

STORAGE NAME: h2019s1.grr

DATE: April 8, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
ANALYSIS**

BILL #: CS/HB 2019

RELATING TO: Child Protection

SPONSOR(S): The Committee on Governmental Rules and Regulations, The Committee on Family Law and Children and Rep. Roberts

COMPANION BILL(S): SB 1666 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FAMILY LAW AND CHILDREN YEAS 7 NAYS 0
- (2) GOVERNMENTAL RULES AND REGULATIONS YEAS 6 NAYS 0
- (3) JUDICIARY
- (4)
- (5)

I. SUMMARY:

Committee substitute for House Bill 2019 amends sections of Chapter 39, Florida Statutes, to make corrections, conform and clarify language and references that were amended in a substantial revision of the chapter in 1997.

The bill also creates s. 30.0014, F.S., which is a recreation of s. 415.509(1)(b), F.S. (1997). This section was repealed in the 1998 session, but the text was not transferred to Chapter 39, F.S., in the 1998 revision of that chapter.

The bill is effective July 1, 1999, and has no fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Florida's Dependency Court Improvement Program (DCIP) was established in 1995 when the U.S. Department of Health and Human Services provided funding to the highest court in every state for a comprehensive research project designed to study judicial management of foster care and adoption proceedings involving dependent children. HB 1019, passed by the legislature during the 1998 session, incorporated the recommendations that evolved from this study.

HB 1019 relocated relevant sections of Chapter 415, Florida Statutes, into Chapter 39, Florida Statutes, and reorganized Chapter 39, Florida Statutes, to reflect an orderly presentation of the dependency process from intake to case outcome. The bill provided attorneys for parents who qualify under indigency standards at shelter hearings, who will continue representation of those parents throughout the duration of the case. It also increased penalties for false reporting and created the Relative Caregiver Program.

The federal Adoption and Safe Families Act of 1997 was signed into law in November 1997, and HB 1019 also incorporated the requirements of that legislation. The health and safety of children, rather than family reunification or preservation, is now required to be the paramount concern in decisions made at all stages of dependency proceedings. In addition, all children in foster care are now required to have a permanency planning review hearing within one year from the date of their removal from home and additional grounds for expediting termination of parental rights under certain circumstances are provided. Florida became the first state in the nation to enact the provisions of the federal act.

B. EFFECT OF PROPOSED CHANGES:

The bill makes necessary technical, conforming and clarifying changes to chapter 39, Florida Statutes.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends sections 39.001, 39.0015, 39.01, 39.011, 39.0121, 39.013, 39.0132, 39.0134, 39.201, 39.202, 39.203, 39.206, 39.301, 39.302, 39.3035, 39.304, 39.311, 39.312, 39.313, 39.395, 39.401, 39.402, 39.407, 39.501, 39.502, 39.503, 39.504, 39.506, 39.507, 39.508, 39.5085, 39.509, 39.510, 39.601, 39.602, 39.603, 39.701, 39.702, 39.703, 39.704, 39.801, 39.802, 39.805, 39.806, 39.807, 39.808, 39.811, 39.814, 39.815, 39.822, 63.0427, 419.001, and creates s. 39.0014, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 39.001, Florida Statutes, 1998 Supplement, to remove the terms “guardian” and “caregiver” and insert the term “legal custodian”. The changes are technical and conforming.

Section 2. Creates s. 39.0014, Florida Statutes, to provide that all state, county, and local agencies shall cooperate, assist, and provide such information to the department to enable it to fulfill its responsibilities under chapter 39.

Section 3. Amends s. 39.0015, Florida Statutes, 1998 Supplement, to expand a statutory reference and clarify a reference to child abuse.

Section 4. Amends s. 39.01, Florida Statutes, 1998 Supplement, to clarify and conform definitions as used in chapter 39, Florida Statutes. The section also restores a sentence to the definition of “harm” that was inadvertently omitted during the 1998 session and provides a definition for the term “out-of-home”.

Section 5. Amends s. 39.011, Florida Statutes, 1998 Supplement, to provide a technical and conforming change.

Section 6. Amends s. 39.0121, Florida Statutes, 1998 Supplement, to reflect that Child Protection Teams are now under the jurisdiction of the Department of Health.

Section 7. Amends s. 39.013, Florida Statutes, 1998 Supplement, to provide technical and conforming changes.

Section 8. Amends s. 39.0132, Florida Statutes, 1998 Supplement, to provide technical and conforming changes. The section also reduces the time period that the court shall make and keep records of all cases brought before it pursuant to chapter 39 and shall preserve records relating to a dependent child from 10 to 7 years after the last entry was made. It also adds language related to termination of parental rights to conform to language in s. 39.806(1)(l), Florida Statutes, 1998 Supplement.

Section 9. Amends s. 39.0134, Florida Statutes, 1998 Supplement, to provide that counties shall impose a lien which may be enforced as provided in s. 983.08, Florida Statutes, related to compensation for counsel who are court appointed in dependency proceedings.

Section 10. Amends s. 39.201, Florida Statutes, 1998 Supplement, to provide technical and conforming changes.

Section 11. Amends s. 39.202, Florida Statutes, 1998 Supplement, to provide technical and conforming changes. The section also clarifies that the Department of Children and Family Services must authorize the use of the department’s records for research, statistical or audit purposes. Provides for a privacy and security agreement.

Section 12. Amends s. 39.203, Florida Statutes, 1998 Supplement, to provide a technical and conforming change.

Section 13. Amends s. 39.206, Florida Statutes, 1998 Supplement, to provide technical and conforming changes.

Section 14. Amends s. 39.301, Florida Statutes, 1998 Supplement, to provide technical and conforming changes. New language is added to related to dependency petitions to conform to and clarify intent language in s. 39.301(8)(c). Time frames are specified to conform to those in s. 39.302, Florida Statutes, 1998 Supplement.

Section 15. Amends s. 39.302, Florida Statutes, 1998 Supplement, to provide technical and conforming changes.

Section 16. Amends s. 39.3035, Florida Statutes, 1998 Supplement, to clarify the definition of a Child Advocacy Center. A child advocacy center may either be a child protection team or have a child protection team as a component of the center.

Section 17. Amends s. 39.304, Florida Statutes, 1998 Supplement, to provide technical and conforming changes.

Section 18. Amends s. 39.311, Florida Statutes, 1998 Supplement, to provide a technical change.

Section 19. Amends s. 39.312, Florida Statutes, 1998 Supplement, to clarify the intent of the federal Adoption and Safe Families Act and to provide technical and conforming changes.

Section 20. Amends s. 39.313, Florida Statutes, 1998 Supplement, to conform to the intent of the federal Adoption and Safe Families Act.

Section 21. Amends s. 39.395, Florida Statutes, 1998 Supplement, to provide a technical and conforming change.

Section 22. Amends s. 39.401, Florida Statutes, 1998 Supplement, to provide technical and conforming changes. It also restores to the statute language that was inadvertently omitted.

Section 23. Amends s. 39.402, Florida Statutes, 1998 Supplement, to provide technical and conforming changes. It also adds new language to clarify the parents' right to a continuance at the shelter hearing in order to obtain counsel and to require parents to provide to the Department of Children and Family Services within 28 days of the shelter hearing the financial information necessary to calculate child support pursuant to s. 61.30, Florida Statutes.

Section 24. Amends s. 39.407, Florida Statutes, 1998 Supplement, to provide technical and conforming changes.

Section 25. Amends s. 39.501, Florida Statutes, 1998 Supplement, to provide technical and conforming changes.

Section 26. Amends s. 39.502, Florida Statutes, 1998 Supplement, to provide technical and conforming changes.

Section 27. Amends s. 39.503, Florida Statutes, 1998 Supplement, to provide technical and conforming changes.

Section 28. Amends s. 39.504, Florida Statutes, 1998 Supplement, to remove language relating to the Department of Juvenile Justice.

Section 29. Amends s. 39.506, Florida Statutes, 1998 Supplement, to provide technical and conforming changes. It also adds language to include a Dependency Court Improvement Committee recommendation to clarify that it is unnecessary to move forward with an adjudicatory trial when a parent fails to appear.

Section 30. Amends s. 39.507, Florida Statutes, 1998 Supplement, to provide technical and conforming changes.

Section 31. Amends s. 39.508, Florida Statutes, 1998 Supplement, to provide technical, conforming, and clarifying changes.

Section 32. Amends s. 39.5085, Florida Statutes, 1998 Supplement, to provide technical, conforming and clarifying changes.

Section 33. Amends s. 39.509, Florida Statutes, 1998 Supplement, to provide technical and conforming changes.

Section 34. Amends s. 39.510, Florida Statutes, 1998 Supplement, to provide technical and conforming changes.

Section 35. Amends s. 39.601, Florida Statutes, 1998 Supplement, to provide technical, conforming, and clarifying changes.

Section 36. Amends s. 39.602, Florida Statutes, 1998 Supplement, to provide technical and conforming changes.

Section 37. Amends s. 39.603, Florida Statutes, 1998 Supplement, to provide technical, conforming, and clarifying changes.

Section 38. Amends s. 39.701, Florida Statutes, 1998 Supplement, to provide technical, conforming, and clarifying changes. New language is added to provide for a statement related to partial compliance by parents with the provisions of a case to be included in a report submitted by the Department of Children and Family Services to the court prior to a judicial review hearing or citizen review panel hearing.

Section 39. Amends s. 39.702, Florida Statutes, 1998 Supplement, to provide technical and conforming changes.

Section 40. Amends s. 39.703, Florida Statutes, 1998 Supplement, to provide technical and conforming changes.

Section 41. Amends s. 39. 704, Florida Statutes, 1998 Supplement, to provide a technical change.

Section 42. Amends s. 39.801, Florida Statutes, 1998 Supplement, to provide technical and conforming changes.

Section 43. Amends s. 39.802, Florida Statutes, 1998 Supplement, to provide technical changes.

Section 44. Amends s. 39.805, Florida Statutes, 1998 Supplement, to provide a technical change.

Section 45. Amends s. 39. 806, Florida Statutes, 1998 Supplement, to provide technical and conforming changes.

Section 46. Amends s. 39.807, Florida Statutes, 1998 Supplement, to provide conforming changes.

Section 47. Amends s. 39.808, Florida Statutes, 1998 Supplement, to provide technical, conforming, and clarifying changes.

Section 48. Amends s. 39.811, Florida Statutes, 1998 Supplement, to provide technical, conforming, and clarifying changes.

Section 49. Amends s. 39.814, Florida Statutes, 1998 Supplement, to provide technical and conforming changes.

Section 50. Amends s. 39.815, Florida Statutes, 1998 Supplement, to provide a technical change.

Section 51. Amends s. 39.822, Florida Statutes, 1998 Supplement, to provide a conforming change.

Section 52. Amends s. 63.0427, Florida Statutes, 1998 Supplement, to correct a statutory reference.

Section 53. Amends s. 419.001, Florida Statutes, 1998 Supplement, to correct a statutory reference.

Section 54. Amends s. 921.0024, F.S., (1998 Supp.), to provide for a sentence multiplier when domestic violence is committed in the presence of a child.

Section 55. Amends s. 901.15, F.S. (1998 Supp.), to provide for a preferred arrest policy in criminal investigations of child abuse.

Section 56. Amends s. 20.135, F.S. (1997), to extend immunity to law enforcement officers in executing an arrest under s. 901.15, F.S.

Section 57. Amends s. 570.073, F.S. (1998 Supp.), to provide law enforcement officers of the Department of Agriculture and Consumer Services in executing an arrest under s. 901.15, F.S.

Section 58. Amends s. 741.29, F.S. (1997), to conform the section to amendments to s. 901.15, F.S.

Section 59 . Amends s. 784.046 (1997), to conform the section to amendments to s. 901.15, F.S.

Section 60. Amends s. 943.1702, F.S. (1997), to conform the section to amendments to s. 901.15, F.S.

Section 61. Provides for an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Comments of the Committee on Governmental Rules and Regulations:

Section 2 of the bill creates s. 39.0014, F.S., to provide that all state, county, and local agencies have an affirmative duty to cooperate with the department so that it may fulfill its responsibilities under Chapter 39, F.S. This substantially recreates s. 415.509(1)(b), F.S. (1997), which was repealed in Chapter 98-403, L.O.F. However, the section as written may provide a cause of action if it is determined that a public entity has not fulfilled the duty to fully cooperate with the department. A person who is affected by the failure of the department to fulfill its responsibilities under Chapter 39, F.S., may have a right to sue that public entity for its breach of duty. It is recommended that the wording of the section be amended to read that all state, county, and local agencies should cooperate, assist, and provide such information as will enable the department to fulfill its responsibilities under the chapter.

Section 6 amends s. 39.0121, F.S., to grammatically correct that section. However, the introductory paragraph of s. 39.0121, F.S., contains language that, after the 1996 amendments to the Administrative Procedure Act, is unnecessary to ensure the implementation of the chapter through administrative rule. It is recommended that the paragraph be amended to conform to current drafting practice.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Family Law and Children adopted two technical amendments to the bill.

The Committee on Governmental Rules and Regulations at its meeting on April 8, 1999, adopted eleven amendments and reported a committee substitute favorably on a unanimous vote.

Amendment one revised section 2 of the bill to provide that all public entities shall cooperate, assist, and provide information to the department to enable it to fulfill its responsibilities under Chapter 39, F.S.

Amendment two revised section 6 of the bill to conform the general grant of rulemaking authority to current drafting practice.

Amendment eleven amended ss. 921.0024, 901.15, 20.165, 570.073, and 943.01702, F.S., to provide that the decision to arrest in event of suspected child abuse shall not require the consent of the victim or the consideration of the parties.

Amendments three through ten provided technical and conforming changes to the bill.

VII. SIGNATURES:

COMMITTEE ON Family Law and Children:
Prepared by:

Carol E. Preston

Staff Director:

Carol E. Preston

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:
Prepared by:

David M. Greenbaum

Staff Director:

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