

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: SPB 7008

INTRODUCER: For consideration by Children, Families, and Elder Affairs Committee

SUBJECT: Missing Children

DATE: January 7, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Jameson</u>	_____	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Proposed Senate Bill 7008 gives the Department of Children and Families (DCF or “the department”) authority adopt, implement and amend administrative rules relating to the reporting, location, recovery and stabilization of children who become missing while they are involved with the department. The bill specifically directs the department to adopt rules that will provide clear and consistent guidelines for the department and its contracted providers.

The bill amends ch. 39, F.S., to clarify that it is the responsibility of the department and its contracted providers to make reasonable efforts to locate a child whose whereabouts become unknown and to report the children as missing. The bill amends s. 937.021, F.S., to require law enforcement agencies to accept reports of missing children from the department or its contracted providers, as well as from the parent or guardian of the child.

The bill amends s. 787.04(3), F.S., making it unlawful to knowingly and willfully, rather than with criminal intent, lead, take, entice, or remove a minor from the state or conceal the location of a minor, after receiving constructive or actual notice of a pending dependency proceeding or abuse investigation involving the minor. The bill directs the department to adopt rules that will ensure that parents and guardians are advised of their responsibilities under the statute and that violations of the statute are reported when appropriate.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: s. 39.0121, s. 39.0141, s. 787.04 and s. 937.021.

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

II. Present Situation:

Missing Child Reports

In Florida, pursuant to s. 937.021(1), F.S., local law enforcement agencies are mandated to accept a report that a child is missing, but only if the report is filed by the child's parent or guardian. Law enforcement agencies are not required to accept or investigate missing children reports that are filed by the department or by the department's contracted providers.

Children who are involved with the department sometimes become missing *because* their parents or guardians, who are the only individuals from whom a law enforcement agency must take a report, abscond with them or fail to prevent or report their absence. According to the department, the potential refusal or reluctance of law enforcement agencies to accept reports of missing children is of particular concern in two types of cases: those involving children who become missing while an abuse investigation is pending and those who become missing after they have been placed under the department's protective supervision. In both situations, the child remains in the legal custody of the parent or guardian, and law enforcement agencies are often reluctant to interfere with parental rights by accepting a report that the child is missing. This is especially true in cases where the child is still living with the parent or guardian.¹

Because local law enforcement agencies are not required by law to accept reports of missing children from DCF or its contracted providers, cases of children who become missing while they are involved with the department sometimes go uninvestigated. Without guidelines, law enforcement protocols for accepting missing child reports from DCF or its contracted providers vary across the state and missing children may be put in harm's way when law enforcement delays or declines to act.²

Open Abuse Investigations

Section 39.301, F.S., describes the steps to be taken when a protective investigation is initiated in response to a report of known or suspected child abuse or neglect. The statute requires the investigator, at the commencement of the investigation, to inform the subject of the investigation of his or her "duty . . . to report any change in the residence or location of the child to the investigator . . ."³ The statute further provides that if a parent or guardian, after having been advised of the duty to report a change in residence, causes or allows a child to be moved, the protective investigator *may* report the child as missing to law enforcement in accordance with s. 937.021, F.S.⁴ However, local law enforcement agencies have discretion to accept a report from the investigator in these circumstances.

Protective Supervision

Pursuant to s. 39.521(3), F.S., when a child is adjudicated dependent, the court will determine the appropriate placement for the child. The following options, *inter alia*, are available:

¹ The Florida Senate, Committee on Children, Families and Elder Affairs, *Missing Children* (Interim Project Report 2008-106) (October 2007) at 4 -5.

² In some cases, although not required by statute or rule, law enforcement agencies will only accept a missing child report from DCF or a contracted provider upon receipt of an order that "authorizes" law enforcement to take a particular child into custody and deliver the child to the care or supervision of DCF. *Id.* at 3.

³ Section 39.301 (5) (a) 6, F.S.

⁴ Section 39.301 (23), F.S.

- The child may be placed in the home of the parent with whom the child had been living, under the protective supervision of the department; or
- The child may be placed in the temporary legal custody of a relative or non-relative adult, under the protective supervision of the department.

Children under protective supervision remain in the legal custody of their parents or guardians.

In anticipation of the reluctance of law enforcement agencies to accept reports of children who become missing while under protective supervision, DCF legal staff includes language in its proposed orders that specifically encourages law enforcement to generate missing child reports in protective custody cases when the parent removes the child from the circuit or the child is otherwise unable to be located. Although these orders encourage law enforcement officers to take a report of a child missing from protective supervision, they do not and cannot mandate law enforcement to do so.⁵

Linking Reports of Missing Children to Adult Records

When an adult absconds with a child who is involved with the department, and a local law enforcement agency *does* accept a missing child report on the child, the agency may also accept a report regarding the adult, enter the adult into the criminal databases, either as wanted on a warrant or as missing, and link the adult's record to the child's record. The ability to link the records in the databases facilitates the location of the child, since the likelihood of a law enforcement officer looking up an adult in the database (e.g., at a traffic stop) is greater than the likelihood of an officer looking up the child.⁶

While there is understandable reluctance on the part of law enforcement to list an adult as missing in the absence of any reason other than that a child is missing, it is unclear why adults are not more often entered as wanted pursuant to s. 787.04(3), F.S.⁷

Section 787.04(3), F.S., makes it unlawful for any person, with criminal intent, to lead, take, entice, or remove a minor from the state, or to conceal the location of a minor, under the following circumstances:

- During the pendency of a dependency proceeding affecting the minor; or
- During the pendency of any investigation, action, or proceeding concerning the alleged abuse or neglect of the minor.

The statute requires that the defendant must have had notice of the pending proceeding, investigation, or action, and that he or she must have acted without the permission of a state

⁵ The Florida Senate, Committee on Children, Families and Elder Affairs, *Missing Children* (Interim Project Report 2008-106) (October 2007) at 5.

⁶ *Id.* at 6.

⁷ According to FDLE, less than one percent of cases involving missing children are linked in the databases to a case identifying an adult as missing or wanted. *Id.*

agency or court.⁸ It is a defense that a person acted with the belief that the action was necessary to protect the child from abuse.⁹ Violation of s. 787.04, F.S., is a third degree felony.¹⁰

Section 787.04(3), F.S., appears to allow, if not require, law enforcement to issue arrest warrants for adults who abscond with children under the circumstances described, and to enter them in the data bases as wanted, while entering the children as missing. This rarely occurs, however, suggesting that actual use of the statute is limited.¹¹ Barriers to enforcement include insufficient evidence that a parent or guardian had notice as required by the statute, and inadequate training of law enforcement officers, as well as of department and provider staff, as to the effective use of the statute.¹²

In addition, s. 787.04(3), F.S., requires “criminal intent” but it may be more precise and more prosecutable to require that the defendant acted “knowingly and willfully” after receiving actual or constructive notice of the pending proceeding, investigation or action.¹³

DCF Policies and Procedures Regarding Missing Children

The department does not have specific rulemaking authority with respect to the reporting, location and recovery of children whose whereabouts are unknown, but it relies on the following to manage cases of missing children:

- Missing Children Guide, Reporting, Location, Stabilization and Prevention;¹⁴
- Operating Procedure: Prevention, Reporting and Services to Missing Children;¹⁵ and
- Administrative Rule: Missing Children.¹⁶

Although these documents provide guidelines for the department and its contracted providers, they are, in some respects, inconsistent, incomplete or unclear. In addition, neither the Missing Children Guide nor the Operating Procedure are enforceable against DCF’s contracted providers or local law enforcement agencies.

III. Effect of Proposed Changes:

Proposed Senate Bill 7008 adds subsection (16) to s. 39.0121, F.S., expanding the department’s rule-making authority to include provisions for the reporting, locating, recovering, and stabilizing of children whose whereabouts become unknown while they are involved with the department. The proposed bill directs the department to adopt rules that will:

⁸ Section 787.04(3), F.S.

⁹ Section 787.04(5), F.S.

¹⁰ Section 787.04(6), F.S.

¹¹ The Florida Senate, Committee on Children, Families and Elder Affairs, *Missing Children* (Interim Project Report 2008-106) (October 2007) at 6.

¹² *Id.*

¹³ *Id.* See also, *State v. Mancuso*, 652 So.2d 370 (Fla. 1995); *Mogavero v. State*, 744 So.2d 1048 (Fla. 4th DCA 1999).

¹⁴ Developed by DCF, community-based care providers and FDLE (December 2006). The Guide describes when and how a caregiver should report a child as missing and how to work with local law enforcement to recover a child.

¹⁵ CFOP No. 175-85 (October 17, 2002). The Operating Procedure defines “missing children” and provides instruction on the reporting, recovery, prevention and stabilization of missing children,

¹⁶ Fla. Admin. Code Ann. r. 65C-30.019 (2006) prescribes the responsibilities of caregivers when children under investigation or protective supervision are believed to be missing.

- Provide comprehensive, explicit and consistent guidelines to be followed by its employees and contracted providers;
- Establish the criteria to be used to determine when it is necessary to make a report that a child in the care of the department is missing which will require, at a minimum, that in all cases in which a criminal investigation has been initiated pursuant to s. 39.301(2)(a), F.S., and the whereabouts of the subject child are unknown, a report must be filed;
- Establish the steps to be taken by caseworkers and investigators to ensure and provide evidence that parents and guardians have been advised of the requirements of s. 787.04 (3), F.S. and that violations of s. 787.04 (3), F.S., are reported.

The bill creates s. 39.0141, F.S., requiring the department and its contracted providers to:

- Make reasonable efforts, as defined by rule, to locate a child whose whereabouts become unknown;
- Determine, also pursuant to rule, if the child is missing; and
- Report the child as missing pursuant to s. 937.021, F.S.

The bill amends s. 787.04(3), F.S., to make it unlawful to knowingly and willfully, rather than with criminal intent, lead, take, entice, or remove a minor from the state or conceal the location of a minor, after receiving constructive or actual notice of a pending dependency proceeding or abuse investigation involving the minor.

The bill amends s. 937.021(1), F.S., to mandate that a law enforcement agency must accept a report of a missing child from not only the parent or guardian of the child, but also from the department or its contracted providers. The proposed bill further provides that a law enforcement agency may not require a reporter to present an order that a child be taken into custody before accepting a report that the child is missing.

The bill provides 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.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The department will incur expenses in the rule-making process, but the impact is likely to be minimal. To the extent the bill increases the number of children reported as missing, local law enforcement agencies may incur increased expenses related to the investigation and recovery of missing children, but the impact is not expected to be significant. To the extent the amendments to s. 787.04(3), F.S., increase the number of violations reported and pursued for prosecution, State Attorneys' Offices and local law enforcement agencies may incur increased expenses related to investigation and prosecution under the statute.

VI. Technical Deficiencies:

At lines 58 and 86, it should be clarified that sheriff's offices provide investigative services *for* the department, rather than *to* the department.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.