

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 899 Child Welfare

SPONSOR(S): Health & Human Services Committee, Children, Families & Seniors Subcommittee, Tomkow

TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	10 Y, 0 N, As CS	Christy	Brazzell
2) Appropriations Committee	29 Y, 0 N	Fontaine	Pridgeon
3) Health & Human Services Committee	16 Y, 0 N, As CS	Christy	Calamas

SUMMARY ANALYSIS

Chapter 39, F.S., creates the dependency system that is charged with protecting child welfare. The Department of Children and Families (DCF) administers the state's child welfare system and works in partnership with local communities and the courts to ensure the safety, timely permanency and well-being of children involved in the dependency process.

The court reviews the progress of a child's case at various points in the dependency process. Depending on the stage of the child's case, a court may reunify a child with a parent and return the child home from an out-of-home placement if it determines conditions for return have been met or if a parent has substantially complied with a case plan.

HB 899 amends various statutes in ch. 39, F.S., to revise the standards for reunifying children. The bill also amends current law to require evidence that conditions for return have been met or that a parent has substantially complied with a case plan and is likely to complete it in a reasonable time before reunification may occur.

Additionally, the bill amends current law to require the court to place a child in out-of-home care if a parent is unlikely to provide a safe and stable home without court involvement in a reasonable amount of time, evaluate the child's permanency goal, and change the goal if in the best interest of the child.

The bill also amends current law to require planning for and monitoring of communication between foster parents and biological parents at various stages in the dependency process to encourage effective communication.

The bill also allows a lead agency to demonstrate a justification of need to exceed the 35 percent maximum threshold of direct care service delivery.

HB 899 does not have a fiscal impact on DCF or the Guardian ad Litem program. There is no impact on local government.

The bill provides an effective date of October 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida's Child Welfare System

Florida's child welfare system identifies families whose children are in danger of suffering or have suffered abuse, abandonment, or neglect, and works with those families to address the problems that are endangering children, if possible. If the child welfare system cannot address the problems, the Department of Children and Families (DCF) finds safe out-of-home placements to protect children.

DCF administers the state's child welfare system and works in partnership with local communities and the courts to ensure the safety, timely permanency and well-being of children.¹

DCF's practice model focuses on preserving and strengthening the child's family ties whenever possible, and removing the child from the home when the child's welfare cannot be adequately safeguarded otherwise.²

Community-Based Care Organizations and Services

DCF contracts for case management, out-of-home care, and related services with community-based care lead agencies (CBCs). Using CBCs to provide child welfare services is designed to increase local community ownership of service delivery and design.³ DCF, through the CBCs, administers a system of care for children with the goals of:

- Prevention of separation of children from their families;
- Intervention to allow children to remain safely in their own homes;
- Reunification of families who have had children removed from their care;
- Safety for children who are separated from their families;
- Well-being of children through emphasis on educational stability and timely health care;
- Achievement of permanency; and
- Effective transition to independence and self-sufficiency.

CBCs provide foster care and related services, including, but not limited to, counseling, domestic violence services, substance abuse services, family preservation, emergency shelter, and adoption.⁴ CBCs contract with a number of subcontractors for case management and direct care services to children and their families.⁵ There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.⁶

Currently, CBCs are statutorily limited from directly providing more than 35 percent of all child welfare services in the circuit it serves.⁷ CBC subcontractors provide direct care services to children and families over the 35 percent maximum threshold.

¹ S. 39.001, F.S.

² S. 39.001(4), F.S.

³ Department of Children and Families, *Community-Based Care*, <http://www.dcf.state.fl.us/admin/publications/year-in-review/2012/page9.shtml> (last visited Mar. 9, 2019).

⁴ S. 409.145(1), F.S.

⁵ *Supra* note 4.

⁶ Department of Children and Families, *Community-Based Care Lead Agency Map*, <http://www.myflfamilies.com/service-programs/community-based-care/cbc-map> (last visited Mar. 9, 2019).

⁷ S. 409.988(1)(j), F.S.

Dependency Case Process

When child welfare necessitates that DCF remove a child from the home, a series of dependency court proceedings must occur to adjudicate the child dependent and placed in out-of-home care. The dependency process includes, among other things, a child protective investigation to determine the safety of the child, the court finding the child dependent, case planning to address the problems resulting in the child's dependency, and reunification with the child's parent or another option to establish permanency, such as adoption.

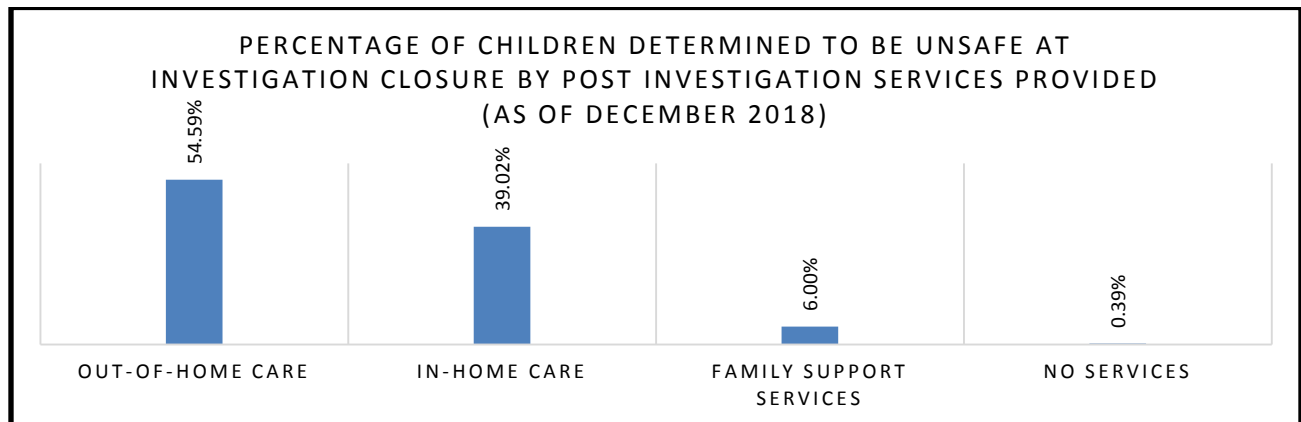
Safety Methodology

In 2013, DCF began using a new child welfare practice model (model) that standardized the approach to making safety decisions and risk assessments for children.⁸ The model seeks the goals of safety, permanency, and child and family well-being.⁹ The model emphasizes parent engagement and empowerment as well as training and support of child welfare professionals to assess child safety.¹⁰

To further implement this model, in 2014 the Legislature amended statute to require child protective investigators to implement in-home safety plans to ensure the child's safety while the child remains in the home or is returned home after an out-of-home placement.¹¹ DCF must file all safety plans with the court.¹² In-home safety plans must be specific, sufficient, feasible and sustainable to ensure child safety while the child remains in the home.¹³ If an in-home safety plan cannot be established at investigation and removal is necessary to protect the child, conditions for return are established.

DCF uses a family functioning assessment to assess conditions for return at removal or the potential use of an in-home safety plan that would allow a child to return home after removal.

The graph below shows the percentage of children, as of December 2018, determined to be unsafe and provided services out of the home compared with those determined safe and either receiving services in the home or through family support services.¹⁴ Additionally, the graph shows the percentage of children who did not need services after an investigation.¹⁵



⁸ Department of Children and Families, *2013 Year in Review*, <http://www.dcf.state.fl.us/admin/publications/year-in-review/2013/page19.shtml> (last visited Mar. 12, 2019).

⁹ Department of Children and Families, *Florida's Child Welfare Practice Model*, <http://www.myflfamilies.com/service-programs/child-welfare/child-welfare-practice-model> (last visited Mar. 12, 2019).

¹⁰ *Supra* note 4.

¹¹ S. 39.301(9)(a)6.a., F.S.

¹² Ch. 14-244, Laws of Fla.; s. 39.501(3)(a), F.S.

¹³ S. 39.301(9)(a)6.a., F.S.

¹⁴ Department of Children and Families, *Child Welfare Key Indicators Monthly Report*, (Feb. 2019), available at http://centerforchildwelfare.fmhi.usf.edu/qa/cwkeyindicator/KI_Monthly_Report_FEB_2019.pdf (last visited Mar. 11, 2019).

¹⁵ *Id.*

Case Plans

Pursuant to s. 39.6011, F.S., DCF must prepare a case plan for each child receiving services. It must be developed in a face-to-face conference with the child's parent, any court-appointed Guardian ad Litem, and, if appropriate, the child and the temporary custodian of the child.

Each case plan must contain:

- The problem being addressed, including the parent's behavior or acts resulting in risk to the child and the reason for the intervention by DCF.
- The permanency goal.
- If concurrent planning is being used, a goal of reunification in addition to one of the remaining permanency goals provided in statute.
- The date the case plan compliance expires. The case plan must be limited to as short a period as possible for accomplishing its provisions. The plan's compliance period expires no later than 12 months after the date the child was removed from the home, the child was adjudicated dependent, or the date the case plan was accepted by the court, whichever occurs first.
- A written notice to the parent that failure to substantially comply with the case plan may result in the termination of parental rights, and that a material breach of the case plan may result in the filing of a petition for termination of parental rights sooner than the compliance period set forth in the case plan.¹⁶

Additionally, the case plan must describe:

- The role of foster parents or legal custodians when developing the services for the child, foster parents, or legal custodians;
- The responsibility of the case manager to forward a relative's request to receive notification of all proceedings and hearings;
- The minimum number of face-to-face meetings to be held each month between the parents and DCF to review the progress of the case plan, to eliminate barriers to progress, and to resolve conflicts or disagreements; and
- The parent's responsibility for financial support of the child.¹⁷

All parties must sign the case plan, including the child, unless the child is not of an age or capacity to participate in the case-planning process. Signing the case plan acknowledges that individuals have participated in developing the terms and conditions.¹⁸

Reunification

Federal law requires states to show, except in certain circumstances such as where the parent committed an especially egregious act, that they have made "reasonable efforts" to provide services to prevent a child's removal or to reunify a child with his or her family prior to termination of parental rights.¹⁹ This federal requirement makes reunification a key goal for children placed in out-of-home care. Additionally, reunification is the primary permanency goal under Florida law.²⁰ Throughout the dependency process, if a child is in out-of-home care, the court reviews the parent's case to determine when reunification is safe for the child.

The court determines reunification primarily at two points in the dependency process, either at postdisposition or at a judicial review hearing.

¹⁶ S. 39.6011(2), F.S.

¹⁷ S. 39.6011(4), F.S.

¹⁸ S. 39.6011(3), F.S.

¹⁹ Adoption Assistance and Child Welfare Act of 1980, Public L. No. 96-272, H.R. 3434, 96th Cong. (1980).

²⁰ S. 39.621(3)(a), F.S.

The court decides whether a child should receive services in-home or out-of-home at a disposition hearing.²¹ If a child is placed out-of-home at disposition, the court can return the child home *postdisposition* if it determines the circumstances that caused the out-of-home placement have been remedied to the extent that returning the child home with an in-home safety plan will not be detrimental to the child.²²

Until the child reaches permanency, the court regularly reviews the placement decision and the child's status at judicial review hearings. If the child remains in out-of-home care after disposition, the court returns the child home after a judicial review hearing any time it determines a parent has substantially complied with case plan tasks.²³

To ensure the child's safety after reunification, the court retains jurisdiction to review the status of the child for at least six months.²⁴ Currently, other than retaining jurisdiction for at least six months after reunification, it is in the court's discretion when to terminate judicial oversight of the child.

Substantial Compliance

The court advises the parents throughout the dependency process that if they "fail to substantially comply with the case plan," their parental rights may be terminated and the child's out-of-home placement may become permanent" therefore not allowing for reunification.²⁵ "Substantial compliance" is defined as the circumstances which caused the creation of the case plan have been significantly remedied to the extent that the well-being and safety of the child will not be endangered upon the child's remaining with or being returned to the child's parent.²⁶ The definition of substantial compliance does not involve the use of a safety plan to ensure the child's safety for reunification to occur.

Conditions for Return

Florida Statutes do not define "conditions for return." However, DCF administrative rules define conditions for return as the specific family conditions or behaviors that must exist or be in place in order to meet the criteria for the child to be returned home safely.²⁷ Child protective investigators are responsible for development and management of safety plans, and conditions for return are established as part of the development of out-of-home safety plans.²⁸

DCF's operating procedures have five questions to help establish what conditions must exist to return the child home with an in-home safety plan:

- The parents or legal guardians are willing for an in-home safety plan to be developed and implemented and have demonstrated that they will cooperate with all identified safety services.
- The home environment is calm and consistent enough for an in-home safety plan to be implemented and for safety service providers to be in the home safely.
- Safety services are available at a sufficient level and to the degree necessary in order to manage the way in which impending danger is manifested in the home.
- An in-home safety plan and the use of in-home safety management services can sufficiently manage impending danger without the results of scheduled professional evaluations. This question concerns what specific knowledge is needed to understand impending danger threats, caregiver capacity, or behavior or family functioning specifically related to impending danger threats.

²¹ S. 39.01(25), F.S.

²² S. 39.522(2), F.S.

²³ S. 39.701(2)(d), F.S.

²⁴ S. 39.701, F.S.

²⁵ Ss. 39.402(18), 39.507(7)(c), 39.6011(2)(e), F.S.

²⁶ S. 39.01(84), F.S.

²⁷ R. 65C-30.001(31), F.A.C.

²⁸ R. 65C-30.002, F.A.C.

- The parents or legal guardians have a physical location in which to implement an in-home safety plan.

During an investigation, if any of these conditions are nonexistent, the child should be removed from the home. The child cannot be reunified with the parent and returned home until the situation related to the non-existent condition has changed.

Conditions for return are based on the use of a safety plan. The threshold of substantial compliance with a case plan involves a level of safety for the child without the use of a safety plan and is higher. Thus, a parent often may not reach the level of substantial compliance until many months into the dependency case, while the parent may meet the conditions for return much sooner. This allows for the child to be reunified more quickly than the court waiting for the parents' substantial compliance for reunification; however, at the point of meeting conditions for return, the parent has generally not achieved the full behavior change necessary for the child's safety, permanency, and well-being.

Foster Parents

Children who are receiving care out of the home can be placed with foster parents licensed by CBCs or its subcontractors. As of November 2018, there were 5,358 foster parents licensed in Florida.

Foster parents care for the children placed in their home and serve as role models for the biological parents working to reunify with their children. To qualify as a potential foster parent, applicants must go through a rigorous interview process, complete a training program, and participate in a home inspection and background check.²⁹ Foster parents are expected to:³⁰

- Provide parenting that consists of a loving commitment to the child and the child's safety and wellbeing;
- Provide opportunities to develop the child's interests and skills;
- Care for the child in light of the child's culture, religion, ethnicity, special physical or psychological needs and unique situations;
- Assist the biological parents in improving their ability to care for and protect their children and to provide continuity for the child;
- Assist the child in visitation and other forms of communication with his or her biological family;
- Obtain and maintain records that are important to the child's wellbeing, such as medical records and records of achievements;
- Advocate for children in their care with the child welfare system, the court, and community agencies, such as schools, child care, and health providers;
- Participate fully in the child's medical, psychological, and dental care as they would for their biological child; and
- Support the child's school success by participating in school activities and meetings.

Effect of Proposed Changes

Reunification

The bill amends s. 39.522, F.S., to require the court to place a child in out-of-home care after reunification has occurred or the child has been allowed to remain in the home with a safety plan, if a parent is unlikely to provide a safe and stable home without court involvement in a reasonable amount of time. In these situations, the court must evaluate the child's permanency goal and change the goal if in the best interest of the child. This will address situations where the child is unlikely to reach permanency after remaining in

²⁹ Florida Department of Children and Families, *How Do I Become a Foster Parent?*, <http://www.dcf.state.fl.us/service-programs/foster-care/how-do-i.shtml> (last visited Mar. 12, 2019).

³⁰ Florida Department of Children and Families, *Partnership Plan for Children in Out-of-Home Care*, available at <http://centerforchildwelfare.fmhi.usf.edu/kb/OOHPublications/PartnershipPlan.pdf> (last visited Mar. 12, 2019).

the home or reunification with a safety plan due to the parent's lack of progress in fully resolving the issues that brought the child into care.

The bill also amends s. 39.701(2)(d)2, F.S., to add additional requirements that must be met before a child is returned to his or her parent at the conclusion of a judicial review hearing. In addition to the court being satisfied that reunification will not be detrimental to the child, the bill requires reunification only after evidence has been provided that either:

- Conditions for return have been met and an in-home safety plan can be implemented; or
- A parent has substantially complied with the case plan and is likely to complete the case plan in a reasonable amount of time.

Current law provides no express guidance to courts when determining whether reunification should occur at postdisposition or judicial review. It is currently within the court's discretion to decide what factors to consider. HB 899 gives courts guidance on what specifically should be in place before allowing reunification to occur at postdisposition or judicial review. When determining whether conditions for return have been met to allow reunification to occur with the use of an in-home safety plan, the bill requires the court to consider a family's circumstances, including, but not limited to, the home environment, the parent's behavior, and safety resources. The bill gives this guidance to courts by adding a definition for "conditions for return" to ch. 39, F.S.

Foster Parents

The bill amends various statutes to promote effective communication between foster parents and biological parents, requires notification to the court of ineffective communication, and requires the review of the communication at judicial review hearings. Further, to protect foster parents while caring for children placed in their home, the bill reclassifies to higher penalties any offenses committed against a foster parent.

Case Plans

HB 899 amends s. 39.6011(4), F.S., to require the case plan to describe the responsibility of the parents and caregivers to communicate effectively, which includes, but is not limited to, refraining from harassing communication, to promote the safety, well-being, and physical, mental, and emotional health of the child. Further, it requires the parent or caregiver to notify the court if ineffective communication takes place.

Judicial Review Hearings

HB 899 amends s. 39.701(2)(a)6, F.S., to require the report for judicial review hearings to contain a statement from a foster parent or legal custodian regarding any communication that is not in compliance with the case plan. Further, it amends s. 39.701(2)(a)7, F.S., to require the report to contain the caregiver's recommendations for an expansion or restriction on future visitations with the parent. This will allow caregivers to have additional input regarding the child's safety at judicial review hearings.

The bill also amends s. 39.701(2)(c), F.S., to require the court to determine at judicial review hearings whether the parent and caregiver communicate effectively to promote the safety, well-being, and physical, mental, and emotional health of the child, which includes, but is not limited to, refraining from harassing communication.

Community-Based Care Services

The bill amends s. 409.988(1)(j), F.S., to allow a lead agency to exceed the 35 percent threshold of providing direct care services to children and families in its circuit if approved by the court to do so. The lead agency must provide a justification of need to stakeholders to exceed the threshold. Stakeholders will review the justification of need and recommend to DCF whether it should approve or deny the request.

The bill amends various statutes to conform cross references to changes in the bill.

The bill will take effect October 1, 2019.

B. SECTION DIRECTORY:

Section 1: Amending s. 39.01, F.S., relating to definitions.

Section 2: Amending s. 39.522, F.S., relating to postdisposition change of custody.

Section 3: Amending s. 39.6011, F.S., relating to case plan development.

Section 4: Amending s. 39.701 F.S., relating to judicial review.

Section 5: Amending s. 409.988, F.S., relating to lead agency duties; general provisions.

Section 6: Amending s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment, or neglect.

Section 7: Amending s. 39.521, F.S., relating to disposition hearings; powers of disposition

Section 8: Amending s. 39.6012, F.S., relating to case plan tasks; services.

Section 9: Amending s. 322.09, F.S., relating to application of minors; responsibility for negligence or misconduct of minor.

Section 10: Amending s. 394.495, F.S., relating to child and adolescent mental health system of care; programs and services.

Section 11: Amending s. 627.746, F.S., relating to coverage for minors who have a learner's driver license; additional premium prohibited.

Section 12: Amending s. 934.255, F.S., relating to subpoenas in investigations of sexual offenses.

Section 13: Amending s. 960.065, F.S., relating to eligibility for awards.

Section 14: Providing an effective date of October 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. It is unknown how many children will be reunified with their families more quickly, reducing costs related to out-of-home care, or how many children will remain longer in out-of-home care or return to out-of-home care, increasing costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals who commit specific offenses against foster parents will be subjected to enhanced criminal penalties if convicted. It is unknown how many individuals this may affect.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY

DCF has sufficient rulemaking authority to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2019, the Children, Families, and Seniors Subcommittee adopted a strike-all amendment that:

- Removes the term “protective capacities” from the definition of conditions for return.
- Requires the courts to place a child in out-of-home care if a parent is unlikely to achieve full protective capacities after his or her child has remained in the home or has been reunified with an in-home safety plan.
- Provides criteria for the court to consider when determining whether to place a child in out-of-home care postdisposition.
- Requires evidence of achievement of either conditions for return or substantial compliance at judicial review hearings before the judge reunifies a child on that basis.
- Allows a lead agency to exceed the 35 percent maximum threshold for providing direct services if it demonstrates a need to provide more services and the department approves the request to exceed the threshold.

On April 16, 2019, the Health and Human Services Committee adopted two amendments that:

- Remove the more serious consequences for crimes committed against foster parents.
- Specify a process to compose the group that will make a recommendation to DCF on a lead agency’s justification of need to exceed the direct services maximum when that lead agency’s geographical area includes multiple stakeholders of different types.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.