

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1121 Child Welfare

SPONSOR(S): Health & Human Services Committee, Children, Families & Seniors Subcommittee, Stevenson

TIED BILLS: IDEN./SIM. **BILLS:** SB 1044

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	10 Y, 0 N, As CS	Tuszynski	Brazzell
2) Health Care Appropriations Subcommittee	13 Y, 0 N	Fontaine	Pridgeon
3) Health & Human Services Committee	17 Y, 0 N, As CS	Tuszynski	Calamas

SUMMARY ANALYSIS

Chapter 39, F.S., creates Florida's child welfare system 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.

CS/CS/HB 1121 makes multiple changes to the child welfare statutes to protect vulnerable children. The bill changes the process that DCF and the courts 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 to improve risk assessment. The bill expedites permanency for children by making changes to the procedures the dependency court and DCF use to identify and locate prospective parents to require inquiry and search much earlier in the dependency case. The bill facilitates more participation by a child in his or her case planning, streamlines processes for child protective investigators, and aligns statute with current practice including 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 offices to release patient records to DCF or its contracted entities for investigations of abuse, neglect, or exploitation of children or vulnerable adults; and
- Repeals obsolete sections of law related to residential group care, including provisions dealing with equitable reimbursement for group care services and reimbursement methodology.

The bill has no fiscal impact on state or local government.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida's Child Welfare System

Background

Chapter 39, F.S., creates Florida's child welfare system 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). Using CBCs to provide child welfare services is designed to increase local community ownership of service delivery and design.⁷ DCF, through the CBCs, administers a system of care⁸ for children with the goal of:

- Preventing 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.

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 provide foster care and related services, including, but 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. If a child is unable to return home, other permanency options are explored, such as adoption. The dependency system judicial process is detailed in 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 may be 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).

Effect of the Bill – Child Welfare

CS/CS/HB 1121 makes multiple changes to the child welfare system to protect vulnerable children. The bill expedites permanency for children by making changes to the procedures DCF and the courts use to identify and locate prospective parents to require inquiry and search much earlier in the dependency case. The bill changes the process that DCF and the courts 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 to improve risk assessment. The also bill facilitates more participation by a child in his or her case planning, streamlines processes for child protective investigators, and aligns statute with current practice including conditions for return and Family Functioning Assessments. These changes are detailed in the analysis below.

Child Welfare System Paternity Determinations

Background

Current law defines “parent” as a woman who gives birth to a child and a man whose consent to the adoption¹³ 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 dependency court must conduct an inquiry to identify or locate that parent. This inquiry requirement is found in the sections of statute relating to dependency adjudication¹⁷ 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.

Current law requires a diligent search when the identity or location of a prospective parent is unknown. However, 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;

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.

- A thorough search of at least one electronic database specifically designed for locating persons; and
- Inquiries of appropriate law enforcement agencies.

However, a diligent search under s. 39.803(6), F.S., does not require the search of an electronic database. In addition, 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 is 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 the Bill – Paternity Determinations

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.

²¹ S. 39.503(8), F.S.

²² Id.

²³ Ch. 742, F.S.

²⁴ 42 U.S.C. s. 653(c)(4)

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 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.

Supplemental Adjudication of Dependency

Background

Current law allows only one order of adjudication in a dependency case.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,²⁸ based on a holding from the Fifth District Court of Appeal (DCA),²⁹ 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.³⁰

In contrast, the Third DCA³¹ 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.³²

Effect of the Bill – Supplemental Adjudication of Dependency

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 Id.

³¹ Including Miami-Dade and Monroe Counties.

³² D.A. v. Department of Children & Family Services, 84 So. 3d 1136 (Fla. 3d DCA 2012).

Safety Assessments for Children Born Into or Moving Into a Household

Background

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.³³ 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.³⁴ 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 the Bill – Safety Assessments

The bill requires DCF to add a child to a current investigation and assess that child's safety when he or she is born into 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 of Children in Out-of-Home Care

Background

DCF began the transition in 2013 to a 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.³⁵ In 2014, as part of a major effort to reform the child welfare system with SB 1666 (2014),³⁶ 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,³⁷ and for cases with judicial oversight, required DCF to file all safety plans with the court.³⁸ In-home safety plans are required to be specific, sufficient, feasible and sustainable to ensure child safety while the child remains in the home.³⁹

³³ 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).

³⁴ Id.

³⁵ Supra, FN 3.

³⁶ Ch. 14-244, Laws of Fla.

³⁷ Ch. 14-244, Laws of Fla.; s. 39.301(9)(a)6., F.S.

³⁸ Ch. 14-244, Laws of Fla.; s. 39.501(3)(a), F.S.

³⁹ 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.⁴⁰ 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.⁴¹ 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 the Bill – Conditions for Return

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.

⁴⁰ S. 39.521(1), F.S.

⁴¹ 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 in Child Welfare Cases

Background

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 a protective injunction if the perpetrator is not the parent, guardian, or legal custodian of the child.⁴² This injunction protects the child victims of domestic violence by allowing the court to order the perpetrator to:⁴³

- 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 the Bill – Safety Planning

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 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.⁴⁴

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

⁴² S.39.301(9)(a), F.S.

⁴³ S. 39.504(4), F.S.

⁴⁴ See In re: Report of the Family Court Steering Committee, 794 So. 2d 518 (Fla. 2001)(“Family Courts IV”).

Case Planning for Child Welfare Cases

Background

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.⁴⁵ The case plan follows the child from the provision of voluntary services through dependency, or termination of parental rights.⁴⁶ 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.⁴⁷

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.⁴⁸ 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 the Bill – Case Planning

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

Background

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.⁴⁹ Permanent guardianships 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.⁵⁰ Once a case closes in permanent guardianship, the court terminates supervision of the case while maintaining jurisdiction.⁵¹ The law is silent regarding a permanent guardian moving from his or her current geographical location.

⁴⁵ Ss, 39.6011 and 39.6012, F.S.

⁴⁶ S. 39.01(11), F.S.

⁴⁷ S. 39.521, F.S.

⁴⁸ 42 U.S.C. s. 675(1)(B).

⁴⁹ 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.

⁵⁰ S. 39.6221(6), F.S.

⁵¹ S. 39.6221(5), F.S.

In 2015, the Fourth DCA held that the provisions of s. 61.13001, F.S., which relate to parental relocation in dissolution of marriage or time-sharing cases, apply to permanent guardianship placements.⁵² 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.⁵³

Effect of the Bill – Permanent Guardianship

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

Background

When a parent fails to remedy the family problems that brought a child into the dependency system, DCF may file a petition for termination of parental rights (TPR).⁵⁴ 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.⁵⁵ 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.⁵⁶ 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 parental conduct that demonstrates that continued involvement with the child threatens the child's life, safety, well-being, or physical, mental, or emotional health,⁵⁷ and a conviction that requires the parent to register as a sexual predator,⁵⁸ are not included.

Effect of the Bill – Termination of Parental Rights

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.

⁵² *T.B. v. Department of Children & Families*, 189 So. 3d 150 (Fla. 4th DCA 2015).

⁵³ 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.

⁵⁴ S. 39.8055, F.S.

⁵⁵ S. 39.806(1)(l), F.S.

⁵⁶ S. 39.811(6), F.S.

⁵⁷ S. 39.806(1)(c), F.S.

⁵⁸ S. 39.806(1)(n), F.S.

Services for Parents of Substance Exposed Newborns

Background

Drug abuse during pregnancy creates adverse health effects in newborns termed Neonatal Abstinence Syndrome (NAS).⁵⁹ Newborns with NAS suffer from withdrawal symptoms such as tremors, abdominal pain, weight loss, sweating, incessant crying, rapid breathing, sleep disturbance and seizures.⁶⁰ The incidence of NAS has increased substantially in the past decade.⁶¹

In 2012 the Legislature created the Statewide Task Force on Prescription Drug Abuse and Newborns to begin addressing the growing problem of NAS.⁶² The 15-member Task Force was composed of medical professionals, law enforcement, prevention experts and state legislators. This Task Force was charged to examine the scope of NAS in Florida, its long-term effects, the costs associated with caring for drug exposed babies, and which drug prevention and intervention strategies work best with pregnant mothers.⁶³ 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.⁶⁴

Dependency courts have 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.⁶⁵ 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 the Bill – Substance Exposed Newborns

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 makes adjudication of a child as dependent based upon evidence of harm as defined in s. 39.01(30) (g), F.S.,⁶⁶ good cause for such order. This removes discretion from a dependency court to order substance abuse assessments and treatment 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.

⁵⁹ 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/NEJMr1600879> (last accessed March 10, 2017).

⁶⁰ Id.

⁶¹ Id.

⁶² Id.

⁶³ Id.

⁶⁴ 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](http://myfloridalegal.com/webfiles.nsf/WF/RMAS-9GUKBJ/$file/Progress-Report-Online-2014.pdf) (last accessed March 10, 2017).

⁶⁵ See s. 39.521, F.S.

⁶⁶ 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

Background

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. Federal law requires states submit a state plan, detailing the structure of the state's program, to the Social Security Administration for approval to receive TANF block grants to operate their individual programs.⁶⁷

Florida's Temporary Cash Assistance Program

Florida's state plan creates the Temporary Cash Assistance (TCA) Program, administered by DCF, to provide cash assistance to families with children under the age of 18 or under age 19⁶⁸ 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.⁶⁹

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. Additionally, there are two types of child-only TCA:

- Where the child has not been adjudicated dependent, but is living with a relative,⁷⁰ or still resides with his or her custodial parent, but that parent is not eligible to receive TCA;⁷¹ and
- The Relative Caregiver Program (RCP), 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 child-only, through the RCP, 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.⁷²

The RCP provides one type of child-only TCA 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.⁷³ 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.

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

⁶⁷ 42 U.S.C. s. 602

⁶⁸ 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.

⁶⁹ Department of Children and Families, *Monthly Flash Report Caseload Data: November 2016*, available at: <http://eww.dcf.state.fl.us/ess/reports/docs/flash2005.xls> (last visited April 3, 2017).

⁷⁰ Grandparents or other relatives receiving child-only payments are not subject to the TANF work requirement or the TANF time limit.

⁷¹ 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 TCA due to their immigration status, and situations where the parent has been sanctioned for noncompliance with work requirements.

⁷² *Supra*, FN 69.

⁷³ S. 39.5085(2), F.S.; Rule 65C-28.008(2)(g), F.A.C.

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. This child-only eligibility requirement for the RCP is detailed in the federally approved TANF state plan.⁷⁴ Under 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.⁷⁵ However, at least one court has ruled that caregivers may continue to receive the RCP 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 require DCF to make federally disallowed TANF payments, thereby violating the eligibility requirements for the RCP in Florida's approved state plan.

Effect of the Bill – Relative Caregiver Program

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 RCP.

Other Changes

The bill 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, rule 65C-13.023 requires DCF to conduct a records check of abuse registry information for licensure of a family foster home and s. 39.202(2)(a)5., F.S., grants an exception to the confidentiality of reports and records related to child abuse and neglect investigations for the purpose of family foster home licensure. However, the law does not clearly authorize access to this information for group home employee employment screening.

The bill defines a "child welfare trainer" as a person providing training for 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.⁷⁶

The bill permits hospitals licensed under Ch. 395, F.S. and physician's offices to release patient records to DCF to investigate cases of abuse, neglect, exploitation of children, or vulnerable adults or to provide services related to an investigation. DCF has reported that some providers have been hesitant to release these records without additional statutory authority.⁷⁷

The bill 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 an effective date of July 1, 2017.

⁷⁴ Department of Children and Families, *Temporary Assistance For Needy Families State Plan Renewal*, October 1, 2014 – September 20, 2017, pg. 46, available at: <http://www.dcf.state.fl.us/programs/access/docs/TANF-Plan.pdf> (last accessed April 3, 2017).

⁷⁵ 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.

⁷⁶ Letter from Jowanna N. Oates, Chief Attorney, Joint Administrative Procedures Committee, *RE: Department of Children and Families Rules 65C-33.001-.015* (July 23, 2015), (on file with Health and Human Services Committee staff).

⁷⁷ Email from Rachel Moscoso, Deputy Director of Legislative Affairs, Department of Children and Families, *RE: Proposed Language to authorize medical record release by certain entities for investigation and provision of services* (April 3, 2017).

B. SECTION DIRECTORY:

- Section 1:** Amends s. 39.01, F.S. relating to definitions.
- Section 2:** Amends s. 39.202, F.S., relating to confidentiality of reports and records in cases of child abuse or neglect.
- 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.

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.

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 negative fiscal impact on those parents assessed the cost of testing previously absorbed by the CBCs.

D. FISCAL COMMENTS:

The bill does not appear to have a fiscal impact on the court system, as the provisions in the bill enhance or modify existing court procedures without increasing workload.

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 grants DCF sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2017, the Children, Families, and Seniors Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Moved language regarding the use of abuse registry information for group home staff employment screening, to align with foster home screening requirements, to a more appropriate section of statute; and
- Specified that criminal record checks do not involve DCF's child welfare information system.

On April 6, 2017, the Health and Human Services Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment made technical and conforming changes to make language consistent throughout the bill. This analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.