

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB CFS 20-03 Dependency Proceedings and Child Protection Services

**SPONSOR(S):** Children, Families & Seniors Subcommittee

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Children, Families & Seniors Subcommittee		Woodruff	Brazzell

### SUMMARY ANALYSIS

Florida's child welfare system identifies families whose children are in danger of suffering or have suffered abuse, abandonment, or neglect, and works with those families to address the problems that are endangering children, if possible. If the child welfare system cannot address the problems, the Department of Children and Families (DCF) finds safe out-of-home placements to protect children. When child welfare necessitates that DCF remove a child from the home, a series of dependency court proceedings must occur to adjudicate the child dependent and place him or her in out-of-home care. The dependency process includes, among other things, a child protective investigation to determine the safety of the child, the court finding the child dependent, case planning to address the problems resulting in the child's dependency, and reunification with the child's parent or another option to establish permanency, such as adoption.

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. The term "parent" also means legal father. For a dependent child, the court must determine who the father is so that person can receive a case plan and work towards its successful completion.

The proposed committee bill (PCB) amends various statutes to require the court to establish paternity early in the dependency case, make the adoption process more efficient, and allow the court to terminate parental rights faster in certain situations.

Specifically, the PCB:

- Amends statute throughout ch. 39, F.S., to require the court to establish paternity earlier in the dependency case.
- Creates a special court process for children who have no surviving parents so the children can be adopted and continue to receive their parents' benefits, like social security and inheritance.
- Removes a duplicative administrative review hearing from the adoption process so adoptions are not unnecessarily delayed.
- Requires a preliminary home study for all prospective parents, regardless of whether that individual is a stepparent or relative.
- Allows the court to terminate parental rights faster when a parent is a registered sexual predator.
- Removes the statutory responsibility from the Agency for Health Care Administration to adopt rules for the registration of qualified evaluators who assess residential placements for children. Instead, DCF will have responsibility for the qualified evaluators.
- Amends statute to require a case plan to be filed not less than 72 hours before the disposition hearing.
- Amends the definition of "Guardian ad Litem" to include the Statewide Guardian ad Litem Office.
- Removes mandated reports that are no longer needed.

The PCB has a significant, positive fiscal impact on state government and does not have a fiscal impact on local government.

The PCB has an effective date of July 1, 2020.

### FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcb03.CFS

DATE: 2/3/2020

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Florida's Child Welfare System

Florida's child welfare system identifies families whose children are in danger of suffering or have suffered abuse, abandonment, or neglect, and works with those families to address the problems that are endangering children, if possible. If the child welfare system cannot address the problems, the Department of Children and Families (DCF) finds safe out-of-home placements to protect children.

DCF administers the state's child welfare system and works in partnership with local communities and the courts to ensure the safety, timely permanency, and well-being of children.<sup>1</sup> DCF's practice model focuses on preserving and strengthening the child's family ties whenever possible, and removing the child from the home when the child's welfare cannot be adequately safeguarded otherwise.<sup>2</sup>

##### *Central Abuse Hotline*

DCF operates the Florida central abuse hotline (hotline), which accepts reports 24 hours a day, seven days a week, of known or suspected child abuse, abandonment, or neglect.<sup>3</sup> Statute mandates any person who knows or suspects that a child is abused, abandoned, or neglected to report such knowledge or suspicion to the hotline.<sup>4</sup> A child protective investigation begins if the hotline determines the allegations meet the statutory definition of abuse, abandonment, or neglect.<sup>5</sup>

##### Community-Based Care Organizations and Services

DCF contracts for case management, out-of-home care, and related services with community-based care lead agencies (CBCs). Using CBCs to provide child welfare services is designed to increase local community ownership of service delivery and design.<sup>6</sup>

DCF, through CBCs, administers a system of care for children with the goals of:

- Prevention of separation of children from their families;
- Intervention to allow children to remain safely in their own homes;
- Reunification of families who have had children removed from their care;
- Safety for children who are separated from their families;
- Well-being of children through emphasis on educational stability and timely health care;
- Achievement of permanency; and
- Effective transition to independence and self-sufficiency.

CBCs provide foster care and related services, including, but not limited to, counseling, domestic violence services, substance abuse services, family preservation, emergency shelter, and adoption.<sup>7</sup> CBCs contract with a number of subcontractors for case management and direct care services to children and their families.<sup>8</sup> There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.<sup>9</sup>

---

<sup>1</sup> S. 39.001, F.S.

<sup>2</sup> S. 39.001(4), F.S.

<sup>3</sup> S. 39.201(5), F.S.

<sup>4</sup> S. 39.201(1)(a), F.S.

<sup>5</sup> S. 39.201(2)(a), F.S.

<sup>6</sup> Department of Children and Families, *Community-Based Care*, <https://www.myflfamilies.com/service-programs/community-based-care/> (last visited Jan. 14, 2020).

<sup>7</sup> S. 409.145(1), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Department of Children and Families, *Community-Based Care Lead Agency Map*, <http://www.myflfamilies.com/service-programs/community-based-care/cbc-map> (last visited Jan. 14, 2020).

### Guardian ad Litem Program

The Guardian ad Litem (GAL) Program is a network of volunteer advocates and professional staff representing the best interest of abused, abandoned, and neglected children. The court must appoint a GAL to represent a child as soon as possible in any child abuse, abandonment, or neglect proceeding.<sup>10</sup>

The Statewide GAL Office within the Justice Administrative Commission has oversight responsibilities for and provides technical assistance to all guardian ad litem programs located with the judicial circuits.<sup>11</sup>

### Dependency Case Process

When child welfare necessitates that DCF remove a child from the home, a series of dependency court proceedings must occur to adjudicate the child dependent and placed in out-of-home care. The dependency process includes, among other things, a child protective investigation to determine the safety of the child, the court finding the child dependent, case planning to address the problems resulting in the child's dependency, and reunification with the child's parent or another option to establish permanency, such as adoption.

---

<sup>10</sup> S. 39.822, F.S.

<sup>11</sup> S. 39.8296(2)(b), F.S.

## 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 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 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.
Postdisposition hearing	The court may change temporary placement at a postdisposition hearing any time after disposition but before the child is residing in the permanent placement approved at a permanency hearing.	s. 39.522, 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 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.

### *Case Plans*

Section 39.6011, F.S., requires DCF to prepare a case plan for each child receiving services. It must be developed in a face-to-face conference with the child's parent, any court-appointed Guardian ad Litem, and, if appropriate, the child and the temporary custodian of the child.

Pursuant to s. 39.6011(2), F.S., each case plan must contain:

- The problem being addressed, including the parent's behavior or acts resulting in risk to the child and the reason for the intervention by DCF.
- The permanency goal.
- If concurrent planning is being used, a goal of reunification in addition to one of the remaining permanency goals provided in statute.
- The date the case plan compliance expires. The case plan must be limited to as short a period as possible for accomplishing its provisions. The plan's compliance period expires no later than 12 months after the date the child was removed from the home, the child was adjudicated dependent, or the date the case plan was accepted by the court, whichever occurs first.
- A written notice to the parent that failure to substantially comply with the case plan may result in the termination of parental rights, and that a material breach of the case plan may result in the filing of a petition for termination of parental rights sooner than the compliance period set forth in the case plan.

Additionally, the case plan must describe:

- The role of foster parents or legal custodians when developing the services for the child, foster parents, or legal custodians;
- The responsibility of the case manager to forward a relative's request to receive notification of all proceedings and hearings;
- The minimum number of face-to-face meetings to be held each month between the parents and DCF to review the progress of the case plan, to eliminate barriers to progress, and to resolve conflicts or disagreements; and
- The parent's responsibility for financial support of the child.<sup>12</sup>

All parties must sign the case plan, including the child, unless the child is not of an age or capacity to participate in the case-planning process. Signing the case plan acknowledges that individuals have participated in developing the terms and conditions.<sup>13</sup>

During FY 2018-19, the court ordered a case plan at disposition for 9,186 children.<sup>14</sup> However, before the court can order these plans to be followed by the parents, DCF is required to file the case plan and serve a copy on the other parties. Currently, there is a conflict in law when DCF must perform these tasks.

Section 39.521(1)(a), F.S., governing disposition hearings, requires DCF 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 60<sup>th</sup> day after the date the child was placed in out-of-home care.
- Not less than 72 hours before the case plan acceptance hearing, if the disposition hearing occurs before the 60<sup>th</sup> after the date the child was placed in out-of-home care and a case plan has not been submitted, 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 for the court to review and approve the case plan.

However, s. 39.6011(7), F.S., governing case plans, requires DCF to file the case plan with the court and provide copies to all parties not less than three business days before the disposition hearing, regardless of when the disposition hearing is held.

### Guardianship Assistance Program

DCF's Guardianship Assistance Program (GAP) is a federal-supported program for relatives and fictive kin who care for dependent children in out-of-home care. The federal government gives states the option of using federal funds to support kinship guardianship payments for children living in the home of relative caregivers who become the children's legal guardian.<sup>15</sup> The program became effective in Florida on July 1, 2019.

A requirement for a guardian to receive a GAP payment is the identification of a successor guardian in the event the current guardian can no longer take care of the child.<sup>16</sup> To be deemed a successor guardian, an individual must be selected by the child's initial guardian and complete background screening. Successor guardians are intended to maintain a relationship with the child while the child is placed with the initial guardian, thus giving them a relationship to the child. For a successor guardian to receive a GAP payment, the individual must complete background checks and have the child placed in the custody of the caregiver for six months. This requires the child to be placed back in the custody of DCF for placement with the successor guardian.

<sup>12</sup> S. 39.6011(4), F.S.

<sup>13</sup> S. 39.6011(3), F.S.

<sup>14</sup> Florida Department of Children and Families, Agency Bill Analysis for Senate Bill 1548, p. 8 (Jan. 23, 2020).

<sup>15</sup> Mark F. Testa and Leslie Cohen, *Pursuing Permanence for Children in Foster Care: Issues and Options for Establishing a Federal Guardianship Assistance Program in New York State*, School of Social Work, The University of North Carolina at Chapel Hill, (June 2010), <http://ocfs.ny.gov/main/report/Pursuing%20Permanence%20for%20Children%20in%20Foster%20Care%20June%202010.pdf> (last visited Feb. 2, 2010).

<sup>16</sup> 42 U.S.C. § 673(b)(1)(d)

## Suitability Assessments for Children in the Child Welfare System

Section 39.407, F.S., provides a process for assessing a child in the legal custody of DCF for suitability for residential mental health treatment. This assessment must be conducted by a qualified evaluator who evaluates whether:

- the child appears to have an emotional disturbance serious enough to require treatment.
- the child has had the treatment explained to him or her.
- there are no less restrictive placements available.

In 2016, the Legislature required the Agency for Health Care Administration (AHCA) to assign all rights, obligations, and other interest under the contract pertaining to Qualified Evaluator Network services to DCF.<sup>17</sup> However, the Legislature did not amend s. 39.407(6)(b), F.S., to reflect this change, and thus the statute still requires AHCA to appoint the qualified evaluators. AHCA continues to have statutory authority to adopt rules for the registration of and fee schedule for qualified evaluators.

## Permanent Commitment of Orphaned Children

Section 39.01(15), F.S., defines a “child who is found to be dependent” to mean a child who, pursuant to Ch. 39, F.S., is found by the court to:

- Have been abandoned, abused, or neglected by the child’s parent or parents or legal custodian.
- Have been surrendered to DCF or a licensed child-placing agency for purpose of adoption.
- Have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, or DCF, after which placement, under the requirements of Ch. 39, F.S., a case plan has expired and the parent or parents or legal custodians have failed to substantially comply with the requirements of the plan.
- Have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a parent or parents have signed a consent for adoption.
- Have no parent or legal custodians capable of providing supervision and care.
- Be at substantial risk of imminent abuse, abandonment, or neglect by the parent or parents or legal custodians.
- Have been sexually exploited and to have no parent, legal custodian, or reasonable adult relative currently known and capable of providing the necessary and appropriate supervision and care.

Currently, DCF can adjudicate a child dependent if both parents are deceased; however, there are no legal mechanisms to permanently commit that child to DCF for subsequent adoption. Florida’s Fourth District Court of Appeals has held that when parents or guardians have died, they have not abandoned the child because the definition of “abandonment” contemplates the failure to provide minor child with support and supervision while being able, and the deceased parents 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 finding that the child has no parent or legal custodian capable of providing supervision and care.

Section 39.811(2), F.S., permits a court to commit a child to the custody of DCF 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. All the current grounds to terminate a parent’s rights for a child to be subsequently adopted require that the parent engage in some kind of behavior that puts a child at risk.<sup>18</sup> Because a deceased parent can no longer engage in any behavior, DCF cannot seek the termination of a deceased parent’s parental rights. Moreover, even if there was a legal ground to seek termination of a deceased parent’s parental rights, the child may be receiving benefits such as social security benefits or an inheritance because of the parent’s death that DCF would not want to halt by seeking a termination of the deceased parent’s rights.

---

<sup>17</sup> Ch. No. 2016-80, L.O.F.

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

Because DCF cannot seek termination of parental rights when both parents are deceased, courts are permanently committing children to DCF's custody. Florida statutes do not currently have a mechanism that permits an orphaned child to be permanently committed to DCF for subsequent adoption without terminating the deceased parent's rights to allow the child to continue receiving death benefits.

### Termination of Parental Rights and Requirements for Reasonable Efforts

Beginning with the Adoption Assistance and Child Welfare Act of 1980,<sup>19</sup> federal law has required states to show that they have made "reasonable efforts" to provide assistance and services to prevent a child's removal or to reunify a child with his or her family prior to terminating parental rights. The Adoption and Safe Families Act of 1997 stated, however, that the child's health and safety are the primary concern when assessing the degree for a state to strive in making reasonable efforts.<sup>20</sup> Additionally, the Adoption and Safe Families Act does not require states to make reasonable efforts when a court has determined that the parent has subjected the child to aggravated circumstances as defined in state law, which includes but is not limited to abandonment, torture, chronic abuse, and sexual abuse.<sup>21</sup>

Section 39.806, F.S., regarding grounds for termination of parental rights, addresses DCF's reasonable efforts. DCF's failure to make reasonable efforts to reunify the parent and child may excuse the parent's noncompliance with the case plan, leading to invalidate such noncompliance as grounds for a termination of his or her rights. However, a court may exempt DCF from having to make reasonable efforts to preserve and reunify families if the parents have engaged in certain conduct, such as subjecting the child to aggravated child abuse or murdering the child's sibling; or if the court has taken certain actions, such as involuntarily terminating the parent's rights to the child's sibling. Reasonable efforts are also not required if the court determines that abandonment of a child has occurred.<sup>22</sup> Abandonment of a child, or when the identity of location of the parent or parents is unknown and cannot be ascertained by diligent search within 60 days, is also grounds for termination of parental rights. "Abandonment" is defined as a situation in which the parent or legal custodian of a child has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.<sup>23</sup>

When DCF does not have to make reasonable efforts before terminating parental rights it is known as an expedited termination of parent rights. In these situations, DCF does not need to obtain an adjudication of dependency and offer the parents a case plan for reunification before seeking termination of the parent's rights.

Currently, the registration as a sexual predator is not included in the grounds to expedite the termination of a parent's rights. Therefore, DCF must provide a parent who is a registered sexual predator a case plan for reunification prior to seeking termination of that parent's rights.

### Child Welfare Adoptions

Adoption is a method of achieving permanency for children who have suffered abuse, abandonment, or neglect and are unable to be reunified with their parents. To become a licensed adoptive parent, an individual or couple must complete a licensing study class and complete a homestudy.<sup>24</sup> Adoption

---

<sup>19</sup> Adoption Assistance and Child Welfare Act of 1980, Public L. No. 96-272, H.R. 3434, 96th Cong. (1980).

<sup>20</sup> CHILD WELFARE INFORMATION GATEWAY, CHILDREN'S BUREAU, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children*, <https://www.childwelfare.gov/pubPDFs/reunify.pdf> (last visited Jan. 31, 2020).

<sup>21</sup> 42 U.S.C. § 671(a)(15)(D)(i).

<sup>22</sup> S. 39.806(2), F.S.

<sup>23</sup> S. 39.806, F.S., uses the definition of "abandonment" in s. 39.01(1), F.S. That definition also states: "For purposes of this subsection, "establish or maintain a substantial and positive relationship" includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child. A man's acknowledgement of paternity of the child does not limit the period of time considered in determining whether the child was abandoned."

<sup>24</sup> Department of Children and Families, How Do I Become a Foster Parent?, <https://www.myflfamilies.com/service-programs/foster-care/how-do-i.shtml> (last visited Jan. 31, 2019).

proceedings are governed by Ch. 63, F.S., regardless of whether the child is being adopted from the child welfare system or through private adoption.

For a child in the custody of DCF, statutes allows a parent to execute a consent for placement of a minor with an adoption entity<sup>25</sup> or qualified adoptive parents when parental rights have not yet been terminated. The adoption consent is valid, binding, and enforceable by the court. After the parent executes the consent to adopt, statute permits the adoption entity to intervene in the Ch. 39, F.S., dependency case. The adoption entity is required to provide the court with a copy of the preliminary home study of the prospective adoptive parents and any other evidence showing the placement would be stable for the child.

Although s. 63.082(6), F.S., does not allow exceptions 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 on s. 63.092(3), F.S. This section does not require a petitioner for adoption to provide a preliminary homestudy in a nondependency proceeding if the petitioner for adoption is a stepparent or relative<sup>26</sup>.

As a result, a relative who did not pass a DCF home study because of safety concerns or disqualifying background offenses is permitted to intervene in a dependency action to obtain placement of the child. DCF reports one recent case where a relative failed five different DCF home studies, yet the trial court held that she did not need to complete a home study to intervene in a dependency proceeding.<sup>27</sup>

### Selection of Adoptive Placement

Currently, DCF'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. DCF may place a child in its custody in a home and DCF's consent alone is sufficient for the placement. The dependency court retains jurisdiction over any child in DCF's custody until the child is adopted. After custody of a child for subsequent adoption has been given to DCF, 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., allows the court to review the appropriateness of the adoptive placement of the child after the child's Guardian ad Litem shows good cause.

When a child is available for adoption, DCF, 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, DCF routes these conflicting applications through the adoption applicant review committee (AARC) for resolution. The decision of the AARC is then reviewed by DCF which issues its consent for adoption to one applicant while communicating its denial to the other applicant through a certified letter. These final letters are considered final agency action which gives an unsuccessful applicant a "point of entry" to seek review of DCF's decision through an administrative review hearing process under Ch. 120, F.S.

Additionally, Florida law permits individuals whom DCF declines consent for adoption of a child to initiate a new Ch. 63, F.S., legal proceeding by filing a petition for adoption. Upon filling the petition, the petitioner must demonstrate DCF unreasonably withheld its consent to adopt a child. Because Ch. 63, F.S., permits anyone who meets statutory requirements to adopt a child and any petition may argue DCF's unreasonable withheld its consent for the adoption, multiple parties may file a petition to adopt the same child. Therefore, there can possibly be three separate legal proceedings simultaneously addressing the adoption of a child:

- A Ch. 39, F.S., dependency proceeding.
- A Ch. 63, F.S., adoption proceeding filed by the family who has DCF's consent.

---

<sup>25</sup> Section 63.032(3) defines adoption entity as DCF, a child caring-agency registered under s. 409.176, an intermediary, a Florida child-placing agency licensed under s. 63.202, or a child-placing agency licensed in another state which is licensed by DCF to place children in the State of Florida.

<sup>26</sup> Relative is defined as a person related by blood to the person being adopted within the third degree.

<sup>27</sup> Florida Department of Children and Families, Agency Bill Analysis for Senate Bill 1548, p. 11

- A Ch. 63, F.S., adoption proceeding filed by the applicant who asserts DCF unreasonably withheld its consent.

Multiple competing adoption petitions require additional court hearings to resolve the conflict and may lead 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.

Chapter 120, F.S., administrative review hearings are heard by designated hearing officers within DCF. Assignment of adoption disputes to the Ch. 120, F.S., process arose due to the opinion in *Department of Children & Family Services v. I.B. and D.B.*, 891 So. 2d 1168 (Fla. 1<sup>st</sup> DCA 2005). These hearings require agency resources to conduct.

There are also associated delays inherent in Ch. 120 procedures that encumber the Ch. 39, F.S. demand for permanency. From a sample of 25 Ch. 120 contested adoption matters between 2018 and 2019, the average length of time between the receipt of a hearing request and entry of a final order was 213 days. This does not include any additional delays caused by appeal to the appropriate District Court, which adds, on average, an additional 120 days of delay.

### Paternity

If an individual is a “parent” in a dependency action, the person is entitled to due process and notice before any judicial action may be taken. Section 39.01(56), F.S., 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. The term “parent” also means legal father.<sup>28</sup> If a child has been legally adopted, the term “parent” means the adoptive mother or father of the child.

The term “parent” does not include an individual whose parental relationship to the child has been legally terminated, or an alleged or prospective parent, unless:

- The parental status falls within the terms of s. 39.503(1) or 63.062(1), or
- Parental status is applied for the purpose of determining whether the child has been abandoned.

The parents, whether the legal father or prospective parent, are included as parties to a dependency case. As such:

- They must be advised of their right to counsel at each stage of the dependency proceeding.<sup>29</sup>
- DCF must obtain the names of all parents and prospective parents when taking custody of a child.<sup>30</sup>
- They are provided written notice of their right to counsel and right to be heard and present evidence at the shelter hearing.<sup>31</sup>
- They are notified of every proceeding or hearing involving the child.<sup>32</sup>
- The court makes its own inquiry to discover the parent’s identity when a dependency petition is filed and the parent’s identity is unknown.<sup>33</sup>
- DCF conducts a diligent search to determine the parent’s location when the identity of the parent is known, but his or her whereabouts are unknown.<sup>34</sup>

### *Paternity Inquiry*

<sup>28</sup> Section 39.01, F.S., defines “legal father” as a man married to the mother at the time of conception or birth of the child, unless paternity has been otherwise determined by a court of competent jurisdiction. 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, 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.

<sup>29</sup> S. 39.013(9), F.S.

<sup>30</sup> S. 39.401(4), F.S.

<sup>31</sup> S. 39.402(5), F.S.

<sup>32</sup> S. 39.502(1), F.S.

<sup>33</sup> S. 39.503(1), F.S.

<sup>34</sup> S. 39.503(5), F.S.

When the identity and location of the legal father is unknown, ss. 39.402(8)(c), 39.503(1), and 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 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.
- 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.

There could be a delay in court proceedings in cases where there is a legally established father because statute requires the court to treat an alleged or prospective father who is identified during the inquiry as a parent even if that person has not yet been located or, if located, fails to execute a sworn affidavit of parenthood. Such delays occur even in cases where it is not contemplated that the legal father will be disestablished and the prospective parent will be established.

While statute requires the court to conduct the inquiry to identify the legal father, there is no legal requirement in statute that the court must enter an order establishing paternity when a legal father has been identified. Without an entry of an order establishing paternity, the legal father is under no obligation to accept services or provide child support.

Additionally, the law does not specify that the inquiry should stop after an affirmative response to any particular question, and so provides a means for any man identified through the inquiry to become a party to the proceedings and to be treated as a parent.<sup>35</sup> Just like there is no statutory requirement mandating the court to enter an order establishing paternity, there is also no statutory prohibition to the court acting on its own motion to disrupt paternity when no one has sought to disestablish a legal father. As a result, dependency court judges at times make prospective fathers parties to a dependency case even if there is a legal father, resulting in dual paternity for a child and the need to provide services to multiple “fathers” at the same time.

Statute currently requires DCF and the court to provide notice of hearings where the court’s inquiry identifies any person as a parent or a prospective parent and conduct a diligent search if that person’s location is unknown. In practice, compliance with statute has resulted in unintended consequences of delay in court proceedings when notice must be provided to a parent whose location is unknown, even after a search was previously conducted, or a diligent search must be conducted to locate a prospective father even where there is a legal father.<sup>36</sup> DCF reports that in FY 2018-19, diligent searches were performed for 2,968 children.<sup>37</sup> On average, it takes a case manager approximately 60 days to perform a diligent search and provide the results of the search to the court and DCF.<sup>38</sup>

### *Paternity Establishment*

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., requires a prospective parent to be given an opportunity to become a party to a dependency proceeding if the inquiry and diligent search identified that person as a prospective parent. A prospective parent who files a sworn affidavit of parenthood while the child is a dependent child before

---

<sup>35</sup> Ss. 39.503(8) and 39.803(3), F.S.

<sup>36</sup> Florida Department of Children and Families, Agency Bill Analysis for Senate Bill 1548, p. 5

<sup>37</sup> Id.

<sup>38</sup> Id.

an adjudicatory hearing for termination of parental rights is considered a parent unless the other parent contests the determination of parenthood.

Chapter 742, F.S., concerns determination of parentage. 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 to bring proceedings in court to determine the paternity of the child when paternity has not been established by law or otherwise. Section 742.031, F.S., requires the court to conduct a hearing on the complaint and establish paternity if the court finds the alleged father is the father of the child. Additionally, s. 742.18, F.S., allows a man to disestablish paternity or terminate a child support obligation when the male is not the biological father of the child.

Currently, statute does not provide guidance to the court if a prospective parent files a sworn affidavit of parenthood or files an action under Chapter 742, F.S., after the legal father's rights have been terminated. Instead, courts get their guidance on resolving a Ch. 742, F.S., disestablishment of paternity claim from case law.

In *Simmons 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 in 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.<sup>39</sup> Thereafter, the biological father must show there is a clear and compelling reason based primarily on the child's best interest to disestablish paternity of the legal father.<sup>40</sup>

### Statutorily Mandated Reports

Included in Ch. 39 and 409, F.S., are several legislatively mandated reports that DCF must send to the Legislature and the Governor's Office. Some reports have been mandated for years despite changes in processes and monthly tracking and posting of data.

#### *False Reporting*

Section 39.205(7), F.S., currently requires DCF to submit an annual report detailing the number of false reports referred to law enforcement for consideration of a criminal investigation. Any person who knowingly and willingly files a false report with the hotline, or advises another individual to make such a report, is guilty of a felony of the third degree as provided in ss. 775.082 and 775.083, F.S.

This report has consistently indicated that the vast majority of reports are made in good faith to the hotline. Since FY 2015-16, DCF has averaged 172,500 child protective investigations per year with only 325 reports per year suspected as being initiated as a result of false reporting.<sup>41</sup> Over the past four years, that equates to only one suspected false report per approximately more than 500 investigations.<sup>42</sup> Low rates have repeatedly been reported to the Legislature since 2006.<sup>43</sup>

#### *Independent Living Services Advisory Council Annual Report*

The Florida Legislature created the Independent Living Services Advisory Council (ILSAC) with the "purpose of reviewing and making recommendations concerning the implementation and operation of independent living transition services."<sup>44</sup> It was formed in 2005 to improve interagency policy and services coordination to support older foster youth aging out of foster care.<sup>45</sup> Section 409.1451, F.S.,

---

<sup>39</sup> *Simmons v. Perkins*, 247 So. 3d 397 (Fla. 2018)

<sup>40</sup> *Dep't of Health & Rehab. Servs. v. Privette*, 617 So. 2d 305, 308 (Fla. 1993).

<sup>41</sup> *Supra* note 30.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> S. 409.1451(5), F.S.

<sup>45</sup> Florida Department of Children and Families, Independent Living Service Advisory Council, 2019 Annual Report, <https://www.myffamilies.com/service-programs/child-welfare/docs/2019LMRs/ILSAC%20Annual%20Report%202019.pdf> (last visited Feb. 2, 2020).

specifies an array of services for older foster youth to help them become independent self-supporting young adults, including Aftercare Services, Extended Foster Care, and Post-Secondary Education Services and Support. The ILSAC keeps DCF informed of problems with independent living services, barriers to effective and efficient integration of services across systems of care, and successes that system of services has achieved.<sup>46</sup> The ILSAC must submit a report by December 31 of each year to the Senate President and Speaker of the House that includes a summary of the factors reported on by the council and provide DCF's response to its recommendations.

In addition to the ILSAC annual report, s. 409.1451(6), F.S., requires DCF to prepare a report on the outcome measures and DCF's oversight activities regarding independent living services no later than January 31 of each year. DCF submits the report to the Senate President and Speaker of the House and to the committees with jurisdiction over issues relating to children and families.

The report must include:

- (a) An analysis of performance on the outcome measures developed under the section reported for each community-based care lead agency (CBC) and compared with the performance of the Department on the same measures.
- (b) A description of the Department's oversight of the program, including, by CBC, any programmatic or fiscal deficiencies found, corrective actions required and status of compliance.
- (c) Any rules adopted or proposed under the section since the last report.

DCF is required to provide the Children's Bureau, an Office of the Administration for Children and Families, an Annual Progress and Services Report (APSR). A section of the federal APSR is dedicated to sharing outcome and oversight information regarding the Department's independent living services programs and services provided under s. 409.1451, F.S., that are linked to federal funding. The APSR is also provided to the Legislature each year for review.

In addition, DCF is required to develop a legislatively mandated Results Oriented Accountability - CBC Performance Report. The report monitors and measures the use of resources, the quality and amount of services provided, and the child and family outcomes. While this report does not currently capture specific outcomes related to independent living program, the content could be expanded to include this population if some level of duplication is needed for document context.

Through the course of legislative changes affecting independent living services throughout the years, s. 409.1451(7), F.S., regarding the ILSAC's charge has remained unchanged except for incorporating Extended Foster Care. The law still requires DCF's Secretary to appoint members to ILSAC for reviewing and making recommendations concerning the implementation and operation of independent living program services.

## **Effect of Proposed Changes**

### Paternity

The proposed committee bill (PCB) amends statute throughout ch. 39, F.S., to require the court to establish paternity earlier in the dependency case. Specifically, the PCB:

- Removes an alleged or prospective parent from the definition of "parent" to ensure a legal parent's rights are not modified. This will also eliminate the need to provide rights to prospective parents who have not yet established their paternity when there is currently a legal father. The prospective parent may still execute an affidavit of parenthood at the dependency hearing to establish rights to notice and participation.
- Removes the requirement of notice when a prospective parent's identity or location is unknown and there is an identified legal father.
- Requires the court to establish paternity at the dependency hearing if the inquiry identifies a legal father.

- Relieves the court from being required to do further search or give notice when a legal father has been identified or an inquiry does not identify a parent or prospective parent.
- Requires notice of all hearings if an inquiry and diligent search identifies and locates a parent during the dependency or termination of parental rights hearing.
- Gives an identified prospective parent the opportunity to become a party by completing an affidavit of parenthood when there is no legal father.
- Requires the court to give notice for termination of parental rights only on a prospective parent who has been identified and located.
- Requires the court to establish paternity at a termination of parental rights hearing if a legal father is identified.
- Relieves the court from conducting an inquiry to identify or locate a parent at termination of parental rights hearing if the inquiry was previously performed at the dependency hearing.

Additionally, the PCB creates a new section to provide the court guidance on establishing paternity in cases involving dependent children. The new section allows a paternity proceeding concerning a dependent child to either be part of the dependency case or a separate action. The new section concerns a dependent child who already has a legal father and a different man has filed a complaint to establish paternity. Under the new section, before the court may proceed on his complaint, the alleged father must prove he has acted with diligence in seeking the establishment of paternity and manifested a substantial and continuing concern for the child's welfare. The father must then prove by clear and convincing evidence that there is a clear and compelling reason, based primarily on the dependent child's best interest, to establish his paternity and disestablish the legal father's paternity. However, the bill establishes a rebuttable presumption that it is not in the child's best interest to disestablish the legal father's paternity if the alleged father files his complaint 12 months or more after the child became dependent or the alleged father cannot pass a home study for placement of the child.

Establishing paternity early in the dependency case will make the process more efficient and may eliminate unnecessary delays in the dependency process. Eliminating these unnecessary delays may speed up permanency for children.

## Adoptions

### *Selection of Adoptive Placements*

The PCB amends statute to eliminate the opportunity for a hearing under Ch. 120, F.S., when an applicant is denied the ability to adopt a child. This will reduce the number of simultaneous adoption actions that can be filed by multiple parties to adopt the same child. The bill requires a denied applicant seeking court review of DCF's determination to appeal the decision to the applicable district court of appeals under Ch. 63, F.S. Therefore, review of the decision would only be reviewable by the appellate courts.

Given the other avenue for appeal under Ch. 63, F.S., the Ch. 120, F.S., administrative review hearing is unnecessary, resource-intensive, and delays permanency for children. By barring a Ch. 120, F.S., administrative process, adoption selection appeals would only be heard in circuit court by the same judge already assigned to the child's case.

### *Orphaned Children*

The PCB creates a new process for the permanent commitment of a child to DCF's custody for the purpose of adoption when both parents are deceased without terminating the deceased parent's parental rights. This will allow the child to continue to receive death benefits.

New s. 39.8025, F.S., allows a person to file a petition for adjudication and permanent commitment to DCF's custody of a child whose parents have died and there is no legal custodian through probate or guardianship proceedings. The new section also addresses situations where a child has already been adjudicated dependent and that child's parent dies to allow DCF's attorney or another person who has knowledge of the facts to file a petition for permanent commitment of the child to DCF's custody for

adoption. The petition for either of these situations must be in writing, identify the deceased parents, and allege the facts that establish both parents are deceased and the child does not have a legal custodian through a probate or guardianship proceeding. The petition must be signed by the petitioner under oath stating the petitioner's good faith in filing the petition.

Creating a process for DCF to take a child whose parents have died into custody for adoption without a process that legally cuts off needed benefits for the child reinforces the goal of getting children to permanency faster while maintaining resources for the child.

#### *Home Studies in Ch. 63, F.S., Intervention Proceedings*

The PCB amends statute to require a preliminary home study for all prospective parents, regardless of whether that individual is a stepparent or relative. This change will ensure that individuals who have failed a home study to be a placement under ch. 39, F.S., cannot use ch. 63, F.S., to become a placement for the child. This change promotes placements that are in the child's best interest.

#### Termination of Parental Rights

The PCB allows DCF to expedite termination of parental rights without having to try to reunify the child with his or her parent when the parent is a registered sexual predator. Therefore, DCF will not have to give the parent who is a registered sexual predator a case plan before terminating parental rights. This will speed up permanency for children while keep them away from a dangerous parent.

#### Qualified Evaluators

The PCB moves the statutory responsibility to adopt rules for the registration of qualified evaluators who assess residential placements for the children from AHCA to DCF. This is consistent with DCF having responsibility for the qualified evaluators.

#### Case Plans

The PCB amends statute to ensure that case plans are filed not less than 72 hours before the disposition hearing. This change resolves a conflict in law and ensures there is consistency statewide when case plans are filed to the court and provided to all parties.

#### Guardian ad Litem Program

The PCB amends the definition of "Guardian ad Litem" to include the Statewide Guardian ad Litem Office. This change reflects that the circuit Guardian ad Litem programs are under the single statewide entity. This change will allow the statewide Guardian ad Litem office electronic access to needed records.

#### Statutorily Mandated Reports

The PCB removes statutory requirements for two reports that must be submitted to the Legislature and the Governor on false reporting of child abuse, abandonment and neglect and on the Independent Living program. This change eliminates unnecessary duplication of information to the Legislature.

#### B. SECTION DIRECTORY:

**Section 1:** Amending s. 39.01, F.S., relating to definitions.

**Section 2:** Amending s. 39.205, F.S., relating to penalties relating to reporting of child abuse, abandonment, or neglect.

**Section 3:** Amending s. 39.407, F.S., relating to medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.

**Section 4:** Amending s. 39.503, F.S., relating to identity or location of parent unknown; special procedures.

- Section 5:** Creating s. 39.5035, F.S., relating to deceased parents; special procedures.
- Section 6:** Amending s. 39.6011, F.S., relating to case plan development.
- Section 7:** Amending s. 39.6221, F.S., relating to permanent guardianship of a dependent child.
- Section 8:** Amending s. 39.801, F.S., relating to procedures and jurisdiction; notice; service of process.
- Section 9:** Amending s. 39.803, F.S., relating to identity or location of parent unknown after filing of termination of parental rights petition; special procedures.
- Section 10:** Amending s. 39.806, F.S., relating to grounds for termination of parental rights.
- Section 11:** Amending s. 39.8011, F.S., relating to powers of disposition; order of disposition.
- Section 12:** Amending s. 39.812, F.S., relating to postdisposition relief; petition for adoption.
- Section 13:** Amending s. 39.820, F.S., relating to definitions.
- Section 14:** Amending s. 63.062, F.S., relating to persons required to consent to adoption; affidavit of nonpaternity; waiver of venue.
- Section 15:** Amending s. 63.082, F.S., relating to execution of consent to adoption or affidavit of nonpaternity; family social and medical history; revocation of consent.
- Section 16:** Amending s. 409.1451, F.S., relating to the road-to-independence program.
- Section 17:** Creating s. 742.0211, F.S., relating to proceedings applicable to dependent children.
- Section 18:** providing an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DCF estimates a cost avoidance of \$1,169,231.88 if the changes related to the adoption selection process are implemented based on a review of cases from 2019. In addition, eliminating requiring a case plan for parents who have to register has a sexual predator and the reduction of supervision of the guardian successor by three months will result in a cost avoidance of judicial case supervision by DCF's attorneys.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

Community-based care lead agencies may have a positive fiscal impact if the changes in the bill speed up permanency for children in their care.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:  
None.

**B. RULE-MAKING AUTHORITY:**

The bill moves rulemaking authority for qualified evaluators from Agency for Health Care Administration to DCF. DCF currently has sufficient rulemaking authority to implement the other changes made in this bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**