

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	HB 281	<b>FINAL HOUSE FLOOR ACTION:</b>		
<b>SUBJECT/SHORT TITLE</b>	Incarcerated Parents	112	Y's 0	N's
<b>SPONSOR(S):</b>	Williams, Daniels and others	<b>GOVERNOR'S ACTION:</b>		Approved
<b>COMPANION BILLS:</b>	CS/SB 522			

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**SUMMARY ANALYSIS**

HB 281 passed the House on January 31, 2018, and subsequently passed the Senate on March 6, 2018.

The bill further defines the role of incarcerated parents in the development and execution of case plans associated with their children. Section 39.6011, F.S., requires DCF to engage incarcerated parents in the dependency case process, including case plan development. The bill adds additional responsibilities for DCF and incarcerated parents as case plans are developed, implemented, and modified.

The bill requires DCF to:

- Engage incarcerated parents in case planning and develop case plans that give some consideration to limitations faced by incarcerated persons;
- Coordinate efforts with relevant correctional facilities to identify those services and resources available to incarcerated parents; and,
- Amend case plans as individuals become incarcerated or are released from incarceration.

The bill makes incarcerated parents responsible for complying with case plan requirements and the requirements of relevant correctional facilities.

The bill has no fiscal impact on state or local government.

The bill was approved by the Governor on March 21, 2018, ch. 2018-45, L.O.F., and will become effective on July 1, 2018.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Present Situation**

##### Florida's Child Welfare System

Chapter 39, F.S., creates Florida's child welfare system to protect children and prevent abuse, abandonment, and neglect.<sup>1</sup> The Department of Children and Families (DCF) works in partnership with local communities and the courts to ensure the timely permanency and well-being of children. During FY 2016-17, DCF and selected county sheriffs' offices contracted as child protective investigative staff conducted more than 220,000 investigations. The department ultimately served more than 38,000 children in out-of-home care during the same period. Approximately 41% of children removed from their homes achieved permanency within 12 months, based on 2016 data – which placed Florida just above the national average of 40.5%.<sup>2</sup>

##### *Practice Model*

DCF's child welfare practice model (model) standardizes the approach to risk assessment and decision making used to determine a child's safety.<sup>3</sup> The model seeks to achieve the goals of safety, permanency, and child and family well-being.<sup>4</sup> The model emphasizes parent engagement and empowerment, training and support for child welfare professionals to assess child safety,<sup>5</sup> and family-centered practice with the goal of keeping children in their homes whenever possible.<sup>6</sup> DCF contracts with community-based care lead agencies to coordinate case management and services for families within the dependency system.

##### *Dependency Case Process*

When child welfare necessitates that DCF remove a child from his or her home, a series of dependency court proceedings must occur to adjudicate the child dependent and place him or her in out-of-home care, as indicated by the chart below.

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<sup>1</sup> S. 39.001(8), F.S.

<sup>2</sup> Department of Children and Families, *Child Welfare Key Indicators Monthly Report*, available at [http://www.centerforchildwelfare.org/qa/cwkeyindicator/KI\\_Monthly\\_Report\\_Sept2017.pdf](http://www.centerforchildwelfare.org/qa/cwkeyindicator/KI_Monthly_Report_Sept2017.pdf) (last accessed November 5, 2017).

<sup>3</sup> Department of Children and Families, *2013 Year in Review*, available at: <http://www.dcf.state.fl.us/admin/publications/year-in-review/2013/page19.shtml> (last accessed October 31, 2017).

<sup>4</sup> The Department of Children and Families, *Florida's Child Welfare Practice Model*, available at: <http://www.myflfamilies.com/service-programs/child-welfare/child-welfare-practice-model> (last accessed October 31, 2017).

<sup>5</sup> *Supra*, FN 3.

<sup>6</sup> The Department of Children and Families, *2012 Year in Review*, available at: <http://www.dcf.state.fl.us/admin/publications/year-in-review/2012/page9.shtml> (last accessed October 31, 2017).

## The Dependency Process

Dependency Proceeding	Description of Process	Controlling Statute
Removal	A child protective investigation determines the child's home is unsafe, and the child is removed.	s. 39.401, F.S.
Shelter Hearing	A shelter hearing occurs within 24 hours after removal. The judge determines whether to keep the child out-of-home.	s. 39.401, F.S.
Petition for Dependency	A petition for dependency occurs within 21 days of the shelter hearing. This petition seeks to find the child dependent.	s. 39.501, F.S.
Arraignment Hearing and Shelter Review	An arraignment hearing and shelter review occurs within 28 days of the shelter hearing. This allows the parent to admit, deny, or consent to the allegations within the petition for dependency and allows the court to review any shelter placement.	s. 39.506, F.S.
Adjudicatory Trial	An adjudicatory trial is held within 30 days of arraignment. The judge determines whether a child is dependent during this trial.	s. 39.507, F.S.
Disposition Hearing	If the child is found dependent, disposition occurs within 15 days of arraignment or 30 days of adjudication. The judge reviews the case plan and placement of the child. The judge orders the case plan for the family and the appropriate placement of the child.	s. 39.506, F.S. s. 39.521, F.S.
Judicial Review Hearings	The court must review the case plan and placement every 6 months, or upon motion of a party.	s. 39.701, F.S.
Petition for Termination of Parental Rights	Once the child has been out of home for 12 months, if DCF determines that reunification is no longer a viable goal, termination of parental rights is in the best interest of the child, and other requirements are met, a petition for termination of parental rights is filed.	s. 39.802, F.S. s. 39.8055, F.S. s. 39.806, F.S. s. 39.810, F.S.
Advisory Hearing	This hearing is set as soon as possible after all parties have been served with the petition for termination of parental rights. The hearing allows the parent to admit, deny, or consent to the allegations within the petition for termination of parental rights.	s. 39.808, F.S.
Adjudicatory Trial	An adjudicatory trial is set within 45 days after the advisory hearing. The judge determines whether to terminate parental rights to the child at this trial.	s. 39.809, F.S.

### *Federal Requirements for Permanency*

Many of the federal requirements related to the dependency process can be traced to the Adoption and Safe Families Act (ASFA) of 1997.<sup>7</sup> The ASFA expanded the use of detailed case planning, while emphasizing the well-being of children at all critical points during the dependency case process.<sup>8</sup> It further requires that states make timely decisions regarding permanency. The permanency goal is enforced primarily via a requirement that states terminate the parental rights of children who have spent 15 or more months of the past 22 months in foster care.<sup>9</sup>

The ASFA also required that states participate in Child & Family Services Reviews (CFSRs) to identify and remedy potential weaknesses in their existing child welfare frameworks. Among the deficiencies noted in Florida's 2016 CFSR was insufficient engagement of parents, particularly fathers, in the case planning process.<sup>10</sup>

<sup>7</sup> Public Law 105-89.

<sup>8</sup> Committee on Child Maltreatment Research, Policy, and Practice for the Next Decade: Phase II, New Directions in Child Abuse and Neglect Research (2004), available at <https://www.ncbi.nlm.nih.gov/books/NBK195980/> (last accessed November 6, 2017).

<sup>9</sup> Id.

<sup>10</sup> Child and Family Services Reviews – Final Report on Florida (2016), U.S. Department of Health and Human Services, Children's Bureau, available at <http://centerforchildwelfare.org/ga/CFSRTools/2016%20CFSR%20Final%20Report.pdf> (last accessed November 7, 2017).

## Case Plans

Throughout the dependency process, DCF must develop and refine a case plan with input from all parties to the dependency case that details the problems being addressed as well as the goals, tasks, services, and responsibilities required to ameliorate the concerns of the state.<sup>11</sup> The case plan follows the child from the provision of voluntary services through dependency, or termination of parental rights.<sup>12</sup> Once a child is found dependent, a judge reviews the case plan, and if the judge accepts the case plan as drafted, orders the case plan to be followed.<sup>13</sup>

Section 39.6011, F.S., details the development of the case plan and who must be involved, such as the parent, guardian ad litem, and if appropriate, the child. This section also details what must be in the case plan, such as descriptions of the identified problems, the permanency goal, timelines, and notice requirements.

Section 39.6012, F.S., details the types of tasks and services that must be provided to the parents as well as the type of care that must be provided to the child. The services must be designed to improve the conditions in the home, facilitate the child's safe return to the home, ensure proper care of the child, and facilitate permanency. The case plan must describe each task with which the parent must comply, the services to be provided that address the identified problem in the home, and all available information that is relevant to the child's care.

When determining whether to place a child back into the home he or she was removed from, or whether to move forward with another permanency option, the court assesses whether the circumstances that caused the out-of-home placement have been remedied to the extent that the safety, well-being and health of the child are not endangered by an in-home placement.<sup>14</sup> To support the permanency goal, the court continues to monitor a parent's efforts to comply with the tasks assigned in the case plan.<sup>15</sup>

### *Case Plans Involving Incarcerated Parents*

Recent research suggests that about 7% of all children in the United States have lived with a parent who was incarcerated at some point.<sup>16</sup> There is a significant body of research that documents the negative impacts of parental incarceration on children. Among other insights, this research often highlights the virtues of reunification, when possible, and the importance of child welfare processes that actively engage incarcerated parents in the care of their children.<sup>17</sup>

Incarceration of a parent is not, in and of itself, sufficient grounds for the termination of that individual's parental rights.<sup>18</sup> Accordingly, DCF and the courts must engage with incarcerated parents to develop and implement case plans. However, the incarceration of one or more parents can present significant challenges to the timely and appropriate permanency of children. Among these challenges are narrow visitation schedules, communication restrictions, and limited prisoner support services.<sup>19</sup>

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<sup>11</sup> Ss. 39.6011 and 39.6012, F.S.

<sup>12</sup> S. 39.01(11), F.S.

<sup>13</sup> S. 39.521, F.S.

<sup>14</sup> S. 39.522, F.S.

<sup>15</sup> S. 39.621, F.S.

<sup>16</sup> David Murphey and P. Mae Cooper, *Parents Behind Bars: What Happens to their Children?* (October 2015), available at <https://www.childtrends.org/wp-content/uploads/2015/10/2015-42ParentsBehindBars.pdf> (last accessed November 3, 2017).

<sup>17</sup> Child Welfare Information Gateway, *Child Welfare Practice With families affected by Parental Incarceration* (October 2015), U.S. Department of Health and Human Services, Children's Bureau, available at [https://www.childwelfare.gov/pubPDFs/parental\\_incarceration.pdf](https://www.childwelfare.gov/pubPDFs/parental_incarceration.pdf) (last accessed November 3, 2017).

<sup>18</sup> *Id.*

<sup>19</sup> Annie E. Casey Foundation, *When a Parent is Incarcerated: A Primer for Social Workers* (2011), available at <http://www.aecf.org/m//resourcedoc/aecf-WhenAParentIsIncarceratedPrimer-2011.pdf> (last accessed November 1, 2017).

The Florida Department of Corrections (DOC) currently allows DCF staff access to inmates for relevant meetings and interviews. DOC also contributes by approving transfers, when appropriate, for incarcerated parents to facilities which meet the inmate's programming needs, and by allowing incarcerated parents to have routine visits with their children, when appropriate.

DOC provides inmates with access to a range of educational and vocational services that may help an incarcerated parent meet select goals attached to his or her case plan. Among the relevant resources offered by DOC are substance abuse treatment, anger management programs, and parenting classes. DOC also provides high school diploma programs, literacy programs, and occupational training in fields such as carpentry, masonry, plumbing, and automotive technology. DOC identifies which services are available at each facility in published annual reports and also on the department webpage for each facility.<sup>20</sup>

## **Effect of the Bill**

The bill addresses involvement of incarcerated parents in the case planning process. To include incarcerated parents more effectively in the development and execution of case plans, the bill requires DCF to:

- Initiate contact with the correctional facility in which a parent is being held to determine how the parent can participate in the preparation and execution of the case plan;
- Attach a list of services available at the relevant correctional facility to the case plan itself;
- Develop case plans that take into account the services and resources available to incarcerated parents in the facilities in which they reside;
- Provide flexibility within the case plan following the incarceration of a parent. If a parent becomes incarcerated after initial development of a case plan, the case plan must be amended if this incarceration may impact the permanency of the child. Such an amendment may include revisions to visitation arrangements between the child and incarcerated parent, identification of services available to the parent within the correctional facility, and modification of the stated permanency goal;
- Use the case plan to facilitate re-entry of an incarcerated parent. If an incarcerated parent is released prior to expiration of the case plan, the case plan must indicate which tasks will need to be completed post-release, when appropriate; and
- Document non-participation in the case plan. If an incarcerated parent does not participate in the development of the case plan, DCF must include a full explanation for this non-participation and detail any efforts made to secure the participation of the incarcerated parent.

The bill also reinforces the responsibility that lies with incarcerated parents in the development and execution of the case plan. Incarcerated parents must comply with procedures established by the relevant correctional facility and maintain contact with impacted children as provided in the case plan. The bill does not, however, create any additional obligations for relevant correctional facilities beyond those that already exist in statute.

The bill also does not prevent DCF or the court from using discretion in determining whether reunification of an incarcerated parent with his or her child is in the best interest of the child.<sup>21</sup>

The bill provides an effective date of July 1, 2018.

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<sup>20</sup> Florida Department of Corrections, Annual Report for Fiscal Year 2015-2016, available at [http://www.dc.state.fl.us/pub/annual/1516/FDC\\_AR2015-16.pdf](http://www.dc.state.fl.us/pub/annual/1516/FDC_AR2015-16.pdf) (last accessed November 3, 2017). For instance, see information regarding Calhoun Correctional Institution at <http://www.dc.state.fl.us/facilities/region1/105.html> (last accessed November 6, 2017).

<sup>21</sup> Section 39.806(1)(d), F.S., outlines the circumstances in which the court may terminate the parental rights of an incarcerated parent. Among such considerations are the nature of the offense committed by an incarcerated parent, the length of the parent's expected incarceration, and the nature of the relationship between the incarcerated parent and the child.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.