

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2282

SPONSOR: Senator Mitchell

SUBJECT: Dependent Children Protection

DATE: March 16, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable</u>
2.	_____	_____	<u>CF</u>	_____
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill makes technical and necessary changes to chapter 39, F.S., to correct errors and inconsistencies resulting from the major reorganization of the chapter begun during the 1998 legislative session (ch. 98-403, L.O.F.). There are also additional substantive changes to conform and reflect the new focus of the federal Adoption and Safe Families Act of 1997 on the health and safety of children rather than primary focus on family reunification or preservation in all stages of dependency proceedings. Florida became the first state in the nation to enact the provisions of the federal act.

This bill amends the following sections of the Florida Statutes: 39.0015, 39.01, 39.013, 39.0132, 39.202, 39.302, 39.402, 39.502, 39.503, 39.508, 39.5085, 39.522, 39.601, 39.603, 39.621, 39.622, 39.623, 39.624, 39.701, 39.803, 39.804, 39.806, 39.807, 39.811, 409.2554, and 435.045. This bill also creates section 39.0014, F.S. This bill creates new parts VII and IX of chapter 39, F.S.

II. Present Situation:

In 1998, the Florida Legislature substantially rewrote chapter 39, F.S., relating to proceedings for children. *See* chapter 98-403, L.O.F. It incorporated the recommendations of a statewide study conducted by Florida's Dependency Court Improvement Program. The Program was established in 1995 with federal funding from the U.S. Department of Health and Human Services made available to all state courts to study the judicial management of foster care and adoption proceedings involving dependent children. Chapter 98-403, L.O.F., also incorporated the requirements of the federal Adoption and Safe Families Act of 1997 which refocused the paramount concern in decisions at all stages of dependency proceedings to be on the health and safety of children rather than on family reunification or preservation. Florida became the first state in the nation to enact the provisions of the federal act.

Chapter 98-403, L.O.F., transferred and reorganized relevant sections from chapter 415, F.S., into chapter 39, F.S., to create 11 parts. The 11 parts present the dependency process from intake to case outcome. Chapter 39, F.S., now provides that all foster care children are 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. It also provided attorneys for parents who qualify under indigence standards at shelter hearings and for continual representation of those parents through the duration of the case. It also increased penalties for false reporting and created the Relative Caregiver Program.

Subsequent to the rewrite of chapter 39, F.S., some errors and inconsistencies were uncovered. Chapter 99-193, Laws of Florida, clarified the definitions, roles, obligations and rights of parents, legal custodians and caregivers depending on their involvement in proceedings under chapter 39, F.S. It allowed counties to also acquire a lien on court-ordered payment of attorneys' fees and costs in indigent dependency cases. It allowed a default consent to dependency adjudication to be entered in the event a person who is ordered to appear at a subsequent adjudication hearing fails to appear. It clarified time frames for filing dependency petitions, setting arraignment and adjudicatory hearings, and placing children in shelter care or out-of-home care.

III. Effect of Proposed Changes:

This bill continues the ongoing effort to revise chapter 39, F.S., for an orderly presentation of the dependency process, a prioritization of the permanency placement options, and an incorporation of federal mandates that primarily focus on the protection of children rather than family reunification and preservation. Additionally, it makes the following specific changes as to the eleven statutory parts of Chapter 39, F.S.:

Section 1 amends s. 39.01, F.S., to revise the definition for long-term custody to clarify that this relationship is only conferred on a relative or legal custodian of the child. The term "long-term licensed custody" is created to mean the relationship between a child and a placement licensed by the state to provide residential care for dependent children arising from a juvenile court order.

Section 2 amends s. 39.013, F.S., to require a court order on dependency to be filed by the clerk of the court and provides for its precedence over any other custody or visitation order entered in any dissolution or other related proceeding. This section also clarifies that court-appointed counsel is not required for legal guardians at shelter hearings.

Section 3 amends s. 39.0132, F.S., relating to oaths, records, and confidential information relating to dependency matters, to replace the term "part" with the term "chapter" to provide that these confidentiality provisions apply to all court records arising under chapter 39, F.S., and to be consistent with other dependency confidentiality provisions.

Section 4 amends s. 39.202, F.S., relating to confidentiality of reports and records in child abuse and neglect cases, to limit the access to specific information in those reports and records by an alleged perpetrator other than a parent. This also clarifies that the penalty provisions regarding unauthorized release of confidential information apply to information obtained pursuant to this section and not just information obtained through the central abuse hotline.

Section 5 amends s. 39.402, F.S., relating to placement in a shelter hearing, to conform and to clarify that the guardian ad litem is appointed to represent the best interest of the child.

Section 6 amends s. 39.502, F.S., to clarify that the notice, process and service provisions in this section only apply to part VI, relating to petition, temporary placement, adjudication, and disposition of dependency, in lieu of the entire chapter.

Section 7 amends s. 39.503, F.S., to clarify that the petitioner, whether it be the department or some other individual, is responsible for conducting a diligent search to locate an identified parent or prospective parent.

Section 8 redesignates the existing part VII of chapter 39, F.S., relating to case plans, as part VIII, and creates a new part VII, consisting solely of a new section 39.521, F.S., relating to disposition and postdisposition change of custody, which is based on the old section 39.508, F.S. In addition, existing parts VIII through XI of chapter 39, F.S., are redesignated as parts X through XIII, respectively, and a new part IX is created, consisting of s. 39.621, 39.622, 39.623, and 39.624, F.S., relating to permanency.

Section 9 redesignates section 39.508, F.S., relating to disposition hearings as new section 39.521, F.S., and provides for revisions and substantial reorganization of this section into seven subsections.

Subsection (1)(a) retains some of the same provisions currently found in subsection (9)(a). It also clarifies that the case plan and the predisposition study prepared by the Department of Children and Family Services must be filed with the court, served upon the child's parents, and provided to the guardian ad litem and to all other parties, no later than 72 hours before the disposition hearing. If the case plan is not approved, a subsequent hearing must be held within 30 days after the disposition hearing to review and approve another case plan. This subsection revises the required content of an order adjudicating dependency to include requirements to participate in necessary treatment and services and in dependency mediation if necessary, and provide for placement of a child in the home of a relative or other approved adult or in the custody of the department, subject to protective supervision.

Subsection(1)(c) retains the same provisions currently found in subsection (7) requiring an initial judicial review hearing to be held no later than 90 after the disposition hearing or after the date of the hearing approving the case plan but in no event no later than 6 months after a child's removal from the home. Subsection (1)(d) retains the same existing requirements found in subsection (9)(b) for what must be included in a disposition order with the exception of two new requirements. If the child is in an out-of-home placement, the disposition order must include provisions for support, care and maintenance of the child including health insurance and enforcement of other child support obligations. If the court does not commit the child to temporary legal custody of a relative, legal custodian or other court-approved adult, the disposition order must include the reasons for the court's decision and a determination that diligent efforts were made to locate such persons. If diligent efforts were made but no suitable relative was found, the court may consider transferring temporary legal custody of a child from the department, legal custodian, or other court-approved adult to an adult relative at a later date unless it is in the child's best interest to remain otherwise.

Subsections (1)(e) and (f), relating to reunification efforts by the department, retain existing statutory language formerly found in subsections (9)(c)-(d) under the old numbered 39.508, F.S., with one exception, the term “legal custodian” is removed in reference to persons whose parental rights may be terminated.

Subsection (2) is reorganized and revised to require additional documented information to be submitted in the predisposition study. This includes the capacity and disposition of the parents to provide the child with food, clothing and medical care, the length of time the child has resided in the specified environment, the mental and physical health of the parent, the child’s home, school and community record, the child’s preference, and any evidence of domestic and child abuse. Reference to the abuse registry is clarified to mean the Florida Abuse Hotline Information System.

Subsection (3) retains and clarifies existing statutory language formerly found in subsections (8)(a)-(b) and (9)(a)4. relating to the placement of a child adjudicated dependent. Language is added to provide that if the court determines the child can remain safely in the child’s parents’ home and that it would be in the child’s best interest to remain there, then the court must order the conditions under which the child may continue to reside in the home under the protective supervision of the department. This protective supervision may be for 6 months, which is consistent with the existing time frame for protective supervision. If no fit parent is willing or available to assume care and custody of the dependent child, then the child is to be placed under the protective supervision of the department in the temporary legal custody of an adult relative or court-approved adult. If the child can not be safely placed in a nonlicensed placement, the court must commit the child to the temporary legal custody of the department who will have all the rights and responsibilities of a legal custodian of the child until the court terminates the commitment or the child reaches the age of 18. The provisions regarding termination of protective supervision are clarified and expanded.

Subsections (4), (5), (6), and (7) are formerly subsections (12), (13), (14), and (15), respectively.

Section 10 creates section 39.522, F.S., relating to postdisposition change of custody, which is based on the same statutory language in the existing subsections (9)(a)8.a.-b. of section 39.508, F.S.

Section 11 amends subsection (2) of section 39.601, F.S. relating to case plan requirements to conform with the new section 39.521, F.S., which requires that a case plan be filed with the court and served on all parties 72 hours prior to the disposition hearing. In addition, it requires that a case plan for a child receiving services in an out-of-home placement include alternative permanency goals when appropriate.

Section 12 amends section 39.603, F.S., relating to court approval of case plans. In lieu of requiring the court to appoint a guardian ad litem in every case, the court is allowed the discretion to appoint a guardian ad litem in cases where the parent is known but not present at the hearing and the development of the case is based on the condition or physical location of the parent.

Section 13 creates section 39.621, F.S., to set forth the permanency options that a court may order when reunification of a child with either parent is not appropriate, as prescribed: adoption, guardianship, long-term custody, long-term licensed custody, and independent living. Once the

permanency placement is made, the placement can not be changed unless it is no longer in the best interest of the minor child.

Section 14 creates section 39.622, F.S., relating to the requirements for placement and a case plan involving long-term custody. This section is based on the same current language found in subsections (9)(a)5.a. and (9)(a)5.b. of section 39.508, F.S., with the following exceptions: 1) removing language relating to the continued protective supervision of the department which is now located in 39.521, F.S., which would otherwise make this placement a non-permanent placement, 2) removing language relating to later efforts by a parent to petition for reunification which precluded alternative permanency placement despite hardship on the child, and 3) including language regarding the rights and duties of a relative or other legal custodian who has been designated a long-term custodian, including informing the court of any change of residence.

Section 15 creates section 39.623, F.S., relating to the requirements for placement and a case plan involving long-term licensed custody which is only a permanency option for children aged 14 or older. This section is based on the same current language found in subsections (9)(a)6.a. and (9)(a)6.b. of section 39.508, F.S., relating to long-term out-of-home placement. In addition, it requires the court to set forth the powers of the foster parents which shall include the powers ordinarily granted to a guardian of a minor unless otherwise specified.

Section 16 creates section 39.624, F.S., relating to the requirements for permanent placement and a case plan involving independent living which is only available to a child aged 16 years or older. This section is based on the same current language found in subsections (9)(a)6.c. of section 39.508, F.S.

Section 17 amends subsections (3) and (6) of section 39.701, F.S., respectively, relating to judicial review of a child's placement and case plan to clarify that if a citizen review panel recommends extending a goal of reunification for any case plan beyond 12 months from the date the child was removed from the home or from the date the plan was adopted, the court must schedule a judicial review hearing. Changes are also made to conform this section to the updated terminology for permanency options.

Section 18 amends section 39.803, F.S., relating to the special procedures to be followed for identifying or locating an unknown parent after the petitioning for a termination of parental rights, to clarify that the court shall direct the petitioner (who may or may not be the department) to conduct the diligent search before scheduling an adjudicatory hearing.

Section 19 amends section 39.804, F.S., clarify that any male person or any mother of a dependent child who knowingly and willfully makes a false statement concerning paternity is guilty of a first degree misdemeanor.

Section 20 amends section 39.806, F.S., to clarify that abandonment as defined in section 39.01(1), F.S., may be grounds for petitioning for termination of parental rights.

Section 21 amends section 39.807, F.S., to clarify that the guardian ad litem is appointed to represent the best interests of the child and not the child's desires.

Section 22 amends section 39.811, F.S., to conform with changes in the bill relating to the placement of a child in long-term custody with the legal custodian provided the child has resided with the legal custodian for a minimum of 6 months.

Section 23 amends section 435.045, F.S., relating to the requirements for prospective foster and adoptive parents, to relocate provisions formerly in subsection 39.508(3)(a), F.S. These provisions allow the Department of Children and Families to place a child in a foster home if state and local criminal records checks do not otherwise disqualify the applicant, pending the results of the federal criminal records check based on submitted fingerprint information, and require the prospective and adoptive parent to disclose any pending local, state or federal criminal proceedings. This section also redesignates a cross-reference to refer to the new section 39.521, F.S.

Section 24 amends subsection (3) of section 39.0015, F.S., relating to child abuse prevention training in the district school system to correct cross-references to acts included in the definition for “child abuse.”

Section 25 amends subsection (1) of section 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment, or neglect, to correct cross-references to acts included in the definition for “child abuse.”

Section 26 amends subsection (2) of section 39.5085, F.S., relating to the Relative Caregiver Program, to conform to changes in other sections of the bill.

Section 27 amends subsection (10) of section 409.2554, F.S., relating to the state child support enforcement program, to conform cross-references to redesignated and created sections.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Corresponding legislation has been filed to provide a public records exemption for all records obtained pursuant to this act.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may further clarify procedures, rights, and responsibilities for parents and other participants in proceedings under this chapter. It is indeterminate what other impact there may be.

C. Government Sector Impact:

It is indeterminate what impact, if any, there will be on the Department of Children and Family Services, and the State Courts System for implementing any of the changes in the bill, most of which are technical and clarifying.

The bill may clarify the permanency options and procedures for the court to follow.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Rules of Juvenile Procedure may need to be amended to conform to any provisions in the bill changing the procedural steps in specified proceedings.

VIII. Amendments:

None.