

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 803 Child Protection

SPONSOR(S): Diaz

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Batchelor	Schoolfield
2) Civil Justice Subcommittee			
3) Appropriations Committee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

HB 803 makes substantial changes to various provisions in Chapter 39, F.S., as it relates to the Florida Abuse Hotline, Child Protective Investigations, and the dependency process. Specifically, the bill does the following:

- Amends hotline procedures to specify that the hotline may accept a call from a parent or legal custodian seeking assistance for themselves when the call does not meet the statutory requirement of abuse, abandonment or neglect.
- Permits the Department of Children and Families (DCF) to discontinue an investigation if they determine that a false report of abuse, abandonment or neglect has been filed.
- Requires DCF to maintain one electronic child welfare case file for each child.
- Requires Child Protective Investigators (CPI) to determine the need for immediate consultation with law enforcement, child protection teams, and others prior to the commencement of an investigation.
- Outlines the activities and training requirements for CPI's.
- Requires that monitoring of protective investigation reports are used to determine the quality and timeliness of safety assessments, and teamwork with other professionals and engagement with families.
- Provides DCF with discretion as to whether to file a dependency petition to the court when a child is in need of protection and supervision. Current law which requires that a dependency petition be filed under certain conditions is deleted by the bill.
- The bill amends 39.013, F.S., related to court procedures and jurisdiction to specify that jurisdiction of the court attaches to a case when a petition for injunction to prevent child abuse has been issued pursuant to s. 39.504, F.S.
- The bill makes improvements and changes to the injunction process to prevent child abuse in s.39.504, F.S. and mirrors language in the civil injunction process in Chapter 741, F.S. ¹
- Requires DCF for out-of-home placement of a child to submit fingerprints of any household members who are 18 years of age or older to the state for criminal background and records checks.
- Amends the time frame for parents to comply with a case plan from 9 months to 12 months as it relates to grounds for termination of parental rights. This is a conforming change to other sections of law that already specify 12 months.
- The bill provides specific circumstances in which the court may have maintaining and strengthening families as a permanency goal in the child's case plan when the child resides with a parent.

The bill does not appear to have a fiscal impact. The bill provides an effective date of July 1, 2012.

¹ s. 741.30, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 39, Florida Statutes

Chapter 39, F.S., provides Legislative direction for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development; to ensure secure and safe custody; to promote the health and well-being of all children under the state's care; and to prevent the occurrence of child abuse, neglect, and abandonment.² The Legislature has established the Florida Abuse Hotline, Child Protection Investigations, and Community Based Care system to help ensure the safety and protection of children.

Florida Abuse Hotline

DCF operates the Florida Abuse Hotline (hotline), a 24 hour a day 7 day a week hotline that receives calls relating to child abuse or neglect. The hotline serves as a point of contact for people who reasonably suspect or believe that a child is being abused, abandoned or neglected.³ Callers to the hotline may remain anonymous; however, various professions⁴ are required to report to the hotline and are required to provide their name as part of the permanent report.⁵ Once a call has been made to the hotline, the operators of the hotline are required to enter all information into the Florida Safe Families Network (FSFN), and determine if the report meets the statutory definition of child abuse, abandonment or neglect by a caregiver.⁶ If the report meets the definition it is then referred to the appropriate child investigative office.⁷ DCF is required to maintain a master file for each child whose report is accepted by the hotline.⁸

DCF has authorized the hotline to also accept calls which do not meet the criteria for abuse, abandonment or neglect. These are called Special Condition Referrals and include when the parent, adult household member, or other person responsible for the child's welfare:⁹

- Has been or is about to be incarcerated;
- Has been or is about to be hospitalized;
- Has died; or
- Is having difficulty caring for a child to the degree that it appears likely that without intervention, abuse will occur.

² s. 39.001(1)(a), F.S.

³ s. 39.201(1)(a), F.S.

⁴ s. 39.201(1)(b), F.S.

⁵ *Id.*

⁶ s. 39.01(1), (2), (44), F.S.

⁷ s. 39.201(2)(a), F.S.

⁸ S. 39.301, F.S.

⁹ *Id.*

Child Protective Investigations

Once a call is received to the hotline and a determination has been made that a child may be a victim of abuse, abandonment or neglect, a Child Protective Investigator (CPI) is sent out for an immediate onsite investigation, if appropriate, or within 24 hours from the time the report was accepted by the hotline.¹⁰ DCF is required to report criminal conduct¹¹ immediately to county law enforcement in which the alleged conduct has occurred.¹² The CPI is required to inform all parties of the report, once the initial assessment is complete, including the parent, legal custodian or other person responsible for the child's welfare.¹³ All investigations are required to be completed within 60 days, unless there is a concurrent criminal investigation, the death of a child is involved, or the child is determined to be missing.¹⁴

Current statute provides for 2 options for response once the CPI determines the report is complete.¹⁵ If it is determined that child would best be served in the home and child care or other treatment is voluntarily accepted by the child and the parent or legal custodian, the CPI may make the necessary references for treatment.¹⁶ If the child is in need of protection and supervision from the court, DCF shall file a petition for dependency.¹⁷ A petition for dependency is required for all cases classified as high risk, including but not limited to the young age of the parents or legal custodians, the use of illegal drugs, the arrest of parents or legal guardians for the manufacturing, processing, disposing of or storing of any substances in violation of Chapter 893, F.S., and domestic violence.¹⁸

If the CPI determines that a false report has been filed¹⁹, the CPI will inform the reporter of criminal penalties and administrative fines associated with false reporting and will work with their supervisor to close the case. If the alleged perpetrator of abuse, abandonment or neglect consents, DCF may refer the report to law enforcement for prosecution of filing a false report.²⁰

DCF currently performs child protection investigation services in 60 counties using department staff.²¹ In the remaining 7 counties²², investigations are conducted by local Sheriff's offices under contract with DCF.²³ There are currently 1,475 CPI's in the state that are either employed through DCF or the sheriff's office.²⁴

Protective Injunction

Current law permits a court to issue an injunction to prevent an act of child abuse including protection from acts of domestic violence at any time after a protective investigation has been initiated, and there is reasonable cause for the injunction.²⁵ An injunction issued pursuant to this section may order an alleged or actual offender to:

¹⁰ Rule 65C-29.003, F.A.C.

¹¹ s. 39.301(2)(b), F.S.

¹² s. 39.301(2)(a), F.S.

¹³ Rule 65C-29.003, F.A.C.

¹⁴ s. 39.301(17), F.S.

¹⁵ s. 39.301(9)(a)(b), F.S.

¹⁶ s. 39.301(9)(a), F.S.

¹⁷ s. 39.301(9)(b), F.S.

¹⁸ *Id.*

¹⁹ Rule 65C-29.010, F.A.C.

²⁰ s. 39.205(5), F.S.

²¹ OPPAGA Memorandum, Sheriff's Offices have Advantages for Conducting Child Abuse Investigations, but Quality Cannot be Directly Compared to DCF. (February 26, 2011).

²² Broward, Citrus, Hillsborough, Manatee, Pasco, Pinellas, and Seminole.

²³ OPPAGA Memorandum, Sheriff's Offices have Advantages for Conducting Child Abuse Investigations, but Quality Cannot be Directly Compared to DCF. (February 26, 2011).

²⁴ Staff Analysis for CS/HB 279 (2011); (on file with committee staff).

²⁵ s. 39.504(1), F.S.

- Refrain from further abuse or acts of domestic violence;
- Participate in a specialized treatment program;
- Limit contact or communication with the child victim, other children in the home, or any other child;
- Refrain from contacting the child at home, school, work, or wherever the child may be found;
- Have limited or supervised visitation with the child.; pay temporary support for the child or other family members; the costs of medical, psychiatric, and psychological treatment for the child incurred as a result of the offenses; and similar costs for other family members.
- Vacate the home in which the child resides.²⁶

The injunction will remain in effect until modified or dissolved by the court, and is enforceable in all counties in the state,²⁷ allowing law enforcement to exercise arrest powers in the enforcement of the injunction, if necessary.²⁸

Petitions

If during the course of a protective investigation, DCF or law enforcement deems that a child cannot safely remain in a home, because of abuse, abandonment or neglect, the child can be taken into custody.²⁹ Once a child is taken into custody, DCF will review the facts supporting the removal of the child and determine if sufficient cause exist to file a shelter petition. If sufficient cause does not exist the child shall be returned to their parent or legal custodian.³⁰ If sufficient cause does exist, DCF shall file a petition and schedule a hearing with the courts, and request that a shelter hearing be held within 24 hours from the removal of the child from the home.³¹ Each petition filed shall contain the identity and residences of the parent or legal custodians, and shall identify the name, age and sex of each child named in the petition.³² Additionally, the petition must detail what voluntary services/and or dependency mediations the parents or legal custodian were offered and what the results were.³³

At the adjudicatory hearing the court may make the following rulings:³⁴

- That the child is not a dependent child and dismiss the case;
- That the child is adjudicated dependent and may remain in the home, under supervision of the court, or be placed in out-of-home care;
- That the child may remain in the home, under the supervision of DCF; adjudication of dependency would be withheld assuming the family complies with the conditions of supervision.

DCF will develop a case plan for each child taken from the home with the goal of achieving permanency for the child.

Effect of Proposed Changes

Section 1. Definitions

The bill amends the definition of “institutional child abuse or neglect” to include a cross reference which provides a definition for “other person” which is referenced in the institutional child abuse or neglect definition.

Section 2. Procedures and Jurisdiction of the Court

²⁶ s. 39.504(3)(a), F.S.

²⁷ s. 39.504(30)(c), F. S.

²⁸ s. 39.504(4), F.S.

²⁹ s. 39.401(1)(b)(1), F.S.

³⁰ s. 39.401(3)(a), F.S.

³¹ s. 39.401(3)(b), F.S.

³² Fla.R.Jud.Admin.8.310.

³³ *Id.*

³⁴ s. 39.507, F.S.

The bill amends 39.013, F.S., related to court procedures and jurisdiction to specify that jurisdiction of the court attaches to a case when a petition for injunction to prevent child abuse has been issued pursuant to s. 39.504, F.S. Current law provides that court jurisdiction attaches to a case when petitions for shelter, dependency or termination of parental rights are filed or the child is taken into DCF custody. DCF reports that some courts will not recognize or hear an injunction unless a shelter, dependency or termination of parental rights petition has already been filed. This change will assist DCF by not requiring one of these other petitions when all that may be needed to resolve a situation is an injunction to protect the child.

Section 3. Criminal History Records Checks

The bill amends the requirements for background screening for persons being considered by DCF for the placement of a child. The bill requires that all persons, including parents, undergo a background screening through the State Automated Child Welfare Information System (SACWIS) and a local and statewide criminal check. Additionally, the bill specifies that all household members and visitors 18 years of age or older are required to submit fingerprints to the Florida Department of Law Enforcement (FDLE) as a condition of background screening. Lastly, the bill requires that an out-of-state criminal history records check, for anyone 18 years of age or older, be conducted if the state allows for the release of such records.

Section 4. Hotline Reports of Child Abuse, Abandonment or Neglect

The bill amends hotline procedures to specify that the hotline may accept a call from a parent or legal custodian that does not meet the statutory requirement of abuse, abandonment or neglect if the person is calling on their own behalf for services. If DCF determines that the parent or legal custodian is in need of services to prevent a possible future harm to the child, DCF may make a referral for voluntary community services. DCF is currently making these referrals as "Special Condition Referrals" outlined in their Operating Procedures, without statutory authority. Adding this section to law clarifies current practice. The bill also clarifies that the hotline is the first step in the safety assessment and investigative process.

Section 5. False Reports of Abuse, Abandonment or Neglect

The bill permits that if DCF or its agent determines that a false report of abuse, abandonment or neglect has been filed, DCF may discontinue all investigative services during the course of investigation. Currently, DCF may not discontinue until the investigation has closed. This could help reduce the workload of CPI's by not requiring them to finish an investigation when a false report has been filed.

Section 6. Child Protection Investigations

The bill makes several changes to the current child protective investigation process.

- The bill provides DCF with discretion as to whether to file a dependency petition to the court when a child is in need of protection and supervision. Current law is deleted which requires that a dependency petition be filed when the child needs protection and supervision of the court and when the case is determined to be high risk.³⁵
- The bill requires that the case record for each child be electronic and include all information from reports called into the hotline and all services the child and the family has received.
- The bill removes several provisions from current law which provided conditions as to when a child protective investigation is to be performed. This is replaced with a general directive that each report from the hotline which is accepted, will be investigated and provides the following list of activities to be performed, some of which are already in current law:
 - Review all available information specific to the child and family and the alleged maltreatment including past family child welfare history, criminal records checks, and requests for law enforcement assistance provided by the hotline;
 - Interview collateral contacts, which may include professionals who know the child.
 - Conduct face-to-face interviews, including with the child's parent or caregiver;
 - Assess the child's residence;
(*The following are new requirements proposed by the bill*)
 - Determine the need for immediate consultation with law enforcement, child protection teams, domestic violence shelters and substance abuse and mental health professionals;
 - Document impending dangers to the child based on safety assessment instruments as opposed to a risk assessment instrument which is required in current law. Neither the bill or current law defines "safety" or "risk". It is, therefore, not clear what change is intended by a safety assessment versus a risk assessment.
- The bill provides conditions under which an investigator may close a case and also makes changes to the case review process to identify strengths and weaknesses.

Section 7. Protective Investigations of Institutional Child Abuse, Abandonment or Neglect

The bill clarifies that during a protective investigation of institutional child abuse, abandonment or neglect that the CPI must include an interview with the child's parent or legal guardian as opposed to making an onsite visit to the residence.

Section 8. Child on Child Sexual Abuse

The bill specifies that DCF contracted Sheriff's offices that provide CPI services, or contracted case management personnel as opposed to district staff must follow the procedures in s. 39.307, F.S., involving child-on-child sexual abuse. The bill also removes the 7 day timeframe in which an assessment of service and treatment needs must be completed for a child who is a victim or perpetrator of child-on-child sexual abuse. This allows DCF more time to make the assessment as it often takes more than 7 days.³⁶

Section 9. Injunctions

The bill makes improvements and changes to the injunction process to prevent child abuse in s.39.504, F.S., and mirrors language in the civil injunction process in Chapter 741, F.S. The bill requires a petitioner seeking an injunction to file a verified petition or a petition along with an affidavit, specifying

³⁵ s.39.301(9)(b), F.S.

³⁶ HB 803, DCF Analysis 2012 (on file with committee staff).

the actions of the alleged offender and the remedies sought. The court of jurisdiction is required to set the hearing on the petition to take place as soon as possible. Prior to the hearing, the court may issue a temporary ex parte injunction lasting no more than 15 days. The hearing on the petition must take place within these 15 days, unless good cause is shown otherwise. The bill specifies that before the hearing the alleged offender must be served with a copy of the petition and the temporary injunction if one has been filed. The current injunction process in s.39.504, F.S., does not specify a timeframe for hearings.

The bill also clarifies that the person whom an injunction is against is not automatically a party to subsequent dependency actions.

Section 10. Disposition Hearings

The bill clarifies that parents are included in the list of adults for which a home study must be conducted when considered for out of home placement for a child. In addition the requirements for the home study are increased to include that DCF must submit fingerprints of any household members who are 18 years of age or older to FDLE for state and criminal background checks, and a records check through State Automated Child Welfare Information System. The bill also provides that DCF has the discretion to submit fingerprints of other visitors in the home who are made known to DCF.

Section 11. Case Plan Development

The bill provides specific circumstances in which the court may have maintaining and strengthening families as a permanency goal in the child's case plan when the child resides with a parent. The bill adds the date a child was adjudicated dependent to the list of event dates used to measure compliance with the 12 month case plan.

Section 12. Permanency Determination

The bill makes minor technical wording changes.

Section 13. Judicial Review

The bill adds the date the child was adjudicated dependent as a starting point when considering extending the goal of reunification in a case plan beyond 12 months.

Section 14. Requirement to file a petition to Terminate Parental Rights

The bill provides that if a child is still in DCF custody 12 months after the child was sheltered or adjudicated dependent, whichever occurs first, that DCF shall file a petition to terminate parental rights. Current law provides for this to occur at the 12 month judicial review hearing.

Section 15. Termination of Parental Rights

The bill amends the timeframe for parents to comply with a case plan from 9 months to 12 months as it relates to grounds for termination of parental rights. This is a conforming change to other sections of law (including ss 39.401, 39.6011, 39.621, 39.701, 39.8055, F.S.) that already specify 12 months.

Sections 16, 17 and 18.

The bill makes conforming changes.

Section 19.

The bill provides an effective date.

B. SECTION DIRECTORY:

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

Section 2: Amends s. 39.013, F.S., relating to procedures and jurisdiction; right to counsel.

Section 3: Amends s. 39.0138, F.S., relating to criminal history records check; limit on placement of a child.

Section 4: Amends s. 39.201, F.S., relating to mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.

Section 5: Amends s. 39.205, F.S., relating to penalties relating to reporting of child abuse, abandonment, or neglect.

Section 6: Amends s. 39.301, F.S., relating to initiation of protective investigations.

Section 7: Amends s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment or neglect.

Section 8: Amends s. 39.307, F.S., relating to reports of child-on-child sexual abuse.

Section 9: Amends s. 39.504, F.S., relating to injunction pending disposition of petition.

Section 10: Amends s. 39.521, F.S., relating to disposition hearings; powers of disposition.

Section 11: Amends s. 39.6011, F.S., relating to case plan development.

Section 12: Amends s. 39.621, F.S., relating to permanency determination by the court.

Section 13: Amends s. 39.701, F.S., relating to judicial review.

Section 14: Amends s. 39.8055, F.S., relating to requirement to file a petition to terminate parental rights; exceptions.

Section 15: Amends s. 39.806, F.S., relating to grounds for termination of parental rights.

Section 16: Amends s. 39.502, F.S., relating to notice, process, and service.

Section 17: Amends s. 39.823, F.S., relating to guardian advocates for drug dependent newborns.

Section 18: Amends s. 39.828, F.S., relating to grounds for appointment of a guardian advocate.

Section 19: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- Line 345 requires DCF to have a single, standard, electronic record. This limits DCF's ability to use a paper copy of a child's record, if needed, and could have budget implications by requiring the use of an electronic record.
- Line 503 has an incorrect cross reference, paragraph (10)(a) has been changed and the reference no longer applies.
- Line 653 has an incorrect cross reference, subparagraph (10)(b)(2) is not in this section of the bill.
- Lines 1019-1023 are unclear. The language is circular and confusing.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES