

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #:	CS/CS/HB 803 (CS/SB 2044)	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Health & Human Services Committee; Health & Human Services Access Subcommittee; Diaz and others (Judiciary; Children, Families and Elder Affairs; Lynn)	119 Y's	0 N's
COMPANION BILLS:	CS/SB 2044	GOVERNOR'S ACTION:	Pending

SUMMARY ANALYSIS

CS/CS/HB 803 passed the House on February 16, 2012, and subsequently passed the Senate on March 8, 2012. The bill makes substantial changes to various provisions in statutes relating to child abuse, the Florida Abuse Hotline, Child Protective Investigations, and the dependency process. The bill does the following:

- Amends the definition of “abandoned” and “harm” to provide more consideration to the affect on children of incarcerated parents.
- Amends current law to give direction to the court to consider certain factors regarding terminating parental rights of an incarcerated parent.
- 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.
- Amends 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.
- Makes improvements and changes to the injunction process to prevent child abuse.
- 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.
- Provides specific circumstances in which the court may use “maintaining and strengthening families” as a permanency goal in the child's case plan.
- Amends the number of times the Children's Cabinet shall meet in a year.

Subject to the Governor's veto powers, the effective date of the bill is July 1, 2012.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

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.¹ 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, abandonment, 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.² Callers to the hotline may remain anonymous; however, various professions³ are required to report and provide their name as part of the permanent report.⁴ 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.⁵ If the report meets the definition it is then referred to the appropriate child investigative office.⁶ DCF is required to maintain a master file for each child whose report is accepted by the hotline.⁷

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:⁸

- 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.

Child Protective Investigations

Once a call is received by 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.⁹ DCF is required to report criminal conduct¹⁰ immediately to county law enforcement in which the alleged conduct has occurred.¹¹ The CPI is required to inform all parties of the report, once the

¹ Section 39.001(1)(a), F.S.

² Section 39.201(1)(a), F.S.

³ Section 39.201(1)(b), F.S.

⁴ *Id.*

⁵ Section 39.01(1), (2), (44), F.S.

⁶ Section 39.201(2)(a), F.S.

⁷ Section 39.301, F.S.

⁸ *Id.*

⁹ Rule 65C-29.003, F.A.C.

¹⁰ Section 39.301(2)(b), F.S.

¹¹ Section 39.301(2)(a), F.S.

initial assessment is complete, including the parent, legal custodian or other person responsible for the child's welfare.¹² 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.¹³

Current law provides for two options for response once the CPI determines the report is complete.¹⁴ First, if it is determined that the child is best served by recommended treatment which is voluntarily accepted by the child and parent or legal custodian, the CPI may make the necessary referrals for treatment at home.¹⁵ Second, if the child is in need of protection and supervision from the court, DCF shall file a petition for dependency.¹⁶ 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. (drug laws), and domestic violence.¹⁷ A dependency case may include removal of the child to out of home care, or the child may remain at home as determined by the court.

If the CPI determines that a false report has been filed¹⁸, 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.¹⁹

DCF currently performs child protection investigation services in 60 counties using department staff.²⁰ In the remaining 7 counties²¹, investigations are conducted by local Sheriff's offices under contract with DCF.²² There are currently 1,475 CPI's in the state that are either employed through DCF or the sheriff's office.²³

Children of Incarcerated Parents

Current law²⁴ provides that grounds for the termination of parental rights may be established under a number of circumstances, including when the parent of a child is incarcerated in a state or federal correctional institution and either:²⁵

- The period of time for which the parent is expected to be incarcerated will constitute a substantial portion of the period of time before the child will attain the age of 18 years;
- The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph; or

¹² Rule 65C-29.003, F.A.C.

¹³ Section 39.301(17), F.S.

¹⁴ Section 39.301(9)(a)(b), F.S.

¹⁵ Section 39.301(9)(a), F.S.

¹⁶ Section 39.301(9)(b), F.S.

¹⁷ *Id.*

¹⁸ Rule 65C-29.010, F.A.C.

¹⁹ Section 39.205(5), F.S.

²⁰ OPPAGA Memorandum, Sheriff's Offices have Advantages for Conducting Child Abuse Investigations, but Quality Cannot be Directly Compared to DCF. (February 26, 2011).

²¹ Broward, Citrus, Hillsborough, Manatee, Pasco, Pinellas, and Seminole.

²² OPPAGA Memorandum, Sheriff's Offices have Advantages for Conducting Child Abuse Investigations, but Quality Cannot be Directly Compared to DCF. (February 26, 2011).

²³ Staff Analysis for CS/HB 279 (2011); (on file with committee staff).

²⁴ Section 39.806, F.S.

²⁵ *Id.*

- The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason that termination of the parental rights of the incarcerated parent is in the best interest of the child.

Protective Injunction

Current law allows 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.²⁶ An injunction issued pursuant to this section may order an alleged or actual offender to do one or more of the following:

- 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.²⁷

The injunction will remain in effect until modified or dissolved by the court, and is enforceable in all counties in the state,²⁸ allowing law enforcement to exercise arrest powers in the enforcement of the injunction, if necessary.²⁹

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.³⁰ 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.³¹ 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.³² Each petition filed must contain the identity and residences of the parent or legal custodians, and must identify the name, age and sex of each child named in the petition.³³ Additionally, the petition must detail what voluntary services/and or dependency mediations the parents or legal custodian were offered and what the results were.³⁴

²⁶ Section 39.504(1), F.S.

²⁷ Section 39.504(3)(a), F.S.

²⁸ Section 39.504(30)(c), F. S.

²⁹ Section 39.504(4), F.S.

³⁰ Section 39.401(1)(b)(1), F.S.

³¹ Section 39.401(3)(a), F.S.

³² Section 39.401(3)(b), F.S.

³³ Fla.R.Jud.Admin.8.310.

³⁴ *Id.*

At the adjudicatory hearing the court may make one the following rulings:³⁵

- 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.

Children and Youth Cabinet

The Children and Youth Cabinet (cabinet) was created in 2007 to ensure that the public policy of the state relating to children and youth was developed to promote interdepartmental collaboration and implementation of services designed for children and youth.³⁶ The cabinet is created under the Executive Office of the Governor and consists of 14 members, including the Governor.³⁷ The cabinet must meet at least six times each year in different regions of the state in order to solicit input from the public.³⁸

Effect of Proposed Changes

Definitions

The bill amends the definition of “abandoned” and “harm” to provide more consideration to children of incarcerated parents and how an incarceration affects a child. This change will provide that the incarceration, repeated incarceration or extended incarceration of a child’s parent, legal custodian, or caregiver who is responsible for the child’s care may support a finding of abandonment.

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.

Procedures and Jurisdiction of the Court

The bill amends s. 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.

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, and children 12 years and older, 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 for state and national criminal history checks. Lastly, the bill requires that an out-of-state criminal history records check be conducted, for anyone 18 years of age or older, who resided in another state, if the state allows for the release of such records.

³⁵ Section 39.507, F.S.

³⁶ Section 402.56, F.S.

³⁷ *Id.*

³⁸ *Id.*

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 for services on their own behalf. 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.

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.

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.³⁹
- 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 provide conditions as to when a child protective investigation is performed and replaces these provisions with a general directive that each accepted report from the hotline will be investigated. The bill adds the following to the specific list of activities that must be performed:
 - 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.

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. The bill also requires that at the close of an investigation of abuse, neglect or abandonment, DCF or the Sheriff's office protective investigator must provide to the parent, legal custodian or person who is the target of the investigation, the findings of the investigation and information about rights to access confidential reports about the investigation.

The bill provides training requirements for staff who respond to calls to the central abuse hotline. The department's training program at the regional and district levels must include the results of qualitative reviews of child protective investigation cases. CPI's are required to:

- Know how to fully inform parents or legal custodians of their rights and options, including opportunities for audio or video recording of child protective responder interviews with parents or legal custodians or children.
- Know how and when to use the injunction process under s. 39.504 or s. 741.30 to remove a perpetrator of domestic violence from the home as an intervention to protect the child.

³⁹ Section 39.301(9)(b), F.S.

- Know how to explain the findings of the investigation and to inform parties of their right to access confidential reports.

Protective Investigations of Institutional Child Abuse, Abandonment or Neglect

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

Child on Child Sexual Abuse

The bill clarifies that DCF and contracted Sheriff's office child protective investigators, or contracted case management personnel 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.⁴⁰

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 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.

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 national 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.

Case Plan Development

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

Permanency Determination

The bill makes minor technical wording changes which are not substantive.

⁴⁰ HB 803, DCF Analysis 2012 (on file with committee staff).

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.

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 12th month judicial review hearing.

Termination of Parental Rights

The bill amends current law to give direction to the court to consider certain factors regarding terminating parental rights of an incarcerated parent. This will help avoid children languishing in foster care when their parent is incarcerated. Factors include:

- The age of the child;
- The relationship between the child and the parent;
- The nature of the parent's current and past provision for the child's developmental, cognitive, psychological, and physical needs;
- The parent's history of criminal behavior, which may include the frequency of incarceration and the unavailability of the parent to the child due to incarceration; and
- Any other factor the court deems relevant.

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.

Children's Cabinet

The bill provides that the Children and Youth Cabinet must meet at least four times, but no more than six times each year.

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.