

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 1548

INTRODUCER: Senator Perry

SUBJECT: Child Welfare

DATE: January 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Pre-meeting
2.			AHS	
3.			AP	

I. Summary:

SB 1548 makes a number of changes to current law applicable to children in out-of-home care. Specifically, the bill:

- Creates an emergency modification of placement process that uses a probable cause standard to ensure child safety when a child is either abandoned by or must be immediately removed from a relative, nonrelative, or licensed foster home followed by a review process that uses the current standard of child's best interest established by a preponderance of the evidence.
- Resolves a conflict in Chapter 39 concerning the timeframe for filing and serving a case plan.
- Clarifies the process for terminating court jurisdiction and department supervision in a dependency court action by relocating provisions concerning supervision and jurisdiction that are located throughout Chapter 39, F.S., into a newly created s. 39.630, F.S.
- Clarifies the paternity establishment and disestablishment process by modifying provisions concerning paternity that are located throughout Chapter 39.
- Creates a new s. 39.8025, F.S., to provide a lawful process to immediately protect children whose parents are deceased by committing them to the custody of the department and making them eligible for adoption.
- Clarifies that the department is not required to provide reasonable efforts to preserve and reunify the family if a court has found that the parent is registered as a sexual predator.
- Provides standing for an unsuccessful applicant to adopt a child who is permanently committed to the department to have the opportunity to prove that the department has unreasonably withheld its consent to the applicant. These amendments eliminate the need for an administrative appeal process for unsuccessful applicants and eliminates multiple competing adoption petitions by the approved and unsuccessful applicants.
- Requires a petition to adopt a child who is permanently committed to the department to demonstrate that the department has consented to the adoption or that the dependency court has entered an order waiving the department's consent.

- Provides that a dependent child's placement with a prospective adoptive parent after a Chapter 39 intervention in a dependency proceeding can only occur after the placement is subject to a preliminary home study to establish the suitability of the home.
- Creates a new s. 742.0211, F.S., to address paternity proceedings concerning dependent children.

In addition the bill does the following:

- Requires the Florida Court Educational Council to establish certain standards, consistent with the purposes of Chapter 39, F.S., for instruction of circuit court judges in dependency cases.
- Eliminates the requirement for the department to submit an annual report to the Governor and Legislature on false reporting of abuse allegations made to the Florida Abuse Hotline, as well as the Independent Living Services Report and the Independent Living Services Advisory Council's Report.
- Provides the department authority to adopt rules for the establishment of processes and procedures for qualified evaluators and implement Medicaid behavioral health utilization management programs for statewide in-patient psychiatric (SIPP) facilities with a contracted vendor.
- Provides authority for the department to appoint all Qualified Evaluators who conduct suitability assessments for children in out-of-home care.

The bill is expected to have a positive fiscal impact on the state and has an effective date of October 1, 2020.

II. Present Situation:

Judicial Education

The Florida Court Education Council was established in 1978 and charged with providing oversight of the development and maintenance of a comprehensive educational program for Florida judges and certain court support personnel. The Council's responsibilities include making budgetary, programmatic, and policy recommendations to the Supreme Court regarding continuing education for Florida judges and certain court professionals.

All judges new to the bench are required to complete the Florida Judicial College program during their first year of judicial service following selection to the bench. Taught by faculty chosen from among the state's most experienced trial and appellate court judges, the College's curriculum includes:

- A comprehensive orientation program in January, including an in-depth trial skills workshop, a mock trial experience and other classes.
- Intensive substantive law courses in March, incorporating education for both new trial judges and those who are switching divisions.
- A separate program designed especially for new appellate judges.
- A mentor program providing new trial court judges regular one-to-one guidance from experienced judges.¹

¹ The Florida Courts, *Information for New Judges*, available at: <https://www.flcourts.org/Resources-Services/Judiciary-Education/Information-for-New-Judges> (Last visited December 26, 2019).

All Florida county, circuit, and appellate judges and Florida supreme court justices are required to comply with the following judicial education requirements:

- Each judge and justice shall complete a minimum of 30 credit hours of approved judicial education programs every 3 years.
- Each judge or justice must complete 4 hours of training in the area of judicial ethics. Approved courses in fairness and diversity also can be used to fulfill the judicial ethics requirement.
- In addition to the 30-hour requirement, every judge new to a level of trial court must complete the Florida Judicial College program in that judge's first year of judicial service following selection to that level of court.
- Every new appellate court judge or justice must, within 2 years following selection to that level of court, complete an approved appellate-judge program. Every new appellate judge who has never been a trial judge or who has never attended Phase I of the Florida Judicial College as a magistrate must also attend Phase I of the Florida Judicial College in that judge's first year of judicial service following the judge's appointment.²

To help judges satisfy this educational requirement, Florida Judiciary Education currently presents a variety of educational programs for new judges, experienced judges, and some court staff. About 900 hours of instruction are offered each year through live presentations and distance learning formats. This education helps judges and staff to enhance their legal knowledge, administrative skills and ethical standards.

In addition, extensive information is available to judges handling dependency cases in the Dependency Benchbook. The benchbook is a compilation of promising and science-informed practices as well as a legal resource guide. It is a comprehensive tool for judges, providing information regarding legal and non-legal considerations in dependency cases. Topics covered include the importance of a secure attachment with a primary caregiver, the advantages of stable placements and the effects of trauma on child development.³

Paternity

The failure to establish a father for a child as early in the case as possible leads to delay in permanency when the father appears months after disposition because a new case plan must be established. This often extends the goal date by at least six months. The failure to establish the father of the child early also limits the scope of available relative placements for the child, which is contrary to the legislative intent in s. 39.4015(1), F.S., acknowledging that research has shown that relative placements lead to better results for children. If an individual is a “parent” in a dependency action, the individual is entitled to due process and notice before any judicial action may be taken.

² Fla. R. Jud. Admin. 2.320 As amended through August 29, 2019, available at: <https://casetext.com/rule/florida-court-rules/florida-rules-of-judicial-administration/part-iii-judicial-officers/rule-2320-continuing-judicial-education> (Last visited December 26, 2019).

³ The Florida Courts, *Dependency Benchbook*, available at <https://www.flcourts.org/Resources-Services/Court-Improvement/Family-Courts/Dependency/Dependency-Benchbook> (Last visited December 27, 2019).

Chapter 39 defines “parent” to mean a woman who gives birth to a child and a man whose consent to the adoption of the child would be required under s. 63.062(1). The term “parent” also means legal father who defined as a man who is married to the mother at the time of conception or birth of their child unless paternity has been otherwise determined by the court. If the mother was not married to a man at the time of birth or conception of the child, the term means a man named on the birth certificate of the child pursuant to s. 382.013(2), F.S., a man determined by a court order to be the father of the child, or a man determined to be the father of the child by the Department of Revenue as provided in s. 409.256, F.S. If a child has been legally adopted, the term “parent” means the adoptive mother or father of the child. The term does not include an individual whose parental relationship to the child has been legally terminated, or an alleged or prospective parent, unless specified conditions are met.

When the identity and location of the legal father is unknown, ss. 39.402(8)(c)(4), 39.503(1), 39.803(1), F.S., require the court to inquire under oath of those present at the shelter, dependency, or termination of parental rights hearing whether they have any of the following information:

- Whether the mother of the child was married at the probable time of conception of the child or at the time of birth of the child.
- Whether the mother was cohabiting with a male at the probable time of conception of the child.
- Whether the mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father.
- Whether the mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.
- Whether any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother resided at the time of or since conception of the child or in which the child has resided or resides.
- Whether a man is named on the birth certificate of the child pursuant to s. 382.013(2), F.S.
- Whether a man has been determined by a court order to be the father of the child.
- Whether a man has been determined to be the father of the child by the Department of Revenue as provided in s. 409.256, F.S.

There currently is no requirement in those statutes that the court must enter an order establishing paternity when a legal father has been identified. Without the entry of an order establishing paternity, the legal father is under no obligation to begin services or provide child support. Also, if the child is or were to be placed with the legal father’s relatives, that placement is treated as a nonrelative placement until the order establishing paternity is entered.

Current law requires the department and the court to take action including providing notice of hearings where the court’s inquiry identifies any person as a parent or a prospective parent and conducting a diligent search if that person’s location is unknown. Conducting a diligent search for a prospective parent where there is a legal father can result in unnecessary delay because, even if the prospective parent were to be located, there is no assurance that individual will seek to disestablish the legal father’s rights or that he could meet the standing threshold of manifesting a substantial and continuing concern for the welfare of his child in order to be permitted to pursue a paternity action. The court could achieve disposition pursuant to s. 39.521,

F.S., earlier if a diligent search was not required to be conducted to locate a prospective father where there is a legally-established father.

If there is no legal father, then a diligent search for a prospective parent is appropriate to establish paternity and potentially increase the pool of relative placements for the child. Section 39.503(8), F.S., establishes that if the inquiry and diligent search performed at the dependency stage identifies a prospective parent, that person must be given the opportunity to become a party to the proceedings by completing a sworn affidavit of parenthood and filing it with the court or the department. A prospective parent, who files a sworn affidavit of parenthood while the child is a dependent child but no later than at the time of or before the adjudicatory hearing in any termination of parental rights proceeding for the child, shall be considered a parent for all purposes under this section unless the other parent contests the determination of parenthood.

Current law contains additional provisions related to determination of parentage in chapter 742. Section 742.011, F.S., permits any woman who is pregnant or has a child, any man who has reason to believe that he is the father of a child, or any child may bring proceedings in the circuit court, in chancery, to determine the paternity of the child when paternity has not been established by law or otherwise. Section 742.021, F.S., provides for the filing of a complaint charging paternity in the circuit court where the plaintiff resides or where the defendant resides. Section 742.031, F.S., contemplates that the court will conduct a hearing on the complaint and that, if the court finds that the alleged father is the father of the child, it shall so order. Section 742.18, F.S., provides for a process under which a male may disestablish paternity or terminate a child support obligation when the male is not the biological father of the child.

Current law does not provide any guidance on the standards a court should use in a Chapter 39 proceeding to disestablish a legal father's rights when a Chapter 742 action has been filed concerning a dependent child. Instead, courts get their guidance on resolving a Chapter 742 disestablishment claim from case law. In Simmonds v. Perkins, 247 So. 3d 397 (Fla. 2018), the Florida Supreme Court established the test to determine whether a biological father has standing to bring a paternity action when a child is born of an intact marriage. The Court found that if a biological father manifests a substantial and continuing concern for the welfare of his child, he will not be precluded from bringing a paternity action even if the mother was married at the time of conception or birth. Thereafter, the biological father must show there is a clear and compelling reason based primarily on the child's best interests to overcome the presumption of legitimacy. Dep't of Health & Rehab. Servs. v. Privette, 617 So. 2d 305, 308 (Fla. 1993).

Case Closure

Current law does not have a case closure statute that provides when a court can terminate the department's supervision or the court's jurisdiction. Instead, the only statute in Chapter 39, F.S., to describe when these events can occur is s. 39.521, F.S., which addresses disposition. Section 39.521(1)(c)3., F.S., provides that protective supervision shall be terminated by the court whenever the court determines that permanency has been achieved for the child, whether with a parent, another relative, or a legal custodian, and that protective supervision is no longer needed. The termination of supervision may be with or without retaining jurisdiction, at the court's discretion, and shall in either case be considered a permanency option for the child. The order terminating supervision by the department must set forth the powers of the custodian of the child

and include the powers ordinarily granted to a guardian of the person of a minor unless otherwise specified. Upon the court's termination of supervision by the department, further judicial reviews are not required if permanency has been established for the child.

While many statutes in Chapter 39 concern a child remaining in or returning to the home or being placed in some other permanency placement, those statutes are silent on how and when supervision and jurisdiction should be terminated.

Permanent Commitment of Orphaned Children

Presently, the department can adjudicate a child dependent if both parents are deceased, but there is no legal mechanism to permanently commit the child to the department for subsequent adoption.

The court in F.L.M. v. Department of Children and Families, 912 So. 2d 1264 (Fla. 4th DCA 2005), held that when the parents or guardians have died, they have not abandoned the child because the definition of abandonment contemplates the failure to provide a minor child with support and supervision while being able and the parents who died are no longer able to do so. Instead, the court held that an orphaned child without a legal custodian can be properly adjudicated dependent based upon then s. 39.01(14)(e), F.S., which is currently numbered as s. 39.01(15)(e), F.S., in that the child has no parent or legal custodian capable of providing supervision and care. As such, the department relies upon s. 39.01(15)(e), F.S., to adjudicate orphaned children dependent.

Section 39.811(2), F.S., permits a court to commit a child to the custody of the department for the purpose of adoption if the court finds that the grounds for termination of parental rights have been established by clear and convincing evidence. Section 39.806(1), F.S., outlines the available grounds for termination of parental rights. Those grounds include: a written surrender voluntarily executed by the parent, abandonment, failure by the parent to substantially comply with a case plan, and egregious conduct on the part of the parent, among other grounds. All of the grounds available under s. 39.806(1), F.S., require that the parent engage in some kind of behavior that puts a child at risk. Because a deceased parent can no longer engage in any behavior, the department cannot seek the termination of a deceased parent's rights. Moreover, even if there was a legal ground to seek the termination of a deceased parent's rights, there may be benefits that the child is receiving such as social security benefits or an inheritance as a result of the parent's death that the department would not want to halt by seeking a termination of the deceased parent's rights. Because the department cannot seek termination of parental rights when both parents are deceased, courts are permanently committing children to the department's custody without meeting the requirements of s. 39.811(2), F.S. The dependency system is in need of a statute that permits an orphaned child to be permanently committed to the department for subsequent adoption without terminating the deceased parent's rights so as to allow the child to continue to receive death benefits.

Reasonable Efforts for Registered Sexual Predators

Currently, s. 39.806(1)(n), F.S., provides that a ground for termination of parental rights may be established when the parent is convicted of an offense that requires the parent to register as a sexual predator under s. 775.21, F.S.

Section 39.806(2), F.S., provides that the department is not required to provide reasonable efforts to preserve and reunify families if a court of competent jurisdiction has determined that any of the events described in ss. 39.806(1)(b)-(d) or (1)(f)-(m), F.S., have occurred. These grounds are referred to as the expedited termination of parental rights grounds because the department does not need to obtain an adjudication of dependency and offer the parents a case plan for reunification before seeking termination of the parents' rights. These grounds include where the parent has committed egregious conduct, aggravated child abuse, and aggravated sexual battery. Because s. 39.806(1)(n), F.S., is not listed in s. 39.806(2), F.S., the department must provide a parent who is a convicted and registered sexual predator a case plan for reunification prior to seeking termination of that parent's rights pursuant to this particular ground for termination.

Department's Selection of Adoptive Placement

Currently, the department's ability to place a child in its custody for adoption and the court's review of the placement is controlled by s. 39.812, F.S. The statute provides the department may place a child in a home and the department's consent alone shall be sufficient. The dependency court retains jurisdiction over any child placed in the custody of the department until the child is adopted pursuant to ss. 39.811(9), 39.812(4), and 39.813, F.S. After custody of a child for subsequent adoption has been given to the department, the court has jurisdiction for the purpose of reviewing the status of the child and the progress being made toward permanent adoptive placement. As part of this continuing jurisdiction, s. 39.811(9), F.S., provides that for good cause shown by the Guardian ad Litem for the child, the court may review the appropriateness of the adoptive placement of the child.

Where a child is available for adoption, the department through its contractors will receive applications to adopt the child. Some applicants are not selected because their adoption home study is denied. When there are two or more families with approved home studies, the department's rules route these conflicting applications through the adoption applicant review committee (AARC) for resolution. The decision of the AARC is then reviewed and the department issues its consent to one applicant while communicating its denial to the other applicants through certified letter. These letters are considered final agency action. Unsuccessful applicants have a "point of entry" to seek review of department action through the administrative hearing process under Chapter 120, F.S. These hearings are heard by designated hearing officers within the department. The assignment of adoption disputes to the Chapter 120, F.S., process did not originate with nor was it inspired by legislative directive. Instead, this process arose due to the opinion in Department of Children & Family Services v. I.B. and D.B., 891 So. 2d 1168 (Fla. 1st DCA 2005). However, this process is inconsistent with the Legislature's clear intent of permanency and resolution of all disputes through the Chapter 39, F.S., process.

Florida law also permits individuals, who the department has not approved to adopt a child, to initiate a new Chapter 63, F.S., legal action by filing a petition for adoption. Upon filing the

petition, the petitioner must demonstrate pursuant to s. 63.062(7), F.S., that the department unreasonably withheld its consent to be permitted to adopt the child. Because Chapter 63, F.S., permits anyone who meets the requirements of s. 63.042(2), F.S., to adopt and any petitioner may argue the department's consent to the adoption should be waived because it was unreasonably withheld, multiple parties may file a petition to adopt the same child. Indeed, there can be at least three legal proceedings simultaneously addressing the adoption of the child:

- The Chapter 39, F.S., dependency proceeding.
- The Chapter 63, F.S., adoption proceeding filed by the family who has the department's consent.
- The Chapter 63, F.S., adoption proceeding filed by the applicant who asserts the department unreasonably withheld its consent.

Multiple competing adoption petitions require additional court hearings to resolve the conflict and leads to a delay of the child's adoption. These court proceedings often occur concurrently with the administrative hearing process, which can lead to disparate results.

Relative Home Studies in Chapter 63 Intervention Proceedings

For children in the custody of the department, s. 63.082(6)(a), F.S., provides that if a parent executes a consent for placement of a minor with an adoption entity or qualified adoptive parents, but parental rights have not yet been terminated, the adoption consent is valid, binding, and enforceable by the court. After the parent executes the consent, s. 63.082(6)(b), F.S., permits the adoption entity to intervene in the dependency case as a party in interest and requires the adoption entity to provide the court with a copy of the preliminary home study of the prospective adoptive parents and any other evidence of the suitability of the placement. Section 63.082(6)(b), F.S., further provides that the home study provided by the adoption entity shall be sufficient unless the court has concerns regarding the qualifications of the home study provider or concerns that the home study may not be adequate to determine the best interests of the child.

Although s. 63.082(6), F.S., provides no exception for the completion of a preliminary home study before the court may transfer custody of the child to the prospective adoptive parents, parties have been able to intervene and accomplish a modification of placement without presenting the court with a home study by relying upon s. 63.092(3), F.S. This section provides that a preliminary home study in a nondependency proceeding is not required when the petitioner for adoption is a stepparent or a relative. Section 63.032(16), F.S., defines a "relative" to mean a person related by blood to the person being adopted within the third degree of consanguinity. As a result of this interpretation of the law, a "relative" who did not pass a department home study because of safety concerns in the home or disqualifying background offenses is permitted to intervene in a dependency action to obtain placement of the child. In one recent case, the relative failed 5 different department home studies, yet the trial court held that she did not need to complete a home study to intervene in the proceeding pursuant to s. 63.082(6), F.S. The department has no ability to ensure the safety of the child in these instances because the adoption entity upon the modification of placement takes over supervision of the child pursuant to s. 63.082(6)(f), F.S.

Licensing Requirements – Institutional Investigations

There are situations where a person is named in some capacity in a report and that, after an investigation of institutional abuse, neglect, or abandonment is closed, the person is not identified as a caregiver responsible for the alleged abuse, neglect, or abandonment. Chapter 39 currently provides that the information contained in the report may not be used in any way to adversely affect the interests of that person. However, Chapter 39 also provides that if a person is a licensee of the department and is named in any capacity in three or more reports within a 5-year period, the department may review the reports and determine if information contained is relevant to determine if said person's license should be renewed or revoked.

Section 39.302(7)(a), F.S., establishes the fact that a person named in some capacity in a report may not be used in any way to adversely affect the interests of that person after an investigation of institutional abuse, neglect, or abandonment is closed and a person is not identified as a caregiver responsible for the abuse, neglect, or abandonment alleged in the report. However, if a person is a licensee of the department and is named in any capacity in three or more reports within a 5-year period, the department may review the reports and determine if information contained is relevant to determine if said person's license should be renewed or revoked.

Qualified Evaluator

Currently, the Agency for Health Care Administration (AHCA) has statutory authority to adopt rules for the registration of qualified evaluators, to establish procedures for selecting the evaluators to conduct the reviews, and to establish a reasonable cost-efficient fee schedule for qualified evaluators. AHCA is required to contract with a vendor (in this case the department) who would then be responsible for maintaining the QEN. In 2016, the Legislature moved the positions and funding to the department for it to exercise its responsibility of maintaining the QEN, but s. 39.407, F.S., still references AHCA as having authority over the QEN.

Child Care

To protect the health and welfare of children, it is the intent of the Legislature to develop a regulatory framework that promotes the growth and stability of the child care industry and facilitates the safe physical, intellectual, motor, and social development of the child. To that end, the Child Care Regulation Program is responsible for regulating programs that provide services that meet the statutory definition of "child care." This is accomplished through the inspection of licensed child care programs to ensure the consistent statewide application of child care standards established in statute and rule, and the registration of child care providers not subject to inspection. The department regulates licensed child care facilities, licensed family day care homes, licensed large family child care homes, and licensed mildly ill facilities in 62 of the 67 counties in Florida.

"Child care" is defined as "the care, protection, and supervision of a child, for a period of less than 24 hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, and for which a payment, fee, or grant is made for care." If a child care program meets this statutory definition of "child care," it is subject to regulation by the department/local licensing agencies, unless

specifically excluded or exempted from regulation by statute. Every program determined to be subject to licensing must meet the applicable licensing standards established by ss. 402.301-402.319, F. S., and rules.

- The current definition in s. 402.302, F.S., allows the family day care operation to occur in any occupied residence, thus allowing for operators to utilize additional residences to operate the family day care home.
- Current language in s. 402.305, F.S., allows for child care personnel to complete “training” in cardiopulmonary resuscitation. Training in this statute has always been interpreted and implemented as certification. Certification ensures that child care personnel have actually demonstrated an ability to implement cardiopulmonary resuscitation training. This section of statute is the primary issue at stake in a pending challenge on the rule development process.
- Currently, providers are not required to notify the department when they begin offering transportation services.
- Child care providers are required to provide parents with information at different times throughout the year as required in ss. 402.305, 402.313, and 403.3131, F.S. The dates for provision of different kinds of information is staggered.

III. Effect of Proposed Changes:

Section 1 amends s. 25.385, F.S., relating to standards for instruction of circuit and county court judges in handling domestic violence cases, to require the Florida Court Educational Council to establish standards for instruction of circuit court judges who have responsibility for dependency cases. The standards for instruction must be consistent with and reinforce the purposes of Chapter 39, F.S., particularly the purpose of ensuring that a permanent placement is achieved as soon as possible for every child in foster care and that no child remains in foster care longer than 1 year. The instruction must be provided on a periodic and timely basis and by specified entities.

Section 2 amends s. 39.01, F.S., relating to definitions to amend the definition of the term “parent” to remove an alleged or prospective parent from the definition unless parental status is applied for the purpose of determining whether the child has been abandoned.

Section 3 amends s. 39.205, F.S., relating to penalties for false reporting of child abuse, abandonment and neglect, to remove the requirement of an annual report to the Legislature on the number of reports referred.

Section 4 amends s. 39.302, F.S., relating to protective investigations of institutional investigations, to require the department to review any and all reports within a 5-year period, if a person is a licensee of the department and is named in any capacity within the report.

Section 5 amends s. 39.402, F.S., relating to shelter placement, to require the court to enter an order establishing the paternity of the child if the inquiry under s. 39.402(8)(c)4., F.S., identifies a person as a legal father, as defined in s. 39.01, F.S. It also provides that once an order establishing paternity has been entered, the court shall not take any further action to disestablish this paternity in the absence of an action filed pursuant to Chapter 742, F.S. The statute explains that if an action is filed pursuant to Chapter 742 for a dependent child, the action must comply with newly created s. 742.0211, F.S.

Section 6 amends s. 39.407, F.S., relating to medical, psychiatric, and psychological examinations, to make a technical change to agree with the law that was changed in 2016 to move responsibility for the appointment of Qualified Evaluators to the department from AHCA.

Section 7 amends s. 39.503, F.S., relating to identity or location of an unknown parent, to address instances in which there is a legal father. Specifically, this section:

- Provides if an inquiry identifies any person as a parent or a prospective parent and that person's location is known, the court shall require notice of the hearing to be provided to that person, except that notice shall not be required to be provided to a prospective parent if there is an identified legal father, as defined in s. 39.01(40), F.S., for the child.
- Provides that if the inquiry identifies a person as a legal father, as defined in s. 39.01, F.S., the court shall enter an order establishing the paternity of the child. This subsection further provides that once an order establishing paternity has been entered, the court shall not take any further action to disestablish this paternity in the absence of an action filed pursuant to Chapter 742, F.S.
- Provides that the petitioner is relieved from further search in addition to being relieved of further notice when an inquiry does not identify a parent or a prospective parent.
- Provides that a diligent search shall not be required to be conducted for a prospective parent if there is an identified legal father, as defined in s. 39.01(40), F.S., for the child.
- Provides that if the inquiry and diligent search identifies and locates a parent, the individual shall be considered a parent for all purposes under this chapter and the court shall require notice of all hearings to be provided to that person.
- Provides that if the inquiry and diligent search identifies and locates a prospective parent and there is no legal father, that person must be given the opportunity to become a party to the proceedings by completing a sworn affidavit of parenthood and filing it with the court or the department. Also provides that no person shall have standing to file a sworn affidavit of parenthood or otherwise establish parenthood except through adoption after entry of a judgment terminating the parental rights of the legal father of the child. If the known parent contests the recognition of the prospective parent as a parent, the court having jurisdiction over the dependency matter shall conduct paternity proceedings under Chapter 742, F.S.
- Provides if the diligent search under the subsection fails to identify and locate a parent or a prospective parent who was identified during the inquiry, the court shall so find and may proceed without further notice and the petitioner is relieved of further search.

Section 8 creates s. 39.5035, F.S., relating to deceased parents, to provide a process for the permanent commitment of a child to the department for the purpose of adoption when both parents are deceased. Specifically, this section:

- Provides that, where both parents of a child are deceased and the child does not have a legal custodian through a probate or guardianship proceeding, an attorney for the department, or any other person who has knowledge of the facts alleged or is informed of them and believes that they are true, may initiate a proceeding seeking an adjudication of dependency and permanent commitment of the child to the custody of the department.
- Provides that, when a child has been placed in shelter status by order of the court and not yet adjudicated, a petition for adjudication and permanent commitment must be filed within 21 days after the shelter hearing. In all other cases, the petition must be filed within a reasonable

time after the date the child was referred to protective investigation or after the petitioner becomes aware of the facts supporting the petition.

- Provides that, when a petition for adjudication and permanent commitment or a petition for permanent commitment has been filed, the clerk of court shall set the case before the court for an adjudicatory hearing to be held as soon as possible, but no later than 30 days after the petition is filed.
- Provides notice of the date, time, and place of the adjudicatory hearing for the petition for adjudication and permanent commitment or the petition for permanent commitment and requires a copy of the petition be served upon specified individuals
- Provides that adjudicatory hearings shall be conducted by the judge without a jury, applying the rules of evidence in use in civil cases and adjourning the hearings from time to time as necessary. In a hearing on a petition for adjudication and permanent commitment or a petition for permanent commitment, the court shall consider whether the petitioner has established by clear and convincing evidence that both parents of the child are deceased, and that the child does not have a legal custodian through a probate or guardianship proceeding. The presentation of a certified copy of the death certificate for each parent shall constitute evidence of the parents' deaths and no further evidence is required to establish that element.
- Provides when the adjudicatory hearing is on a petition for adjudication and permanent commitment, within 30 days after conclusion of the adjudicatory hearing, the court shall enter a written order.
- Provides when the adjudicatory hearing is on a petition for permanent commitment, within 30 days after conclusion of the adjudicatory hearing, the court shall enter a written order.

Section 9 amends s. 39.521, F.S., relating to disposition hearings, to eliminate the description of how long protective supervision can continue and under what circumstances the court can terminate protective supervision. Instead, protective supervision will now be fully addressed in newly created s. 39.63, F.S.

Section 10 amends s. 39.522, F.S., relating to postdisposition change of custody, to create an emergency modification of placement that will enable the department and the judiciary to take immediate action to protect children at risk of abuse, abandonment, or neglect who have already been subject to disposition. Specifically, the section:

- Clarifies that the statute applies to a modification of placement if a child must be removed from the parent's custody while the department is supervising the placement of the child after the child is returned to the parent.
- Provides that at any time, an authorized agent of the department or a law enforcement officer may remove a child from a court-ordered placement and take the child into custody if the child's current caregiver requests immediate removal of the child from the home or if the circumstances meet the criteria of probable cause. It also provides requirements and sets timelines for motions and petitions to be filed, considerations for the court before issuing an order, requirements for a home study if a placement is changed, and cause for the court to conduct an evidentiary hearing. The standard for changing custody of the child shall be whether a preponderance of the evidence establishes that a change is in the best interest of the child. When applying this standard, the court shall consider the continuity of the child's placement in the same out-of-home residence as a factor when determining the best interests of the child.

Section 11 amends s. 39.6011, F.S., relating to case plan development, to require the department to file the case plan with the court and serve a copy on the parties:

- Not less than 72 hours before the disposition hearing, if the disposition hearing occurs on or after the 60th day after the date the child was placed in out-of-home care. All such case plans must be approved by the court.
- Not less than 72 hours before the case plan acceptance hearing, if the disposition hearing occurs before the 60th day after the date the child was placed in out-of-home care and a case plan has not been submitted pursuant to this paragraph, or if the court does not approve the case plan at the disposition hearing. The case plan acceptance hearing must occur within 30 days after the disposition hearing to review and approve the case plan.

Section 12 creates s. 39.63, F.S., relating to case closure, to provide that unless the circumstances relating to young adults in extended foster care apply, the court must close the judicial case for all proceedings under this chapter by terminating protective supervision and its jurisdiction as provided in this section. Specifically, the section provides the circumstances under which the court shall close the judicial case by terminating protective supervision and its jurisdiction in a Chapter 39, F.S., proceeding. This statute clarifies for the court and the parties the requirements that must be met to ensure child safety before jurisdiction and supervision is terminated at any stage of the case.

Section 13 amends s. 39.801, F.S., relating to procedures and jurisdiction related to termination of parental right procedures, to clarify that personal service of a termination of parental rights petition is required only on a prospective parent who has been both identified and located.

Section 14 amends s. 39.803, F.S., relating to identity or location of a parent unknown after filing a termination of parental rights petition, to conform to changes that were made to s. 39.503, F.S. This section further clarifies that the court needs to conduct an inquiry to determine the identity or location of a parent where an inquiry has not previously been performed under s. 39.503, F.S.

Section 15 amends s. 39.806, F.S., relating to grounds for termination of parental rights, to provide that reasonable efforts to preserve and reunify families are not required if a court of competent jurisdiction has determined that any of the events described in ss. 39.806(1)(b)-(d) and (1)(f)-(n), F.S., have occurred. Consequently, the department will no longer need to make reasonable efforts if a parent has been convicted of an offense that requires the parent to register as a sexual predator.

Section 16 amends s. 39.811, F.S., relating to powers of disposition and orders of disposition, to provide the court shall retain jurisdiction over any child for whom custody is given to a social service agency until the child is adopted after termination of parental rights or permanent commitment pursuant to newly created s. 39.8025, F.S. It also provides that the department's decision to deny an application to adopt a specific child who is under the court's jurisdiction is reviewable only through the process established in s. 39.812(4), F.S., and is not subject to the provisions of Chapter 120, F.S.

Section 17 amends s. 38.812, F.S., relating to postdisposition relief and petition for adoption, to

provide that the department may place a child in the department's custody with an agency as defined in s. 63.032, F.S., with a child-caring agency registered under s. 409.176, F.S., or in a family home for prospective subsequent adoption without the need for a court order unless as otherwise provided in this section. It also authorizes the department, without the need for a court order, to allow prospective adoptive parents to visit with the child to determine whether adoptive placement would be appropriate. It also provides procedures if the department has denied an individual's application to adopt a child.

Section 18 amends s. 63.062, F.S., relating to persons required to consent to adoption, to provide that when a minor has been permanently committed to the department for subsequent adoption, the department must consent to the adoption or the court order finding the department unreasonably withheld its consent must be attached to the petition to adopt.

Section 19 amends s. 63.082, F.S., relating to execution of consent to adopt, to provide that a preliminary home study is required for all prospective parents regardless of whether that individual is a stepparent or a relative, and that the exemption in s. 63.092(3), F.S., does not apply when a minor child is under the supervision of the department or otherwise subject to the jurisdiction of the dependency court as a result of the filing of a shelter petition, a dependency petition, or a petition for termination of parental rights pursuant to Chapter 39, F.S.

Section 20 amends s.402.302, relating to definitions, to specify that family day care home operations must occur in the operator's primary residence and that the capacity is limited to children present in the home during operations.

Section 21 amends s. 402.305, F.S., relating to licensing standards, to clarify that at least one child care facility staff person must receive a certification for completion of a cardiopulmonary resuscitation course.

Sections 402.305(9)(b) and (c), F.S., are amended to align the dates for providers on when information is to be shared with parents or guardians.

Section 402.305(10), F.S., is amended to specify that, prior to providing transportation services, a child care facility, family day care home or large family child care home is required to notify the department for approval to begin the service to ensure that all standards have been verified as compliant. Currently, providers are not required to notify the department when they begin offering transportation services. The amendment further specifies that family or large family child care homes are not responsible for children being transported by a parent or guardian.

Section 22 amends s. 402.313, F.S., relating to family day care homes, to align the dates for providers on when information is to be shared with parents or guardians.

Section 23 amends s. 402.331, F.S., relating to large family day care homes, to align the dates for providers on when information is to be shared with parents or guardians.

Section 24 amends s. 409.1451, F.S., relating to the Road-to-Independence Program, to eliminate the requirement to submit an annual report.

Section 25 creates s. 742.0211, F.S., relating to proceedings applicable to dependent children, to establish a process for paternity proceedings concerning a dependent child. Specifically, it:

- Provides that, in addition to satisfying the other requirements of this chapter, any paternity proceeding filed under Chapter 742 concerning a dependent child must comply with the requirements of this section.
- Provides that, notwithstanding s. 742.021(1), F.S., a paternity proceeding filed under Chapter 742 concerning a dependent child may be filed in the circuit court of the county that is exercising jurisdiction over the Chapter 39 proceeding even if the plaintiff or the defendant do not reside in the county.
- Provides that the court having jurisdiction over the dependency matter may conduct proceedings under this chapter either as part of the Chapter 39 proceeding or as a separate action under Chapter 742.
- Provides that no person shall have standing to file a paternity complaint under this chapter regarding a dependent child after entry in the Chapter 39 proceeding of a judgment terminating the parental rights of the legal father, as defined in s. 39.01(40), F.S., for the dependent child.
- Addresses paternity proceedings concerning a dependent child who already has an established legal father under Chapter 39, F.S.
- Mandates that the court shall enter a written order on the paternity complaint within 30 days after conclusion of the hearing held pursuant to s. 742.031, F.S.
- Provides that if the court enters an order finding the alleged father is the father of the dependent child, that individual will be considered a parent as defined in s. 39.01(56), F.S., for all purposes of the Chapter 39 proceeding.

Section 26 provides an effective date of October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Pinellas, Hillsborough, and Sarasota counties would be required to adopt standards that address the minimum standards in the changes to Chapter 402, F.S.

The department has reported that there is a potential cost savings of \$1.1 million if the changes in sections 16, 17, and 18 of the bill are implemented.⁴

VI. Technical Deficiencies:

Lines 1266 and 1299 in the bill change “shall be,” to “is” or “are.” Both lines should either retain current law or be changed to “must be.”

VII. Related Issues:

It is unclear how the changes proposed in section 39.503, regarding the department’s current obligation to search for prospective parents will be reconciled with other provisions in the statute (for example section 39.502) and parents’ constitutional rights.

Additionally, the provisions regarding determinations of paternity under Chapter 742 appear to establish new standards and legal burdens for determinations of paternity. Questions have arisen as to whether the procedure proposed can be implemented from a practical perspective given the standards established and the timeframes imposed.

VIII. Statutes Affected:

This bill substantially amends ss. 25.385, 39.01, 39.205, 39.302, 39.402, 39.407, 39.503, 39.521, 39.522, 39.6011, 39.801, 39.803, 39.806, 39.811, 39.812, 63.062, 63.082, 402.302, 402.305, 402.313, 402.3131, and 409.1451 of the Florida Statutes.

This bill creates ss. 39.5035, 39.63, and 742.0211 of the Florida Statutes.

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

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

None.

⁴ The Department of Children and Families, 2020 Agency Legislative Bill Analysis, SB 1548, November 25, 2019.

B. Amendments:

None.

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