register, or both, as appropriate. This act does not alter rulemaking

authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rule cited, and is intended to preserve the status of any cited rule as a rule under chapter 120, Florida Statutes. This act does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

Section 2. This act shall take effect upon becoming law.