

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/SB 2644

INTRODUCER: Children, Families and Elder Affairs Committee and Senator Storms

SUBJECT: Care of Children

DATE: April 10, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Jameson	CF	Fav/CS
2.			JU	
3.			GO	
4.			HA	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Committee Substitute for Senate Bill 2644 provides that the bill may be called the "Zahid Jones Give Relatives a Voice Act."

The bill amends s. 39.202, F.S., relating to the confidentiality of child abuse reports, to allow a physician, psychologist or mental health professional engaged in the care of the child to have access to child abuse records.

The bill requires that photographs, reports on examinations, and x-rays shall be preserved in a permanent form in records held by the department.

The bill makes several amendments regarding notice to relatives of children who are subject to ch. 39, F.S., proceedings.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 39.201, 39.202, 39.301, 39.304, 39.402, 39.502, 39.506, 39.5085, 39.6011, 39.701, and 683.10.

II. Present Situation:

Kinship Care

The Child Welfare League of America (CWLA) defines kinship care as “the full time care, nurturing and protection of children by relatives, members of their tribes or clans, godparents, stepparents, or any adult who has a kinship bond with a child.”¹

The CWLA notes that “one of the most recent stunning changes in the child welfare system has been the major growth in the number of children in state custody who are living with their relatives.”²

In the United States, more than six million children (approximately 1 in 12) are living in households headed by grandparents or other relatives. In many of these homes, grandparents and other relatives are taking on primary responsibility for the children’s needs, without either of the child’s parents present in the home.³

The increase in recent years in the numbers of children living with relatives can be attributed to many factors, including:

- Increased reporting of abuse and neglect;
- Change in drug usage and addiction related to the spread of crack cocaine and other drugs;
- Increased levels of poverty;
- More children are affected by HIV/AIDS;
- More parents are struggling with physical and mental health problems;
- Family violence and parental incarceration; and
- Decline in the availability of traditional foster homes.⁴

In Florida, 258,952 children live in grandparent-headed households (7.1% of all the children in the state). There are another 86,152 children living in households headed by other relatives (2.4% of all the children in the state). Of the children living in households headed by grandparents or other relatives, 151,492 are living there without either parent present.⁵ Although many children living with relatives are doing so pursuant to a court order after being adjudicated dependent pursuant to ch, 39, F.S., far more are living with relatives in informal arrangements, with no court involvement, often because their parents are incarcerated or drug addicted.⁶

In response to the growing needs of children living in kinship care homes in Florida and the many grandparents and other relatives who are providing the primary care for them, the

¹ CWLA, *Kinship Care: Fact Sheet*, available at <http://www.cwla.org/programs/kinship/factsheet.htm> (last visited April 2, 2008).

² *Id.*

³ AARP Foundation, *et al.*, *State Fact Sheets for Grandparents and Other Relatives Raising Children* (October 2007).

⁴ CWLA, *Kinship Care: Fact Sheet*, available at <http://www.cwla.org/programs/kinship/factsheet.htm> (last visited April 2, 2008).

⁵ AARP Foundation, *et al.*, *GrandFacts, Florida* (November 2007).

⁶ *See generally*, Judge Tracy Sheehan, *Relative Caregiver Legislative Priority 2007* (received April 3, 2008, on file with the Senate Committee on Children, Families and Elder Affairs).

University of South Florida School of Social Work established the Kinship Support Center. According to its website, the Center:

- Develops, maintains, and strengthens support groups for kinship caregivers and their children;
- Collaborates with the community to develop new, innovative services to address the needs and concerns of the kinship care family;
- Researches and develops techniques for working with children, kinship caregivers, biological parents, school systems, local and state service provider agencies, and the community;
- Serves as a statewide clearinghouse of kinship care information obtained at local, state, and federal level of government for service providers and caregivers;
- Provides training for service provider agencies, universities, and kinship caregivers; and
- Provides direct services to kinship caregivers throughout Florida by means of the Kinship Care Warmline, a statewide listening line for kinship caregivers who need emotional support and information and referral services, and provides direct services to children living in kinship care families through a school-based intervention pilot project.⁷

Section 39.5085, F.S., establishes the Relative Caregiver Program through which relatives who care for dependent children are eligible for financial assistance within available funding limits.

Public Record Exemptions for Reports of Abuse, Abandonment or Neglect

Current law provides public record exemptions for all records held by the department concerning reports of abandonment, abuse, or neglect of a child.⁸ This includes reports made to the central abuse hotline and all records generated as a result of such reports.

The exemption authorizes release of the confidential and exempt information to specified agencies and persons or under specified circumstances.⁹ For example, the department may release otherwise confidential information to professionals as is necessary for the diagnosis and treatment of the child or of the person perpetrating abuse.¹⁰

Photographs and Medical Records in Cases of Abuse, Abandonment or Neglect

Section 39.304, F.S., permits any person required to investigate cases of suspected child abuse, abandonment, or neglect to photograph the areas of trauma visible on a child who is the subject of the report, and requires any child protection team¹¹ that examines a child to photograph visible trauma. Photographs of physical abuse injuries must be provided to the department for inclusion in the investigative file. Photographs of trauma caused by sexual abuse must be made part of the child protection team's medical record.¹²

Under certain circumstances, a child who is the subject of an abuse investigation may be referred for diagnosis to a licensed physician or an emergency department in a hospital without the

⁷ See generally, <http://www.cas.usf.edu/~krisman/> (last visited April 5, 2008).

⁸ Section 39.202(1), F.S.

⁹ See s. 39.202(2), *et. seq.*, F.S.

¹⁰ Section 39.202(3), F.S.

¹¹ Pursuant to s. 39.303, F.S., certain child abuse cases (e.g., cases involving head injury, sexual abuse malnutrition or death) must be referred to a Department of Health child protection team for assessment and other services

¹² Section 39.304(1)(a), F.S.

consent of the child's parents or legal custodian.¹³ A licensed physician or advanced registered nurse practitioner who has reasonable cause to suspect that an injury is the result of child abuse, abandonment, or neglect may authorize a radiological examination to be performed on the child without the consent of the child's parent or legal custodian.¹⁴

Any facility licensed under chapter 395 must provide the department, its agent, or a child protection team that contracts with the department, any photograph or report on examinations made or X rays taken for the purpose of investigation or assessment of cases of abuse, abandonment, neglect, or exploitation of children.¹⁵

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 2644 provides that the bill may be called the "Zahid Jones Give Relatives a Voice Act."

The bill amends s. 39.202, F.S., relating to the confidentiality of child abuse reports, to allow a physician, psychologist or mental health professional engaged in the care of the child to have access to child abuse records.

The bill requires that photographs, reports on examinations, and x-rays shall be preserved in a permanent form in records held by the department. According to the department, this provision codifies current practice.¹⁶

The bill makes several amendments regarding relatives¹⁷ of children who are subject to ch. 39, F.S. Specifically, the bill:

- Requires a child protective investigator (CPI) to make collateral contact with a relative in cases where services are refused (**Section 4**);
- Allows a relative to submit a request to a CPI or case manager to receive notice of all proceedings involving the child (**Section 4**);
- Provides that the case plan must describe the case manager's responsibility for forwarding a relative's request for notification to the attorney for the department (**Section 10**);
- Requires that a court order for shelter placement must include a written finding that the court notified relatives providing out-of-home care that they have a right to attend subsequent hearings and submit reports to the court (**Section 6**);
- Requires the attorney for the department to notify any relative who has requested notification, of the date, time and location of all proceedings involving the child, unless the court finds that the relative's involvement is impeding the proceedings or is detrimental to the child's well-being (**Section 7**); and

¹³ Section 39.304(1)(b), F.S.

¹⁴ *Id.*

¹⁵ Section 39.304(3), F.S.

¹⁶ Julie Mayo, *DCF Staff Analysis and Economic Impact Senate Bill Number 2644* (March 10, 2008).

¹⁷ Pursuant to s. 39.01(63), F.S., "relative" means a grandparent, great-grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, niece, or nephew, whether related by the whole or half blood, by affinity, or by adoption. The term does not include a stepparent.

- Requires the attorney for the department to notify any relative who has requested notice of judicial review hearings (**Section 11**).

The bill amends the intent language of the Relative Caregiver Program, reflecting an intent to recognize the "valued resource uniquely available through grandparents and relatives of children." The bill authorizes the department to utilize available funds to develop liaison functions for relatives caring for children under ch. 39, F.S.

The bill amends s. 683.10, F.S., deleting the designation of "Grandmother's Day" and designating the first Sunday after Labor Day as "Grandparents' and Family Caregivers' Day."

The bill has an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Parents have a fundamental liberty interest in determining the care and upbringing of their children. The interest is protected by both the Florida and federal constitutions.¹⁸ Because this bill may implicate this fundamental right, it may be subject to constitutional scrutiny.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

¹⁸ See *Beagle v. Beagle*, 678 So.2d 1271 (Fla. 1996).

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill allows physicians, psychologists and mental health professionals engaged in the care of a child to receive otherwise confidential reports of abuse concerning the child. The department is already authorized to release confidential information to professionals as is necessary for the diagnosis and treatment of a child who is the subject of abuse or the person perpetrating abuse.¹⁹ The bill appears to allow disclosure of abuse records to health care providers for the ordinary care of the child, rather than just for the care related to the abuse.

The bill requires that photographs, reports and x-rays be preserved in a “permanent form” by the department. It is unclear if “permanent” means the records must be held in perpetuity (which may be contrary to the state’s records retention policies) or if “permanent” is meant to describe the format of the records. If the latter is intended, it is unclear what formats would be considered permanent in nature.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families and Elder Affairs on April 8, 2008:

- Deletes the provision establishing a Grandparent Liaison Office within DCF;
- Names the bill the "Zahid Jones Give Relatives a Voice Act;"
- Requires the department to include as part of its quality assurance for the central abuse hotline an analysis of unaccepted reports made by relatives;
- Allows psychologists and mental health professionals (in addition to physicians) to have access to child abuse records;
- Allows the relative of a child under ch. 39, F.S., to request notice of all proceedings involving the child, and makes other amendments to further that purpose;
- Amends the Relative Caregiver Program to authorize DCF to use funds for relative liaison functions;
- Deletes provisions relating to dissolution and custody proceedings;
- Deletes provisions amending the factors to be considered in petition for grandparent visitation; and
- Designates "Grandparents' and Family Caregivers' Day."

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁹ Section 39.202(3), F.S.