

The Florida Senate
PROFESSIONAL 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: Judiciary Committee

BILL: CS/SB 1388

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Storms

SUBJECT: Adoption and Child Protection

DATE: March 26, 2007

REVISED: 03/28/07

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|------------------|
| 1. | <u>Toman</u> | <u>Jameson</u> | <u>CF</u> | <u>Fav/CS</u> |
| 2. | <u>Maclure</u> | <u>Maclure</u> | <u>JU</u> | <u>Favorable</u> |
| 3. | <u></u> | <u></u> | <u>HA</u> | <u></u> |
| 4. | <u></u> | <u></u> | <u></u> | <u></u> |
| 5. | <u></u> | <u></u> | <u></u> | <u></u> |
| 6. | <u></u> | <u></u> | <u></u> | <u></u> |

I. Summary:

This bill renames the Office of Child Abuse Prevention as the Office of Adoption and Child Protection (Office) and revises the purpose of the Office to include the promotion of adoption and the support of adoptive families.

The bill renames the director of the Office as the Chief Child Advocate and renames the Child Abuse Prevention Advisory Council as the Child Abuse Prevention and Permanency Advisory Council. The bill requires the Office, in conjunction with the Department of Children and Families (DCF) and the Department of Education (DOE), to develop a certification program for professionals who provide services related to adoption.

The bill authorizes the Office to establish a direct-support organization and specifies the purposes, requirements, and objectives of the organization.

The bill establishes an adoption-promotion subsidy program and requires that all funding appropriated for this program be paid as subsidies to adoptive families.

The bill substantially amends the following sections of the Florida Statutes: 39.001, 39.0014, and 39.01. The bill creates sections 39.0011 and 409.1661, Florida Statutes.

II. Present Situation:

Child Abuse and Prevention

In 2004, Florida's rate of child maltreatment was the highest in the nation, with 32.5 victims per 1,000 children.¹ During 2004, according to the Florida Child Abuse Death Review Team, at least 108 Florida children died from abuse or neglect at the hands of their parents or caretakers. Echoing national trends, 56 percent of the deaths were caused by neglect.

The cost of child maltreatment to society is significant. National estimates of direct and indirect impacts range from \$24 to \$94 billion each year, and many argue that these estimates are likely to understate the true costs due to the difficulty in capturing the full range of indirect costs such as cash and food assistance.²

In 2006, the Legislature established a centralized office to examine, oversee, and implement abuse-prevention services by creating the Office of Child Abuse Prevention within the Executive Office of the Governor.³ Under s. 39.001, F.S., the office is directed to develop a state plan for the prevention of child abuse, abandonment, and neglect of children. Appropriate state and local agencies – including the Department of Children and Families (DCF or the department), Department of Education (DOE), Department of Juvenile Justice, Department of Corrections, Department of Law Enforcement, Agency for Persons with Disabilities, and Agency for Workforce Innovation – and organizations must be provided an opportunity to participate in the development of the state plan.

Adoption

Although prevention of child abuse was the focus of the 2006 legislation, increasing the adoption rate for children who have been abused or neglected and cannot safely return to their families has long been a goal of the state's child welfare system. Although the number of adoptions of foster children in FY 2004-2005 was more than double the number in FY 1998-1999,⁴ there are still many children waiting to be adopted.

As of July 1, 2005, 3,212 foster children were available for adoption. The DCF and community-based care lead agencies finalized 3,011 foster child adoptions in FY 2005-06.⁵ Forty-one

¹ National Center on Child Abuse Prevention Research, Prevent Child Abuse America, "Child Maltreatment: Reports Victims and Fatalities" (May 2006), at http://member.preventchildabuse.org/site/PageServer?pagename=research_fact_sheets (last visited March 9, 2007).

² Suzette Fromm, *Total Estimated Cost of Child Abuse and Neglect in the United States: Statistical Evidence* (2001), available at http://member.preventchildabuse.org/site/DocServer/cost_analysis.pdf?docID=144 (last visited March 9, 2007).

³ Section 1, ch. 2006-194, L.O.F.

⁴ Florida Legislature, Office of Program Policy Analysis and Government Accountability (OPPAGA), *Child Welfare System Performance Mixed in First Year of Statewide Community-Based Care*, Report No. 06-50, 6 (June 2006).

⁵ Memorandum from Becky Vickers, staff of the Office of Program Policy Analysis and Government Accountability, to staff of the Senate Committee on Children, Families, and Elder Affairs, "Florida's Adoption Process and Financial Assistance for Families" (March 9, 2007) (on file with the Senate Committee on Judiciary).

percent of children wait more than two years from the time they become available for adoption to be adopted, and 37 percent wait more than three years.⁶

Section 409.166(1), F.S., which relates to special needs children and subsidized adoption, provides that:

It is the intent of the Legislature to protect and promote every child's right to the security and stability of a permanent family home. The Legislature intends to make available to prospective adoptive parents financial aid which will enable them to adopt a child in foster care who, because of his or her special needs, has proven difficult to place in an adoptive home. In providing subsidies for children with special needs in foster homes, it is the intent of the Legislature to reduce state expenditures for long-term foster care. *It is also the intent of the Legislature that placement without subsidy be the placement of choice unless it can be shown that such placement is not in the best interest of the child.*

(Emphasis added.)

The statute provides that authorization for an adoption subsidy is to be granted only when all other resources available to place the child have been thoroughly explored and it can be clearly established that this is the most acceptable plan for providing permanent placement for the child. However, the statute also gives DCF a legislative directive that its policies should not result in denying any child an adoption when a subsidy would make an adoption possible.⁷

The department's policies and procedures state that the best interest of the child should be the overriding placement factor, even if the family identified as most suitable can only adopt the child with a subsidy. To be consistent with statute, department policies and procedures require that staff make reasonable efforts to place a child for adoption without adoption assistance and document that these efforts have been made. The majority of families who adopt children from the state of Florida receive an adoption subsidy.⁸

Pursuant to s. 409.166, F.S., parents who adopt a child defined as a "special needs child" may qualify both for special financial assistance in completing the adoption and for subsidies and services after the adoption, depending on the needs of the child and the family.

A "special needs child" is defined under s. 409.166(2)(a), F.S., as:

a child whose permanent custody has been awarded to the department or to a licensed child-placing agency and

1. Who has established significant emotional ties with his or her foster parents; or
2. Is not likely to be adopted because he or she is:

⁶ Florida Department of Children and Families, adoption fact sheet, at <http://www.dcf.state.fl.us/adoption/faq.shtml> (last visited March 8, 2007).

⁷ Vickers, *supra* note 5.

⁸ *Id.*

- a. Eight years of age or older;
- b. Mentally retarded;
- c. Physically or emotionally handicapped;
- d. Of black or racially mixed parentage; or
- e. A member of a sibling group of any age, provided two or more members of a sibling group remain together for purposes of adoption.

The majority of children available for adoption from the state meet the definition of special needs.

The different types of financial assistance available to families who adopt children provide for both recurring and non-recurring expenses, and are predominately administered by the lead community-based care agencies. Some types of financial assistance are not available to families who adopt children without special needs unless the child placing agency can document that it was not able to find a family willing to adopt the child without a subsidy. The following chart describes the types of financial assistance available to adoptive families:⁹

| Type of Assistance | Funding Source | Assistance Description |
|--------------------------------------------------------------------|------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Available to Families Who Adopt Children with Special Needs | | |
| Maintenance Subsidy | Federal Title IV-E, Federal Temporary Assistance for Needy Families, and State General Revenue | This is a monthly payment made to the adoptive family to assist in the support of the special needs child. The amount of the subsidy is 80% of the current standard foster care board rate and ranges from \$296.80 to \$365.60 per child per month, depending on the child’s age and needs. The funding source used for the subsidy depends on which eligibility criteria the child meets. Children eligible for federal Title IV-E assistance are automatically qualified to continue Medicaid coverage after the adoption. Payments are made by the lead agency to the adoptive parent(s). The majority of families who adopt special needs children receive a maintenance subsidy. |
| Medical Subsidy | State General Revenue | Designed to help cover the costs of treating physical, mental, or emotional conditions that existed prior to the adoption. However, payment for services must first be refused by Medicaid, Children’s Medical Services, and Children’s Mental Health before this subsidy is available. The Department of Children and Families makes payments directly to the provider. |
| Non-Recurring Expenses | Federal Title IV-E | Reimburses adoptive parents up to \$1,000 per child for some of the costs incurred in connection with a special needs adoption. Such costs include attorney fees, acquiring a new birth certificate, travel expenses, and physical and psychological exams of the adoptive parents. The lead agency makes payments directly to the adoptive parent(s). |
| Available to Families for Any Foster Child Adoption | | |
| College Tuition Exemption | N/A | Children who are adopted through the Department of Children and Families and lead agencies after May 5, 1997, are eligible to receive up to four years of college tuition exemptions at Florida universities, colleges, and vocational training schools. Because this is a waiver, no funds are exchanged. |
| State Employee Benefit | State General Revenue | Any full time or part time Florida state employee who adopts a special needs child is eligible to receive a monetary benefit in the amount of \$10,000 per child. Any full-time or part-time Florida state employee who adopts a non-special needs child is eligible to receive a monetary benefit of \$5,000 per child. |
| Federal Income Tax Credit | N/A | Adoptive families can receive a tax credit of up to \$10,960 per child. The tax credit applies to domestic and international adoptions, but the procedures are not the same for the two types of adoptions. Adoptive parents pursuing international adoptions can claim adoption expenses for the credit only after |

⁹ *Id.*

finalization; adoptive parents pursuing domestic adoptions can claim expenses for the credit even if the adoption does not go through.

Footnote omitted. Source: Department of Children and Families and Office of Program Policy Analysis and Government Accountability (OPPAGA) analysis.

The primary source of funding for maintenance adoption subsidies is Title IV-E, Section 473 of the Social Security Act. Title IV-E is an open-ended entitlement program that partially funds services to maintain adoptive placements for children who meet certain eligibility criteria while in foster care, such as having a low family income. Title IV-E provides matching funds for providing the necessary administrative functions related to the adoptive placement and conducting staff and adoptive parent training. In addition, the state receives a Temporary Assistance to Needy Families (TANF) block grant each year, and uses the funds for child welfare and programs that sustain children and families such as childcare. TANF funds can be used for services for all children who meet financial eligibility criteria.¹⁰

Title IV-E provides that the amount of adoption assistance payments cannot exceed the foster care maintenance payment that would have been paid during the period if the child with respect to whom the adoption assistance is made had been in a foster family home.¹¹

According to DCF, approximately 90 percent of children adopted out of foster care are special needs children. For those children, the average maintenance subsidy is \$3,792, which is funded largely with federal dollars, depending on eligibility.¹² The remaining 10 percent of children adopted out of foster care – those who are not special needs children – do not qualify for any federal dollars.

Section 110.152, F.S., provides a one-time monetary benefit to state employees who adopt a special needs child or child in the custody of DCF. Employees who adopt a special needs child receive a \$10,000 one-time benefit paid over one year, and employees who adopt a foster child receive a \$5,000 one-time benefit paid over one year.

III. Effect of Proposed Changes:

This bill:

- Renames the Office of Child Abuse Prevention as the Office of Adoption and Child Protection (Office) and revises the purpose of the Office to include the promotion of adoption and the support of adoptive families.
 - Renames the director of the Office as the Chief Child Advocate and renames the Child Abuse Prevention Advisory Council as the Child Abuse Prevention and Permanency Advisory Council.

¹⁰ *Id.*

¹¹ U.S. Social Security Administration, *Compilation of the Social Security Laws: Adoption Assistance Program*, http://www.ssa.gov/OP_Home/ssact/title04/0473.htm.

¹² If an adopted child qualifies for Title IV-E funds, the subsidy is 58 percent federally funded; if the child qualifies for Temporary Assistance for Needy Families (TANF), the subsidy is 100 percent federally funded.

- Requires the Office, in conjunction with the Department of Children and Families (DCF or the department) and the Department of Education (DOE), to develop a certification program for professionals who provide services related to adoption.
- Authorizes the Office to establish a direct-support organization and specifies the purposes, requirements, and objectives of the organization.
- Establishes an adoption-promotion subsidy program and requires that all funding appropriated for this program be paid as subsidies to adoptive families.

Renaming of Child Abuse Prevention Office

Section 1 amends s. 39.001, F.S., changing references to the Office of Child Abuse Prevention to the Office of Adoption and Child Protection and adding the promotion of adoption and the support of adoptive families to references made to the purposes and goals of the Office.

This bill renames the director of the Office as the Chief Child Advocate. The Chief Child Advocate must:

- Formulate and recommend rules pertaining to the promotion of adoption, support of adoptive families, and the implementation of child abuse prevention efforts;
- Act as the Governor's liaison with state agencies, other state governments, and the public and private sectors on matters that relate to the promotion of adoption, support of adoptive families, and child abuse prevention;
- Work to secure funding for the promotion of adoption, support of adoptive families, and implementation of child abuse prevention efforts;
- Develop a strategic program and funding initiative for the promotion of adoption, support of adoptive families, and implementation of child abuse prevention efforts;
- Advise the Governor on statistics related to adoption and child abuse trends in the state; and
- Develop adoption and child abuse prevention public awareness campaigns.

Under existing s. 39.001, F.S., the Office is authorized and directed to:

- Oversee the preparation and the implementation of a state plan and revise and update the plan as necessary;
- Conduct or provide for continuing professional education and training in the prevention of child abuse and neglect;
- Work to secure funding;
- Make recommendations pertaining to agreements or contracts for the establishment and development of programs and services, training programs, and multidisciplinary and discipline-specific training programs for professionals; and
- Monitor, evaluate, and review the development and quality of local and statewide services and programs and distribute and publish an annual report of its findings before January 1 of each year. The report is to include a summary of the activities of the Office,

a summary of adoption data and child abuse prevention data, and recommendations for improvement.

This bill further requires the activities of the Office to include the promotion of adoption and the support of adoptive families in addition to child abuse prevention efforts.

This bill renames the Child Abuse Prevention Advisory Council as the Child Abuse Prevention and Permanency Council, and specifies that an adoptive parent who has adopted a child from within the child welfare system shall also serve as a member of the council. The bill makes the promotion of adoption and support of adoptive families part of the council's mission.

This bill directs the Office, DCF, and DOE to work together to develop a postgraduate certification program for mental health and education professionals who provide services to adoptive children and families.

The statute requires each district of DCF to develop a plan for its specific geographical region and to submit the plan to the advisory council. This bill specifies that the local plan must include information about the promotion of adoption and the support of adoptive families.

Section 3 and **4** amend ss. 39.0014 and 39.01, F.S., to conform to the change of the name of the Office of Child Abuse Prevention to the Office of Adoption and Child Protection.

Authorization of Direct-Support Organization

Section 2 creates s. 39.0011, F.S., authorizing the Office of Adoption and Child Protection to establish a direct-support organization to support the state in carrying out its purposes and responsibilities regarding the promotion of adoption, the support of adoptive families, and the prevention of child abuse, by raising money, receiving grants, and making expenditures on behalf of the Office.

The bill specifies that the direct-support organization must be:

- Incorporated under ch. 617, F.S., and approved by the Department of State as a not-for-profit corporation;
- Organized and operated to make expenditures to or for the benefit of the Office;
- Approved by the Office to be operating for the benefit of and in the best interest of the state.

The bill specifies the membership of the board of directors of the direct-support organization, requires that the organization operate under a written contract with the Office, and directs that all money received by the organization be deposited into an account and used in a manner consistent with the goals of the Office.

The bill does not make provision for the review, certification, or reversion upon dissolution of the direct-support organization.¹³

¹³ See, e.g., s. 744.7082, F.S.

Adoption Promotion Subsidy

Section 5 creates s. 409.1661, F.S., establishing an Adoption Promotion Subsidy. The bill requires DCF to make adoption subsidies available to prospective adoptive parents as follows:

- For the support and maintenance of special needs children, DCF may provide an adoption subsidy, in addition to the adoption assistance available under s. 409.166, F.S.,¹⁴ up to \$5,000 annually (unless a higher rate is approved by the DCF secretary), until the child's 18th birthday;
- For the support and maintenance of other children within the child welfare system, DCF may provide an adoption subsidy up to \$5,000 annually (unless a higher rate is approved by the DCF secretary), until the child's 18th birthday;
- For the support and maintenance of children who are not in the child welfare system, DCF may provide an adoption subsidy up to \$3,000 annually for three years following the finalization of the adoption, as long as the adopting parent is a resident of Florida.

In all situations, the adoption promotion subsidy must be an amount agreed to between the adopting parents and the department and must be memorialized in writing. The bill further provides adoption fees shall be waived in all cases where a child in the custody of the department is adopted. The bill specifies that fees may be waived for a family who adopts a child in the custody of a licensed child-placing agency or a child placed by an intermediary and who receives or is eligible for subsidies under this act.

The bill directs DCF to keep data and records necessary to evaluate the effectiveness of the subsidy, and to adopt rules to administer the program as necessary.

Effective Date

Section 6 provides the act will take effect on July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁴ Section 409.166, F.S., authorizes the Department of Children and Families to administer a subsidy program for families that adopt special needs children. See the "Present Situation" section of this staff analysis for additional information.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Eligible adopting families may receive financial assistance – ranging from up to \$3,000 to up to \$5,000 per year – through the adoption promotion subsidy program authorized by this bill. Assistance will be available to families who adopt children in the custody of the Department of Children and Families (DCF or department), as well as to those who adopt children privately.

The bill further provides adoption fees shall be waived in all cases where a child in the custody of DCF is adopted. The bill specifies that fees may be waived for a family who adopts a child in the custody of a licensed child-placing agency or a child placed by an intermediary and who receives or is eligible for subsidies under this act.

C. Government Sector Impact:

The bill authorizes an adoption promotion subsidy program. For special needs children adopted out of foster care, the difference between the federally funded portion of adoption assistance and \$5,000 will be paid with state dollars. For other children adopted out of foster care (approximately 10 percent of the total) and for private adoptions (estimated at 6,000 annually), the entire subsidy will be paid with state dollars.

The postgraduate certification program for professionals who provide services to adoptive children and families may have a fiscal impact on the Department of Education or DCF. According to DCF, Rutgers University has developed a postgraduate program to certify mental health professionals in adoption issues. Because the program was developed with a federal grant, it is available at no charge. The Department of Children and Families expects that the costs of implementing this program in Florida would include “train the trainer” fees (i.e., travel expenses for Rutgers’ professors to come to Florida and teach the course initially) and incentives for mental health professionals to encourage pursuit of the certification. The department estimates that these costs will be at least \$50,000.¹⁵

The bill does not provide any appropriations.

VI. Technical Deficiencies:

None.

¹⁵ Conversation with Kathy Waters, Department of Children and Families, March 12, 2007.

VII. Related Issues:

It is not clear what the role of the Department of Education will be in the development of a postgraduate certification program as required by the bill.

This Senate Professional 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 Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
