

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 Committee on Fiscal Policy

BILL: CS/CS/CS/SB 590

INTRODUCER: Fiscal Policy Committee; Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senators Detert and Gaetz

SUBJECT: Adoption

DATE: January 21, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Crosier</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 590 revises the circumstances under which an adoption consent is valid, binding and enforceable; amends the factors a court must consider in determining whether the best interests of the child are served by transferring custody to a prospective adoptive parent chosen by the parent or adoptive entity; authorizes the court to establish reasonable timelines for the transfer of custody; requires the court to provide written notice to a parent of his or her right to participate in a private adoption plan earlier in the process than currently required by law; and amends the definitions of “abandonment” and “parent” under ch. 39, F.S.

According to the Department of Children and Families, the bill is not expected to impact state funds. However, according to the Office of State Courts Administrator the bill is expected to have an indeterminate negative impact on judicial workloads.

II. Present Situation:

The Department of Children and Families and Dependency

Chapter 39, F.S., governs child protection for the state. Chapter 63, F.S., addresses adoption. The Department of Children and Families (DCF) investigates all allegations of abuse, neglect, and

abandonment.¹ The DCF may file a petition with the circuit court to place the child in shelter and enter an adjudication that the child is dependent.²

A child who is dependent is a child found by the court:

- To have been abandoned, abused, or neglected by the child’s parent or parents³ or legal custodians;
- To have been surrendered to the DCF, the former Department of Health and Rehabilitative Services, or a licensed child-placing agency for purpose of adoption;
- To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, the DCF, or the former Department of Health and Rehabilitative Services, after which placement, under the requirements of ch. 39, F.S., a case plan has expired and the parent or parents or legal custodians have failed to substantially comply with the requirements of the plan;
- To have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a parent or parents have signed a consent pursuant to the Florida Rules of Juvenile Procedure;
- To have no parent or legal custodians capable of providing supervision and care;
- To be at substantial risk of imminent abuse, abandonment, or neglect by the parent or parents or legal custodians; or
- To have been sexually exploited and to have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care.⁴

If the court adjudicates the child as dependent, the child is placed in the state’s care.⁵ When a child is placed in the state’s care the state “acts in the protective and provisional role of in loco parentis” or in place of the parent for the child.⁶

Dependency Proceedings

The purpose of dependency proceedings is for the court to determine if allegations of child abuse, abandonment, or neglect stated in a petition filed by the DCF or other interested person are true.⁷ If the court finds the allegations to be true, the court will direct a course of action to protect a child. A course of action is provided through a written case plan, which may include

¹ Section 39.01(1), F.S. defines “abandoned” or “abandonment” as a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child’s care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.

² Section 39.301, F.S.

³ Section 39.01(49). F.S. defines “parent” as a woman who gives birth to a child and a man whose consent to the adoption of the child would be required under s. [63.062](#)(1), F.S. If a child has been legally adopted, the term “parent” means the adoptive mother or father of the child. The term does not include an individual whose parental relationship to the child has been legally terminated, or an alleged or prospective parent, unless the parental status falls within the terms of s. [39.503](#)(1) or s. [63.062](#)(1), F.S.

⁴ Section 39.01(15), F.S.

⁵ Section 39.501(1) and (2), F.S.

⁶ *Buckner v. Family Services of Central Florida, Inc.*, 876 So. 2d 1285, 1288 (Fla. 5th DCA 2004).

⁷ Section 39.501(1) and (2), F.S.

requiring a parent, legal guardian, or a child into treatment and services, dependency mediation, and placement of a child in protective supervision.⁸

Dependency Proceeding	Description of Process	Controlling Statute
Removal	<p>If probable cause exists such as, abuse, neglect or abandonment, a child may be taken into custody by law enforcement and placed under the custody of the DCF.</p> <p>A child may be detained by medical or hospital personnel if returning the child to the parent or caregiver presents an imminent danger to the child.</p>	<p>s. 39.401, F.S.</p> <p>s. 39.395, F.S.</p>
Shelter Hearing	<p>A shelter hearing must occur within 24 hours of a child’s removal to determine if probable cause exists to continue to keep the child in shelter⁹ care.</p>	<p>s. 39.401, F.S.</p>
Petition for Dependency¹⁰	<p>A petition for dependency states the allegations that brought the case before the court and is required to be filed within 21 days of the shelter hearing. The purpose of a petition seeking the adjudication of a child as a dependent child is the protection of the child and not the punishment of the person creating the condition of dependency.</p>	<p>s. 39.501, F.S.</p>
Arraignment Hearing and Shelter Review	<p>Within 28 days after the shelter hearing, the court must hold an arraignment hearing to allow the parent to admit, deny, or consent to the allegations within the petition for dependency and to allow the court to review the necessity for the child’s continued shelter placement.</p> <ul style="list-style-type: none"> • If the parent or legal custodian denies any of the allegations of the petition for dependency, the court shall hold an <i>adjudicatory hearing</i> within 30 days after the date of the arraignment hearing. • If the parent or legal custodian admits or consents to the findings in the petition for dependency, the court shall conduct a <i>disposition hearing</i> within 15 days after the arraignment hearing. 	<p>s. 39.506, F.S.</p>
Adjudicatory Hearing¹¹	<p>An adjudicatory hearing is held within 30 days of arraignment. It is a hearing for the court to determine whether or not the facts support the allegations stated in the petition for dependency cases or in termination of parental rights cases. The judge determines whether child is dependent during this hearing.</p>	<p>s. 39.507, F.S.</p>

⁸ Section 39.521(1)(b), F.S.

⁹ Section 39.01(70), F.S., defines “shelter” as a placement with a relative or a nonrelative, or in a licensed home or facility, for the temporary care of a child who is alleged to be or who has been found to be dependent, pending court disposition before or after adjudication.

¹⁰ Section 39.501, F.S., requires the petition to specifically set forth the acts or omissions upon which the petition is based and the identity of the person or persons alleged to have committed the acts or omissions, if known.

¹¹ Section 39.01(4), F.S.

Dependency Proceeding	Description of Process	Controlling Statute
	If the court finds that the allegations have not been proven, the child is not dependent and the case may be dismissed. If the court finds the child dependent the court must schedule a disposition hearing within 30 days.	
Disposition Hearing¹²	<p>The court will hold a disposition hearing to determine the most appropriate protections, services, and placement for the child in dependency cases if:</p> <ul style="list-style-type: none"> • The court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing; • The parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition; or • The parents or legal custodians have failed to appear for the arraignment hearing after proper notice or have not been located despite a diligent search. <p>After a disposition hearing the court may hold a post-disposition hearing¹³ to change the temporary legal custody or conditions of protective supervision.¹⁴</p>	ss. 39.506 and 39.521, F.S.
Judicial Review Hearings	The court must review the status and placement of the child every 6 months, or upon motion of a party.	s. 39.701, F.S.
Petition for Termination of Parental Rights (TPR)	Once the child has been out of home for 12 months, if the DCF determines that reunification is no longer a viable goal, termination of parental rights is in the best interest of the child, and other requirements are met, then a petition for termination of parental rights is filed by the DCF. A termination of parental rights permanently deprives the parents of any rights to the child. ¹⁵	ss. 39.801 – 39.815, F.S.
Advisory Hearing	An advisory hearing on the petition to terminate parental rights must be held as soon as possible after all parties have been served a copy of the petition. The hearing allows the parent to admit, deny, or consent to the allegations within the petition for termination of parental rights.	s. 39.808, F.S.
Adjudicatory Trial	An adjudicatory trial must be set within 45 days after the advisory hearing. The judge determines whether to terminate parental rights to the child at this trial.	s. 39.809, F.S.

¹² Section 39.01(25), F.S.

¹³ Section 39.522, F.S.

¹⁴ Section 39.01(64), F.S., defines “protective supervision” as a legal status in dependency cases which permits the child to remain safely in his or her own home or other nonlicensed placement under the supervision of an agent of the DCF and which must be reviewed by the court during the period of supervision.

¹⁵ Section 39.811(5), F.S.

Adoption

After termination of parental rights, the court retains jurisdiction over a child for whom custody is given to a social service agency until the child is adopted.¹⁶ If the DCF is given custody of a child for a subsequent adoption under ch. 39, F.S., the DCF may place the child with a licensed adoption agency, a registered child-caring agency, or a family home for prospective adoption.¹⁷ Prospective adoptive parents may not file a petition for adoption until the court has entered a judgment terminating parental rights.

However, in instances in which a child is adjudicated dependent but parental rights have not yet been terminated, s. 63.082, F.S., allows a parent to execute a consent to place the child with an adoption entity or qualified adoptive parents. The court considers consent given in these circumstances to be valid, binding, and enforceable. Upon execution of the consent of the parent:

- The adoption entity may intervene in the dependency case.
- The adoption entity must provide the court with a copy of the preliminary home study of the prospective adoptive parents and other evidence of the suitability of the placement.¹⁸
- The dependency court will hold a hearing to review documents in support of intervention and determine whether a change in placement is appropriate.
- Upon a determination by the court that the prospective adoptive parents are properly qualified to adopt the child and that the adoption appears to be in the best interests of the child, the court must immediately order the transfer of custody of the child to the prospective adoptive parents, under the supervision of the adoption entity.
- The court determines the best interest of the child are served by transferring custody to the prospective adoptive parents by considering:
 - The rights of the parent to determine an appropriate placement for the child;
 - The permanency offered;
 - The child's bonding with any potential adoptive home that the child has been residing in; and
 - The importance of maintaining sibling relationships, if any.
- The adoption entity is responsible for keeping the dependency court informed of the status of the adoption proceedings every 90 days from the date of the order changing placement of the child until the date of finalization of the adoption.
- In all dependency proceedings, after it is determined that reunification is not a viable alternative and prior to the filing of a petition for termination of parental rights, the court must advise the biological parent who is a party to the case of the right to participate in a private adoption plan.¹⁹

Parental Rights to Select a Prospective Adoptive Parent

In the case of *In re Adoption of K.A.G.*, 152 So. 3d 1271 (Fla. 5th DCA 2014),²⁰ the DCF instituted dependency proceedings and filed a shelter petition on behalf of a child whose father awaited trial for murdering the child's mother. The child was placed in the temporary custody of

¹⁶ Section 39.811(9)

¹⁷ Section 39.812(1), F.S.

¹⁸ Section 63.082(6)(b), F.S.

¹⁹ Section 63.082(6), F.S.

²⁰ *In re Adoption of K.A.G.*, 152 So. 3d 1271 (Fla. 5th DCA 2014).

his maternal aunt and her fiancé. After the DCF petitioned to involuntarily terminate parental rights, the paternal grandmother petitioned to terminate the father's parental rights and adopt the child. The father had given written consent to terminate parental rights and for the grandmother to adopt the child.²¹

The trial court ruled that the father's consent to terminate parental rights was conditional on allowing the grandmother to adopt the child. Therefore, the Aunt did not have the required consent to proceed with her petition for adoption.²² The appeals court agreed with the trial court that the father's consent was properly conditional.²³ The court held that under these circumstances, the court must analyze the best interest of the child through whether "the birth parent's choice of prospective adoptive parents is appropriate and protects the well-being of the child; not that it is the best choice as evaluated by the court or the Department in light of other alternatives."²⁴

Due Process Protections for Parents

A parent who is a party in a dependency action is entitled to due process safeguards. A parent must receive notice of all proceedings or hearings involving the child. Notice of shelter hearings or hearings resulting from medical emergencies must approximate actual notice. Notice by summons is required for other hearings or proceedings before the dependency court.²⁵

During a dependency proceeding, a court may decide that a child's reunification with his or her parent is not viable. In those circumstances, the adoption of the child would often be in the child's best interest. However, once reunification is no longer viable, but before the parent's parental rights are terminated, the court must provide written notice to the parent of his or her right to participate in a private adoption plan.

At each stage of dependency proceedings, parents have the right to counsel appointed by the court if the parents are indigent.²⁶

III. Effect of Proposed Changes:

The bill requires a court to determine whether a change in placement is in the best interest of the child, rather than appropriate. Specifically, the bill changes what a court must consider in determining whether the best interests of the child are served by transferring custody to a prospective adoptive parent chosen by the parent or adoptive entity. Under existing law, a court must consider "the rights of the parent to determine an appropriate placement for a child, the permanency offered, the child's bonding with any potential adoptive home that the child has been residing in, and the importance of maintaining sibling relationships."²⁷ The bill preserves as

²¹ *Id.* at 1272.

²² *Id.*

²³ *Id.* at 1276.

²⁴ *Id.* at 1276, n. 4.

²⁵ Section 39.502(1), F.S.

²⁶ Section 39.013(1) and (9)(a), F.S. In fact, the Florida Constitution requires greater due process than the federal constitutional provision, including the appointment of counsel in every case. *M.E.K. v. R.L.K.*, 921 So. 2d 787, 790 (Fla. 5th DCA 2006).

²⁷ Section 63.082(6)(e), F.S.

a factor the rights of the parent to determine the appropriate placement, the permanency offered, and the importance of maintaining sibling relationships. The bill also requires the court to consider the following additional factors:

- Established bonded relationship between the child and the current caregiver in any potential adoptive home in which the child has been residing;
- The stability of the potential adoptive home in which the child has been residing as well as the desirability of maintaining continuity of placement;
- Reasonable preferences and wishes of a child, provided that the child is sufficiently mature enough to express a preference;
- Whether a petition for termination of parental rights has been filed; and
- What is best for the child.

The bill attempts to expedite the final placement of a child in an adoptive home in two ways. First, the bill requires parents to be given notice of the right to participate in a private adoption plan at an earlier stage of the dependency proceedings. Current law requires parental notice to be given just prior to the filing of a petition for termination of parental rights. The bill requires the court to provide written notice to a parent earlier in the process, at the time of arraignment, in addition to other significant markers of the dependency process. Moving up the time of notice might expedite the permanent placement of a child.

Second, the bill imposes a timeline on the court for holding a final hearing on a motion to intervene and issuing a written final order. Under the bill, the court must hold the final hearing on the motion to intervene and the change of placement of the child within 30 days after the motion is filed. Additionally, the court must issue a written final order within 15 days after the hearing. The timeline may not apply if good cause or mutual agreement of the parties warrants otherwise.

Current law provides that a parent's consent to an adoption is valid for children who are *in the custody* of the DCF. This bill expressly expands the circumstances in which a parent may consent for the adoption of a child in dependency proceedings by allowing a parent to consent when a child is *under the supervision of the DCF, or otherwise subject to the jurisdiction of the dependency court*. Children whose cases are under DCF supervision include children who are in relative care.

Current law provides that if the court finds both that the prospective adoptive parents are qualified and that the adoption is in the best interests of the child, the court must order the immediate transfer of custody of the child to the prospective adoptive parents. The bill instead authorizes the court to establish a reasonable timeline to transition custody pending adoption. This provision provides the court flexibility in determining transfer on a case-by-case basis.

The bill amends the definition of "abandon" or "abandonment" to include that a man's acknowledgement of paternity of the child does not limit the period of time considered in determining whether the child was abandoned.

Current law provides that the term "parent" does not include an individual whose parental relationship to the child has been legally terminated, or an alleged or prospective parent, unless the parental status falls within the terms of ss. 39.503(1) or 63.062(1), F.S. The bill amends the

definition of a parent to clarify that term also does not include an alleged or prospective parent, unless the parental status is applied for the purpose of determining whether the child has been abandoned.

The bill takes effect July 1, 2016.

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:

The United States Supreme Court has long recognized that even parents in dependency proceedings have not entirely lost their fundamental rights to parent, as guaranteed by the 14th Amendment of the U.S. Constitution. As stated in *Santosky v. Kramer*, 455 U.S. 745, 753 (1982), the “fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.”²⁸ Therefore, certain due process protections are required, including the burden of proof in a termination of parental rights case. A court must not enter an order terminating parental rights without a finding of clear and convincing evidence that termination is warranted.²⁹ Other due process rights include notice and appointment of counsel for indigent parents.³⁰

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

²⁸ *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

²⁹ *Id.* at 756, 769 (1982).

³⁰ *M.E.K. v. R.L.K.*, 921 So.2d 787, 790 (Fla. 5th DCA 2006).

C. Government Sector Impact:

Based on an analysis of the bill, the Office of the State Courts Administrator (OSCA) indicates that an impact on judicial or court workload may result from the bill. Current law recognizes as valid, binding, and enforceable adoption consent from a parent for a child who is in the custody of the DCF. This bill recognizes parental consent for adoption for children who are not just in the custody of the DCF, but also under the supervision of the DCF or otherwise under the jurisdiction of the dependency court. Expanding the pool of cases may increase the number of adoptions. However, OSCA reports that it cannot accurately determine the fiscal impact due to the unavailability of data needed to quantifiably establish any impact.³¹ OSCA further notes that the expedited timeframes to act on motions by an adoption entity may affect judicial workloads. However, any impact is unknown at this time.³²

The Department of Children and Families does not expect a fiscal impact from the bill.³³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 39.01 and 63.082 of the Florida Statutes.

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

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

CS/CS/CS by Fiscal Policy on January 20, 2016:

The committee substitute:

- Amends the definition of “abandoned” or “abandonment,” and “parent” under ch. 39, F.S.
- Amends the factors a court must consider in determining whether the best interests of the child are served by transferring custody to a prospective adoptive parent chosen by the parent or adoptive entity.

³¹ The Office of the State Courts Administrator, *2016 Judicial Impact Statement for CS/SB 590* (Dec. 21, 2015) (on file with the Senate Committee on Judiciary).

³² Email from Alexis Rojas, The Office of the State Courts Administrator (Jan. 12, 2016) (on file with the Senate Committee on Judiciary).

³³ The Department of Children and Families, *2016 Agency Legislative Bill Analysis for CS/SB 590* (Dec. 8, 2015)(on file with the Senate Committee on Judiciary).

CS/CS by Judiciary Committee on January 12, 2016:

- Expands conditions in which adoption consent by a parent is valid, binding, and enforceable by the court based on a child being under the jurisdiction of the dependency court;
- Provides a timeline for the court to hold a final hearing on a motion to intervene and issue a written final order in response to motions by an adoption entity;
- Redefines for purposes of transferring custody of a child to prospective adoption parents the standard of the best interests of the child by:
 - Restoring the rights of the parent as a factor of best interest, provided that it is based on the well-being of the child;
 - Adding as a factor the preferences of the child, if the child is sufficiently mature to express a preference; and
 - Increasing the amount of information a court may use to determine what is best for the child.
- Authorizes the court to establish reasonable requirements and timeframes for the transfer of final custody of a child to prospective adoptive parents pending adoption.
- Clarifies that the court must provide written notice to a parent of his or her right to participate at three different phases of dependency proceedings: at the arraignment hearing, in the order that approves the case plan, and in the order that changes the permanency goal to adoption.

CS by Children, Families, and Elder Affairs Committee on November 19, 2015:

- Allows a parent to execute a consent for placement of a minor that is under the supervision of the department with an adoption entity or qualified prospective adoptive parents and that the consent is valid, binding, and enforceable by the court.
- Revises the standard of review used by the court when making a determination of a change of placement of a child from the appropriateness of the placement to the best interests of the child.
- Ensures that the biological parent is provided written notice of his or her right to participate in a private adoption plan at the arraignment hearing held pursuant to s. 39.506, in the order approving the case plan pursuant to s. 39.603, or in the order that changes the permanency goal to adoption and terminates the parental rights pursuant to s. 39.621, F.S.

B. Amendments:

None.