

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS
FINAL BILL ANALYSIS**

BILL #: CS/CS/HB 421 Proceedings Related to Children
SPONSOR(S): Health & Human Services Committee and Appropriations Committee, Roach and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 262

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	15 Y, 0 N	Christy	Brazzell
2) Appropriations Committee	28 Y, 0 N, As CS	Smith	Pridgeon
3) Health & Human Services Committee	17 Y, 0 N, As CS	Christy	Calamas
FINAL HOUSE FLOOR ACTION: 112 Y's 0 N's			
GOVERNOR'S ACTION: Approved			

SUMMARY ANALYSIS

CS/CS/HB 421 passed the House on April 30, 2019, as CS/SB 262.

Chapter 39, F.S., creates the child welfare system, administered by the Department of Children and Families (DCF) in partnership with local communities and the courts to ensure the safety, timely permanency and well-being of children. When DCF determines that a child cannot safely remain in the home, it initiates dependency proceedings designed to guarantee the child's safety while also attempting reunification with the family, if appropriate. Ultimately, if a child's home remains unsafe, the court may terminate the parental rights of the offending parent(s) and seek another permanency option, such as adoption.

The bill revises several provisions of ch. 39, F.S., to address barriers to permanency for children in the child welfare system to shorten the timeframe for achieving permanency. The bill requires a parent to notify the parties to his or her child welfare case and the court of barriers to compliance with a case plan task soon after discovering the barrier. It also requires DCF to make service referrals more promptly and limits continuances by the court's own motion to 60 days within any 12-month period.

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

The bill was approved by the Governor on June 25, 2019, chapter 2019-128, Laws of Florida. The effective date of this bill is October 1, 2019.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Florida's Child Welfare System

The Department of Children and Families (DCF) administers the state's child welfare system pursuant to ch. 39, F.S., which requires DCF to work in partnership with local communities and the courts to ensure the safety, timely permanency and well-being of children.¹

DCF's practice model is based on the safety of the child within the home, using in-home services such as parenting coaching and counseling to maintain and strengthen that child's natural supports in the home environment. DCF contracts for case management, out-of-home care, and related services with lead agencies, also known as community-based care organizations (CBCs). These services include, but are not limited to, counseling, domestic violence services, substance abuse services, family preservation, emergency shelter, and adoption. CBCs contract with a number of subcontractors for case management and direct care services to children and their families.²

When DCF determines that a child cannot safely remain in the home, it works, through the involvement of the dependency courts, toward guaranteeing the safety of the child out-of-home while providing services to reunify the child as soon as it is safe to do so. Ultimately, if a child's home remains unsafe and the court is unable to return the child home, DCF and the courts may seek a permanent home for that child through the adoption process. The court is required to terminate the parental rights of the offending parent or parents in this scenario.

Federal Requirements for Permanency

While states bear primary responsibility for child welfare, Congress appropriates funds to states through a variety of funding streams for services to children who have been abused or neglected.³ However, for states to receive federal funding to pay for child welfare services, they must comply with federal requirements. Some of these requirements relate directly to establishing permanency for children in the state's care.

Beginning with the Adoption Assistance and Child Welfare Act of 1980 (AACWA), federal law has required states to show, except in certain circumstances, such as where the parent committed an especially egregious act, that they have made "reasonable efforts" to provide assistance and services to prevent a child's removal or to reunify a child with the family prior to terminating parental rights.⁴ Further, the Adoption and Safe Families Act of 1997 (ASFA) requires states to make timely decisions regarding permanency 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.⁵

¹ S. 39.001, F.S.

² Department of Children and Families, Community-Based Care, <http://www.dcf.state.fl.us/service-programs/community-based-care/> (last visited Feb. 13, 2019).

³ One of these funding streams is established in Title IV-E of the Social Security Act which provides federal reimbursement to states for a portion of the cost of foster care and adoption assistance.

⁴ 42 U.S.C. § 671(15).

⁵ 42 U.S.C. § 671.

Florida's Dependency Process

Florida law prescribes specific timeframes for the dependency process, as detailed in the following table. However, s. 39.0136, F.S., also allows continuances. The statute limits continuances requested by parties to the child welfare case to a total of 60 days within any 12-month period and only for extraordinary circumstances involving the constitutional rights of a party or the child's best interests. Current law does not limit continuances by the court on its own motion.

The Dependency Process

Dependency Proceeding	Description of Process	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. The petition seeks to find the child dependent.	s. 39.501, F.S.
Arraignment Hearing and Shelter Review	An arraignment and shelter review occurs within 28 days of the shelter hearing. The time before the hearing 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 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	An advisory 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 Hearing	An adjudicatory trial shall be 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.

Permanency Goals

During the dependency court process, the court sets at least one permanency goal for a child; if that goal is reunification with the child's parent, it may also set a second concurrent goal in case reunification does not occur.⁶ Section 39.01(59), F.S., defines a "permanency goal" as the living arrangement identified for the child to return to or identified as the permanent living arrangement of the child.

Section 39.621(3), F.S., lists permanency goals, in order of preference, as:

- Reunification;

⁶ S. 39.01(19), F.S.

- Adoption, if a petition for termination of parental rights has been or will be filed;
- Permanent guardianship of a dependent child;
- Permanent placement with a fit and willing relative; and
- Placement in another planned permanent living arrangement.

Maintaining and strengthening the placement with the child's parent is also a permanency goal option in certain circumstances, such as when the child has been reunified with a parent but the case is still under the court's jurisdiction.

A permanency hearing for the child is held no later than 12 months after the child is removed from the home or within 30 days after a court determines reasonable efforts to return a child to either parent is not required.⁷ At this point in the dependency process a child should be in a stable placement and any change of custody is governed by s. 39.621, F.S. The court must consider, among other things, the child's stability and longevity in the current placement, the recommendation of the current custodian, and the preference of the child.⁸

The charts below include numbers and percentages of children finding permanency from January 2017 to December 2017.⁹

Children Who Entered Care Between 1/1/17 and 12/31/17 and Achieved Permanency	
Total Children Entering Care	16,076
Children Who Achieved Permanency	6,482
Percent of Children Who Achieved Permanency	40.32%

Children in Care 12 to 23 Months as of 1/1/18 and Achieved Permanency	
Total Children in Care 12 to 23 Months	6,451
Children Who Achieved Permanency	3,482
Percent of Children Who Achieved Permanency	53.98%

Case Plans

DCF must develop and refine a case plan throughout the dependency process with input from all parties. The case plan details the problems being addressed as well as the goals, tasks, services, and responsibilities required to ameliorate the concerns of the state.¹⁰ The case plan follows the child from the provision of voluntary services through dependency, or termination of parental rights.¹¹ 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.¹²

Section 39.6011, F.S., details the development of the case plan and who must be involved, such as the parent, Guardian ad Litem,¹³ and if appropriate, the child. The section also details what must be in the case plan, such as descriptions of the identified problems, the permanency goal, timelines, and notice requirements.

⁷ S. 39.621(1), F.S.

⁸ S. 39.621(11), F.S.

⁹ Department of Children and Families, *Florida's Child Welfare Statistics*, <http://www.dcf.state.fl.us/programs/childwelfare/dashboard/index.shtml> (last visited Feb. 17, 2019).

¹⁰ S. 39.6011, s. 39.6012, F.S.

¹¹ S. 39.01(11), F.S.

¹² S. 39.521, F.S.

¹³ S. 39.820, F.S. (allowing for a guardian ad litem to be appointed by the court in judicial proceedings to represent the best interests of a child. This includes dependency proceedings under Ch. 39, F.S.).

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 and the services 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 in the home before a permanent placement has been established, or whether to move forward with another permanency option, the court seeks to determine 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.¹⁴ To support the permanency goal, the court continues to monitor a parent's efforts to comply with the tasks assigned in the case plan.¹⁵

If the child's permanency goal is adoption, the case plan describes the steps DCF will take toward that goal.¹⁶ If the parent is subject to an expedited termination of parental rights, such as due to an egregious act committed against the child or a sibling by the parent, the case plan will not have a goal of reunification.¹⁷

Parental Responsibilities and Termination of Parental Rights

Parents involved in the child welfare system have a number of responsibilities they must carry out in order to be reunified with their children, if that is a permanency goal. A primary responsibility is to comply with the case plan. Lack of compliance with case plan requirements is grounds for termination of parental rights—specifically, a parent's failure to have substantially complied for 12 months after the child's adjudication of dependency or when a child has been in care for 12 of the last 22 months, or a parent's material breach of the case plan such that noncompliance is likely before the expiration of time to comply. However, generally, if the noncompliance was due to the parent's lack of financial resources or DCF's failure to make reasonable efforts, grounds for termination are not established.¹⁸

Section 39.6011, F.S., requires the case plan to contain a written notice that a parent's noncompliance with the case plan may lead to the termination of his or her parental rights. The judge also delivers the notice during a shelter hearing¹⁹ and adjudicatory hearing.²⁰

Federal Assessment of State Child Welfare Performance

Federal Measures

The U.S. Department of Health and Human Services (HHS) assesses the performance of states' child welfare systems on seven key measures of safety and permanency. The chart below includes these measures, the federal target, and the state's performance during the first quarter of FY 2018-19. The

¹⁴ S. 39.522, F.S.

¹⁵ S. 39.621, F.S.

¹⁶ S. 39.6011(5), F.S.

¹⁷ S. 39.01(26), F.S.

¹⁸ S. 39.806(e), F.S.

¹⁹ S. 39.402(18), F.S.,

²⁰ S. 39.507(7)(c), F.S.

measures that touch on some aspect of permanency are in the chart below. Florida exceeded the federal target on two of these four permanency measures.²¹

Federal Measure	Statewide Performance	Federal Target
Percent of children exiting to a permanent home within 12 months of entering care	39.60	40.50 or higher
Percent of children exiting to a permanent home within 12 months for those in care 12 to 23 months	53.00	43.60 or higher
Percent of children exiting to a permanent home within 12 months for those in care 24+ months	47.20	30.30 or higher
Percent of children who do not re-enter care within 12 months of moving to a permanent home	88.70	91.70 or higher

Child and Family Services Review

HHS, through the Children’s Bureau, conducts periodic Child and Family Services Reviews (CFSR) in each state. As authorized by federal law, these reviews assess states’ compliance with the federal requirements for child welfare systems. In particular, the Children’s Bureau examines whether desired child outcomes are being achieved and whether the child welfare system is structured appropriately and its processes operate effectively. CFSRs have been taking place every four years.

The Children’s Bureau rates whether a state is in “substantial conformity” with each outcome or systemic factor. For a state to be in substantial conformity with a particular outcome, 95 percent or more of the cases reviewed must be rated as having substantially achieved the outcome. The substantial conformity assessment for the systemic factors considers information from a statewide assessment, interviews, and focus groups.²²

The report summarizing Florida’s results was issued in 2016. The state was in substantial conformity with three of seven systemic factors measured,²³ including:

- Quality assurance system,
- Staff and provider training, and
- Agency responsiveness to the community.²⁴

However, the report indicated that Florida was not in substantial conformity with any of the seven outcomes on which it was measured, which included:

- Safety: children are, first and foremost, protected from abuse and neglect and safely maintained in their homes whenever possible and appropriate,
- Permanency: children have permanency and stability in their living situations, and the continuity of family relationships and connections is preserved for families, and
- Family and child well-being: families have enhanced capacity to provide for their children’s needs, and children receive appropriate services to meet their educational needs and adequate services to meet their physical and mental health needs.

²¹ Department of Children and Families, Office of Child Welfare, *Federal Indicators*, <http://www.dcf.state.fl.us/programs/childwelfare/dashboard/federal-indicators.shtml> (last visited Feb.12, 2019).

²² U.S. Department of Health and Human Services, Children’s Bureau, *Child and Family Services Reviews, Florida Final Report, 2016*, <http://www.centerforchildwelfare.org/ga/CFSRTools/2016%20DFSR%20Final%20Report.pdf> (last visited Apr. 12, 2019).

²³ The systematic factors include the effectiveness of the statewide child welfare information system; the case review system; the quality assurance system; staff and provider training; the service array and resource development; the agency’s responsiveness to the community; and foster and adoptive parent licensing, recruitment, and retention.

²⁴ *Id.* at 3.

The report acknowledged progress the state has made and strengths on which it is building, such as in ensuring children's stability in foster care placements and establishing timely and appropriate

permanency goals for children. However, significant challenges remain. For instance, the Florida 2016 CFSR Report discussed the results of the review of 80 individual cases:

Despite establishing timely and appropriate permanency goals, case review results found that agencies and courts struggle to make concerted efforts to achieve identified permanency goals in a timely manner. Delays in achieving reunification and guardianship goals are affected by case plans not being updated timely to reflect the current needs of the family, delays in referral for services, and failure to engage parents. The agency and court do not make concerted efforts to achieve the goal of adoption timely in nearly half of applicable cases. Barriers affecting timely adoptions include the lack of concurrent planning when a parent's compliance level is minimal, and providing parents additional time to work on case plan goals [...] In over half of applicable cases, the agency failed to make concerted efforts to provide services, removed children without providing appropriate services, or did not monitor safety plans and engage the family in needed safety-related services.²⁵

Once a state's review is complete, the state formulates a Performance Improvement Plan to address those outcomes and systemic factors not in substantial conformity. Florida has an approved Performance Improvement Plan, which DCF is implementing.²⁶

Effect of the Bill

The bill revises ch. 39, F.S., to address barriers to permanency for children in the child welfare system in order to shorten the timeframe for achieving permanency. Specifically, the bill requires the court to notify parents of actions required to achieve permanency, limits the continuances available, and expedites service referrals. Additionally, the bill requires the name and contact information of a child's Guardian ad Litem or Attorney ad Litem to be entered on all orders of the court in dependency proceedings to ensure a child and his or her family know that information.

Parental Case Plan Compliance

Notice

The bill adds additional purpose and intent language to ch. 39, F.S., to include a recognition on behalf of a parent that it is his or her responsibility to comply with the case plan so permanency for the child can occur no more than one year after removal or adjudication. The responsibility includes notifying parties and the court of barriers to compliance with the case plan.

The bill requires additional notification by the court to parents or legal custodians on their responsibilities. For example, the bill requires the court to advise parents or legal custodians of what is expected of them for the child to reach permanency, including taking action to comply with the case plan, keeping in contact with their attorney and case manager, providing updated contact information, and notifying the parties and the court of barriers to completing the case plan. The information is given at the shelter hearing and at the adjudicatory hearing, where the child has been found to be dependent.

²⁵ Id. at 3-4.

²⁶ Department of Children and Families, *Florida Child Welfare System, Program Improvement Plan*, (2017), <http://www.centerforchildwelfare.org/qa/CFSRTools/4276%20Round%203%20FL%20PIP%205-22-17.pdf>.

The bill also requires the parent to provide the court and all parties with identification and location information of relatives who might be considered for placement of the child at the adjudication hearing.

Additionally, the bill requires the case plan to include written notice about the need for parents to take action and their obligation to report barriers to the court if the parties are not actively working to address them, in addition to the other information the case plan must currently include.

Termination of Parental Rights

The bill amends s. 39.806(1), F.S., to include that both action and inaction by the parent may cause the parent to have materially breached the case plan thus establishing grounds for termination of parental rights.

Dependency Process Timeframes

The bill adds continuances or extensions by the court on its own motion to the calculation of the 60-day limit on continuances or extensions within any 12-month period for proceedings under ch. 39, F.S.

The bill requires that the written order of disposition of the termination of parental rights petition be entered within 30 days of the conclusion of the hearing.

Case Planning and Service Provision

The bill requires that all parties and the court work together to achieve permanency expeditiously. If a parent has not agreed to begin case plan services immediately, the bill mandates that referrals for services outlined in the case plan be made as soon as possible but not more than seven days after the date of case plan approval, unless otherwise specified or approved by the court.

Additionally, the bill specifies that DCF must provide referral information for voluntary services at the conclusion of the shelter hearing to allow parents or legal custodians to begin the services as soon as possible. DCF must also include strategies in the case plan to help parents overcome barriers.

Guardian ad Litem

The bill specifies that the name and contact information of the child's Guardian ad Litem or Attorney ad Litem must be included on all orders of the court. The bill also requires DCF to provide copies of the case plan and family functioning assessment to all parties, which includes the Guardian ad Litem.

Postdisposition Change of Custody

The bill amends s. 39.522, F.S., on postdisposition change of custody to allow this proceeding only *until* the child reaches permanency. Any other postdisposition changes of custody *after* permanency are governed by s. 39.621, F.S. A change of custody pursuant to s. 39.522, F.S., is not as intrusive as a change of custody under s. 39.621, F.S., because a child has not achieved permanency at this point in the dependency process. For a change of custody pursuant to s. 39.522, F.S., a court is only required to consider whether a parent has complied with their case plan and remedied conditions in the home, and not whether the child has stability and longevity in their current placement. This change makes clear which factors the court should be considering when deciding to change custody of a child postdisposition.

The bill has an effective date of October 1, 2019.

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.