

The bill requires that photographs, reports on examinations, and X rays be preserved in a permanent form in records held by the Department of Children and Families, and it also designates the first Sunday after Labor Day as “Grandparents’ and Family Caregivers’ Day.”

This bill substantially amends the following sections of the Florida Statutes: 39.201, 39.202, 39.301, 39.304, 39.402, 39.502, 39.506, 39.5085, 39.6011, 39.6013, 39.701, 39.823, and 683.10.

II. Present Situation:

Kinship Care

The Child Welfare League of America (CWLA)¹ defines kinship care as “the full time care, nurturing and protection of children by relatives, members of their tribes or clans, godparents, stepparents, or any adult who has a kinship bond with a child.”²

The CWLA notes that “one of the most recent stunning changes in the child welfare system has been the major growth in the number of children in state custody who are living with their relatives.”³

In the United States, more than six million children -- approximately 1 in 12 -- are living in households headed by grandparents or other relatives.⁴ In many of these homes, grandparents and other relatives are taking on the primary responsibility for the child’s needs, without either of the child’s parents present in the home.⁵

The increase in recent years in the numbers of children living with relatives can be attributed to many factors, including:

- Increased reporting of abuse and neglect;
- Change in drug usage and addiction related to the spread of crack cocaine and other drugs;
- Increased levels of poverty;
- More children affected by HIV/AIDS;
- More parents struggling with physical and mental health problems;
- Family violence and parental incarceration; and
- Decline in the availability of traditional foster homes.⁶

¹ The Child Welfare League of America, founded in 1920, “provides direct support to agencies that serve children and families, improving the quality of the services they provide to more than nine million children every year.” Child Welfare League of America, *About CWLA: Fact Sheet*, <http://www.cwla.org/whowhat/more.htm> (last visited April 18, 2008).

² Child Welfare League of America, *Kinship Care: Fact Sheet*, <http://www.cwla.org/programs/kinship/factsheet.htm> (last visited April 18, 2008).

³ *Id.*

⁴ American Ass’n of Retired Persons, *State Fact Sheets for Grandparents and Relatives Raising Children* (Oct. 2007), http://www.grandfactsheets.org/state_fact_sheets.cfm (last visited April 18, 2008).

⁵ *Id.* Approximately 2.4 million children are in grandparent-headed homes without any parents present.

⁶ *About CWLA: Fact Sheet*, *supra* note 1.

In Florida, 258,952 children live in grandparent-headed households, which accounts for 7.1 percent of all the children in the state.⁷ There are another 86,152 children living in households headed by other relatives, accounting for 2.4 percent of all the children in the state.⁸ Of the children living in households headed by grandparents or other relatives, 151,492 are living there without either parent present.⁹ Although many children living with relatives are doing so pursuant to a court order after being adjudicated dependent pursuant to ch. 39, F.S., far more are living with relatives in informal arrangements, with no court involvement, often because their parents are incarcerated or addicted to drugs.¹⁰

In response to the growing needs of children living in kinship care homes in Florida and the many grandparents and other relatives who are providing the primary care for them, the University of South Florida's School of Social Work established the Kinship Support Center (Center). According to its website, the Center:

- Develops, maintains, and strengthens support groups for kinship caregivers and their children;
- Collaborates with the community to develop new, innovative services to address the needs and concerns of the kinship care family;
- Researches and develops techniques for working with children, kinship caregivers, biological parents, school systems, local and state service provider agencies, and the community;
- Serves as a statewide clearinghouse of kinship care information obtained at local, state, and federal level of government for service providers and caregivers;
- Provides training for service provider agencies, universities, and kinship caregivers; and
- Provides direct services to kinship caregivers throughout Florida by means of the Kinship Care Warmline, a statewide listening line for kinship caregivers who need emotional support and information and referral services, and provides direct services to children living in kinship care families through a school-based intervention pilot project.¹¹

Section 39.5085, F.S., establishes the Relative Caregiver Program through which relatives who care for dependent children are eligible for financial assistance within available funding limits.

Confidentiality of Records

Current law provides that all records held by the Department of Children and Families (DCF or the department) concerning reports of child abandonment, abuse, or neglect are to be confidential

⁷ American Ass'n of Retired Persons, *GrandFacts, Florida* (Nov. 2007), <http://www.grandfactsheets.org/doc/Florida%2007%20New%20Template.pdf> (last visited April 18, 2008).

⁸ *Id.*

⁹ *Id.*

¹⁰ See generally Judge Tracy Sheehan, *Relative Caregiver Legislative Priority 2007* (April 3, 2008) (on file with the Senate Committee on Children, Families, and Elder Affairs); James P. Gleeson, *Kinship Care Research and Literature: Lessons Learned and Directions for Future Research*, KINSHIP REPORTER VOL. 1, NO. 2 (Summer 2007), available at <http://www.cwla.org/programs/kinship/kinshipsummer2007.pdf> (last visited April 18, 2008).

¹¹ School of Social Work, Univ. of South Florida, *Kinship Support Center*, <http://www.cas.usf.edu/~krisman/> (last visited April 18, 2008).

and exempt from the provisions s. 119.07(1), F.S.¹² This includes reports made to the central abuse hotline and all records generated as a result of such reports.

The exemption authorizes release of the confidential and exempt records to specified agencies and persons or under specified circumstances.¹³ For example, the department may release otherwise confidential information to professionals as is necessary for the diagnosis and treatment of the child or of the person perpetrating abuse or neglect.¹⁴

Photographs and Medical Records in Cases of Abuse, Abandonment, or Neglect

Section 39.304, F.S., permits any person required to investigate cases of suspected child abuse, abandonment, or neglect to photograph the areas of trauma visible on a child who is the subject of the report, and requires any child protection team¹⁵ that examines a child to photograph visible trauma. Photographs of physical abuse injuries must be provided to the department for inclusion in the investigative file. Photographs of trauma caused by sexual abuse must be made part of the child protection team's medical record.¹⁶

Under certain circumstances, a child who is the subject of an abuse investigation may be referred for diagnosis to a licensed physician or an emergency department in a hospital without the consent of the child's parents or legal custodian.¹⁷ A licensed physician or advanced registered nurse practitioner who has reasonable cause to suspect that an injury is the result of child abuse, abandonment, or neglect may authorize a radiological examination to be performed on the child without the consent of the child's parent or legal custodian.¹⁸

Any facility licensed under ch. 395, F.S. must provide the department, its agent, or a child protection team that contracts with the department, any photograph or report on examinations made or X rays taken for the purpose of investigation or assessment of cases of abuse, abandonment, neglect, or exploitation of children.¹⁹

III. Effect of Proposed Changes:

This bill creates the "Zahid Jones, Jr., Give Grandparents and Other Relatives a Voice Act"²⁰ and makes a number of changes to sections of law relating to children in order to give relatives²¹ notice of all proceedings and hearings regarding a child.

¹² Section 39.202(1), F.S. Florida's Public Record law provides for the inspection and copying of public records by any person desiring to do so. *See* s. 119.07, F.S.

¹³ *See* s. 39.202(2), F.S.

¹⁴ Section 39.202(3), F.S.

¹⁵ Pursuant to s. 39.303, F.S., certain child abuse cases (e.g., cases involving head injury, bruising, sexual abuse, malnutrition, or death) must be referred to a Department of Health child protection team for assessment and other services. The child protection teams are comprised of representatives of school districts and appropriate health, mental, health, social service, legal service, and law enforcement agencies.

¹⁶ Section 39.304(1)(a), F.S.

¹⁷ Section 39.304(1)(b), F.S.

¹⁸ *Id.*

¹⁹ Section 39.304(3), F.S.

²⁰ Zahid Jones was a 3-year-old boy who was killed by his mother's boyfriend just over a month after DCF returned the child to his mother's home. *See* Elizabeth Wright, *State DCF grapples with questions in wake of Lee toddler's death*, NAPLES DAILY NEWS (June 17, 2007), available at

Specifically, the bill:

- Requires a child protective investigator (CPI) to make collateral contact with a relative in cases where services are refused (see **Section 4** of the bill);
- Allows a relative to submit a request to a CPI or case manager to receive notice of all proceedings involving the child (see **Section 4** of the bill);
- Provides that the case plan must describe the case manager's responsibility for forwarding a relative's request for notification of all proceedings and hearings to the attorney for the Department of Children and Families (DCF or the department) (see **Section 10** of the bill);
- Requires that a court order for shelter placement include a written finding that the court notified relatives who are providing out-of-home care for the child of the next dependency hearing and the importance of the active participation of the relatives who are providing out-of-home care in all proceedings and hearings (see **Section 6** of the bill);
- Requires that a court order for shelter placement include a written finding that the court notified relatives providing out-of-home care that they have a right to attend subsequent hearings, submit reports to the court, and speak to the court regarding the child (see **Section 6** of the bill);
- Requires the attorney for the department to notify any relative who has requested notification, of the date, time, and location of all proceedings involving the child, and to make all reasonable efforts to ensure that all relatives who have requested notification are given an opportunity to be heard by the court. The court can release the attorney from notifying a relative if the court finds that the relative's involvement is impeding the proceedings or is detrimental to the child's well-being (see **Section 7** of the bill);
- Provides that at the conclusion of an arraignment hearing, the relatives who are providing out-of-home care for a child must also be notified, in addition to the parties, of the date, time, and location for the next scheduled hearing (see **Section 8** of the bill); and
- Requires the attorney for the department to notify any relative who has requested notice of judicial review hearings (see **Section 12** of the bill).

Additionally, the bill amends ss. 39.201 and 39.301, F.S., providing that if a protective investigation is commenced based on a report to the central abuse hotline from certain specified reporters,²² the reporter must be given the contact information of the investigator within 24 hours after an investigator has been assigned. The bill also permits such a reporter to give a written

http://www.naplesnews.com/news/2007/jun/17/state_dcf_grapples_questions_wake_lee_toddlers_dea/ (last visited April 18, 2008); Rachel Myers, *A sad farewell to a young boy*, NEWS-PRESS.COM (June 21, 2007), available at <http://www.news-press.com/apps/pbcs.dll/article?AID=/20070621/SS08/706210374> (last visited April 18, 2008).

²¹ Pursuant to s. 39.01(63), F.S., "relative" means a grandparent, great-grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, niece, or nephew, whether related by the whole or half blood, by affinity, or by adoption. The term does not include a stepparent.

²² Section 39.201(1)(b), F.S., provides that persons in the following occupation categories are required to provide their names to the hotline staff: (1) physician, osteopathic physician, medical examiner, chiropractic physician, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons; (2) any other health or mental health professional; (3) Practitioner who relies solely on spiritual means for healing; (4) School teacher or other school official or personnel; (5) Social worker, day care center worker, or other professional child care, foster care, residential, or institutional worker; (6) law enforcement officer; or (7) judge.

summary of the report made to the central abuse hotline to the investigator, which will become part of the master file.

The bill also amends s. 39.201, F.S., to provide that the department's quality assurance program must analyze unaccepted reports called into the child abuse hotline by identified relatives as a part of the review of screened-out calls.

Section 39.202, F.S., relating to the confidentiality of child abuse reports, is amended to allow a physician, psychologist, or mental health professional engaged in the care of the child to have access to child abuse records.

The bill requires that photographs, reports on examinations, and X rays shall be preserved in a permanent form in records held by the department. According to the department, this provision codifies current practice.²³

The bill amends the intent language of the Relative Caregiver Program, located in s. 39.5085, F.S., to recognize the "valued resource uniquely available through grandparents and relatives of children." The bill authorizes the department to utilize available funds to develop liaison functions for relatives caring for children under ch. 39, F.S.

The bill amends s. 683.10, F.S., deleting the designation of "Grandmother's Day" and designating the first Sunday after Labor Day as "Grandparents' and Family Caregivers' Day."

The bill makes technical and conforming changes.

The bill has an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Parents have a fundamental liberty interest in determining the care and upbringing of their children. The interest is protected by both the Florida and United States

²³ Julie Mayo, *DCF Staff Analysis and Economic Impact Senate Bill Number 2644* (March 10, 2008) (on file with the Senate Committee on Children, Families, and Elder Affairs).

Constitutions.²⁴ This bill may implicate this fundamental right by allowing relatives to receive notice of all proceedings and hearings on a related child, and, therefore, the bill may be subject to constitutional scrutiny. Section 61.13(2)(b), F.S., used to read, in part:

The court may award the grandparents visitation rights of a minor [child] if it is deemed by the court to be in the child's best interest. *Nothing in this section shall be construed to require that grandparents be made parties or given notice of dissolution pleadings or proceedings*, nor shall such grandparents have legal standing as "contestants" as defined in s. 61.1306.²⁵

Allowing a relative to request, and a court to require, notice to all proceedings and hearings on a related child may be found to infringe upon the right of parents to raise their children as they see fit.

However, none of the court rulings that have dealt with grandparent visitation rights have affected a grandparent's right to petition for visitation and custody in proceedings under ch. 39, F.S., where the issue of the child's health and welfare and possibly the parents' fitness is already at issue before the court. A grandparent is entitled to reasonable visitation if the grandchild has been adjudicated dependent and removed from the parent's custody.²⁶ Accordingly, it appears that in ch. 39, F.S., proceedings, a relative may be able to request notice to all proceedings or hearings dealing with the related child without violating the parents' fundamental rights.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill is not expected to have a fiscal impact on the Department of Children and Families (department); however, there may be an increase in workload for the department attorneys in order to fulfill the notice requirements of the bill.²⁷

²⁴ See *Beagle v. Beagle*, 678 So. 2d 1271, 1275 (Fla. 1996); FLA. CONST. art. I, s. 23.

²⁵ Section 61.13(2)(b), F.S. (1978 Supp.); see also *Beagle*, 678 So. 2d at 1272-73; *Sullivan v. Sapp*, 829 So. 2d 951, 952 n.1 (Fla. 1st DCA 2002) (emphasis added). This portion of the statute has been struck down by courts as unconstitutional because it awarded grandparents visitation if it was in the child's best interest. The courts did not discuss the part of the statute discussing notice to pleadings or proceedings.

²⁶ Section 39.509, F.S.

²⁷ Dep't of Children and Families, *Dep't of Children and Families Traveling Amendment(s) Analysis, CA/SB 2644 BC 800010* (April 7, 2008) (on file with the Senate Committee on Judiciary).

VI. Technical Deficiencies:

On lines 225 and 229 of the bill, the word “that” modifies “relatives.” The Legislature may wish to change the modifying word to “who.”

VII. Related Issues:

The bill allows physicians, psychologists, and mental health professionals engaged in the care of a child to receive otherwise confidential reports of abuse concerning the child. The Department of Children and Families (DCF or the department) is already authorized to release confidential information to professionals as is necessary for the diagnosis and treatment of a child who is the subject of abuse or the person perpetrating abuse.²⁸ The bill appears to allow disclosure of abuse records to health care providers for the ordinary care of the child, rather than just for the care related to the abuse.

The bill requires that photographs, reports, and X rays be preserved in a “permanent form” by the department. It is unclear if “permanent” means the records must be held in perpetuity (which may be contrary to the state’s records retention policies) or if “permanent” is meant to describe the format of the records. If the latter is intended, it is unclear what formats would be considered permanent in nature.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Judiciary on April 21, 2008:

The committee substitute:

- Renames the bill the “Zahid Jones, Jr., Give Grandparents and Other Relatives a Voice Act.”
- Provides that if a protective investigation is commenced based on a report to the abuse hotline from certain specified reporters, the reporter must be given the contact information of the investigator within 24 hours after an investigator has been assigned. The committee substitute also permits such a reporter to give a written summary of the report made to the central abuse hotline to the investigator, which will become part of the master file.
- Requires that an order for placement of a child in shelter care contain the written finding that the court notified the parents, *relatives that are providing out-of-home care for the child*, or legal custodians of the next dependency hearing, as well as of the importance of the active participation of the parents, *relatives that are providing out-of-home care for the child*, or legal custodians in all proceedings and hearings.
- Requires that an order for placement of a child in shelter care contain the written finding that the court notified relatives who are providing out-of-home care for a child that they have a right to speak to the court regarding the child, if they desire.

²⁸ Section 39.202(3), F.S.

- Requires the attorney for the Department of Children and Families to make all reasonable efforts to ensure that all relatives who have requested notification of proceedings and hearings on a related child are given an opportunity to be heard by the court if the relative so desires.
- Makes technical and conforming changes.

CS by Children, Families, and Elder Affairs on April 8, 2008:

The committee substitute:

- Deletes the provision establishing a Grandparent Liaison Office within the Department of Children and Families (DCF or the department);
- Names the bill the “Zahid Jones Give Relatives a Voice Act”;
- Requires the department to include as part of its quality assurance for the central abuse hotline an analysis of unaccepted reports made by relatives;
- Allows psychologists and mental health professionals (in addition to physicians) to have access to child abuse records;
- Allows the relative of a child under ch. 39, F.S., to request notice of all proceedings involving the child, and makes other amendments to further that purpose;
- Amends the Relative Caregiver Program to authorize DCF to use funds for relative liaison functions;
- Deletes provisions relating to dissolution and custody proceedings;
- Deletes provisions amending the factors to be considered in petition for grandparent visitation; and
- Designates “Grandparents’ and Family Caregivers’ Day.”

B. Amendments:

None.