

**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 Children, Families, and Elder Affairs

---

BILL: SB 1044

INTRODUCER: Senators Garcia and Campbell

SUBJECT: Child Welfare

DATE: March 10, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	<b>Pre-meeting</b>
2.			JU	
3.			AP	

---

**I. Summary:**

SB 1044 makes a number of revisions to current law to improve the care of children in the child welfare system. Most of these changes are recommended by the Governor or the Department of Children and Families (DCF or the department) and seek to better ensure child safety.

Specifically, the bill:

- Requires the state to identify the father earlier in the legal process to allow for more placement options and family involvement for a child removed by the department.
- Allows the department to return an abused or neglected child to his or her home with an in-home safety plan when the conditions that caused the child to be removed are resolved rather than when the parents have substantially completed their case plan.
- Requires the department to consider the safety of any new children added to the home of a family after a child abuse investigation has begun.
- Requires a parent to be assessed for substance abuse and complete treatment when there is evidence of harm to a child as a result of substance abuse.
- Allows the state to terminate parental rights when a child has been placed in out-of-home care in any jurisdiction three or more times.
- Makes additional changes such as prohibiting payments under the Relative Caregiver Program when the parent is living with the relative along with the child, allowing the release of medical records by hospitals and physicians for child abuse cases, and using child abuse records to screen employees of group homes for foster children.

The bill also requires an assessment to determine the best placement for children removed from their home and allows certain children services councils with taxing authority to satisfy the requirement to be re-approved by the voters with an earlier referendum. The bill limits the use of state funds for administrative employee salaries of the state's privatized child welfare agencies, known as community-based care agencies, to the salary of the secretary of the department.

The bill will have an insignificant fiscal impact on the state and has an effective date of July 1, 2017.

## **II. Present Situation:**

### **Paternity in Dependency Cases**

Although the term legal father is not defined in the Florida Statutes, current law provides that a father is the parent of a child if:

- The child was conceived or born while the father was married to the mother;
- The father has legally adopted the child;
- The father's identity has been determined by the court
- The father has signed an affidavit of paternity or he is listed on the child's birth certificate; or
- The father is the unmarried biological father who has acknowledged in writing that he is the father of the child and has complied with other requirements set forth in s. 63.062(2), F.S.<sup>1</sup>

The legal father is a party to the case in a dependency proceeding<sup>2</sup> and current law makes multiple references to the necessity of having both parents involved in the dependency process including, but not limited, to:

- Both parents must be advised of their right to counsel at each stage of the dependency proceeding;<sup>3</sup>
- The department must obtain the names of all parents and prospective parents when they take custody of a child;<sup>4</sup>
- All parents are provided written notice of their right to counsel and right to be heard and present evidence at the shelter hearing;<sup>5</sup>
- All parents are notified of every proceeding or hearing involving the child;<sup>6</sup>
- The court makes its own inquiry to discover the parent's identity when a dependency petition is filed and the identity of a parent is unknown;<sup>7</sup> and
- The department conducts a diligent search to determine the parent's location when the identity of a parent is known, but his or her whereabouts are unknown.<sup>8</sup>

Therefore, determining the identity of a child's father as early in the process as possible is essential in a dependency proceeding.

### **Conditions for Return and Predisposition Studies**

The Legislature finds that time is of the essence for establishing permanency for a child in the dependency system<sup>9</sup> and reunification of a child with his or her parent or legal guardian is the

---

<sup>1</sup> See also ss. 39.01(49), 63.032(12), and 985.03(38) F.S.

<sup>2</sup> Section 39.01(51), F.S.

<sup>3</sup> Section 39.013(9), F.S.

<sup>4</sup> Section 39.401(4), F.S.

<sup>5</sup> Section 39.402(5), F.S.

<sup>6</sup> Section 39.502.(1), F.S.

<sup>7</sup> Section 39.503(1), F.S.

<sup>8</sup> Section 39.503(5), F.S.

<sup>9</sup> Section 39.0136, F.S.

first preference of the available permanency goals.<sup>10</sup> When safe to do so, reunification should occur as timely as possible to help promote, foster and maintain child-parent attachments. Currently, the determinant for the court to address reunification with a parent and a child's return home is a parent's substantial compliance with his or her case plan. Experience has shown that parents can complete case plans, essentially accomplishing all of the court-ordered tasks and activities, without the home being a safer place for the child.<sup>11</sup>

The DCF has determined that a more reliable and time sensitive standard for determining when a child can safely return home encompasses DCF demonstrating to the court that the conditions that existed in the home which necessitated the child's placement out of home have changed and that an in-home safety plan will enable a better response to any danger or risks in the home.

Conditions for return are the specific circumstances that must change prior to the child's return home when there is an out-of-home safety plan in response to impending danger. The conditions for return describe what must exist or be different with respect to specific family circumstances, home environment, caregiver perception, behavior, capacity and/or safety service resources that would allow for reunification to occur with the use of an in-home safety plan.<sup>12</sup>

Current practice also replaces substantial compliance with the case plan as the determining factors in a child's return home at disposition and other subsequent court hearings with conditions for return and an in-depth review of the in-home safety plan. Current practice also replaces the predisposition study used to provide the court with family functioning assessment, which focuses more narrowly and specifically on danger threats and information related to the determination of child safety.<sup>13</sup>

### **Children in Households with Active Investigation or Ongoing Services**

The department's current policy related to a child who is born into or a child who has moved into a household with an active investigation or ongoing services requires the CPI or case manager to add the child to the child welfare case as a participant in Florida Safe Families Network (FSFN)<sup>14</sup> and assess the new child as part of the family functioning assessment.

### **Substance Exposed Newborn Protection**

Abuse of drugs or alcohol by parents and other caregivers can have negative effects on the health, safety, and well-being of children either through the harm caused by prenatal drug exposure or the harm caused to children of any age by exposure to drug activity in their homes or environment. The Child Abuse Prevention and Treatment Act (CAPTA) requires states to have policies and procedures in place to notify child protective services agencies of substance-exposed

---

<sup>10</sup> Section 39.621(1) and (2), F.S.

<sup>11</sup> Department of Children and Families, 2017 Agency Legislative Bill Analysis, Preliminary analysis for Bill #3, Received from the department December 2, 2017.

<sup>12</sup> Department of Children and Families Operating Procedures. CFOP 170-7, Chapter 9 Conditions for Return, June 14, 2016.

<sup>13</sup> Department of Children and Families Operating Procedures. CFOP 170-5, Chapter 4 Investigation Types and Use of the Family Functioning Assessment, April 4, 2016.

<sup>14</sup> FSFN is Florida's Statewide Automated Child Welfare Information System (SACWIS) and serves as the official child welfare case record.

newborns and to establish a plan of safe care for newborns identified as being affected by substance abuse or having withdrawal symptoms resulting from prenatal drug exposure.<sup>15</sup>

CAPTA was further amended in 2016 by the Comprehensive Addiction and Recovery Act (CARA)<sup>16</sup> to add requirements for states to ensure the safety and well-being of infants following the release from the care of healthcare providers, by:

- Addressing the health and substance use disorder treatment needs of the infant and affected family members or caregivers;
- Monitoring these plans to determine whether and how local entities are making referrals and delivering appropriate services to the infant and affected family or caregiver in accordance with state requirements; and
- Developing plans of safe care for infants affected by all substance abuse, not just illegal substance abuse, as was the requirement prior to this change.

Florida law includes exposure to controlled substances or alcohol in the definition of harm:

- Exposes a child to a controlled substance or alcohol. Exposure to a controlled substance or alcohol is established by:
  - A test, administered at birth, which indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant; or
  - Evidence of extensive, abusive, and chronic use of a controlled substance or alcohol by a parent when the child is demonstrably adversely affected by such usage.<sup>17</sup>

There is currently no requirement that the parents of substance exposed newborns undergo an assessment or evaluation or complete treatment for substance abuse. The courts presently have the sole discretion to determine whether a parent is required to undergo such treatment.

## **Termination of Parental Rights**

### ***Out-of-Home Care***

Grounds for termination of parental rights may be established under a number of circumstances including when on three or more occasions the child or another child of the parent or parents has been placed in out-of-home care under ch. 39, Florida Statutes, and the conditions that resulted in the out-of-home placement were caused by the parent or parents.<sup>18</sup> However, a prior placement of a child in out-of-home care in a state other than Florida cannot serve as a basis for the termination of parental rights.

### ***Single Parent Termination***

---

<sup>15</sup> 42 U.S.C. s.5106a(b), as amended by the CAPTA Reauthorization Act of 2010 (P.L. 111-320).

<sup>16</sup> P.L. 114-198.

<sup>17</sup> Section 39.01(30)(g), F.S. As used in this paragraph, the term "controlled substance" means prescription drugs not prescribed for the parent or not administered as prescribed and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

<sup>18</sup> Section 39.806(1)(l), F.S.

Termination of parental rights of one parent without terminating the rights of the other parent is permitted only under certain circumstances:

- If the child has only one surviving parent;
- If the identity of a prospective parent has been established as unknown after sworn testimony;
- If the parent whose rights are being terminated is a parent through a single-parent adoption;
- If the protection of the child demands termination of the rights of a single parent; or
- If the parent whose rights are being terminated meets any of the criteria specified in s. 39.806(1)(d) and (f)-(m).<sup>19</sup>

There are two grounds for termination of parental rights in s. 39.806, F.S., that are not included in the list of grounds allowable for single parent terminations:

- When the parent or parents engaged in conduct toward the child or toward other children that demonstrates that the continuing involvement of the parent or parents in the parent-child relationship threatens the life, safety, well-being, or physical, mental, or emotional health of the child irrespective of the provision of services. Provision of services may be evidenced by proof that services were provided through a previous plan or offered as a case plan from a child welfare agency;<sup>20</sup> and
- When the parent is convicted of an offense that requires the parent to register as a sexual predator under s. 775.21.<sup>21</sup>

### **Supplemental Adjudication of Dependency**

In 2008, the legislature amended s. 39.507, F.S., relating to adjudicatory hearings to provide:

(7)(a) For as long as a court maintains jurisdiction over a dependency case, only one order adjudicating each child in the case dependent shall be entered. This order establishes the legal status of the child for purposes of proceedings under this chapter and may be based on the conduct of one parent, both parents, or a legal custodian.

(b) However, the court must determine whether each parent or legal custodian identified in the case abused, abandoned, or neglected the child in a subsequent evidentiary hearing. If the evidentiary hearing is conducted subsequent to the adjudication of the child, the court shall supplement the adjudicatory order, disposition order, and the case plan, as necessary. With the exception of proceedings pursuant to s. 39.811, the child's dependency status may not be retried or readjudicated.<sup>22</sup>

This change in the law was in response to concerns raised by the department that while ch. 39, F.S., contemplates that an adjudication of dependency is determined with reference to what happens to a child, not with reference to the conduct of the adult caregiver, when a court finds that a child is adjudicated "as to" a particular parent, the court sometimes requires that the child be adjudicated twice before permanent placement can be made or before parental rights can be

---

<sup>19</sup> Section 39.811(6), F.S.

<sup>20</sup> Section 39.806(1)(c), F.S.

<sup>21</sup> Section 39.806(1)(n), F.S.

<sup>22</sup> Chapter 208-245, Laws of Florida.

terminated. As well, in some cases, courts approve multiple and inconsistent case plans for a single child. The confusion causes unnecessary delays in placement and permanency.

Currently, the change to s. 39.507, F.S., is not being applied uniformly across the state because of a conflict between orders from the 3d DCA and the 5<sup>th</sup> DCA.<sup>23</sup> As a result of the holding in *P.S. v. Department of Children and Families*, 4 So. 3d 719 (Fla. 5th DCA 2009), trial courts in Orange, Osceola, Volusia, Flagler, Putnam, St. Johns, Lake, Marion, Sumter, Citrus, Hernando, Brevard, and Seminole Counties cannot adjudicate a child dependent as to a parent located later in the case or order that parent to comply with case plan tasks unless there is evidence that the later-found parent actually harmed the child, even when there is evidence the parent's behavior puts the child at risk of harm.<sup>24</sup>

### **Domestic Violence Injunction in Dependency**

Current law requires that a CPI implement separate safety plans for the perpetrator of domestic violence and the parent who is a victim of domestic violence as defined in s.741.28, F.S. If the perpetrator of domestic violence is not the parent, guardian, or legal custodian of the child, the CPI shall seek issuance of an injunction authorized by s. 39.504, F.S., to implement a safety plan for the perpetrator and impose any other conditions to protect the child.<sup>25</sup> The law does not address action to be taken by the CPI if the perpetrator is not able to be located.

### **Parental Relocation With a Child**

Current law requires that a parent who wishes to move with a child from the principal residence at its location at the time of the last order establishing or modifying time-sharing, or at the time of filing the pending action to establish or modify time-sharing must do so by agreement or by filing a petition with the court. The change of location must be at least 50 miles from that residence, and for at least 60 consecutive days not including a temporary absence from the principal residence for purposes of vacation, education, or the provision of health care for the child.<sup>26</sup> These provisions would appear to involve only children who are subject to time-sharing arrangements with caregivers.

Nonetheless, by defining the term “child” as any person who is under the jurisdiction of a state court pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) or is the subject of any order granting to a parent or other person any right to time-sharing, residential care, kinship, or custody, as provided under state law, appears to include a child involved in multiple types of custody proceedings including those relating to children who are dependent:

- “Child custody proceeding” means a proceeding in which legal custody, physical custody, residential care, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may

<sup>23</sup> See *D.A. v. Department of Children & Family Services.*, 84 So. 3d 1136 (Fla. 3d DCA 2012), and *P.S. v. Department of Children and Families*, 4 So. 3d 719 (Fla. 5th DCA 2009).

<sup>24</sup> Department of Children and Families, 2017 Agency Legislative Bill Analysis, Preliminary analysis for Bill #3, Received from the department December 2, 2017.

<sup>25</sup> Section 39.301(9)(a)6.a., F.S.

<sup>26</sup> Section 39.13001, F.S.

appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under ss. 61.524-61.540, F.S.<sup>27</sup>

In 2015, the Fourth District Court of appeal held that the provisions of s. 61.13001, F.S., apply to permanent guardianship placements for a dependent child.<sup>28</sup> The department filed a motion for rehearing and sought Florida Supreme Court review of the *T.B.* decision to no avail.<sup>29</sup>

### **Confidential Information Sharing**

Federal law requires children age 14 years and older to participate in the development of or revision to his or her case plan and requires the case plan to include a document describing the rights of the child to education, health, visitation and court participation as well as the right to stay safe and avoid exploitation.<sup>30</sup> The new federal language does not provide protections for confidential information that might be shared at a case planning conference and there are currently no statutory safeguards in Florida law related to the confidentiality of information shared at a case planning conference.

### **Relative Caregiver Ineligibility**

A substantial amount of research acknowledges that children in the care of relatives, or what is often referred to as “kinship care,” are less likely to change placements and benefit from increased placement stability, as compared to children placed in general foster care. Most child welfare systems strive to place children in stable conditions without multiple living arrangement changes because it has consistently demonstrated a better result for all children living in out-of-home care. As opposed to children living in foster care, children living in kinship care are more likely to remain in their own neighborhoods, be placed with their siblings, and have more consistent interactions with their birth parents than do children who are placed in foster care, all of which might contribute to less disruptive transitions into out-of-home care.<sup>31</sup>

Florida recognized the importance of relative placements by creating the Relative Caregiver Program in 1998 to provide financial assistance to eligible relatives caring for children who would otherwise be in the foster care system.<sup>32</sup> In 2014 the program was expanded to include specified nonrelative caregivers.<sup>33</sup>

According to the department, as of December 31, 2016, Florida had 13,056 children in kinship foster care placements, and 12,478 in licensed foster care placements.<sup>34</sup>

---

<sup>27</sup> Section 39.503, F.S.

<sup>28</sup> Section 39.6221, F.S.

<sup>29</sup> See *T.B. v. Department of Children & Families*, 189 So. 3d 150 (Fla. 4th DCA 2015)

<sup>30</sup> P.L. 113-183.

<sup>31</sup> David Rubin and Kevin Downes, et al., *The Impact of Kinship Care on Behavioral Well-being for Children in Out-of-Home Care* (June 2, 2008), available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2654276/>, (last visited February 8, 2017).

<sup>32</sup> Section 39.5085, F.S.

<sup>33</sup> Chapter 2014-224, Laws of Florida.

<sup>34</sup> Florida Department of Children and Families, DCF Quick Facts, available at: <http://www.dcf.state.fl.us/general-information/quick-facts/cw/> (last visited February 8, 2017).

Children receiving cash benefits under the Relative Caregiver Program are not eligible to simultaneously receive WAGES cash benefits under chapter 414.<sup>35</sup> Department rule provides that the parent's presence in the home with the child and relative caregiver for 30 days or more results in the child becoming ineligible for Relative Caregiver Program funds.<sup>36</sup> Currently, s. 39.5085, F.S., is silent on the issue of parents and stepparents living in the home with the child and relative caregiver, and this has resulted in cases where the courts have ordered the department to pay Relative Caregiver Program funds contrary to federal law.

### **Medical Records**

Currently, both chapter 395, relating to hospital licensing and regulation, and chapter 456, relating to health professions and occupations, contain provisions related to the release of patient records.

- Section 395.3025 provides that patient records are confidential and must not be disclosed without the consent of the patient or his or her legal representative, but appropriate disclosure may be made without such consent to certain specified entities including the department or its agent, for the purpose of investigations of cases of abuse, neglect, or exploitation of children or vulnerable adults. Law enables the department and its agents to access medical records for children in care without the patient's written authorization.

However, physician office practices not licensed under Chapter 395 have no authority to release patient records to the department without the patient's written authorization.<sup>37</sup> Such records are important to the investigation of child abuse and neglect.

### **Background Screening for Group Home Personnel**

Current law requires all caregivers in residential group homes to meet the same education, training, and background and other screening requirements as foster parents.<sup>38</sup> Department rule requires foster parents to be screened through the central abuse hotline.<sup>39</sup> However, current law also provides that information in the central abuse hotline may not be used for employment screening, except as provided in s. 39.202(2)(a) and (h) or s. 402.302(15), F.S.<sup>40</sup> Residential child caring agencies are not listed in the exceptions and abuse hotline checks completed on residential group care personnel are not used for employee screenings.

### **Children's Services Councils (CSC)**

In 1986, the Legislature authorized Florida counties to create by ordinance special, countywide districts for the sole purpose of funding children's services. Counties may create:<sup>41</sup>

---

<sup>35</sup> Sections 414.045(1)(b)3. and 414.095(2)(a)5., F.S.

<sup>36</sup> Chapter 65C-28.008(2)(d), F.A.C.

<sup>37</sup> Section 456.057, F.S.

<sup>38</sup> Section 409.145(2)(e), F.S.

<sup>39</sup> Chapter 65C-13.023(2) and (8), F.A.C.

<sup>40</sup> Section 39.201(6), F.S.

<sup>41</sup> Chapter 86-197, L.O.F.



- Independent special districts, for which the county governing body must seek voter approval to levy annual ad valorem property taxes;<sup>42</sup> or
- Dependent special districts, which are supported by appropriation and are authorized to accept grants and donations from public and private sources.<sup>43</sup>

CSCs are authorized to exercise the following powers and functions:

- Provide preventive, developmental, treatment, rehabilitative, and other services for children;
- Provide funds to other agencies that operate for the benefit of children, with the exception of the public school system;
- Collect data and conduct research to determine the needs of the children in the county;
- Coordinate with providers of children's services to prevent duplication of services; and
- Lease or buy necessary real estate, equipment and personal property.<sup>44</sup>
- The governing body of the county shall submit the question of retention or dissolution of a district with voter-approved taxing authority to the electorate in the general election according to the following schedule:
  - For a district in existence on July 1, 2010, and serving a county with a population of 400,000 or fewer persons as of that date.....2014.
  - For a district in existence on July 1, 2010, and serving a county with a population of 2 million or more persons as of that date.....2020.<sup>45</sup>

The Children's Trust of Miami is the only such council in a county with a population of 2 million or more. The trust was created in 2002 and was renewed by referendum in 2008.<sup>46</sup>

### Placement Assessment

Research shows an association between frequent placement disruptions and outcomes that are adverse to the child, including poor academic performance and social or emotional adjustment difficulties such as aggression, withdrawal, and poor social interaction with peers and teachers. Despite this evidence, there has been limited intervention by child welfare systems to reduce placement instability as a mechanism for improving outcomes for children.<sup>47</sup> Mismatching placements to children's needs has been identified as a factor that negatively impacts placement stability. Identifying the right placement requires effective assessment.<sup>48</sup>

When a child is unable to safely remain at home with a parent, the most appropriate available out-of-home placement shall be chosen after analyzing the child's age, gender, sibling status, special physical, educational, emotional and developmental needs, alleged type of abuse, neglect

---

<sup>42</sup> Section 125.901(1), F.S.

<sup>43</sup> Section 125.901(7), F.S.

<sup>44</sup> Section 125.901(2), F.S.

<sup>45</sup> Section 125.901(4), F.S.

<sup>46</sup> The Children's Trust of Miami-Dade County, available at: <https://www.thechildrenstrust.org/about> .(last visited March 7, 2017).

<sup>47</sup> Noonan, K. and Rubin, D., et al. *Securing Child Safety, Well-being, and Permanency Through Placement Stability in Foster Care*, The Children's Hospital of Philadelphia Research Institute, Fall 2009.

<sup>48</sup> Teija Sudol, *Placement Stability Information Packet*, National Resource Center for Permanency and Family Connections, December 2009.

or abandonment, community ties and school placement, and potential responsible caregivers that can meet the child's needs.<sup>49</sup>

Lead agencies must consider placement in residential group care if the child is 11 or older, has been in licensed family foster care for six months or longer and removed from family foster care more than once, and has serious behavioral problems or has been determined to be without the options of either family reunification or adoption. In addition, the assessment must consider information from several sources, including psychological evaluations, professionals with knowledge of the child, and the desires of the child concerning placement. If the lead agency case managers determine that residential group care would be an appropriate placement, the child must be placed in residential group care if a bed is available.<sup>50</sup> Children who do not meet the specified criteria may be placed in residential group care if it is determined that such placement is the most appropriate for the child.<sup>51</sup>

These placement requirements were enacted in 2001 and 2002 to allow increased use of residential group home placements until additional foster homes could be recruited.<sup>52</sup> However, while the 2001 and 2002 legislation was being considered by the Legislature, the department expressed concerns that the provisions of the proposed legislation were contrary to published literature, contrary to guidance from the federal government, and contrary to the actions of other states that were moving away from group home care.<sup>53</sup>

### **Lead Agency Executive Compensation**

The Internal Revenue Code section that sets the rules governing compensation at public nonprofits, including those known as 501(c)3 organizations, specifies that no part of the net earnings of a section 501(c)3 organization may inure to the benefit of any private shareholder or individual.<sup>54</sup> However, it also gives each nonprofit's board of directors latitude in determining how much to pay top employees. The IRS does require that the nonprofit's board have an objective process for setting executive salaries, including use of comparisons with salaries paid by similar organizations for similar services. Without a reasonable basis, a nonprofit that normally pays no taxes could be taxed for paying excess benefits to an insider.<sup>55</sup>

There is disagreement within the nonprofit community around the often heard argument that individuals need to be highly paid to remain and provide leadership in the nonprofit sector. There appears to be an increasing number of exceptions to that belief:

- There are great nonprofit CEO's and bad ones at both ends of the salary spectrum, and many ineffective leaders have been paid well. So it's not a given that we will "lose out" on talented leaders if we don't pay them excessive salaries. It's also not a given that we need to be able

<sup>49</sup> Rule 65C-28.004, F.A.C

<sup>50</sup> Sections 39.523(1) and 409.1676, F.S.

<sup>51</sup> Section 39.523(4), F.S.

<sup>52</sup> Sections. 39.523, 409.1676, 409.1677 and 409.1679, F.S.

<sup>53</sup> Testimony from committee meetings: Senate Children and Families Committee, SB 623, January 30, 2002; Senate Children and Families Committee, SB 1214, March 14, 2001; House Child and Family Security Committee, HB 1145, March 15, 2001; House Child and Family Security Committee, HB 755, February 7, 2002.

<sup>54</sup> 26 U.S.C. s.501. Exemption from tax on corporations, certain trusts, etc.

<sup>55</sup> *Id.*

to attract talent from the business world or from outside of our organizations. We should really be developing the amazingly talented people we already have within our organizations, who are passionate about the work even if it doesn't come with a million-dollar salary.<sup>56</sup>

- Bruce Hurwitz, president and CEO of Hurwitz Strategic Staffing, has stated that while some nonprofits are forced to offer competitive salaries to top executives in order to attract and retain the best leaders out there, not all nonprofits have to shell out big bucks to attract big talent. Especially those funded almost totally by taxpayer dollars. One such organization was Aging in America. "Aging in America is a government subcontractor. The government provides 96.3 percent of all revenue," Hurwitz says. And, if "the government is paying the lion's share of expenses, then salaries should be 'governmental'."<sup>57</sup>

In general, the federal government imposes a limit of \$196,000 on how much of a nonprofit executive's salary can be paid with federal funds. A nonprofit can easily get around the standard by reporting that private funds are used to pay the portion of salary which exceeds the limit.<sup>58</sup> Some states have taken steps to impose similar caps.

A provision in New Jersey's budget includes a limit on what nonprofit groups can pay their chief executives if they are providing social services under state contracts.<sup>59</sup> Beginning July 1, 2010, the state capped the salaries of executives with any nonprofit social service agency with a budget over \$20 million at \$141,000. Executive directors of nonprofit groups who oversee budgets between \$10 million and \$20 million could receive no more than \$126,900 in state compensation. Those overseeing a budget between \$5 million and \$10 million would get \$119,850 a year from the state, and those with a budget less than \$5 million would get \$105,750 in salary from the state.

In Florida each community-based care lead agency is required to post on its website the current budget for the lead agency, including the salaries, bonuses, and other compensation paid, by position, for the agency's chief executive officer, chief financial officer, and chief operating officer, or their equivalents.<sup>60</sup>

The following chart details executive compensation for each community-based care lead agency and allows for a comparison of chief executive officer salaries, the number of children receiving

<sup>56</sup> Thurman, R. (2010). *Nonprofit CEOs Who Want For-Profit Salaries Should Work at For-Profit Companies*. The Chronicle of Philanthropy. available at: <http://philanthropy.com/blogs/leading-edge/nonprofit-ceos-who-want-for-profit-salaries-should-work-at-for-profit-companies/21792>. (last visited January 26, 2017).

<sup>57</sup> Parkes, G. August 16, 2010. *High CEO Salaries Raise More Than Eyebrows*, available at: <http://jobs.aol.com/articles/2010/08/16/ceo-salaries/> (last visited January 26, 2017).

<sup>58</sup> Accountable California: The Center for Public Accountability. Executives at Publicly-Funded Nonprofits Make Big Bucks Serving the Needy. March 16, 2011, available from: <http://www.seiu721.org/2009/10/executives-at-publicly-funded-nonprofits.php> (last visited January 26, 2017).

<sup>59</sup> Livio, S.K. April 25, 2010. *N.J. Governor Chris Christie aims to cap salaries of nonprofit group executives to \$141K*. available from: [http://www.nj.com/news/index.ssf/2010/04/nj\\_gov\\_chris\\_christie\\_aims\\_to.html](http://www.nj.com/news/index.ssf/2010/04/nj_gov_chris_christie_aims_to.html) (last visited January 26, 2017). Also see Strom, S. July 26, 2010. *Lawmakers Seeking Cuts Look at Nonprofit Salaries*, available from: <http://www.nytimes.com/2010/07/27/us/27nonprofit.html?pagewanted=all> (last visited January 26, 2017).

<sup>60</sup> Section 409.988(1)(d), F.S.

both in-home and out-of-home services, and the agency annual contract amount. There does not appear to be a correlation between executive compensation and these other factors.<sup>61</sup>

<b>CBC Lead Agency</b>	<b>Chief Executive Officer Annual Compensation From CBC Contract</b>	<b># of Children Receiving Services</b>	<b>Annual Contract Amount (Millions)</b>	<b>% of Budget from Public Funds</b>
<b>Lakeview Center – Families First Network</b>	\$199,784	2,087	\$46.5	NA
<b>Big Bend Community-Based Care</b> <sup>62</sup>	\$367,380	1,180	\$35.3	99.08
<b>Partnership for Strong Families</b>	\$145,000	1,321	\$33.8	99.67
<b>Family Support Services of North Florida</b>	\$200,155	1,578	\$56	99.64
<b>Community Partnership for Children</b>	\$150,822	1,670	\$34.5	100.00
<b>St. Johns County Commission</b>	\$82,000	279	\$5.7	NA
<b>Kids First of Florida</b>	\$108,00	386	\$8.7	99.99
<b>Sarasota Family YMCA</b>	\$148,484	1,490	\$29.3	NA
<b>Eckerd Community Alternative Pinellas/ Pasco</b>	\$164,243	2,650	\$67.4	NA
<b>Eckerd Community Alternatives Hillsborough</b>	\$176,436	3,762	\$73.6	NA
<b>Children's Network of SW Florida</b>	\$177,654	2,391	\$40	99.99
<b>Brevard Family Partnership</b>	\$195,297	1,135	\$23.4	98.84
<b>CBC of Central Florida</b>	\$243,386	2,742	\$70	99.96

<sup>61</sup> Annual contract amounts, # of FTE's and # of children receiving services is reported by the department; compensation amounts is from either the agency website or the IRS 990.

<sup>62</sup> Big Bend Community Based Care serves as both the CBC lead agency and as the Managing Entity (ME) The CEO receives income from both state contracts for a total of \$474,123.

<b>Kids Central</b>	\$206,794	2,311	\$48.5	99.99
<b>Heartland for Children</b>	\$155,000	1,910	\$43.6	100.00
<b>Devereux Community Based Care</b>	\$131,211	1,011	\$28.6	NA
<b>ChildNet Palm Beach and Broward</b>	\$227,894	5,904	\$44.4 (PB) \$72.3 (B)	100.00
<b>Our Kids of Miami Dade</b>	\$207,489	3,056	\$104.2	100.00

In 2015, during an operational audit of community-based care lead agencies, the Auditor General found instances where salary payments, including bonuses, selected perquisites, and severance pay, or leave balances did not appear to be properly supported or calculated in accordance with established CBC policy or state law.<sup>63</sup>

State law specifies that no extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered or the contract made. The audit discovered salary payments made with department-provided funds included a \$15,000 bonus awarded to the CEO of Big Bend Community Based Care in December 2012 that was not supported by a provision in the CEO's employment contract. In response to the audit inquiry, lead agency management indicated that bonuses awarded at the discretion of the Board were based on market standards and performance.

However, as the CEO's employment contract did not provide for the payment of bonuses, the \$15,000 bonus payment was extra compensation prohibited by state law. Our audit procedures also found that the lead agency had not established policies and procedures regarding the award and calculation of bonuses for staff.<sup>64</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 39.01, F.S., to create a definition for the term "legal father" and amend the definition of the term "parent."

**Section 2** amends s. 39.201, F.S., relating to mandatory reporting and the child abuse hotline, to allow the use of information in the central abuse hotline for employment screening for caregivers employed by residential group homes.

**Section 3** amends s. 39.301, F.S., relating to protective investigations, to require a child protective investigator implement a safety plan for a perpetrator of domestic violence only if the investigator is able to locate the perpetrator. It also clarifies when a CPI shall seek an injunction pursuant to s. 39.504, F.S. The bill also requires that when a child is born into or moves into a

<sup>63</sup> Florida Auditor General, *Department Of Children and Families and Selected Community-Based Care Lead Agencies Oversight of Foster Care and Related Service*. Report No. 2015-156, March 2015.

<sup>64</sup> *Id.*

home that is under a protective investigation, that the child be added to the investigation and assessed for child safety.

**Section 4** amends s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment or neglect, to provide that if an individual employed as a caregiver in a residential group home is named in any capacity in three or more reports to the child abuse hotline within a 5-year period, those reports may be reviewed for employment screening.

**Section 5** amends s. 30.402, F.S., relating to placement in a shelter, to require additional inquiry by the court at a shelter hearing to identify and locate the legal father of the child and provide requirements for the inquiry.

**Section 6** amends s. 39.503, F.S., relating to cases where the identity or location of a parent is unknown when a dependency petition is filed, to require additional inquiry under oath by the court to identify and locate the legal father of the child. The bill also requires that the required diligent search must include a search of the Florida Putative Father Registry.

**Section 7** amends s. 39.504, F.S., relating to injunctions, to require the same judge to hear both the dependency proceeding and the injunction proceeding when applicable. The bill also provides that if an alleged offender cannot be located after a diligent search, the court may enter an injunction based on the sworn petition and any affidavits.

**Section 8** amends s. 39.507, F.S., relating to adjudicatory hearings and orders of adjudication, to provide that actual harm or abuse by the second parent is not required to be proven in order for the court to make findings related to the conduct of the second parent. The court is also not required to conduct an evidentiary hearing for the second parent in order to supplement an order or case plan if certain conditions are met.

**Section 9** amends s. 39.5085, F.S., related to the Relative Caregiver Program, to prohibit a relative or non-relative caregiver from receiving a payment under the program if the parent or stepparent of the child resides in the home. The caregiver may receive a payment under the program however, if a minor child as well as the minor parent's child are living in the home and both have been adjudicated dependent. The proposed changes will align s. 39.5085, F.S., with s. 414.095 F.S., and federal law.

**Section 10** amends s. 39.521, F.S., to replace the requirement for a predisposition study with a requirement for a family functioning assessment and revise the timelines for providing a copy of the case plan to the parties. The bill also requires that when a child is adjudicated dependent based upon evidence of harm related to exposure of a child to a controlled substance or alcohol, the parent is required to undergo a substance abuse disorder assessment or evaluation and comply with treatment and services that are determined to be necessary.

The bill also specifies the information that must be provided to the court in the family functioning assessment and changes the standard for returning a child home from "parent having substantially complied with the case plan" to "circumstances that caused the out-of-home placement and issues subsequently identified have been remedied."

**Section 11** amends s. 39.522, F.S., relating to postdisposition change of custody, to change the standard for returning a child home from “parent having substantially complied with the case plan” to “circumstances that caused the out-of-home placement and issues subsequently identified have been remedied.”

**Section 12** amends s. 39.523, F.S., relating to placement in out-of-home care, to require an initial placement assessment whenever a child has been determined to need an out-of-home placement, and to establish timelines for that assessment. The bill requires the DCF to document these initial assessments in FSFN. The bill also requires the involvement of permanency teams in assessment and placement decisions, and requires an annual report relating to the placement of children and specifies what is to be included in the report.

**Section 13** amends s. 39.6011, F.S., relating to case plan development, to provide that DCF may discuss confidential information during a case planning conference and that all individuals who participate in that conference are required to maintain the confidentiality of shared information.

**Section 14** amends s. 39.6012, F.S., relating to case plan tasks and services, to require that whenever there is evidence of harm related to exposure of a child to a controlled substance or alcohol, the case plan must include a required task that the parent undergo a substance abuse disorder assessment or evaluation and comply with treatment and services that are determined to be necessary.

**Section 15** amends s. 39.6221, F.S., to provide that the requirements of s. 61.13001, F.S., relating to parental relocation, do not apply to permanent guardianships established under chapter 39.

**Section 16** amends s. 39.701, F.S., relating to judicial review, to provide that when a child is born into or moves into a home that is under court jurisdiction, that the child be assessed for child safety and notice be provided to the court. The bill also provides a timeline for both the safety assessment and a progress update that are to be filed with the court and provides the department with rulemaking authority to implement the subsection.

**Section 17** amends s. 39.801, F.S., relating to court procedures, jurisdiction, notice, and service of process, to address notice requirements for a petition of termination of parental rights to a prospective father if there is no legal father.

**Section 18** amends s. 39.803, F.S., relating to unknown identity or location of a parent after a termination for parental rights petition has been filed, to require additional information to the inquiry conducted by the court to identify or locate a parent and authorizes the court to order scientific testing to determine maternity or paternity of the child.

**Section 19** amends s. 39.806, F.S., relating to termination of parental rights, to allow child removals in other states, territories or jurisdictions to be considered when establishing a ground for termination of parental rights.

**Section 20** amends s. 39.811, F.S., relating to powers and orders of disposition, to include when the parent or parents engaged in conduct toward the child or toward other children that

demonstrates that the continuing involvement of the parent or parents in the parent-child relationship threatens the life, safety, well-being, or physical, mental, or emotional health of the child irrespective of the provision of services and when the parent is convicted of an offense that requires the parent to register as a sexual predator under s. 775.21, F.S., to the list of circumstances under which the rights of one parent may be terminated without terminating the rights of the other parent.

**Section 21** amends s. 125.901, F.S., relating to children's services councils, to provide an exception to when a county shall submit the questions of retention or dissolution of a district with voter-approved taxing authority to the general electorate in a general election.

**Section 22** amends s. 395.3025, F.S., relating to patient and personnel records, to allow these confidential records to be disclosed to contracted entities of the department without consent of the patient or his or her legal representative. Private physician offices have requested statutory authority to provide such records to CPIs and dependency case managers.

**Section 23** amends s. 402.40, relating to child welfare training and certification, to add a definition of the term "child welfare trainer" and provide the department rulemaking authority to determine standards for these trainers to ensure that individuals who train child welfare professionals are qualified to provide effective training. There are currently no standards in place.

**Section 24** amends s. 409.992, F.S., relating to community-based care lead agency expenditures, to prohibit administrative employees of lead agencies from using state funds in excess of the salary of the secretary of the department. The current annual salary of the secretary is \$140,539 and 15 of the 18 lead agencies pay their CEO in excess of this amount.

**Section 25** amends s. 456.057, F.S., relating to ownership and control of patient records to allow confidential records to be disclosed to the department, its agent or its contracted entity, for the purpose of conducting child protective investigations of or providing services in cases of abuse, neglect or exploitation of children or vulnerable adults.

**Section 26** repeals s. 409.141, F.S., relating to equitable reimbursement methodology of group homes, to remove obsolete requirements.

**Section 27** repeals s. 409.1677, F.S., relating to model comprehensive residential services programs, to remove obsolete programs.

**Section 28** amends s. 39.524, F.S., relating to safe-harbor placement, to conform a cross reference.

**Section 29** amends 394.495, F.S., relating to child and adolescent mental health system of care, to conform a cross reference.

**Section 30** amends s. 409.1678, F.S., relating to specialized residential options for children who are victims of sexual exploitation, to conform a cross reference.



**Section 31** amends s. 960.065, F.S., relating to eligibility for awards, to conform a cross reference.

**Section 32** amends s. 409.1679, F.S., relating to reimbursement, to conform cross references.

**Section 33** amends s. 1002.3305, F.S., relating to College-Preparatory Boarding Academy Pilot Program for at risk students, to conform a cross reference.

**Section 34** reenacts s. 483.181(2), F.S., relating to acceptance, collection, identification, and examination of specimens.

**Section 35** provides an effective date of July 1, 2017.

#### **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:

The CBC lead agencies that pay their administrative employees more than \$140,539 in state funds would have additional funds to provide services to children and families.

C. Government Sector Impact:

The department reports that the increased workload for the Background Screening Unit may require additional contracted staff (sections 2 and 4 of the bill).<sup>65</sup>

The department may incur costs to capture the placement assessment data. The amount is unknown.

---

<sup>65</sup> Department of Children and Families, 2017 Agency Legislative Bill Analysis, Preliminary analysis for Bill #3, Received from the department December 2, 2017.

The department reports that the cost of a proficiency process for trainers can be paid by federal title IV-E funds.<sup>66</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 39.01, 39.201, 39.301, 39.302, 39.402, 39.503, 39.504, 39.507, 39.5085, 39.521, 39.522, 39.523, 39.524, 39.6011, 39.6012, 39.6221, 39.701, 39.801, 39.803, 39.806, 39.811, 125.901, 394.495, 395.3025, 402.40, 409.1678, 409.1679, 409.992, 456.057, 960.065, and 1002.3305.

This bill reenacts the following section of the Florida Statutes: 483.181(2).

This bill repeals the following sections of the Florida Statutes: 409.141, and 409.1677.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

---

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

---

---

<sup>66</sup> Department of Children and Families, 2017 Agency Legislative Bill Analysis, Preliminary analysis for Bill #6, Received from the department December 2, 2017.