

STORAGE NAME: h1901s1.flc

DATE: April 6, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FAMILY LAW AND CHILDREN
ANALYSIS**

BILL #: CS/HB 1901

RELATING TO: Child Protection/Abandoned Babies

SPONSOR(S): The Committee on Family Law and Children, Representative Murman and others

TIED BILL(S): HB 1903

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

- (1) FAMILY LAW AND CHILDREN YEAS 6 NAYS 0
 - (2) CRIME & PUNISHMENT
 - (3) HEALTH & HUMAN SERVICES APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

The bill allows a parent to abandon a newborn infant at a hospital or fire station anonymously and with immunity from prosecution under certain circumstances. It provides an expedited process for the acceptance, emergency treatment, transfer of custody, termination of parental rights and adoption in cases of unclaimed abandoned newborn infants. It sets forth the responsibilities and duties for fire stations and emergency medical technicians, hospitals, licensed child-placing agencies, and the Department of Children and Families in the process for handling an abandoned newborn infant. It acknowledges parental rights to reclaim or claim an abandoned newborn infant within specified timeframes. It directs the Department of Health in conjunction with the Department of Children and Family Services to conduct a media campaign to promote safe alternatives for placement of abandoned newborn infants.

It is estimated that there is a fiscal impact associated with this bill, which is indeterminate at this time.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Abandoned Infants and Children

The phenomenon of abandoned infants and older children, especially newborn infants, has generated significant public interest and public concern. Based on media reports, the infants are abandoned in public places, trash bins, and other areas for any number of reasons by mothers primarily who range in age from teens to their forties. A yet unpublished survey taken by the U.S. Department of Health and Human Services of media reports nationwide indicates that while many of the babies are born full-term and healthy, a third of them die before they are found¹.

In 1988, Congress enacted the Abandoned Infants Assistance Act (P.L. 100-105) to address the phenomenon of infants abandoned in hospitals, especially those who were exposed perinatally to drugs or HIV². This federal legislation provides funding to support comprehensive and coordinated intervention programs for services to these infants and young children. More recently, a number of states (e.g., California, Georgia, Kansas, Minnesota and Texas) have either enacted or are introducing legislation targeted to address the situation of abandoned newborn infants by providing limited immunity for parents who abandon a newborn infant in a designated safe location such as a hospital or fire station. Florida has no such law at this time.

Over 27 states automatically initiate proceedings to terminate parental rights once a court determines that a child is abandoned, and another 20 states (including Florida) consider abandonment as grounds for termination of parental rights. In Florida, a child is deemed abandoned if the parent or legal custodian of a child, while being able, makes no provision for the child's support and makes no effort to communicate with the child, which situation is sufficient evidence to be a willful rejection of parental obligations. See s. 39.01(1), F.S. If the parents or legal custodian's efforts are marginal in the court's opinion, then the court

¹In 1998, 33 of 105 abandoned infants found in public places were dead. These numbers are part of the estimated 31,000 infants abandoned in hospitals including infants whose mothers said they did not want their infant, and infants whom child protective services deemed would not be safe to return home to a parent due to evidence of drug addition or other factor.

²They are often referred to as "boarder babies."

may declare the child to be abandoned for purposes of proceeding to a termination of parental rights under part IX of ch. 39, F.S.

Disposition of an Abandoned Child

Under current Florida law, an abandoned child is placed in a foster home for 60 days during which time a search for the parents is conducted by law enforcement and the Department of Children and Families with the assistance of the media. See s.39.806, F.S. If no parent is found, the Department of Children and Families files a petition to terminate parental rights and moves to provide constructive service³ in lieu of adherence to the diligent search requirement. A subsequent advisory hearing is held at which the court makes additional inquiries. Failure by a parent to appear constitutes a consent to the termination of parental rights at the advisory hearing⁴. If no parent or family member is known or identified, an adjudicatory hearing is held within 45 days of the advisory hearing to terminate parental rights. If a parent or family member is known but is not located, the Department of Children and Families must conduct a diligent search under section 39.803, F.S.⁵ If the parent is located, DNA testing is required. If termination of parental rights is granted, a permanency or placement hearing must be held within 30 days after the court enters its order regarding disposition of the child at the adjudicatory hearing. Such child may be placed with a licensed child-placing agency, the department or other legal custodian. Permanency of a child may include placement of a child in a long-term custodial relationship, under legal guardianship, or in an adoptive home subsequent to adoption proceedings as provided in ch. 63, F.S.

Prosecution for Abuse or Neglect of a Child

Any person who abuses or neglects a child is subject to criminal prosecution for a felony under section 827.03, F.S. The term "child abuse" is defined to mean either: 1) intentional infliction of physical or mental injury, 2) intentional act reasonably expected to result in physical or mental injury, or 3) active encouragement of any person to act with the result of physically or mentally injuring the child. The term "neglect" is defined to mean failure to provide care, supervision or necessary services to maintain a child's physical and mental health, or a failure to make a reasonable effort to protect a child from abuse, neglect or exploitation by another.

Reporting Child Abuse

Florida law requires all persons including, but not limited to physicians, health professionals, school teachers, social workers, law enforcement officers and judges who know or who have reasonable cause to suspect that a child is abused, abandoned or neglected to report such knowledge to the Department of Children and Families via the statewide central abuse hotline. See Part II, ch. 39, F.S. (ss. 39.201-39.206). A person who knowingly and willfully fails to report child abuse, abandonment or neglect is guilty of a first degree misdemeanor. See s. 39.205, F.S. In addition, a licensed medical facility pursuant

³Section 49.10, F.S., provides for constructive service by publication for 4 consecutive weeks.

⁴An advisory hearing is not required if the parent voluntarily surrendered his or her parental rights. See §39.808, F.S.

⁵The diligent search must include, at a minimum, inquiries of all known relatives of the parent or prospective parents, of all offices of program areas of the department and other state and federal agencies likely to have information of such person, of utility and postal providers, and of law enforcement agencies.

to ch. 395, F.S., is required to adopt a protocol for reporting any actual or suspected case of child abuse, abandonment or neglect, and to designate a physician to act as a liaison between the hospital and the Department of Children and Family Services office for investigating the case. See s.395.1023, F.S.

Duty of a Hospital

Pursuant to section 395.1041, F.S., every general hospital with an emergency department is required to provide emergency services for any emergency medical condition under specified circumstances, including for persons who are being transferred by another hospital as medically needed. The provision of emergency services and care may not be based on a person's race, ethnicity, religion, national origin, citizenship, age, sex, preexisting medical condition, physical or mental handicap, insurance status, economic status or ability to pay for medical services. Hospitals and their employees, including physicians, are not liable for refusing to render emergency services and care if it has been determined that the person is not suffering from an emergency medical condition or that the hospital does not have the service capability or capacity to tend to the person.

C. EFFECT OF PROPOSED CHANGES:

This bill amends current law regarding abandonment to focus specifically on the problem of parents abandoning newborn infants. People may now leave a newborn infant at a hospital or fire station instead of abandoning the child in an area that may threaten the health and safety of that newborn infant. Leaving an infant under the provisions of this bill would not constitute neglect of a child pursuant to s. 827.03 or contributing to the dependency of a minor pursuant to s. 827.04. No investigation would be initiated solely because a person left a newborn infant at a hospital. Leaving an infant under the provisions of this bill also creates a presumption that the parent intended to leave the newborn and consented to termination of parental rights.

The bill provides procedures for fire stations and emergency medical technicians to transfer abandoned infants to the nearest hospital and provides that the hospital accepting the infant has implied consent for emergency services and care. The infants are considered to be eligible for coverage under Medicaid.

When the Department of Children and Family Services receives a report of an abandoned newborn, and there is no indication of abuse or neglect the department shall provide to the caller the name of a licensed child placing agency. If the caller reports indications of abuse or neglect, the report shall be considered as a report of abuse or neglect.

Within 7 days of accepting custody of a newborn the licensed child placing agency shall begin a diligent search to notify and obtain consent form a parent whose identity or location is unknown. Constructive notice must also be provided in the county where the infant was left and in the county where the termination of parental rights (TPR) petition will be filed. A petition for TPR may not be filed until 30 days after the date the newborn was left. A claim of parental rights to the newborn may not be made after the TPR order is entered. The bill provides procedures that must be followed if a claim of parental rights is made within the time frame for such a claim to occur.

The bill provides for a statute of repose under certain circumstances.

D. SECTION BY SECTION ANALYSIS

Section 1. Creates section 383.50, F.S., within ch. 383, F.S., relating to maternal and infant hygiene. The section provides a definition of newborn for purposes of the new section of statute and creates a presumption that the parent who leaves a newborn at a hospital or fire station intended to leave the infant and consents to termination of parental rights. It provides for firefighters or emergency medical personnel to arrange to transport any infant left at a fire station to a hospital. Hospitals providing emergency services are required to admit any newborn infant left with the hospital while other hospitals may exercise their discretion on whether or not to admit the newborn infant for treatment. It provides immunity from liability to hospitals or any of its licensed health care professionals who accept and treat these newborn infants with the exception of liability for negligence. Any newborn admitted to a hospital in accordance with this bill is presumed eligible for Medicaid.

The bill provides that upon admitting a newborn infant under the provisions of this bill, hospitals are required to immediately contact a local licensed child placing agency or the statewide central abuse hotline for the name of a licensed child placing agency in order to transfer physical custody of the infant. If there is any evidence of actual or suspected abuse or neglect the hospital shall report the suspected abuse or neglect in lieu of contacting a child placing agency.

Section 2. Amends s. 39.01, F.S., to amend the definitions of the terms "abandoned" and "harm" to provide that the term abandonment does not include newborn infants abandoned under the provisions of this bill and that the type of abandonment under this bill does not constitute harm.

Section 3. Amends s. 39.201, F.S., to include procedures for calls to the central abuse hotline related to newborn infants abandoned under the provisions of this bill.

Section 4. Amends s. 63.167, F.S., to provide that the state adoption information center is required to maintain a list of licensed child placing agencies eligible and willing to take custody of and place newborn infants abandoned pursuant to the provisions of this bill. The names of these agencies are to be provided on a rotating basis to the central abuse hotline.

Section 5. Creates s. 63.0423, F.S., relating to procedures with respect to abandoned newborns. This section requires that the child-placing agency accepting the newborn from the hospital must assume responsibility for all medical and other costs. The agency is required to immediately seek an order of emergency custody of the infant. If possible, the agency should place the newborn with in a prospective adoptive home. The agency must request assistance from law enforcement officials to investigate whether the newborn infant is a missing child through the Missing Children Information Clearinghouse and other state and national resources.

Within seven days after accepting physical custody of a newborn, the child placing agency shall initiate a diligent search to notify and obtain consent from a parent whose identity or location is unknown. Constructive notice must also be provided in the county where the newborn was abandoned and in the county where the petition to terminate parental rights will be filed.

A petition to terminate parental rights may not be filed until 30 days after the date the newborn was left under the provisions of this bill and a petition for termination of parental rights may not be filed until certain specified circumstances have been met. If a claim of parental rights is made prior to the judgement to terminate parental rights, genetic testing

must be done to establish maternity or paternity, the department must conduct a child protective investigation and home evaluation, and if indicated, a shelter hearing must be conducted. Dependency proceedings may be conducted as the court determines appropriate, but a parent may not be found to have abandoned or neglected the newborn infant, solely because the newborn infant was left with a hospital. This section of the bill also provides for notice requirements.

Section 6. Amends s. 63.182, F.S., to provide for a statute of repose related to vacating, setting aside, or otherwise nullifying a judgement of adoption or an underlying judgement terminating parental rights under the provisions of this bill. There is a one year time limit on any ground including duress but excluding fraud. There is a two year limit for fraud.

Section 7. Provides that the Department of Health in conjunction with the Department of Children and Family Services will develop a media campaign to promote safe placement alternatives for newborn infants.

Section 8. Creates s. 827.035, F.S., related to newborns and providing that leaving a newborn infant under the provisions of this bill shall not constitute neglect of a child under s. 827.03 or contributing to the dependency of a minor under s. 827.04.

Section 9. Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

It can be expected that there will be a fiscal impact associated with the production of a media campaign to inform the public of this legislation. The fiscal impact is indeterminate at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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 take an action requiring 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 municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The parent-child relationship is protected under the state and federal constitution. See *In the Matter of the Adoption of Doe v. Doe*, 543 So.2d 741, 746 (Fla. 1989). The bill tries to balance the interest in providing a safe haven for newborn infants abandoned by their parents and protecting the fundamental and constitutionally protected parental right of either parent. Additional provisions may be needed to ensure timely and strict compliance with consent, disclosure, service, notice and hearing provisions for all parties involved, including the biological or legal father and the prospective adoptive parents of the abandoned newborn infant.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 4, 2000, the Committee on Family Law and Children adopted a strike everything amendment and one amendment to the amendment.

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VII. SIGNATURES:

COMMITTEE ON FAMILY LAW AND CHILDREN:

Prepared by:

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