

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1044

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Garcia and others

SUBJECT: Child Welfare

DATE: April 17, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1044 makes a number of revisions to current law relating to the care of children in the child welfare system. Many of these changes are recommended by the Department of Children and Families (department) and seek to better ensure child safety.

The specific changes in the bill:

- Require the department to identify the father earlier in the legal process to allow for more placement options and family involvement for a child removed by the department.
- Allow the department to return an abused or neglected child to his or her home with an in-home safety plan when the conditions that caused the child to be removed are resolved, rather than when the parents have substantially completed their case plan.
- Require the department to consider the safety of any new children added to the home of a family after a child abuse investigation has begun.
- Require a parent to be assessed for substance abuse and complete treatment when there is evidence of harm to a child as a result of substance abuse.
- Allow the department to terminate parental rights when a child has been placed in out-of-home care in any jurisdiction three or more times.
- Prohibit payments under the Relative Caregiver Program when the parent is living with the relative along with the child.
- Allow the release of medical records by hospitals and physicians in child abuse cases.
- Authorize the use of child abuse records to screen employees of group homes for foster children.

The bill also requires an assessment to determine the best placement for children removed from their home and allows certain children services councils, which are independent special districts having taxing authority, to remain in existence without additional voter approval in 2020 if they were reapproved for a second time since 2005. The bill prohibits the use of state-appropriated funds to pay the salary of a community-based care lead agency administrative employee in an amount that exceeds the salary paid to the secretary of the department.

The bill also contains provisions intended to benefit unaccompanied homeless youth. These changes:

- Allow certified unaccompanied homeless youth to apply for identification cards with the Department of Highway Safety and Motor Vehicles which provide that they have been certified by an authorized entity;
- Clarify eligibility for tuition exemptions for unaccompanied and homeless youth; and
- Clarify current law allowing unaccompanied homeless youth to obtain medical care without parental permission.

The bill takes effect January 1, 2018.

II. Present Situation:

Paternality in Dependency Cases

Although the term “legal father” is not defined in the Florida Statutes, current law provides that a man is the parent of a child if:

- The child was conceived or born while the man was married to the mother;
- The man has legally adopted the child;
- A court has determined the man to be the child’s father;
- The man has signed an affidavit of paternity or he is listed on the child’s birth certificate; or
- The man is the unmarried biological father who has acknowledged in writing that he is the father of the child and has complied with other requirements set forth in s. 63.062(2), F.S.¹

The legal father is included as a party to the case in a dependency proceeding.² As such:

- Both parents must be advised of their right to counsel at each stage of the dependency proceeding;³
- The department must obtain the names of all parents and prospective parents when they take custody of a child;⁴
- All parents are provided written notice of their right to counsel and right to be heard and present evidence at the shelter hearing;⁵
- All parents are notified of every proceeding or hearing involving the child;⁶

¹ See also ss. 39.01(49), 63.032(12), and 985.03(38) F.S.

² Section 39.01(51), F.S.

³ Section 39.013(9), F.S.

⁴ Section 39.401(4), F.S.

⁵ Section 39.402(5), F.S.

⁶ Section 39.502.(1), F.S.

- The court makes its own inquiry to discover the parent's identity when a dependency petition is filed and the identity of a parent is unknown;⁷ and
- The department conducts a diligent search to determine the parent's location when the identity of a parent is known, but his or her whereabouts are unknown.⁸

Therefore, determining the identity of a child's father as early in the process as possible is essential in a dependency proceeding.

Conditions for Return and Predisposition Studies

The Legislature has declared that that time is of the essence for establishing permanency for a child in the dependency system⁹ and that reunification of a child with his or her parent or legal guardian is the first preference of the available permanency goals.¹⁰ When safe to do so, reunification should occur as timely as possible to help promote, foster, and maintain child-parent attachments. Currently, the determinant for the court to address reunification with a parent and a child's return home is a parent's substantial compliance with his or her case plan.

The department has determined that a more reliable and time sensitive standard for determining when a child can safely return home encompasses DCF demonstrating to the court that the conditions that existed in the home which necessitated the child's placement out of home have changed and that an in-home safety plan will enable a better response to any danger or risks in the home.¹¹

Conditions for return are the specific circumstances that must change prior to the child's return home when there is an out-of-home safety plan in response to impending danger. The conditions for return describe what must exist or be different with respect to specific family circumstances, home environment, caregiver perception, behavior, capacity, and/or safety service resources that will allow for reunification to occur with the use of an in-home safety plan.¹²

Current practice also replaces substantial compliance with the case plan as the determining factors in a child's return home at disposition and other subsequent court hearings, with conditions for return and an in-depth review of the in-home safety plan. Current practice also replaces the predisposition study used to provide the court with a family functioning assessment, which focuses more narrowly and specifically on danger threats and information related to the determination of child safety.¹³

⁷ Section 39.503(1), F.S.

⁸ Section 39.503(5), F.S.

⁹ Section 39.0136(1), F.S.

¹⁰ Section 39.621(1) and (2), F.S.

¹¹ Department of Children and Families, *2017 Agency Legislative Bill Analysis*, pg. 4 (March 2, 2017) (on file with the Senate Judiciary Committee).

¹² Department of Children and Families Operating Procedures. CFOP 170-7, Chapter 9 Establish Conditions for Return (March 24, 2017)(on file with the Senate Judiciary Committee).

¹³ Department of Children and Families Operating Procedures. CFOP 170-5, Chapter 4 Investigation Types and Use of the Family Functioning Assessment(Jan. 30, 2017)(on file with the Senate Judiciary Committee).

Children in Households having an Active Investigation or Ongoing Services

The department's current policy related to a child who is born into or a child who has moved into a household having an active investigation or ongoing services requires the child protective investigator or case manager to add the child to the child welfare case as a participant in Florida Safe Families Network (FSFN)¹⁴ and assess the new child as part of the family functioning assessment.

Substance Exposed Newborn Protection

Abuse of drugs or alcohol by parents and other caregivers can have negative effects on the health, safety, and well-being of children either through the harm caused prenatally or to children of any age by exposure to drug activity in their home or environment. The Child Abuse Prevention and Treatment Act (CAPTA) requires states to have policies and procedures in place to notify child protective services agencies of substance-exposed newborns and to establish a plan of safe care for newborns identified as being affected by substance abuse or having withdrawal symptoms resulting from prenatal drug exposure.¹⁵

The Comprehensive Addiction and Recovery Act (CARA)¹⁶ further amended CAPTA in 2016 to add requirements for states to ensure the safety and well-being of infants following release from the care of healthcare providers by:

- Addressing the health and substance use disorder treatment needs of the infant and affected family members or caregivers;
- Monitoring plans of safe care to determine whether and how local entities are making referrals and delivering appropriate services to the infant and affected family or caregiver in accordance with state requirements; and
- Developing plans of safe care for infants affected by all substance abuse, not just illegal substance abuse, as was the requirement prior to 2016 changes.

In defining the term "harm," s. 39.01, F.S., includes exposing a child to controlled substances or alcohol as a form of harm. Exposure to a controlled substance or alcohol is established by:

- A test, administered at birth, which indicates 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
- 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.¹⁷

¹⁴ FSFN is Florida's Statewide Automated Child Welfare Information System (SACWIS) and serves as the official child welfare case record.

¹⁵ 42 U.S.C. s.5106a(b), as amended by the CAPTA Reauthorization Act of 2010 (P.L. 111-320).

¹⁶ P.L. 114-198.

¹⁷ Section 39.01(30)(g), F.S. As used in this paragraph, the term "controlled substance" means prescription drugs not prescribed for the parent or not administered as prescribed and controlled substances as outlined in Schedule I or Schedule II of s. 893.03, F.S.

Current law provides no requirement that the parents of substance exposed newborns undergo an assessment or evaluation or complete treatment for substance abuse. The courts presently have sole discretion to determine whether a parent is required to undergo treatment.

Termination of Parental Rights

Out-of-Home Care

One of the grounds for a termination of parental rights is that on three or more occasions the child or another child of the parent or parents has been placed in out-of-home care under ch. 39, F.S., and the conditions that resulted in the out-of-home placement were caused by the parent or parents.¹⁸ However, a prior placement of a child in out-of-home care in a state other than Florida cannot serve as a basis for the termination of parental rights.

Single Parent Termination

A termination of parental rights of one parent without a termination of parental rights of the other parent is permitted only if:

- The child has only one surviving parent;
- The identity of a prospective parent has been established as unknown after sworn testimony;
- The parent whose rights are being terminated is a parent through a single-parent adoption;
- The protection of the child demands termination of the rights of a single parent; or
- The parent whose rights are being terminated meets any of the criteria specified in s. 39.806(1)(d) and (f)-(m).¹⁹

Grounds for termination of parental rights in s. 39.806, F.S., that are not included in the list of grounds allowable for single parent terminations are:

- Conduct toward the child or other children by a parent which demonstrates that the continuing involvement of the parent or parents in the parent-child relationship threatens the life, safety, well-being, or physical, mental, or emotional health of the child irrespective of the provision of services. A provision of services may be evidenced by proof that services were provided through a previous plan or offered as a case plan from a child welfare agency;²⁰ and
- A conviction of a parent for an offense that requires the parent to register as a sexual predator under s. 775.21.²¹

Supplemental Adjudication of Dependency

In 2008, the legislature amended s. 39.507, F.S., relating to adjudicatory hearings to provide:

(7)(a) For as long as a court maintains jurisdiction over a dependency case, only one order adjudicating each child in the case dependent shall be entered. This order establishes the legal status of the child for purposes of proceedings under this chapter and may be based on the conduct of one parent, both parents, or a legal custodian.

¹⁸ Section 39.806(1), F.S.

¹⁹ Section 39.811(6), F.S.

²⁰ Section 39.806(1)(c), F.S.

²¹ Section 39.806(1)(n), F.S.

(b) However, the court must determine whether each parent or legal custodian identified in the case abused, abandoned, or neglected the child in a subsequent evidentiary hearing. If the evidentiary hearing is conducted subsequent to the adjudication of the child, the court shall supplement the adjudicatory order, disposition order, and the case plan, as necessary. With the exception of proceedings pursuant to s. 39.811, the child's dependency status may not be retried or readjudicated.²²

Section 39.507, F.S., is not being applied uniformly across the state due to a conflict between holdings from the Third and Fifth District Courts of Appeals.²³ The Third District Court of Appeal in *D.A. v. Dep't of Children & Family Servs.*, affirmed the trial court's holding that a child may be adjudicated dependent twice, the second time based on a prospective risk of harm from a parent to a child.²⁴ In this case, the trial court adjudicated a child dependent based on the behavior of the mother and her consent to the adjudication of dependency of her child. Subsequently, the trial court adjudicated the child dependent based on the behavior of the father, which caused a substantial risk of imminent, but not actual harm to the child.²⁵ In contrast, the court in *P.S. v. Department of Children and Families*, 4 So. 3d 719 (Fla. 5th DCA 2009), held that a child may only be adjudicated dependent at a second evidentiary hearing if the second parent actually harms a child.²⁶

Domestic Violence Injunction in Dependency

A Child Protective Investigator (CPI) must implement separate safety plans for the perpetrator of domestic violence and a parent who is a victim of domestic violence as defined in s.741.28, F.S. If the perpetrator of domestic violence is not the parent, guardian, or legal custodian of the child, the CPI shall seek issuance of an injunction authorized by s. 39.504, F.S., to implement a safety plan for the perpetrator and to impose any other conditions to protect the child.²⁷ The law does not address any action to be taken by the CPI if the perpetrator is not able to be located.

Parental Relocation with a Child

A parent who wishes to permanently relocate with a child more than 50 miles from the current residence must petition the court for permission to modify a court order establishing a time-sharing schedule, unless the other parent agrees to the relocation.²⁸ On first read, this provision appears only to apply to situations in which parents have a time-sharing arrangement for minor children.

However, the term "child" as used in s. 61.13001, F.S., is defined as any person under the jurisdiction of a state court pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) or the subject of an order granting a parent or other person a right to time-

²² Chapter 208-245, Laws of Florida.

²³ See *D.A. v. Department of Children & Family Services*, 84 So. 3d 1136, 1140 (Fla. 3d DCA 2012), and *P.S. v. Department of Children and Families*, 4 So. 3d 719, 720-721 (Fla. 5th DCA 2009).

²⁴ *D.A.*, *supra* note 23, at 1139.

²⁵ *Id.* at 1139-1140.

²⁶ *P.S.*, *supra* note 23, at 720.

²⁷ Section 39.301(9)(a)6.a., F.S.

²⁸ Section 61.13001(1)(e), F.S.

sharing, residential care, kinship, or custody.²⁹ Therefore, the provisions on parental relocation may apply to situations in which a child is dependent.

A child custody proceeding is a proceeding in which legal custody, physical custody, residential care, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under ss. 61.524-61.540, F.S.³⁰

In 2015, the Fourth District Court of Appeal held that the provisions of s. 61.13001, F.S., apply to permanent guardianship placements for a dependent child.³¹ Therefore, according to this case, if a permanent guardian wishes to move with a dependent child more than 50 miles away, the guardian must file a motion for permission to relocate the child's residence. At the hearing, the court must issue an order based on the best interests of the child, just as is the case for any relocation determination.³² Still, the ability of a guardian to file a motion under s. 61.13001, F.S., is unclear.³³

The issue of relocation with a child by a permanent guardian is addressed elsewhere, however. Section 39.6221(1)(e), F.S., requires a permanent guardian to provide notice to the court of any change in his or her residential address. Moreover, if the permanent guardian moves to another address in-state, the permanent guardian must still comply with visitation requirements as established by the court in its written order of guardianship.³⁴ Additionally, to ensure compliance with the UCCJEA, the department requires as standard procedure that every order of permanent guardianship include a provision that the child not be moved outside of the state without court permission.³⁵

Confidential Information Sharing

Federal law requires children ages 14 years and older to participate in developing the case plan and requires the case plan to state the rights of the child to education, health, visitation, and court participation, and the right to stay safe and avoid exploitation.³⁶ The new federal language does not provide protections for confidential information that might be shared at a case planning conference and there are currently no statutory safeguards in Florida law related to the confidentiality of information shared at a case planning conference.

²⁹ Section 61.13001(1)(a), F.S.

³⁰ Section 61.502(4), F.S.

³¹ Section 39.6221, F.S.

³² *T.B. v. Department of Children & Families*, 189 So. 3d 150, 152 (Fla. 4th DCA 2015).

³³ *Id.* at 152-153. Section 61.13.001(1)(d), F.S., defines a parent, for purposes of parental relocation, as any person named by court order or express written agreement who is subject to court enforcement or a person reflected as a parent on a birth certificate and who is entitled to access to or time-sharing with the child.

³⁴ Section 39.6221(2)(c), (d), and (e), F.S.

³⁵ Email from Rachel Moscoso, Dep't of Children & Families, to staff with the Senate Judiciary Committee (April 18, 2017)(on file with the Senate Judiciary Committee).

³⁶ P.L. 113-183.

Relative Caregiver Ineligibility

A substantial amount of research acknowledges that children in the care of relatives, or what is often referred to as “kinship care,” are less likely to change placements and benefit from increased placement stability, as compared to children placed in general foster care. Most child welfare systems strive to place children in stable conditions without multiple living arrangement changes. As opposed to children living in foster care, children living in kinship care are more likely to remain in their own neighborhoods, be placed with siblings, and have more consistent interactions with their birth parents than do children placed in foster care.³⁷

Recognizing the importance of relative placements, the Legislature created the Relative Caregiver Program in 1998 to provide financial assistance to eligible relatives caring for children who would otherwise be in foster care.³⁸ In 2014, the Legislature expanded the program to include specified nonrelative caregivers.³⁹

According to the department, as of December 31, 2016, Florida had 13,056 children in kinship foster care placements and 12,478 children in licensed foster care placements.⁴⁰

Children receiving cash benefits under the Relative Caregiver Program are not eligible to simultaneously receive WAGES cash benefits under chapter 414, F.S.⁴¹ A department rule provides that the parent’s presence in the home with the child and relative caregiver for 30 days or more results in the child becoming ineligible for Relative Caregiver Program funds.⁴² Currently, s. 39.5085, F.S., is silent on the issue of parents and stepparents living in the home with the child and relative caregiver, and this has resulted in cases where the courts have ordered the department to pay Relative Caregiver Program funds contrary to federal law.

Medical Records

Currently, both chapter 395, relating to hospital licensing and regulation, and chapter 456, relating to health professions and occupations, address the release of patient records. Section 395.3025(4)(g), F.S., F.S., provides that patient records are confidential and must not be disclosed without the consent of the patient or a legal representative. However, disclosure may be made without consent to entities including the department or its agent for investigations of abuse, neglect, or exploitation of children or vulnerable adults. This provision enables the department and its agents to access medical records for children in care without the patient’s written authorization.

³⁷ David Rubin and Kevin Downes, 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 visited April 12, 2017).

³⁸ Section 39.5085(1), F.S.

³⁹ Chapter 2014-224, Laws of Florida.

⁴⁰ Florida Department of Children and Families, DCF Quick Facts, available at: <http://www.dcf.state.fl.us/general-information/quick-facts/cw/> (last visited April 12, 2017).

⁴¹ Sections 414.045(1)(b)3. and 414.095(2)(a)5., F.S.

⁴² Chapter 65C-28.008(2)(d), F.A.C.

However, physician office practices not licensed under Chapter 395, F.S., have no authority to release patient records to the department without the patient's written authorization.⁴³ These records, however, may be important to the investigation of child abuse and neglect.

Background Screening for Group Home Personnel

Current law requires all caregivers in residential group homes to meet the same education, training, and background and other screening requirements as foster parents.⁴⁴ A department rule requires foster parents to be screened through the central abuse hotline.⁴⁵ However, current law also provides that 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), F.S.⁴⁶ Residential child caring agencies are not included in the exceptions. Therefore, reports to the central abuse hotline may not be used for conducting background checks of residential group care personnel.

Children's Services Councils

In 1986, the Legislature authorized Florida counties to create by ordinance children's services councils as special countywide special districts to fund children's services. Counties may create:⁴⁷

- Independent special districts, for which the county governing body must seek voter approval to levy annual ad valorem property taxes;⁴⁸ or
- Dependent special districts, which are supported by appropriation and are authorized to accept grants and donations from public and private sources.⁴⁹

Children's services councils are authorized to exercise the following powers and functions:

- Provide preventive, developmental, treatment, rehabilitative, and other services for children;
- Provide funds to other agencies that operate for the benefit of children, with the exception of the public school system;
- Collect data and conduct research to determine the needs of the children in the county;
- Coordinate with providers of children's services to prevent duplication of services; and
- Lease or buy necessary real estate, equipment and personal property.⁵⁰

The governing body of the county shall submit to the electorate the question of retention or dissolution of a children's services council established as an independent special district having voter-approved taxing authority in a general election according to the following schedule:

- For a district in existence on July 1, 2010, and serving a county having a population of 400,000 or fewer persons as of that date.....2014.

⁴³ Section 456.057(7), F.S.

⁴⁴ Section 409.145(2)(e), F.S.

⁴⁵ Chapter 65C-13.023(2) and (8), F.A.C.

⁴⁶ Section 39.201(6), F.S.

⁴⁷ Chapter 86-197, L.O.F.

⁴⁸ Section 125.901(1), F.S.

⁴⁹ Section 125.901(7), F.S.

⁵⁰ Section 125.901(2), F.S.

- For a district in existence on July 1, 2010, and serving a county with a population of 2 million or more persons as of that date.....2020.⁵¹

The Children's Trust of Miami is the only council in a county having a population of 2 million or more. The trust was created in 2002 and was renewed by referendum in 2008.⁵²

Placement Assessment

Research shows an association between frequent placement disruptions and adverse outcomes on a child, including poor academic performance and social or emotional adjustment difficulties such as aggression, withdrawal, and poor social interaction with peers and teachers. Despite this evidence, child welfare systems have shown a limited focus on reducing placement instability for children in their care.⁵³ Mismatching placements to children's needs has been identified as a factor that negatively impacts placement stability. Identifying the right placement requires effective assessment.⁵⁴

When a child is unable to safely remain at home with a parent, the most appropriate available out-of-home placement may be chosen after analyzing the child's age, gender, sibling status, special physical, educational, emotional and developmental needs, alleged type of abuse, neglect or abandonment, community ties and school placement, and potential responsible caregivers that can meet the child's needs.⁵⁵

Lead agencies must consider placement in residential group care if the child is 11 or older, has been in licensed family foster care for 6 months or longer and removed from family foster care more than once, and has serious behavioral problems or has been determined to be without the options of either family reunification or adoption. In addition, the assessment must consider information from several sources, including psychological evaluations, professionals with knowledge of the child, and the desires of the child concerning placement. If the lead agency case managers determine that residential group care would be an appropriate placement, the child must be placed in residential group care if a bed is available.⁵⁶ Children who do not meet the specified criteria may be placed in residential group care if it is determined that such placement is the most appropriate for the child.⁵⁷

These placement requirements were enacted in 2001 and 2002 to allow increased use of residential group home placements until additional foster homes could be recruited.⁵⁸ However, while the 2001 and 2002 legislation was being considered by the Legislature, the department expressed concerns that the impact of proposed legislation ran contrary to published literature,

⁵¹ Section 125.901(4), F.S.

⁵² The Children's Trust of Miami-Dade County, available at: <https://www.thechildrenstrust.org/about> .(last visited April 13, 2017).

⁵³ Noonan, K. and Rubin, D., et al. *Securing Child Safety, Well-being, and Permanency Through Placement Stability in Foster Care*, The Children's Hospital of Philadelphia Research Institute, Fall 2009.

⁵⁴ Teija Sudol, *Placement Stability Information Packet*, National Resource Center for Permanency and Family Connections, December 2009.

⁵⁵ Rule 65C-28.004, F.A.C

⁵⁶ Sections 39.523(1) and 409.1676, F.S.

⁵⁷ Section 39.523(4), F.S.

⁵⁸ Sections. 39.523(1), 409.1676(2)(b), 409.1677 and 409.1679(1), F.S.

guidance from the federal government, and the actions of other states in moving away from group home care.⁵⁹

Lead Agency Executive Compensation

The Internal Revenue Code section that sets the rules governing compensation at public nonprofits, including those known as 501(c)3 organizations, specifies that no part of the net earnings of a section 501(c)3 organization may inure to the benefit of any private shareholder or individual.⁶⁰ However, the IRS also gives each nonprofit's board of directors latitude in determining how much to pay top employees. The IRS does require that the nonprofit's board have an objective process for setting executive salaries, including use of comparisons with salaries paid by similar organizations for similar services. However, a nonprofit that normally pays no taxes may be taxed for paying excess benefits to an insider.⁶¹

Disagreement exists within the nonprofit community about whether administrators of nonprofits need to be highly paid to remain and provide leadership in the nonprofit sector. Regarding the use of federal funds to pay executive salaries, the federal government generally caps at \$196,000 how much of a nonprofit executive's salary can be paid with federal funds. A nonprofit can easily get around the standard by reporting that private funds are used to pay the portion of salary which exceeds the limit.⁶² Some states have taken steps to impose similar caps.

A provision in New Jersey's budget limits what nonprofit groups can pay their chief executives if they are providing social services under state contracts.⁶³ Beginning July 1, 2010, the state capped the salaries of executives with any nonprofit social service agency having a budget greater than \$20 million at \$141,000. Executive directors of nonprofit groups who oversee budgets between \$10 million and \$20 million are capped at no more than \$126,900 in state compensation. Persons overseeing a budget between \$5 million and \$10 million are limited to \$119,850 a year from the state, and those with a budget less than \$5 million are capped at \$105,750 in salary from the state.

In Florida, each community-based care lead agency is required to post on its website the current budget for the lead agency, including salaries, bonuses, and other compensation paid, by position, for the agency's chief executive officer, chief financial officer, and chief operating officer, or their equivalents.⁶⁴

⁵⁹ Testimony from committee meetings: Senate Children and Families Committee, SB 623, January 30, 2002; Senate Children and Families Committee, SB 1214, March 14, 2001; House Child and Family Security Committee, HB 1145, March 15, 2001; House Child and Family Security Committee, HB 755, February 7, 2002.

⁶⁰ 26 U.S.C. s. 501. Exemption from tax on corporations, certain trusts, etc.

⁶¹ *Id.*

⁶² Accountable California: The Center for Public Accountability. Executives at Publicly-Funded Nonprofits Make Big Bucks Serving the Needy. March 16, 2011, available from: <http://www.seiu721.org/2009/10/executives-at-publicly-funded-nonprofits.php> (last visited April 14, 2017).

⁶³ Livio, S.K. April 25, 2010. *N.J. Governor Chris Christie aims to cap salaries of nonprofit group executives to \$141K.* available from: http://www.nj.com/news/index.ssf/2010/04/nj_gov_chris_christie_aims_to.html (last visited April 14, 2017).

Also see Strom, S. July 26, 2010. *Lawmakers Seeking Cuts Look at Nonprofit Salaries,* available from: <http://www.nytimes.com/2010/07/27/us/27nonprofit.html?pagewanted=all> (last visited April 14, 2017).

⁶⁴ Section 409.988(1)(d), F.S.

The following chart details executive compensation for each community-based care lead agency and allows for a comparison of chief executive officer salaries, the number of children receiving both in-home and out-of-home services, and the agency annual contract amount. There does not appear to be a correlation between executive compensation and other factors.⁶⁵

CBC Lead Agency	Chief Executive Officer Annual Compensation From CBC Contract	# of Children Receiving Services	Annual Contract Amount (Millions)	% of Budget from Public Funds
Lakeview Center – Families First Network	\$199,784	2,087	\$46.5	NA
Big Bend Community-Based Care ⁶⁶	\$367,380	1,180	\$35.3	99.08
Partnership for Strong Families	\$145,000	1,321	\$33.8	99.67
Family Support Services of North Florida	\$200,155	1,578	\$56	99.64
Community Partnership for Children	\$150,822	1,670	\$34.5	100.00
St. Johns County Commission	\$82,000	279	\$5.7	NA
Kids First of Florida	\$108,000	386	\$8.7	99.99
Sarasota Family YMCA	\$148,484	1,490	\$29.3	NA
Eckerd Community Alternative Pinellas/ Pasco	\$164,243	2,650	\$67.4	NA
Eckerd Community Alternatives Hillsborough	\$176,436	3,762	\$73.6	NA
Children’s Network of SW Florida	\$177,654	2,391	\$40	99.99
Brevard Family Partnership	\$195,297	1,135	\$23.4	98.84

⁶⁵ The department provided annual contract amounts, # of FTE’s and # of children receiving services. *See also* Center for Child Welfare, available at <http://centerforchildwelfare.fmhi.usf.edu/Datareports/TrendReports.shtml> Individual agency websites report compensation amounts. The table was compiled by the Senate Committee on Children, Families, and Elder Affairs.

⁶⁶ Big Bend Community Based Care serves as both the CBC lead agency and as the Managing Entity (ME) The CEO receives income from both state contracts for a total of \$474,123.

CBC of Central Florida	\$243,386	2,742	\$70	99.96
Kids Central	\$206,794	2,311	\$48.5	99.99
Heartland for Children	\$155,000	1,910	\$43.6	100.00
Devereux Community Based Care	\$131,211	1,011	\$28.6	NA
ChildNet Palm Beach and Broward	\$227,894	5,904	\$44.4 (PB) \$72.3 (B)	100.00
Our Kids of Miami Dade	\$207,489	3,056	\$104.2	100.00

In 2015, during an operational audit of community-based care lead agencies, the Auditor General found instances where salary payments, including bonuses, selected perquisites, and severance pay, or leave balances did not appear to be properly supported or calculated in accordance with established Community-based Care policy or state law.⁶⁷

State law specifies that no extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered or the contract made. The audit discovered salary payments made with department-provided funds included a \$15,000 bonus awarded to the CEO of Big Bend Community Based Care in December 2012 which was not supported by a provision in the CEO’s employment contract. In response to the audit inquiry, lead agency management indicated that bonuses awarded at the discretion of the Board were based on market standards and performance.

However, as the CEO’s employment contract did not provide for the payment of bonuses, the \$15,000 bonus payment was extra compensation prohibited by state law. The audit procedures also found that the lead agency had not established policies and procedures regarding the award and calculation of bonuses for staff.⁶⁸

Unaccompanied Homeless Youth

Unaccompanied homeless youth are children, most often teenagers, experiencing homelessness while not in the physical custody of a parent or guardian. It is estimated that 1.6 to 1.7 million youth experience homelessness on their own each year. These youth live in a variety of unsafe, temporary situations, including cars, parks, the homes of other people, shelters, and motels. Most of these young people have left home due to severe dysfunction in their families, including abuse and neglect. Studies have found that 20-40 percent of unaccompanied homeless youth were abused sexually in their homes, while 40-60 percent were abused physically. Over two-thirds of unaccompanied homeless youth report that at least one of their parents abuses drugs or alcohol.

⁶⁷ Office of the Auditor General, *Department of Children and Families and Selected Community-Based Care Lead Agencies Oversight of Foster Care and Related Service*. Report No. 2015-156, pg. 1 (March 2015).

⁶⁸ *Id.*

Other youth are thrown out of their homes because they are pregnant, gay or lesbian, or because their parents believe they are old enough to take care of themselves.⁶⁹

In 2012, the Legislature enacted legislation to give homeless youth ages 16 and older the ability to request and receive their birth certificate from the state.⁷⁰ Without a birth certificate, minors who are not in the physical custody of a parent or guardian cannot obtain other forms of identification, such as a Social Security card, driver's license or state identification card. Without such documentation, they face barriers that hinder their ability to recover from homelessness.

In 2014, the Legislature expanded the 2012 law to enable unaccompanied homeless youth the ability to seek medical care for themselves or their children without parental consent.⁷¹

III. Effect of Proposed Changes:

Section 1 amends s. 39.01, F.S., to create a definition for the term “legal father” and amend the definition of the term “parent.” These revised definitions work in concert with other procedures in an attempt to provide notice to biological fathers of a child in shelter proceedings.

Section 2 amends s. 39.201, F.S., relating to mandatory reporting and the child abuse hotline, to allow the use of information in the central abuse hotline for the employment screening of caregivers employed by residential group homes.

Section 3 amends s. 39.301, F.S., relating to protective investigations, to require a child protective investigator to implement a safety plan for a perpetrator of domestic violence only if the investigator is able to locate the perpetrator. It also clarifies when a CPI must seek an injunction to prevent child abuse pursuant to s. 39.504, F.S., pending the disposition of the petition for dependency. The bill also requires that when a child is born into or moves into a home that is under a protective investigation, the child must be added to the investigation and assessed for child safety.

Section 4 amends s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment or neglect, to provide that if an individual employed as a caregiver in a residential group home is named in any capacity in three or more reports to the child abuse hotline within a 5-year period, those reports may be reviewed for employment screening.

Section 5 amends s. 309.402, F.S., relating to placement in a shelter, to require additional inquiry by the court at a shelter hearing to identify and locate the legal father of the child and provide requirements for the inquiry.

Section 6 amends s. 39.503, F.S., relating to cases where the identity or location of a parent is unknown when a dependency petition is filed, to require additional inquiry under oath by the court to identify and locate the legal father of the child. The bill also provides that the required diligent search include a search of the Florida Putative Father Registry.

⁶⁹ National Association for the Education of Homeless Children and Youth, Unaccompanied Homeless Youth, *available at*: <http://www.naehcy.org/educational-resources/youth>, (last visited April 14, 2017).

⁷⁰ Section 743.067(3)(a), F.S.

⁷¹ *Id.*

Section 7 amends s. 39.504, F.S., relating to injunctions, to require the same judge to hear both the dependency proceeding and the injunction proceeding when applicable. The bill also provides that if an alleged offender cannot be located after a diligent search, the court may enter an injunction based on the sworn petition and any affidavits.

Section 8 amends s. 39.507, F.S., to resolve conflicting decisions of the Third and Fifth District Courts of Appeal as to whether a petitioner must demonstrate that the second parent has actually harmed a child already adjudicated dependent based on the behavior of the first parent. The language in the bill adopts the interpretation of law provided by the Third District Court of Appeal in *D.A. v. Dep't of Children & Family Servs.*⁷² Therefore, the bill specifies that a court may make supplemental findings to the original order regarding the conduct of the second parent short of a showing of actual harm or abuse. Instead of finding harm caused by the second parent, the court may add a finding to the record that the second parent placed the child at substantial risk of imminent abuse, abandonment, or neglect. The court is also not required to conduct an evidentiary hearing for the second parent in order to supplement an order or case plan if the parent consents to or admits the relevant allegations or fails to appear at an arraignment hearing.

Section 9 amends s. 39.5085, F.S., related to the Relative Caregiver Program, to prohibit a relative or non-relative caregiver from receiving a payment under the program if the parent or stepparent of the child resides in the home. The caregiver may receive a payment under the program; however, if a minor child as well as the minor parent's child are living in the home and both have been adjudicated dependent. The proposed changes will align s. 39.5085, F.S., with s. 414.095 F.S., and federal law.

Section 10 amends s. 39.521, F.S., to replace the requirement for a predisposition study with a requirement for a family functioning assessment and revise the timelines for providing a copy of the case plan to the parties. The bill also requires that when a child is adjudicated dependent based upon evidence of harm related to exposure of a child to a controlled substance or alcohol, the parent is required to undergo a substance abuse disorder assessment or evaluation and comply with treatment and services that are determined to be necessary.

The bill also specifies the information that must be provided to the court in the family functioning assessment and changes the standard for returning a child home from "parent having substantially complied with the case plan" to "circumstances that caused the out-of-home placement and issues subsequently identified have been remedied."

Section 11 amends s. 39.522, F.S., relating to postdisposition change of custody, to change the standard for returning a child home from "parent having substantially complied with the case plan" to "circumstances that caused the out-of-home placement and issues subsequently identified have been remedied."

Section 12 amends s. 39.523, F.S., relating to placement in out-of-home care, to require an initial placement assessment whenever a child has been determined to need an out-of-home placement and to establish timelines for that assessment. The bill requires the department to document these

⁷² *D.A.*, *supra* note 23, at 1140.

initial assessments in the Florida Safe Families Network (FSFN).⁷³ The bill also requires the involvement of permanency teams in assessment and placement decisions and requires an annual report relating to the placement of children and specifies what is to be included in the report.

Section 13 amends s. 39.6011, F.S., relating to case plan development, to provide that the department may discuss confidential information during a case planning conference and requires all conference participants to maintain the confidentiality of shared information.

Section 14 amends s. 39.6012, F.S., relating to case plan tasks and services, to require that whenever there is evidence of harm related to exposure of a child to a controlled substance or alcohol, the case plan must include a required task that the parent undergo a substance abuse disorder assessment or evaluation and comply with treatment and services that are determined to be necessary.

Section 15 amends s. 39.6221, F.S., to provide that the requirements of s. 61.13001, F.S., relating to parental relocation, do not apply to permanent guardianships established under chapter 39, F.S. As such, permanent guardians of a dependent child will not need the approval of a court to relocate their residences. However, these guardians will be required to report their new addresses and continue with any visitation requirements, but these guardians, pursuant to department rules, are required to have court approval to move out of the state with a dependent child.

Section 16 amends s. 39.701, F.S., relating to judicial review, to require the department to assess a child for child safety and provide notice to the court when the child is born into or moves into a home that is under court jurisdiction. The bill also provides a timeline for both the safety assessment and a progress update that are to be filed with the court and provides the department with rulemaking authority.

Section 17 amends s. 39.801, F.S., relating to court procedures, jurisdiction, notice, and service of process, to address notice requirements for a petition of termination of parental rights to a prospective father if there is no legal father.

Section 18 amends s. 39.803, F.S., relating to unknown identity or location of a parent after a termination for parental rights petition has been filed, to require additional information to the inquiry conducted by the court to identify or locate a parent and authorizes the court to order scientific testing to determine maternity or paternity of the child.

Section 19 amends s. 39.806, F.S., relating to termination of parental rights, to allow child removals in other states, territories or jurisdictions to be considered when establishing a ground for termination of parental rights.

⁷³ The FFSN is Florida's Statewide Automated Child Welfare Information System, considered to be the official child welfare case record. The FFNS is accessed by the Florida Abuse Hotline, child protective investigators, adult protective investigators, and others. Department of Children and Families, *Florida Safe Families Network Overview*, available at <http://www.dcf.state.fl.us/initiatives/GMWorkgroup/docs/meeting060809/June%208%20presentation%20-%20Pasek.pdf> (last visited April 17, 2017).

Section 20 amends s. 39.811, F.S., relating to powers and orders of disposition, to add to the list of circumstances in which one parent is subject to a termination of parental rights based on possible harm to the life, safety, well-being, or physical, mental, or emotional health of the child, regardless of whether that parent is convicted of an offense requiring registration as a sexual predator under s. 775.21, F.S.

Section 21 amends s. 125.901, F.S., relating to children's services councils, to provide an exception to a requirement that a county submit the question of retention or dissolution of a district having voter-approved taxing authority to the general electorate in a general election.

Section 22 amends s. 322.051, F.S., relating to identification cards, to provide a requirement for a statement on the back of cards for unaccompanied homeless youth to acknowledge that they have been certified as such and include a citation to s. 743.067, F.S.

Section 23 amends s. 395.3025, F.S., relating to patient and personnel records, to allow these confidential records to be disclosed to contracted entities of the department without consent of the patient or his or her legal representative. Private physician offices have requested statutory authority to provide these records to child protective investigators and dependency case managers.

Section 24 amends s. 402.40, relating to child welfare training and certification, to define a "child welfare trainer" and provide the department rulemaking authority to determine standards for these trainers to ensure that they are qualified to train child welfare professionals. There are currently no standards in place.

Section 25 amends s. 409.992, F.S., relating to community-based care lead agency expenditures, to prohibit the use of state-appropriated funds to pay the salaries of administrative employees of lead agencies in amounts in excess of the salary of the secretary of the department. The current annual salary of the secretary is \$140,539, and 15 of 18 lead agencies pay their CEOs in excess of this amount.

Section 26 amends s. 456.057, F.S., relating to ownership and control of patient records to allow the disclosure of confidential records to the department, its agent or its contracted entity, for the purpose of conducting child protective investigations of or providing services in cases of abuse, neglect or exploitation of children or vulnerable adults.

Section 27 repeals s. 409.141, F.S., relating to equitable reimbursement methodology of group homes, to remove obsolete requirements.

Section 28 repeals s. 409.1677, F.S., relating to model comprehensive residential services programs, to remove obsolete programs.

Section 29 amends s. 743.067, F.S., relating to certified unaccompanied homeless youth to define "certified unaccompanied homeless youth," require the department's Office on Homelessness to develop a form to be used when certifying a youth, and authorize certified youth to apply for an identification card with the Department of Highway Safety and Motor Vehicles.

Section 30 amends, s. 1009.25, F.S., relating to tuition and fee exemptions for postsecondary education, to remove a reference to temporary shelter for individuals intended to be institutionalized and to clarify that college or university dormitory housing is not permanent housing.

Section 31 amends s. 39.524, F.S., relating to safe-harbor placement, to conform a cross-reference.

Section 32 amends 394.495, F.S., relating to child and adolescent mental health system of care, to conform a cross-reference.

Section 33 amends s. 409.1678, F.S., relating to specialized residential options for children who are victims of sexual exploitation, to conform a cross-reference.

Section 34 amends s. 960.065, F.S., relating to eligibility for awards, to conform a cross-reference.

Section 35 amends s. 409.1679, F.S., relating to reimbursement, to conform cross-references.

Section 36 amends s. 1002.3305, F.S., relating to College-Preparatory Boarding Academy Pilot Program for at risk students, to conform a cross-reference.

Section 37 reenacts s. 483.181(2), F.S., relating to acceptance, collection, identification, and examination of specimens.

The bill takes effect January 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By limiting the amount of state funds that may be used to pay the salaries of administrative employees of community based care lead agencies, more funding may be available to provide services to children and families. Conversely, some of the highly paid administrative employees will have lower salaries, assuming that the salary reductions resulting from the bill are not offset with other funds.

Additionally, a parent involved in a paternity issue for a dependent child may have to pay the cost of a paternity test.

C. Government Sector Impact:

Although the bill requires the department to develop a process to perform abuse registry checks for residential group care employees in accordance to s. 39.201(6), F.S., the department estimates that increased workload can be absorbed by existing staff.

The bill will reduce costs paid by the community-based care lead agencies for paternity tests, to the extent that the bill requires the court to assess the cost of the testing against the parent (Lines 513 through 518 of the bill). The cost of a paternity test ranges from \$50 to \$500, depending on the type of test. During the 2015-2016 Fiscal Year, Children's Legal Services served more than 52,414 children. If in only 5 percent of the cases paternity testing is required, the department and its community-based care lead agencies would annually save \$131,000 to \$1,310,000.

The bill's changes to s. 39.523, F.S., will now require a full placement assessment on every child who enters out-of-home care. Although a workload impact in developing the assessment tool is expected on the community-based care lead agencies, the impact is unknown at this time.⁷⁴

D. Constitutional Issues:

Lines 201 to 203 of the bill amend s. 39.201, F.S., relating to mandatory reporting and the child abuse hotline, to allow the use of central abuse hotline information to be used for employment screening of caregivers employed at residential group homes. In the past, constitutional due process concerns have been raised about using unsubstantiated information in a report to the central abuse hotline for employment screening.⁷⁵ Notably, the bill does not require that a person be notified of an adverse employment decision based on a report to the hotline or give the person an opportunity to challenge the allegations submitted to the hotline.

⁷⁴ Department of Children and Families, *2017 Agency Legislative Bill Analysis* (March 2, 2017)(on file with the Senate Judiciary Committee).

⁷⁵ Committee on Children, Families, and Elder Affairs, The Florida Senate, Issue Brief 2011-205: Review of State Child Abuse Registries (Oct. 2010), <https://www.flsenate.gov/UserContent/Session/2011/Publications/InterimReports/pdf/2011-205cf.pdf>; Julianna Debler, University of Central Florida, *Has the pendulum swung too far? A legal evaluation of Florida's child abuse and neglect registry* (2012), Available at <http://stars.library.ucf.edu/cgi/viewcontent.cgi?article=2327&context=honorstheses1990-2015>.

VI. Technical Deficiencies:

None.

VII. Related Issues:**The definition of the terms “legal father” and “parent” as used in ch. 39, F.S.**

Lines 153 to 161 of the bill create a definition of the term “legal father.” This definition is also created again in lines 164 to 172. The purpose or intent of having duplicate definitions of the same term is not clear.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.01, 39.201, 39.301, 39.302, 39.402, 39.503, 39.504, 39.507, 39.5085, 39.521, 39.522, 39.523, 39.524, 39.6011, 39.6012, 39.6221, 39.701, 39.801, 39.803, 39.806, 39.811, 125.901, 322.051, 394.495, 395.3025, 402.40, 409.1678, 409.1679, 409.992, 456.057, 743.067, 960.065, 1002.3305, and 1009.25.

This bill reenacts the following section of the Florida Statutes: 483.181(2).

This bill repeals the following sections of the Florida Statutes: 409.141, and 409.1677.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Children, Families, and Elder Affairs on March 13, 2017:**

The committee substitute:

- Allows certified unaccompanied homeless youth to apply for identification cards with DHSMV that contain a statement that they have been certified by an authorized entity and a statutory citation on the back.
- Clarifies eligibility for tuition exemptions for unaccompanied and homeless youth.
- Clarifies current law related to unaccompanied homeless youth allowing them to obtain medical care without parental permission.
- Changes the effective date to January 1, 2018.

B. Amendments:

None.