

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 164

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

SUBJECT: Children in Foster Care

DATE: March 11, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Fav/CS
2.	Brown	Cibula	JU	Pre-meeting
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 164 amends foster care law to further the goal of normalcy in foster care living situations.

This bill directs a caregiver of a foster child to permit the child to participate in age-appropriate extracurricular, enrichment, and social activities. The bill grants immunity to the caregiver from liability for harm to the child which occurs during the activity if the caregiver acts as a reasonable and prudent parent in permitting the activity.

This bill replaces the current requirement for normalcy plans and quarterly updates with an assessment of normalcy goals and objectives at judicial reviews.

The bill also requires a court to apply the best interests of the child standard in determining whether a child should be returned from the custody of a parent to the other parent who successfully completed treatment after committing acts of abuse or neglect. The court will continue to apply the endangerment standard in determining whether to return a child from the custody of a nonparent to a parent who successfully completes treatment.

This bill substantially amends sections 39.522 and 409.1451, and creates section 39.409, Florida Statutes.

II. Present Situation:

Normalcy for Children

Background

Each year, approximately 30,000 children in foster care age out of the foster care system nationwide, typically at 18 years of age. This number has risen steadily over the past decade.¹ In Florida, the number of children aging out of care has dropped in the last 3 years, with 1,181 youth aging out of care in 2011-2012.² These young adults experienced significant psychological trauma during their formative years. Trauma may have involved neglect and abuse, separation from home, friends, family and most things familiar, and multiple placements in homes and group settings.

The foster care system historically focused on safety and concern about liability, often creates huge barriers to the normalcy of a child's experiences growing-up. Children in care typically miss many rites of passage common to their peers. While their friends are getting their driver's licenses, most children in care are not since they generally have no one to teach them to drive or lack the money for insurance or driver's education, let alone access to a car.³ Getting a first job, participating in sports, camping with friends, and even going to the prom are all examples of activities that are a normal part of growing up for many children, but not foster youth.⁴

These problems compound for children who live their teen years in group homes. These children often also do not benefit from typical experiences to prepare them for adult life. These experiences include seeing an adult pay bills each month, do the laundry, buy groceries, pay taxes, arrange for car insurance, and other tasks required to run a household.⁵ In Florida, 60 percent of children 13-17 years of age in foster care live in group homes.⁶

Florida

The Department of Children and Families (DCF or department) and community-based care lead agencies (CBCs) manage and provide child protection, foster care, and adoption services, and participate in dependency proceedings. Foster care services include a range of independent living services. Section 409.1451(3), F.S., requires the department to adopt procedures in rule to

¹ Fostering Connections Resource Center, *Number of Youth Aging Out of Foster Care Continues to Rise; Increasing 64 Percent Since 1999* (Jan. 31, 2010). This report is available at

http://www.fosteringconnections.org/tools/assets/files/Connections_Agingout.pdf

² Provided as part of a data request from Senate Children, Families and Elder Affairs staff to the Department of Children and Families. Response received Dec. 21, 2012.

³ Martha Shirk & Gary Stangler, *On Their Own*, at vi (1st ed. Basic Books 2004).

⁴ *Id.* at vi and 1.

⁵ First Star and Children's Advocacy Institute of the University of San Diego School of Law, *The Fleecing of Foster Children: How We Confiscate Their Assets and Undermine Their Financial Security*, at iii (2011), available at http://www.caichildlaw.org/Misc/Fleecing_Report_Final_HR.pdf.

⁶ Provided as part of a data request from Senate Children, Families and Elder Affairs staff to the Department of Children and Families. Response received on December 21, 2012.

administer the independent living transition services program. Procedures include balancing the goals of normalcy and safety for children, with caregiver flexibility to enable a child to participate in normal life experience. The current rule addressing the role of licensed out of home caregivers:

- Requires caregivers to afford children every opportunity for social development, recreation, and normalcy of their lives. Children in licensed out of home care may attend overnight or planned outings if the caregiver approves activities as safe and appropriate. The case worker must be notified of the activity.
- Authorizes caregivers to allow foster children to attend activities without adult supervision depending on the child's age, maturity, and ability to make appropriate decisions. However, the caregiver must be prudent and conscientious about circumstances where the child is granted independence, including trips to the movies, mall, athletic events and work.
- Requires the child's services worker to approve overnight trips exceeding one night. These trips must not interrupt visitation.
- Provides that background checks are not required for normal school and community activities, such as dating and outings, school field trips, Cub Scout campouts, and activities with friends, families, and school and church groups.⁷

Former secretaries and the current secretary of the department issued memoranda requiring community-based care lead agencies and their providers to implement policies related to normalcy.⁸ Despite this, however, foster teens continue to express concern about normalcy in the foster care setting.⁹

Standard for Reunification

The overriding principle of ch. 39, F.S., in placement of children in dependency proceedings is the best interest of the child. Within ch. 39, F.S., however, the appropriate standard to use to determine a child's permanency, or permanent placement, appears inconsistent. Section 39.521, F.S., requires the court to determine at every review hearing which parent, if either, shall have custody. It further provides for the court to apply the best interest of the child standard when changing custody from one parent to another.¹⁰ In contrast, s. 39.522, F.S., provides that when deciding whether to reunite a child with a parent, the court shall determine whether the parent has substantially complied with the terms of the case plan to the extent that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by the return of the child.¹¹ This standard is commonly known as the endangerment standard, or a finding that reunification would or would not be detrimental to a child.¹² The endangerment standard is a much lower standard than the best interests of the child.

⁷ Rule 65C-13.029(1)(g)7.9., 10, and 11a., F.A.C.

⁸ See Memorandum from Lucy Hadi dated Aug. 31, 2005, Memorandum from George Sheldon dated Sept. 3, 2010, and Memorandum from David Wilkins dated Jan. 20, 2012. On file with the Senate Children, Families, and Elder Affairs Committee and the Judiciary Committee.

⁹ Independent Living Services Advisory Council. *2012 Annual Report*, page 9. This report is available at <http://www.dcf.state.fl.us/programs/indliving/docs/2012%20ILSAC%20Report%20final.pdf>

¹⁰ Section 39.521(3)(b)2., F.S.

¹¹ Section 39.522(2), Florida Statutes.

¹² *R.H. v. Department of Children and Families*, 948 So. 2d 898, 900 (Fla. 5th DCA 2007).

Even within a section of law, both standards may apply. In s. 39.621, F.S., the court must apply the best interest standard during a hearing to determine permanent placement of a child.¹³ A court can only modify a permanency placement if the court finds that the placement is no longer in the best interest of the child. At the hearing in which a parent has not had parenting rights terminated and seeks reunification or increased contact with the child, however, the parent must show that the safety, well-being, and physical, mental, and emotional health of the child is not endangered.¹⁴ Section 39.621(10), F.S., requires the court to base its decision on reunification or increased child contact on the endangerment standard. This same subsection of law, however, provides a list of factors for the court to consider, which has been referred to by at least one court as comprising the best interest standard.¹⁵

Several Florida District Courts of Appeal have upheld s. 39.522(2), F.S., the endangerment standard, as the controlling statute. Specifically, the courts have held that absent endangerment, the plain language of the statute requires the offending parent to be reunified with the child if he or she substantially complies with the case plan.¹⁶

In *S.V.-R v. Dept. of Children and Family Services*, the Third District Court of Appeal invalidated the trial court's use of the best interest standard and replaced it with the endangerment standard. "The 'best interests' and 'endangerment' standards are markedly different. This latter standard applies to a reunification or permanency hearing in which reunification is the primary goal and, as here, the offending parent has substantially complied with his or her case plan."¹⁷ The Second and the Fifth District Courts of Appeal generally seem to apply the endangerment standard to permanency reviews where reunification is the goal.¹⁸ Still, some trial courts apply the best interest standard as the standard, and at least one court of appeal appears to have applied both best interest and the endangerment standard to the same case.¹⁹

There was nothing adduced at the hearing to show that T.A. and D.B.'s safety, well-being, and physical, mental, and emotional health would be endangered by their reunification with the mother. . . . Our review of the record does not disclose

¹³ Section 39.621(1), F.S.

¹⁴ Section 39.621(9), F.S.

¹⁵ *S.V.-R v. Dept. of Children and Family Services*, 77 So. 3d 687, 691 (Fla. 3rd DCA 2011). The list of findings includes the compliance or noncompliance of the parent with the case plan; the circumstances of the dependency and whether they have been resolved; the stability and longevity of the child's placement; the preferences of the child, if the child is of sufficient age to communicate preference; and the recommendation of the current custodian and the guardian ad litem, if one has been appointed. Section 39.621(10), F.S.

¹⁶ An offending parent is a parent who is the perpetrator of the abuse or neglect that resulted in the child being removed from the home. The court considers a non-offending parent to be a parent who has done nothing to contribute to the child's dependency. *D.S. v. Dept. of Children and Families*, 900 So. 2d 628, 630 (Fla. 5th DCA 2005).

¹⁷ *S.V.-R* 77 So. 3d at 691.

¹⁸ *In re G.M.*, 73 So. 3d 320 (Fla. 2d DCA 2011); *K.E. v. Department of Children and Families*, 958 So. 2d 968 (Fla. 5th DCA 2007); *R.H. v. Department of Children and Families*, 948 So. 2d 898 (Fla. 5th DCA 2007); *M.M. v. Department of Children and Families*, 29 So. 3d 1200 (Fla. 5th DCA 2010); *A.L. v. Department of Children and Families*, 53 So. 3d 324 (Fla. 5th DCA 2010).

¹⁹ *D.S.*, 900 So. 2d, at 632 (Fla. 5th DCA 2005).

that there is competent substantial evidence to support a finding that the children's best interests would be served by permanent placement with R.A. and T.B.²⁰

In a later case, the Fifth District Court of Appeal cited case law that applied the endangerment standard but then mentioned the 'best interest' standard, albeit in a more circumspect context:

However, even if the mother could satisfy the standards for modification, the possibility of a future modification is not an excuse for ... failing to allow a parent a reasonable opportunity to complete a case plan in the absence of evidence that such opportunity would be fruitless or ... detrimental to the best interests of the children.²¹

III. Effect of Proposed Changes:

Participation by Foster Children in Extracurricular Activities

The bill amends foster care law to better enable foster children to participate in extracurricular, enrichment and other social activities. The bill also facilitates the ability of the caregiver to approve activities for foster children, without fear of civil liability. The bill specifies a standard, the reasonable and prudent parent standard, which governs whether a caregiver may be held liable for harm to a foster child while engaged in activities approved by the caregiver.

This bill:

- Defines the terms "age-appropriate," "caregiver," and "reasonable and prudent parent standard" which are used in reference to decision-making about extracurricular activities for a foster child.
- Grants a caregiver immunity from liability for harm to a child which occurs during an extracurricular, enrichment, and social activity if the caregiver acts as a reasonable and prudent parent in permitting the activity. The bill clarifies that this provision does not replace or restrict any existing liability protection in law.
- Requires the department to adopt rules specifying additional bases for normalcy in connection with the "reasonable and prudent parent" standard.

Postdisposition Relief

This bill provides and clarifies different standards for a court to use in determining whether to return a child to a parent after the court enters an adjudication of dependency.

- If the child is currently placed with a non-parent, to approve return of the child to the home, the court must apply the endangerment standard.
- If the child is currently placed with a parent, to approve return of the child to the other parent, the court must find that reunification is in the best interest of the child.

²⁰ *Id.* at 632.

²¹ *A.L. v. Department of Children and Families*, 53 So. 3d 324, 328 (Fla. 5th DCA 2010).

This clarifies that a child may not be returned to the parent who harmed the child simply on the basis that the risk of present or future harm is removed. Rather, the move must also be in the child's best interest if the child is currently living in the home of a stable, non-abusive parent.

Preparation for Independent Living

The bill replaces current law which requires caregivers to produce quarterly progress reports on age appropriate activities with inclusion of activities into the agency's judicial social study report provided to the court. Including information on normalcy activities in the overall judicial report may streamline and facilitate the sharing of information.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Children and Families expects that the bill will have an insignificant fiscal impact on the agency, if any.²²

VI. Technical Deficiencies:

None.

²² Dept. of Children and Families, *Staff Analysis and Economic Impact SB 164* (Jan. 11, 2013).

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on February 5, 2013:

- Replaces a reference to an administrative rule with a statutory reference.
- Clarifies the difference in standard for returning a child to a parent who has been abusive or neglectful in the past and who has completed a case plan when the child has been placed with the other parent and when the child has been placed with someone other than a parent.

B. Amendments:

None.