

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- The Department of Children and Family Services is required to adopt rules to:

- Make available to all physical custodians and family services counselors the information required by s. 39.6012(2), F.S. and for ensuring that this information follows the child until permanency has been achieved; and
- Ensure that the federal Indian Child Welfare Act and the Multi-Ethnic Placement Act of 1994 are implemented.

Empower families -- The bill will reduce delays in achieving permanency for children and includes families to a greater degree in the case planning process.

B. EFFECT OF PROPOSED CHANGES:

Background

Florida laws relating to child welfare issues were enacted long before federal intervention. 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, Congress has enacted a number of laws having a significant effect on state child protection and child welfare services.²

The major 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 Multi-Ethnic Placement Act (MEPA),⁷ the Adoption 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 Amendments,¹² and the Keeping Children and Families Safe Act.¹³

The ASFA of 1997, which amends the 1980 Child Welfare Act, was signed into law on November 19, 1997. This law provides that the health and safety of children served by child welfare agencies must be the paramount concern of those agencies. It emphasizes moving children in foster care more quickly

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.

into permanent homes.¹⁴ Its implementing regulations¹⁵ became effective on March 27, 2000. These regulations incorporate 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. 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 percent of the total budget for Florida's child welfare programs, a percentage which remains fairly consistent.¹⁷

As a prerequisite to accepting federal funding through Titles IV-B and IV-E of the Social Security Act, states were required to amend state legislation to bring it into compliance with ASFA. However, the short deadlines for compliance¹⁸ 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 even further increased.

During the 1998 session, the Florida Legislature enacted significant changes to Florida's child protection statute, in part with the goal of bringing state law into compliance with ASFA.¹⁹ 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 Family Services ("DCFS" 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.²⁰ If concurrent case planning is not used, the alternative goal is explored only after the court determines that reunification is no

¹⁴ *Adoption 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.

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

¹⁷ Information obtained from O. Roy Hutcheson, Jr., Chief, Federal Program Eligibility-Revenue Maximization Unit, Child Welfare/CBC Program Office, DCF, August 15, 2005.

¹⁸ P.L. 105-89, s. 103(a)(3).

¹⁹ Ch. 98-403, L.O.F.

²⁰ *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).

longer a viable permanency option for the child, a process that almost inevitably significantly delays permanence for the child.

The remaining major provisions of ASFA which have not been addressed 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; and
- 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.²¹

These three major provisions of ASFA were, for the most part, not addressed in the 1998 legislation. Consequently, 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 created 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.²² 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.

Effect of Bill

Section 1 Definitions

The bill creates new definitions of the terms “concurrent planning,” “family team conference,” “permanency goal,” “permanency plan,” “permanent guardian,” and “permanent guardianship of a dependent child.” Current definitions are also amended and or deleted to reflect provisions of the bill.

²¹ See *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>.

²² *Hilton v. South Carolina Public Railways Comm’n*, 502 U.S. 197 (1991); *Mississippi Power & Light Co. v. Mississippi*, 487 U.S. 354 (1988); *Kalb v. Feuerstein*, 308 U.S. 433 (1940).

Section 2 Rulemaking Authority

The bill grants authority to the DCFS to adopt rules to make available to all physical custodians and family services counselors the information in the case plan and to ensure that this information follows the child until permanency has been achieved.

Section 3 Procedures and Jurisdiction

The bill 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 4 of the bill.)

Section 4 Time Limitations

The bill removes current provisions relating to time limitations in dependency cases and creates a new section that provides for added emphasis on that fact that time is of the essence for establishing permanency for a child in the dependency system. The bill also outlines the time limitations applicable to dependency cases.

Section 5 Federal Law

The bill provides that ch. 39, F.S., does not supersede the requirements of the ICWA, MEPA, or their implementing regulations and encourages the DCFS to enter into agreements with recognized American Indian tribes.

Section 6 Requirements for Placement of Children; Exemptions

The bill creates a new section to describe the background screening requirements for the out-of-home placement of children and the procedures for seeking review of the department's denial of placement of a child based on a disqualifying criminal offense.

Specifically, the bill provides DCFS may conduct a criminal records checks on any person being considered for placement of a child. Approval for placement with any person other than a parent may not be granted in any case in which a criminal records check reveals a felony conviction in a court for:

- Child abuse, abandonment, or neglect; spousal abuse; a crime against children, including child pornography, or a crime involving violence, including sexual battery, sexual assault, or homicide, but not including other physical assault or battery, if the felony was committed at any time; or
- Physical assault, battery, or a drug-related offense if the felony was committed within the past 5 years.

DCFS may place a child in a home that otherwise meets placement requirements if state and local criminal records checks do not disqualify the applicant and if DCFS has submitted fingerprint information to the Department of Law Enforcement for forwarding to the Federal Bureau of Investigation and is awaiting the results of the federal criminal records check.

Persons with whom placement of a child is being considered must disclose to DCFS any prior or pending local, state, or federal criminal proceedings in which they are or have been involved. The results of any criminal records check of a parent conducted under this section must be considered in determining whether placement with the parent will jeopardize the safety of the child being placed.

The court may review the decision of the department to grant or deny an exemption. The court must prepare written findings to support its decision in this matter. A person seeking placement of a child, but has been denied by DCFS has the burden of setting forth sufficient evidence of rehabilitation.

Section 7 Mandatory Reports of Child Abuse

The bill provides that the duty to report to the central abuse hotline includes the reasonable suspicion that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care. The hotline is authorized to accept such reports. The bill also adds a child who is known or suspected to be a victim of human trafficking to the list of offenses defined as “criminal conduct” that DCFS is to immediately forward to a law enforcement agency.

Section 8 Initiation of Protective Investigations

The bill 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. The bill requires parents or legal custodians to notify the protective investigator of any change in the location or residence of a child while an investigation is open, and to clarify that this notification can serve as the basis for a missing child report to law enforcement.

Section 9 Child Protective Teams

The bill amends s. 39.303, F.S., to authorize the Child Protection Teams of the Department of Health to provide assessment and support in any report alleging sexual abuse of a child.

Section 10 Placement in Shelter

The bill amends ss. 39.402(10) and (16), F.S., to require that the order at the shelter²³ 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. The bill 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. The bill requires the court to advise the parents that their parental rights may be terminated if the parents fail to substantially comply with their case plan.

Section 11 Adjudicatory Hearings

The bill 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 must inquire, and the parents provide, the names and location information of all relatives whom they wish to be considered for placement of the child. Further, the bill requires the court to advise the parents that their parental rights may be terminated if the parents fail to substantially comply with their case plan.

Section 12 Relative Caregiver Program

The bill provides that children who are in a permanent guardianship with a relative are eligible for the relative caregiver program.

²³ Section 39.01(64), F.S., provides that a “shelter” is 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.

Section 13 Disposition Hearings

The bill amends s. 39.521, F.S., to remove the limitation on considering placement of a child with an adult relative at a later date when no suitable relative is earlier identified.

Section 14 Postdisposition Change of Custody

The bill requires 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 15 Case Plan Development

The bill creates new sections of ch. 39, F.S., describing the procedural and other requirements for developing a case plan, describing the tasks and services that must be addressed in a case plan and describing the process and grounds for case plan amendments. The DCFS must develop a case plan in conjunction with the child's parents, any court-appointed guardian ad litem, and if appropriate the temporary custodian of the child.

The parent of the child may receive assistance in preparing the case plan, and the parent must be informed of his/her right to assistance from counsel. Should a parent not participate in the preparation of a case plan, DCFS must document that and prepare a case plan without the parent's assistance. A parent may then petition the court for review of the provision(s) of the case plan with which he/she disagrees.

A case plan must include the following information: a description of the problem being addressed; the permanency goal; a description of the reunification goal (if that is applicable); the date compliance expires (the compliance period expires no later than 12 months after the date the child was initially removed from the home or the date the case plan was approved by the court); and a written notice to the parent that failure to comply with the plan may result in the termination of parental rights sooner than the compliance period.

A case plan should be signed by all the parties, yet the parent's failure to sign does not preclude a court from accepting the case plan. The case plan must describe the role of the foster parents or legal custodians, the minimum number of face-to-face meetings to be held each month between the parents and DCFS's family services counselors, and the parent's responsibility for financial support of the child.

When adoption is the ultimate goal for the child, the case plan must include documentation of the steps to locate an adoptive family.

Once a case plan has been developed, DCFS must provide the following procedural requirements.

- If the case plan requires the department to provide services to the parents or the child and the parents agree to begin compliance with the case plan before the case plan's acceptance by the court, the department must make the appropriate referrals for services that will allow the parents to immediately begin the agreed upon tasks and services.
- After the case plan has been agreed upon and signed by the parties, a copy of the plan must immediately be given to the parties, including the child, if appropriate, and to other persons as directed by the court.

Section 16 Case Plan Tasks

The bill describes the tasks and services which must be addressed in a case plan. The services described in the case plan must be designed to improve the conditions in the home and aid in

maintaining the child in the home, facilitate the child's safe return to the home, ensure proper care of the child, or facilitate the child's permanent placement. The services offered must be the least intrusive possible into the life of the parent and child, must focus on clearly defined objectives, and must provide the most efficient path to quick reunification or permanent placement.

The case plan must describe each of the tasks with which the parent must comply and the services to be provided to the parent, specifically addressing the identified problem. Should the child be in an out-of-home placement, the case plan must include additional specific information.

Section 17 Case Plan Amendments

The bill describes the process and grounds for case plan amendments. Once a case plan has been developed these provisions would be the only method of amending that plan. However, the case plan may be amended at any time in order to change the goal of the plan, employ the use of concurrent planning, add or remove tasks the parent must complete to substantially comply with the plan, provide appropriate services for the child, and update the child's health, mental health, and education records.

The case plan may also be amended:

- By the court when all parties are in agreement regarding the amendments and the amended plan is signed by all parties and submitted to the court with a memorandum of explanation.
- To change the goal of the plan, employ the use of concurrent planning, or add or remove tasks the parent must complete in order to substantially comply with the plan if there is a preponderance of evidence demonstrating the need for the amendment.
- To provide appropriate services to the child if there is competent evidence demonstrating the need for the amendment.

Section 18 Court Approval of Case Plan

The bill amends s. 39.603, F.S., to make technical and conforming changes, and provides that all case plans and amendments must be approved by the court.

Section 19 Permanency Determination by the Court

The bill amends s. 39.621, F.S., to provide 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. Further the bill provides that the best interest of the child is the primary consideration of the permanency goal for the child.

The bill also specifies the provisions of the permanency options of permanent guardianship of a dependent child, permanent placement with a fit and willing relative, and another planned permanent living arrangement.

Sections 20-22 Newly Created Permanency Options

This bill creates three new permanency options for children in the dependency system. While these new options are deemed lower priority than either reunification or adoption, they are nonetheless intended to be permanent. These permanency options, discussed in the sections below, differ from an adoption. A few of those differences are: the permanency options do not authorize any rights of inheritance for the child; absent a termination of parental rights, the permanency options do not exclude the possibility of parental reunification; and the court has continuing oversight in all of the permanency placement options.

Section 20 Permanent Guardianship of a Dependant Child

The bill describes the permanency options of permanent guardianship of a dependent child, and conforms this permanency option to the option described in federal law. If a court determines that reunification or adoption is not in the best interest of the child, the court may place the child in a permanent guardianship with a relative or other adult approved by the court.

Placement of a child in a permanent guardianship does not terminate the parent-child relationship. Nor does the placement preclude the right of the child to inherit from his or her parents, the parents' right to consent to the child's adoption, or the parents' responsibility to provide financial, medical, and other support for the child as ordered by the court.

Section 21 Permanent Placement with Fit and Willing Relative

The bill describes the permanency options of permanent placement with a fit and willing relative and conforms this permanency option to that described in federal law.

The bill provides for permanent placement of a child with a fit and willing relative. Such a placement can occur when: the child has been in the placement for at least the preceding 6 months; the relative has made a commitment to provide for the child until the child reaches the age of majority and to prepare the child for adulthood and independence; the relative is suitable and able to provide a safe and permanent home for the child; and the relative agrees to give notice of any change in his or her residence or the residence of the child.

The court must give that relative an order establishing his or her authority to care for the child, and DCFS must continue to supervise the placement with the relative until further court order.

Section 22 Another Planned Permanent Living Arrangement

The bill describes the permanency options of permanent placement with another planned permanent living arrangement and conforms this permanency option to the options described in federal law.

If a court finds that reunification is not in the best interest of a child, the court may approve placement of the child in another planned permanent living arrangement. The placement in such arrangement may occur if: the court finds a more permanent placement, such as adoption, permanent guardianship, or placement with a fit and willing relative, is not in the best interest of the child; DCFS has documented reasons the placement will endure and how the proposed arrangement will be more stable and secure than ordinary foster care; the court finds that the health, safety, and well-being of the child will not be jeopardized by such an arrangement; and there are compelling reasons to show that another placement is the most appropriate permanency goal.

Section 23 Judicial Review

The bill amends s. 39.701, F.S., to revise requirements for contents of social studies reports prepared by social service agencies and submitted for periodic review by the court. The proposed language would require reports to include copies of the child's current health and education records as identified in new s. 39.6012., F.S.

Also, considerations for the court or citizen review panel conducting a periodic review (every six months or more frequently if required) are revised to incorporate the provisions of this bill. The current requirement, that the court review the child's permanency goal at the judicial review held no later than 12 months after the child is placed in shelter care, is revised to require review after six months. If the

court makes a written finding that it is not likely that the child will be reunified within 12 month, the department must file a motion for concurrent planning²⁴ for the child.

Section 24 Initiation of Termination of Parental Rights Proceedings; Judicial Review

The bill amends s. 39.703, F.S., to provide the circumstances under which DCFS is required to file or is excused from filing a termination of parental rights petition at the time of the 12-month judicial review. It provides authority for the court to review DCFS's decision not to file this petition on motion of any party or its own motion.

Section 25 Grounds for Termination of Parental Rights

The bill amends s. 39.806, F.S., to provide 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 for compliance expires.

Section 26 Manifest Best Interests of the Child

The bill 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 non-adoptive relative placement may not be considered as a factor weighing against the termination of parental rights. Also, if a child has been in a stable or pre-adoptive 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.

Section 31 Petition for Termination of Parental Rights; Filing; Elements

The bill re-enacts s. 39.802(5), F.S., to incorporate the revisions in the bill.

Section 35 Site Selection of Community Residential Homes

The bill repeals ss. 39.601, 39.622, 39.623, 39.624, and 435.045, F.S., relating to case requirements, long-term custody of a dependent child, long-term licensed custody of a dependant child, independent living, and background screening of certain persons before a dependent child is placed in their home.

Miscellaneous Sections

Sections 27-30 and 32-34 amend ss. 39.811, 39.0015, 39.205, 39.302, 39.828, 63.092, and 419.001 F.S., to make technical and conforming changes and to update cross-references.

C. SECTION DIRECTORY:

Section 1 amends s. 39.01, F.S., relating to definitions.

Section 2 amends s. 39.0121, F.S., relating to rulemaking authority.

Section 3 amends s. 39.013, F.S., related to procedures and right to counsel for parents in dependency proceedings.

Section 4 creates s. 39.0136, F.S., relating to time limitations and continuances.

²⁴ "Concurrent planning" means "establishing a permanency goal in a case plan that uses reasonable efforts to reunify the child with the parent, while at the same time establishing another goal," such as adoption or permanent guardianship/placement. New definition from this bill.

Section 5 creates s. 39.0137, F.S., relating to federal law and rulemaking authority.

Section 6 creates s. 39.0138, F.S., relating to requirements for placement of children and exemptions from disqualification.

Section 7 amends s. 39.201, F.S., relating to the central abuse hotline and mandatory reports of abuse, neglect, abandonment, and death.

Section 8 amends s. 39.301, F.S., relating to child protective investigations.

Section 9 amends s. 39.303, F.S., relating to child protection teams.

Section 10 amends s. 39.402, F.S., relating to placement in a shelter.

Section 11 amends s. 39.507, F.S., relating to adjudicatory hearings and orders of adjudication.

Section 12 amends s. 39.5085, F.S., relating to the Relative Caregiver Program.

Section 13 amends s. 39.521, F.S., relating to disposition hearings and powers of disposition.

Section 14 amends s. 39.522, F.S., relating to postdisposition change of custody.

Section 15 creates s. 39.6011, F.S., relating to case plan development.

Section 16 creates s. 39.6012, F.S., relating to case plan tasks and services to be provided.

Section 17 creates s. 39.6013, F.S., relating to amendments to a case plan.

Section 18 amends s. 39.603, F.S., relating to court approval of case planning.

Section 19 amends s. 39.621, F.S., relating to permanency determinations by the court.

Section 20 creates s. 39.6221, F.S., relating to the permanent guardianship of a child.

Section 21 creates s. 39.6231, F.S., relating to permanent placement of a child with a fit and willing relative.

Section 22 creates s. 39.6241, F.S., relating to another planned permanent living arrangement.

Section 23 amends s. 39.701, F.S., relating to judicial review.

Section 24 amends s. 39.703, F.S., relating to the initiation of termination of parental rights proceedings and judicial review.

Section 25 amends s. 39.806, F.S., relating to grounds for termination of parental rights.

Section 26 amends s. 39.810, F.S., relating to manifest best interest of the child.

Section 27 amends s. 39.811, F.S., relating to powers and orders of disposition.

Section 28 amends s. 39.0015, F.S., relating to child abuse prevention training in the district school system.

Section 29 amends 39.205, F.S., relating to penalties relating to the reporting of abuse, abandonment, or neglect.

Section 30 amends s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment, or neglect.

Section 31 amends s. 39.802, F.S., relating to petitions for termination of parental rights.

Section 32 amends s. 39.828, F.S. relating to the appointment of a guardian advocate for drug dependent newborns.

Section 33 amends s. 63.092, F.S., relating to reports to the court of intended placement by an adoption entity, at-risk placements, and preliminary studies.

Section 34 amends s. 409.165, F.S., relating to alternative care for children.

Section 35 amends s. 419.001, F.S., relating to site selection of community residential homes.

Section 36 repeals ss. 39.601, 39.622, 39.623, 39.624, and 435.045, F.S.

Section 37 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Unknown.

2. Expenditures:

Unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Children and Family Services' fiscal analysis suggests the passage of this bill will save Florida just under \$1 million in penalties from the federal government for lack of consistency with federal laws and regulations. However, the department does not anticipate any fiscal impact associated with the implementation of this bill.

The bill removes areas of confusion that 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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Children and Family Services is required to adopt rules to:

- Make available to all physical custodians and family services counselors the information required by s. 39.6012(2), F.S. and for ensuring that this information follows the child until permanency has been achieved; and
- Ensure that the federal Indian Child Welfare Act and the Multi-Ethnic Placement Act of 1994 are implemented.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The provisions in this bill regarding criminal history screening of prospective placements appear confusing. (Lines 1104-1148). For instance, the provisions refer to physical assault which could be a misdemeanor, s. 784.011, F.S, and to sexual assault which would appear to be more properly defined as sexual battery under s. 794.011, F.S. The provisions also imply, but do not specifically provide, that DCFS may waive prior convictions in certain circumstances.

The bill attempts to bring Florida law into compliance with federal laws and regulations. Nevertheless, not all of the provisions of the Code of Federal Regulations pertaining to Title IV-E foster care programs have been implemented. For instance the bill does not include provisions of 45 C.F.R. s. 1356.21 pertaining to foster care maintenance payments program implementation requirements. Specifically, the bill does not include: trial home visits, 45 C.F.R. s. 1356.21(e); the provisions the state filing a petition to terminate the parental rights of a foster child who has been the responsibility of the state for 15 of the last 22 months, 45 C.F.R. s. 1356.21(i)(1)(i); the provisions the state filing a petition to terminate the parental rights of a parent who has been convicted of an enumerated felony, 45 C.F.R. s. 1356.21(i)(1)(iii); the provisions related to the removal of a child from the home of a specified relative, 45 C.F.R. s. 1356.21(k);; or the provisions related to the review of payments and licensing standards, 45 C.F.R. s. 1356.21(m).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.