

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Children and Families Committee

BILL: SPB 7056

INTRODUCER: For consideration by Children and Families Committee

SUBJECT: Permanency for Dependent Children

DATE: November 28, 2005 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanford	Whiddon		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

This bill amends Florida's child protection statute to conform to the federal Adoptions and Safe Families Act (ASFA) in three major areas. These areas are reasonable efforts, case planning, and permanency.

As to reasonable efforts, the bill amends current law to:

- Describe when reasonable efforts are required; and
- Clarify the nature of reasonable efforts required regarding both parental and relative placements at the stages of dependency proceedings.

As to case planning, the bill amends current law to:

- Provide that agreeing to a case plan does not constitute an admission of wrongdoing or consent to a finding of dependency;
- Recognize the role of mediation and family conferencing in the development of case plans;
- Define "concurrent case planning" and give direction for its use;
- Replace confusing pre-ASFA language relating to "extending the case plan" with clear direction as to the time frames and requirements for permanency hearings;
- Clarify the options available to the court when it becomes clear that a case plan cannot be completed within the first 12 months a child is in care;
- Provide new emphasis on current language that "time is of the essence" in case planning by placing that language more prominently in the statute; and
- Clarify the considerations and process to be used in amending a case plan.

As to permanency, the bill amends current law to:

- Define "permanency hearings," "permanency plan," and "permanency goal," and

- Conform the permanency options under Florida law to those described in federal law.

This bill substantially amends ss. 39.01, 39.013, 39.301, 30.402, 39.507, 39.5085, 39.522, 39.621, 39.701, 39.703, 39.806, 39.810, 39.811, 39.001, 39.0015, 39.205, 39.302, 39.828, 63.092, and 419.991, Florida Statutes. It creates ss. 39.0136, 39.0137, 39.0138, 39.6011, 39.6012, 39.6221, 39.6231, and 39.6241, F.S. It repeals ss. 39.601, 39.622, 39.623, 39.624, and 435.045, Florida Statutes:

The bill provides for an effective date of July 1, 2006.

II. Present Situation:

Florida's statutory provisions relating to child welfare long precede federal intervention into this arena. In fact, the responsibility and authority to intervene in situations where a child is or appears to be in need of protection as a result of child abuse or neglect has traditionally been at the state rather than federal level.¹ However, beginning with the passage of the Child Abuse Prevention and Treatment Act (CAPTA) in 1974, the U.S. Congress has enacted a series of laws having significant impact on state child protection and child welfare services.²

The primary federal laws impacting Florida's child protection system (listed in order of original enactment) are CAPTA,³ the Indian Child Welfare Act (ICWA),⁴ the Adoption Assistance and Child Welfare Act,⁵ the Family Preservation and Family Support Services Program (established as part of the Omnibus Reconciliation Act of 1993),⁶ the Multiethnic Placement Act (MEPA),⁷ the Adoptions and Safe Families Act (ASFA),⁸ the Foster Care Independence Act,⁹ the Child Abuse Prevention and Enforcement Act,¹⁰ the Intercountry Adoption Act,¹¹ the Promoting Safe and Stable Families Amendments¹² and the Keeping Children and Families Safe Act.¹³

The Adoptions and Safe Families Act of 1997 (ASFA) was signed into law on November 19, 1997. This law, which amends the 1980 Child Welfare Act, clarifies that the health and safety of children served by child welfare agencies must be the primary concern of those agencies. It emphasizes moving children in foster care more quickly into permanent homes.¹⁴ Its implementing regulations¹⁵ became effective on March 27, 2000. These regulations incorporate

¹ National Clearinghouse on Child Abuse and Neglect Information, <http://nccanch.acf.hhs.gov> (August 1, 2005).

² Id.

³ P.L. 93-247, amended P.L. 95-266, 98-257, 100-294, 102-295, 104-235.

⁴ P.L. 95-608.

⁵ P.L. 98-272.

⁶ P.L. 103-66.

⁷ P.L. 103-382, amended P.L. 104-188.

⁸ P.L. 105-89.

⁹ P.L. 106-169.

¹⁰ P.L. 106-177.

¹¹ P.L. 106-279.

¹² P.L. 107-133.

¹³ P.L. 108-36.

¹⁴ *Adoptions and Safe Families Act of 1997 (H.R. 867)* National Association of Social Workers (December 1997), found at <http://www.naswdc.org/archives/advocacy/updates/1997/safeadop.htm>.

¹⁵ 45 CFR ss. 1355, 1356, 1357; see also the introductory materials and comments, found at 65 FR 4020-4075.

provisions of ASFA and MEPA and amend pre-existing regulations by adding new requirements for state compliance with Titles IV-B and IV-E of the Social Security Act.¹⁶

State and local child protection agencies that accept federal funds pursuant to Titles IV-B and IV-E of the Social Security Act are required to follow ASFA and its regulations. Congress enacted ASFA pursuant to its power under the “Spending Clause” of the U.S. Constitution.¹⁷ In FY 2004-2005, the last year for which figures are available, Florida received \$29,873,959 in federal funds pursuant to Title IV-B and \$190,309,299 in federal funds pursuant to Title IV-E of the Social Security Act. In that year, these sums amounted to 23.61 per cent of the total budget for Florida’s child welfare programs, a percentage which remains fairly consistent.¹⁸

As a prerequisite to accepting federal funding through Titles IV-B and IV-E of the Social Security Act, states were obligated to amend state legislation to bring it into compliance with ASFA. However, the strict deadlines for compliance¹⁹ required states to draft legislation quickly, increasing the likelihood that inconsistencies would remain between state law and ASFA requirements. Further, since the required date for drafting statutory changes was earlier than the date of the issuance of the final ASFA regulations (January 25, 2000), the likelihood of inconsistencies between state and federal law was greatly increased.

The Florida Legislature in the 1998 session enacted significant changes to Florida’s child protection statute, in part with the goal of bringing state law into compliance with ASFA.²⁰ The ASFA-related changes included:

- Recognizing the parents’ right to counsel at the shelter and subsequent hearings and the right, if indigent, to appointed counsel;
- Providing for access by the Department of Children and Families (DCF or the department) to federal and state parent locator services for diligent search activities;
- Increasing requirements for documentation in cases where the case plan goal is not reunification;
- Reducing the time period from 18 to 12 months for judicial review of permanency options for a child;
- Requiring judicial reviews for all children in out-of-home care every six months; and
- Authorizing but not requiring the use of concurrent case planning. Concurrent case planning is the practice of establishing a permanency goal in a case plan which uses reasonable efforts to reunify the child with the parent, while at the same time establishing an alternative or back-up permanency plan to be implemented if children cannot safely return to their biological parents.²¹ If concurrent case planning is not used, the alternative goal is explored

¹⁶ *Making Sense of the ASFA Regulations*, Baker, Debra Ratterman *et al*, American Bar Association (2001), p. 4.

¹⁷ *Id.*, p. 178.

¹⁸ Information supplied by O. Roy Hutcheson, Jr., Chief, Federal Program Eligibility-Revenue Maximization Unit, Child Welfare/CBC Program Office, DCF, August 15, 2005.

¹⁹ P.L. 105-89, s. 103(a)(3).

²⁰ Ch. 98-403, L.O.F.

²¹ *Tools for Permanency: Tool #1: Concurrent Permanency Planning*, National Resource Center for Foster Care and Permanency Planning, Hunter College School of Social Work of the City University of New York, found at www.hunter.cuny.edu/socwork/nrcfcpp (July 2005).

only after the court determines that reunification is no longer a viable permanency option for the child, a process which almost inevitably significantly delays permanence for the child.

The remaining major provisions of ASFA which must be reflected in state law may be described as:

- “Reasonable efforts.” ASFA redefines “reasonable efforts” to emphasize children’s health and safety. It describes at least three circumstances when “reasonable efforts” are required by the state agency in child welfare cases: to prevent foster care placement, to finalize a permanency plan for each child, and to reunify families if such placement has occurred. It also describes situations when reasonable efforts to preserve families are not required;
- Case plan and review requirements. ASFA requires that the case plan and associated reviews specifically address child safety and permanency;
- Increased emphasis on timely permanency decision making, including shorter time periods (shortened from 18 months to 12 months) to finalize a permanency plan, a new requirement for permanency hearings, and a limitation on the time period for reunification services to families.²²

These three major provisions of ASFA were, for the most part, not addressed in the 1998 legislation. As a result, Florida law on these issues contains pre-ASFA provisions which are not consistent with current federal law.

Occurring simultaneously with the implementation of the ASFA-related changes, Florida’s child welfare system has undertaken the transition from a traditional agency-driven structure to one in which child welfare services are delivered by community-based care lead agencies. These community-based care lead agencies are independent, non-profit organizations under contract with DCF to provide child welfare services. There are currently 22 lead agencies, each with several subcontracting agencies. This decentralization of service delivery has allowed additional opportunity for confusion as to the requirements of federal and state law in this area.

When state and federal law are not consistent, the Supremacy Clause of the U.S. Constitution requires state courts to apply federal law.²³ However, since most practitioners and decision makers in the Florida child welfare system are more familiar with Florida law than with federal law, the inconsistencies may not be recognized at the court or agency level and may result in failures to comply with federal law which are detected when state practices are reviewed as part of the federal Child and Family Services Review (CFSR) process. Such a failure may lead to the loss of significant federal financial support for Florida’s child welfare program.

Senate Interim Project Report 2006-104

During the 2005-06 interim, staff prepared a study relating to the relationship between Florida’s child welfare statutes and relevant federal statutory provisions and implementing regulations. The major finding from the interim study was that since the regulations interpreting ASFA were not adopted until January 2000, two years after the Florida Legislature amended its child

²² This analysis was informed by *Congress Passes Major new Adoption/Foster Care Reform Law*, ABA Center on Children and the Law, found at <http://www.abanet.org/child/adofost.html>.

²³ *Hilton v. South Carolina Public Railways Commission*, 502 U.S. 197(1991); *Mississippi Power & Light Co. v. Mississippi*, 487 U.S. 354 (1988); *Kalb v. Feuerstein*, 308 U.S. 433 (1940).

protection statute and enacted some of the ASFA-required changes, important areas addressed in the regulations were not addressed in the changes made to Florida's law. These areas relate to reasonable efforts, permanency, and case plans.

III. Effect of Proposed Changes:

Section 1 amends s. 39.01, F.S., to add definitions of "concurrent planning," "family team conference," "permanency goal," "permanency plan," "permanent guardian," and "permanent guardianship of a dependent child." This section also deletes definitions made obsolete by the provisions of the bill.

Section 2 amends s. 39.013, F.S., to remove provisions relating to time limitations in dependency cases. (These provisions are re-enacted and emphasized in section 3 of the bill.)

Section 3 creates s. 39.0136, F.S., to set out the legislative finding that time is of the essence for establishing permanency for a child in the dependency system and to outline the time limitations applicable to dependency cases.

Section 4 creates s. 39.0137, F.S., to clarify that the provisions of chapter 39, F.S., do not supersede the requirements of the federal Indian Child Welfare Act, the Multi-Ethnic Placement Act of 1994, or their implementing regulations. It requires DCF to adopt rules no later than July 1, 2007, ensuring that these federal laws are implemented and encourages DCF to enter into agreements with recognized American Indian tribes.

Section 5 creates s. 39.1038, F.S., to describe the background screening requirements for the out-of-home placement of children and the procedures for seeking exemption from disqualification for placement.

Section 6 amends s. 39.301, F.S., to allow previous reports of child abuse, neglect, or abandonment to be considered in determining whether a child is safe and the risk to a child at any stage of a child protection proceeding.

Section 7 amends s. 39.402(10) and (16), F.S., to require that the order at the shelter hearing include a description of the specific services which could prevent or eliminate the need for the removal of a child and the date the services are expected to become available or an explanation of why the services are not available. This section requires that the order contain a notice to all parties of the date, time, and place of the case plan conference, family team conference, or mediation that will be used to develop the case plan. It also requires the court to inquire, and the parents to provide, the names and location information of all relatives whom they wish to be considered for placement of the child. It requires the court to advise the parents that their parental rights may be terminated if the child is not returned to their custody within 12 months.

Section 8 amends s. 39.507, F.S., to require that when a court adjudicates a child dependent and the child is in out-of-home care, the court inquire, and the parents provide, the names and location information of all relatives whom they wish to be considered for placement of the child. It requires the court to advise the parents that their parental rights may be terminated if the child is not returned to their custody within 12 months.

Section 9 amends s. 39.5085, F.S., to clarify that children who are in a permanent guardianship with a relative are eligible for the relative caregiver program.

Section 10 amends s. 39.522, F.S., to require that the court consider the continuity of the child's placement in the same out-of-home residence as a factor in determining the best interests of a child when a petition is filed to change the custody of a child in an out-of-home placement.

Section 11 creates s. 39.6011, F.S., describing the procedural and other requirements for developing a case plan.

Section 12 creates s. 39.6012, F.S., describing the tasks and services which must be addressed in a case plan.

Section 13 creates s. 39.6013, F.S., describing the process and grounds for case plan amendments.

Section 14 amends s. 39.603, F.S., to make technical and conforming changes.

Section 15 amends s. 39.621, F.S., to clarify that time is of the essence for permanency of children in the dependency system and to provide direction to the court in conducting permanency hearings for children.

Sections 16-18 create sections 39.6221, 39.6231, and 39.6241, F.S., to describe the permanency options of permanent guardianship of a dependent child, permanent placement with a fit and willing relative, and another planned permanent living arrangement, conforming the permanency options for dependent children with the options described in federal law.

Section 19 amends s. 39.401, F.S., to require that judicial review social studies reports provided periodically to the court include copies of the child's current health and education records as identified in s. 39.6012, F.S., to review the child's permanency goal at the judicial review held no later than six months after the child is placed in shelter care, and to evaluate at that time the need for concurrent planning for the child.

Section 20 amends s. 39.703, F.S., to clarify the circumstances under which DCF is required to file or excused from filing a termination of parental rights petition at the time of the 12-month judicial review.

Section 21 amends s. 39.806, F.S., to clarify that a material breach of the case plan is grounds for filing a termination of parental rights petition before the expiration of the time period for compliance with the case plan if the court finds by clear and convincing evidence that the parent is unlikely or unable to substantially comply with the case plan before the time expires to comply with it.

Section 22 amends s. 39.810, F.S., to provide that, in determining the manifest best interests of a child in the context of a termination of parental rights proceeding, the availability of a nonadoptive relative placement may not be considered as a factor weighing against the

termination of parental rights and that, if a child has been in a stable or preadoptive placement for not less than six months, the availability of a different placement, including a placement with relative, may not be considered as a ground to deny the petition for termination of parental rights.

Sections 23-30 amend sections 39.811, 39.001, 39.0015, 39.205, 39.302, 39.802, 39.828, 63.092 and 419.001 F.S., to make technical and conforming changes and to correct cross-references.

Section 31 repeals sections 39.601, 39.622, 39.623, 39.624, and 435.045, Florida Statutes.

Section 32 provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The clarifications contained in the bill will facilitate compliance with federal law and consequent funding of programs in the community-based care agencies.

C. Government Sector Impact:

The bill removes areas of confusion which have led to delay in permanency for children. As a result, more children should achieve permanency at an earlier time, reducing the need for foster care services.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill was developed with the assistance of representatives of the Office of the Guardian ad Litem, Florida's Children First, Inc., the Florida Coalition for Children, the Florida Coalition Against Domestic Violence, the Office of the State Courts Administrator, and DCF. This workgroup and its subgroups met throughout the interim period to identify the current most serious areas in which Florida law is not consistent with federal law and to provide suggestions for changes to Florida law.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.²⁴
