

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB HCC 08-22 Child Protection  
**SPONSOR(S):** Healthcare Council; Galvano  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/CS/SB 1048

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<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
Orig. Comm.: Healthcare Council	15 Y, 0 N	Preston	Gormley
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**SUMMARY ANALYSIS**

The bill makes a number of changes related to the child welfare and child protection system, including the following:

- Provides increased protections relating to missing children.
- Provides for exceptions to the requirement for closure of child protective investigations within a 60 day period.
- Creates new provisions relating to the procedures for investigating a report of child-on-child sexual abuse, to include children who have exhibited inappropriate sexual behavior, as well as alleged juvenile sexual offenders.
- Includes foster and pre-adoptive parents among the individuals who are entitled to notice of proceedings or hearings relating to children in their care or whom they are planning to adopt.
- Provides for changes to the process related to injunctions to prevent an act of child abuse or protect the child from domestic violence.
- Clarifies that during the period of time a court maintains jurisdiction over a dependency case, only one order adjudicating each child in the case shall be entered.
- Allows the court to grant an exception to the requirement for a predisposition study under certain circumstances.
- Allows the Department of Highway Safety and Motor Vehicles (DHSMV) to provide access information contained in its database to the Department of Children and Family Services (DCF or department) for purposes of conducting child and adult protective investigations and expediting the determination of eligibility for public assistance.
- Changes the purpose, the eligibility criteria, and the administration of the Florida Child Welfare Student Loan Forgiveness Program.
- Authorizes the department to accept reports to the Hotline via the 1-800 number, fax, or on the Internet website.
- Extends the time period for the departmental reorganization that began as a result of legislation enacted during the 2007 legislative session until June 30, 2009.

The bill is not anticipated to have a fiscal impact on state or local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill authorizes the department to promulgate rules regarding procedures related to missing children and criminal history records checks when making placement decisions. The bill requires the DHSMV to share digital images and signatures of driver's licensees with DCF for specified purposes.

**Empower families** – The bill contains provisions that should keep children safer and lead to permanence in a more timely manner.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Child on Child Sexual Abuse**

Current law defines an "alleged juvenile sexual offender" to be a child 12 years of age or younger who is alleged to have committed a sexual crime or a child who is alleged to have committed "juvenile sexual abuse," meaning any sexual behavior which occurs without consent, without equality, or as a result of coercion. Juvenile sexual offender behavior can range from no contact sexual behavior, such as making obscene phone calls, to varying degrees of direct sexual contact.<sup>1</sup> When a report involving a known or suspected juvenile sexual offender is received by the central abuse hotline, the report is required to be handled as follows:

- When the alleged juvenile sexual offender is 12 years of age or younger, the central abuse hotline shall immediately electronically transfer the call to the appropriate law enforcement agency office. The department shall conduct an assessment and assist the family in receiving appropriate services pursuant to s. 39.307, Florida Statutes, and send a written report of the allegation to the appropriate county sheriff's office within 48 hours after the initial report is made to the central abuse hotline.
- When the alleged juvenile sexual offender is 13 years of age or older, the department shall immediately electronically transfer the call to the appropriate county sheriff's office by the central abuse hotline, and send a written report to the appropriate county sheriff's office within 48 hours after the initial report to the central abuse hotline.<sup>2</sup>

Current law also requires the department, upon receiving a report of juvenile sexual abuse, to assist the family in receiving appropriate services and to adhere to certain procedures with respect to the case. Specifically, the department is required to perform an assessment of risk and to complete a service and treatment needs report within seven days of receipt of the report involving a juvenile sexual offender. The department must classify the outcome of this initial report in one of several specified ways.

The bill creates a new definition for the term, "child who has exhibited inappropriate sexual behavior" and includes those children in the procedures for investigating a report of child-on-child sexual abuse. The term is defined as a child younger than age 12 who has been found by the department or a court to have committed an inappropriate sexual act. According to the department, this new term more precisely describes many of the children involved in such cases, and adding this definition will avoid the stigmatizing label in cases where it is unwarranted.

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<sup>1</sup> See s. 39.01(7), Florida Statutes.

<sup>2</sup> See s. 39.201, Florida Statutes.

## Missing Children

Currently in Florida local law enforcement agencies are required to accept a report that a child is missing only in cases where the report is filed by the child's parent or guardian. Law enforcement agencies are not required to accept or investigate missing child reports that are filed by the department or by the department's contracted providers.<sup>3</sup>

Children who are involved with the department are sometimes missing because their parents or guardians, who are the only individuals from whom a law enforcement agency must take a report, disappear with them or fail to prevent or report their disappearance. According to DCF, the potential refusal or reluctance of law enforcement agencies to accept reports of missing children is of particular concern in two types of circumstances:

- Those involving children who become missing during a pending abuse investigation; and
- Those who become missing while they are under the department's protective supervision.

In both situations, the child remains in the legal custody of the parent or guardian, and law enforcement agencies are often reluctant to interfere with parental rights by accepting a report that the child is missing. This is especially true in cases where the child is still living with the parent or guardian.<sup>4</sup>

Because local law enforcement agencies are not required by law to accept reports of missing children from the department or its contracted providers, cases of children who become missing while they are involved with the department can and do go uninvestigated. Without guidelines, law enforcement protocols for accepting missing child reports from DCF or its contracted providers vary across the state and missing children may be put in harm's way when law enforcement delays or declines to act.<sup>5</sup>

Current law delineates the process to be followed when a protective investigation is initiated in response to a report of known or suspected child abuse or neglect. The statute requires the investigator, at the beginning of the investigation, to inform the subject of the investigation of his or her "duty . . . to report any change in the residence or location of the child to the investigator . . ."<sup>6</sup> The law further provides that if a parent or guardian, after having been advised of the duty to report a change in residence, causes or allows a child to be moved, the protective investigator may report the child as missing to law enforcement.<sup>7</sup> However, local law enforcement agencies have discretion to accept a report from the investigator in these circumstances.

Children under protective supervision remain in the legal custody of their parents or guardians. In anticipation of the reluctance of law enforcement agencies to accept reports of children who become missing while under protective supervision, DCF legal staff includes specific language in its proposed orders to encourage law enforcement to generate missing child reports in protective custody cases when the parent removes the child from the circuit or when child cannot otherwise be located. While law enforcement is thus encouraged to take a report of a child missing from protective supervision, law enforcement cannot be mandated to do so.<sup>8</sup>

When an adult disappears with a child who is involved with the department and local law enforcement accepts a missing child report on the child, law enforcement may also accept a report regarding the adult, enter the adult into the criminal databases, either as wanted on a warrant or as missing, and link

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<sup>3</sup> See s. 937.021(1), Florida Statutes.

<sup>4</sup> The Florida Senate, Committee on Children, Families and Elder Affairs, Missing Children (Interim Project Report 2008-106) (October 2007).

<sup>5</sup> In some cases, although not required by statute or rule, law enforcement agencies will only accept a missing child report from DCF or a contracted provider upon receipt of an order that "authorizes" law enforcement to take a particular child into custody and deliver the child to the care or supervision of DCF.

<sup>6</sup> See s.39.301 (5) (a) 6, Florida Statutes.

<sup>7</sup> See s. 39.301 (23), Florida Statutes.

<sup>8</sup> The Florida Senate, Committee on Children, Families and Elder Affairs, Missing Children (Interim Project Report 2008-106) (October 2007).

the adult's record to the child's record. The ability to link the records in the databases facilitates the location of the child, because a law enforcement officer is more likely to search for an adult in the database (e.g., during a traffic stop) than look up the child.

While reluctance on the part of law enforcement to list an adult as missing in the absence of any reason other than that a child is missing is understandable, it is unclear why adults are not more often entered as wanted. Current law makes it unlawful for any person, with criminal intent, to lead, take, entice, or remove a minor from the state, or to conceal the location of a minor, under the following circumstances:

- During the pendency of a dependency proceeding affecting the minor; or
- During the pendency of any investigation, action, or proceeding concerning the alleged abuse or neglect of the minor.

The law requires that the defendant must have had notice of the pending proceeding, investigation, or action, and that he or she must have acted without the permission of a state.<sup>9</sup>

The bill expands the department's rulemaking authority to include provisions for the reporting, locating, recovering, and stabilizing of children whose whereabouts become unknown while they are involved with the department. The bill also provides that it is unlawful to knowingly and willfully, rather than with criminal intent, lead, take, entice, or remove a minor from the state or conceal the location of a minor, after receiving constructive or actual notice of a pending dependency proceeding or abuse investigation involving the minor. The bill mandates that a law enforcement agency must accept a report of a missing child from not only the parent or guardian of the child, but also from the department or its contracted providers and further provides that a law enforcement agency may not require a reporter to present an order that a child be taken into custody before accepting a report that the child is missing.

### **Protective Injunctions in Child Welfare Cases**

Current law permits a court to issue an injunction to prevent an act of child abuse or an unlawful sexual offense involving a child, when a shelter or dependency petition has been filed or when a child has been taken into custody, and there is reasonable cause for the injunction. An injunction issued pursuant to this section may order an alleged or actual offender to:

- Refrain from further abuse;
- Limit contact with the child victim or other children; and
- Vacate the home in which the child resides.<sup>10</sup>

Current law also creates a cause of action for an injunction for protection against domestic violence, allowing an individual who is the victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence, to petition the court for an injunction for protection. An injunction issued pursuant to chapter 741 may:

- Restrain the respondent from committing any acts of domestic violence;
- Award the petitioner the exclusive use and possession of the residence the parties share or exclude the respondent from the petitioner's residence; and
- Award the petitioner temporary custody of the minor children of the parties.<sup>11</sup>

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<sup>9</sup> See s. 787.04, Florida Statutes. Also according to FDLE, less than one percent of cases involving missing children are linked in the databases to a case identifying an adult as missing or wanted. It is a defense that a person acted with the belief that the action was necessary to protect the child from abuse. Section 787.04(3), F.S., appears to allow, if not require, law enforcement to issue arrest warrants for adults who disappear with children under the circumstances described, and to enter them in the data bases as wanted, while entering the children as missing. This rarely occurs, however, suggesting that actual use of the statute is limited. Barriers to enforcement include insufficient evidence that a parent or guardian had notice as required by the statute, and inadequate training of law enforcement officers, as well as of department and provider staff, as to the effective use of the statute.

<sup>10</sup> See s. 39.504, Florida Statutes.

<sup>11</sup> See s. 741.30, Florida Statutes.

A domestic violence injunction is valid and enforceable in all counties in the state, and law enforcement officers are permitted to use their arrest powers to enforce the terms of a domestic violence injunction. According to the department, when domestic violence is involved in a child welfare case, the victim of the violence is often forced to seek both a child welfare injunction and a domestic violence injunction, because the child welfare injunction alone is insufficient to protect the child.

The bill authorizes a court, at the request of DCF, to enter an injunction to prevent an act of child abuse at any time after a protective investigation has been initiated, and deletes the provision that the injunction can be issued only at the time a shelter or dependency petition has been filed or when a child has been taken into custody. The bill provides that the terms of such an injunction will remain in effect until modified or dissolved by the court, deleting the provision that an injunction expires at the time of the disposition of the petition for shelter or dependency. The bill provides that the injunction is valid in all counties and that a law enforcement officer may exercise arrest powers in the enforcement of the injunction.

The bill provides that if the intent of an injunction is to protect a child from domestic violence, the court may:

- Remove the offender from the home of the child and the caregiver;
- Award temporary custody of the child to the caregiver; and
- Establish support for the child.

### **Adjudicatory Hearings**

According to DCF, chapter 39, Florida Statutes, contemplates that an adjudication of dependency is determined with reference to what happens to a child, not with reference to the conduct of the adult caregiver. As such, an adjudication of a child "as to" one parent or the other is misleading: the child is dependent regardless of which parent caused the abuse, neglect or abandonment.<sup>12</sup>

The department states that when a court finds that a child is adjudicated "as to" a particular parent, the court sometimes requires that the child be adjudicated twice before permanent placement can be made or before parental rights can be terminated. In addition, in some cases, courts approve multiple and inconsistent case plans for a single child. The confusion causes unnecessary delays in placement and permanency.

The bill provides that the court in a dependency case may enter only one order adjudicating a child dependent and, upon a properly noticed motion, may hold an evidentiary hearing and enter supplemental findings with respect to one parent, both parents or a custodian, without retrial or readjudication of the child's dependency status.

### **Department of Highway Safety and Motor Vehicles Data Access**

The DHSMV is permitted, pursuant to interagency agreements, to share information from its database, including digital images and signatures, in the following circumstances:

- In response to law enforcement agency requests;
- With the Department of State to determine voter registration eligibility;
- With the Department of Revenue for use in establishing paternity and establishing, modifying, or enforcing support obligations; and
- With the Department of Financial Services relating to unclaimed property.<sup>13</sup>

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<sup>12</sup> See *In re K.M.*, 946 So.2d 1214 (Fla. DCA 2006); *T.S. v. Department of Children and Families*, 935 So.2d 626 (Fla. 1st DCA 2006).

<sup>13</sup> See Section 322.142(4), Florida Statutes.

According to the department, the child and adult protective investigation and the public assistance eligibility processes would be more efficient if the department were able to access the pictures and signatures in the DHSMV database for purposes of identifying individuals in connection with both child and adult protective investigations and for expediting the determination of eligibility for public assistance. The bill authorizes DHSMV to share that information with the department for those specified purposes.

### **Child Welfare Student Loan Forgiveness**

In 2003, the Legislature created the Florida Child Welfare Student Loan Forgiveness Program, with the stated purposes of attracting capable and promising students into the child welfare profession, increasing employment and retention of individuals who are working towards or who have received either a bachelor's degree or a master's degree in social work, or any human services subject area that qualifies the individual for employment as a family services worker, and providing opportunities for persons making midcareer decisions to enter the child welfare profession. The law provides for eligibility criteria, award amounts, and repayment terms and provides that the program is to be implemented only as specifically funded.<sup>14</sup>

The program was funded in FY 2003-2004, 2004-2005, and 2006-2007, but was not funded in FY 2005-2006 or FY 2007-2008. The proviso language that has accompanied the appropriations for this program since FY 2003-2004 has consistently not mirrored the statutory description of the program and the department has implemented the program as directed by proviso and budget amendments rather than as described in statute:

- Current law provides that the program shall be implemented only as specifically funded. In Fiscal Year 2003-04, proviso in the General Appropriations Act (GAA) referred to the program as the Family Safety Social Worker Loan Forgiveness Program, rather than the Child Welfare Student Loan Forgiveness Program, and stated that "This initiative is to be designed to recruit and retain mission critical family safety workers by repaying student loans for post secondary educational study for employees meeting educational, performance and experience criteria developed by the department." DCF implemented the program as directed by proviso and through budget amendments.
- In February 2004, the department submitted a budget amendment that detailed the department's intent to implement the program as a loan reimbursement program for current employees rather than a program targeted at students; the amendment was approved.
- In Fiscal Year 2004-05, proviso language in the GAA cited the program as the Child Welfare Loan Forgiveness Program; however, DCF used another budget amendment to continue to operate the program as a reimbursement program.
- Proviso language related to the program for Fiscal Year 2006-07 refers to the program as the Child Welfare Student Loan Reimbursement Program. The department reported that it planned to continue to operate the program to reimburse existing student loans.<sup>15</sup>

The bill provides that the Florida Child Welfare Student Loan Forgiveness Program is to be administered by DCF rather than by the Department of Education. The bill provides that the program shall provide loan reimbursement to eligible employees in "critical" positions in the department, a sheriff's office or a community-based care agency. The bill defines as "eligible" an employee who has an outstanding student loan that is not in default status.

The bill deletes provisions in current law regarding eligibility, loan amounts and repayment terms, and limits the program to current employees, by deleting provisions allowing students who declare intent to work in child welfare to apply for loan forgiveness. The bill deletes the requirement that the program only be implemented if funded.

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<sup>14</sup> See s. 402.401, Florida Statutes.

<sup>15</sup> See Kara Collins-Gomez, Don Wolf and Ann Renaud, Memorandum: Child Welfare Student Loan Forgiveness Program (October 25, 2006).

## Department of Children and Families Reorganization

In 2007, the Legislature authorized the department to begin the process of reorganization, subject to further legislative review and approval, and provided that any modifications to its organizational structure are compatible with its scheduled sunset review pursuant to s.11.905, Florida Statutes.<sup>16</sup> The law is scheduled to expire on June 30, 2008.

The bill provides that Section 1 of Chapter 2007-174, Laws of Florida, expires on June 30, 2009, rather than on June 30, 2008. This amendment will allow the department to continue the process of reorganization that began in 2007.

### In addition, the bill

- Clarifies that all child placements, including non-relative caregiver placements, require background screening of the caregiver, as well as of other members of the household and frequent visitors to the household and requires the department to search its own automated abuse information system with respect to any person subject to screening.
- Codifies the practice that reports of abuse, abandonment, or neglect may be made on the single statewide toll-free telephone number, by fax, or on the department's Internet website.
- Allows three exceptions to the requirement that all child protective investigations be completed no later than 60 days after the initial report is received:
  - In cases where there is an active, concurrent criminal investigation and the closure of the child protective investigation may compromise the criminal prosecution, the child protective investigation will be closed when the criminal investigation and resulting legal action are complete;
  - In child death cases, when the final report from the Medical Examiner is necessary and has not been received, the child protective investigation will be closed after the report is received; and
  - In cases where a child who is necessary to an investigation has been declared missing by the department, a local law enforcement agency or a court, the child protective investigation will remain open until the child is located or until sufficient information exists to close the investigation without locating the child.
- Requires judicial approval and review of all non-relative placements, and requires the department to request that the court establish permanent guardianship or compel the non-relative caregiver to seek foster care licensure if a placement continues for longer than 12 consecutive months.
- Includes foster and pre-adoptive parents among the individuals who are entitled to notice of proceedings or hearings relating to children in their care or whom they are planning to adopt. Notice may be verbal or written and must be received 72 hours in advance of the proceeding or hearing.
- Allows a court to grant an exception to the requirement that the department file a predisposition study, if the court finds that all of the necessary information is available in documents already filed with the court.
- Clarifies that service of notice of a judicial review hearing or a citizen review hearing is required regardless of whether or not the person to be served was present at the previous hearing during which the hearing was announced and adds to the list of individuals entitled to notice the child, if the child is 13 years of age or older, and the child's attorney, if he or she has one.
- Clarifies that only relative caregivers providing full-time care or custody of a child are exempt from licensing requirements.

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<sup>16</sup> See Chapter 2007-174, Laws of Florida.

- Provides an alternative to personal motor vehicle insurance for community-based care lead agency staff who are using their own vehicles for agency purposes.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 39.01, Florida Statutes, relating to definitions.

**Section 2.** Amends s. 39.0121, Florida Statutes, relating to rulemaking authority.

**Section 3.** Amends s. 39.0138, Florida Statutes, relating to criminal history records checks and limits on the placement of a child.

**Section 4.** Creates s. 39.0141, Florida Statutes, relating to missing children and required reports.

**Section 5.** Amends s. 39.201 Florida Statutes, relating to mandatory reports of child abuse, abandonment, and neglect, mandatory death reports, and the central abuse hotline.

**Section 6.** Amends s. 39.301, Florida Statutes, relating to protective investigations.

**Section 7.** Amends s. 39.307, Florida Statutes, relating to reports of child-on-child sexual abuse.

**Section 8.** Amends s. 39.401, Florida Statutes, relating to taking a child alleged to be dependent into custody by law enforcement officers and authorized agents of the department.

**Section 9.** Amends s. 39.502, Florida Statutes, relating to notice, process, and service.

**Section 10.** Amends s. 39.503, Florida Statutes, relating to identity or location of parent unknown.

**Section 11.** Amends s. 39.504, Florida Statutes, relating to injunctions pending disposition of petition.

**Section 12.** Amends s. 39.507, Florida Statutes, relating to adjudicatory hearings and orders of adjudication.

**Section 13.** Amends s. 39.521, Florida Statutes, relating to disposition hearings and powers of disposition.

**Section 14.** Amends s. 39.701, Florida Statutes, relating to judicial review.

**Section 15.** Amends s. 63.0541, Florida Statutes, relating to public records exemption for the Florida Putative Father Registry.

**Section 16.** Amends s. 322.142, Florida Statutes, relating to color photographic or digital image licenses.

**Section 17.** Amends s. 402.401, relating to the Florida Child Welfare Student Loan Forgiveness Program.

**Section 18.** Amends s. 409.175, Florida Statutes, relating to licensure of family foster homes, residential child-caring agencies, and child-placing agencies.

**Section 19.** Amends s. 409.1671, relating to the outsourcing of foster care and related services.

**Section 20.** Amends s. 787.04, Florida Statutes, relating to removing minors from the state or concealing minors contrary to state agency or court order.



**Section 21.** Amends s. 937.021, Florida Statutes, relating to missing child reports.

**Section 22.** Amends s. 985.04, Florida Statutes, relating to oaths, records, and confidential information.

**Section 23.** Amends s. 39.0015, Florida Statutes, relating to child abuse prevention training in the district school system.

**Section 24.** Amends s. 39.205, Florida Statutes, relating to penalties relating to reporting of child abuse, abandonment or neglect.

**Section 25.** Amends s. 39.302, Florida Statutes, relating to protective investigations of institutional child abuse, abandonment, or neglect.

**Section 26.** Amends s. 39.6011, Florida Statutes, relating to case plan development.

**Section 27.** Amends s. 39.828, Florida Statutes, relating to grounds for appointment of a guardian advocate.

**Section 28.** Amends s. 419.001, Florida Statutes, relating to site selection of community residential homes.

**Section 29.** Amends Chapter 2007-174, Laws of Florida, relating to flexibility for the Department of Children and Family Services to reorganize.

**Section 30.** Provides an effective date of July 1, 2008.

## **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:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill provides specific rulemaking authority to the department regarding procedures related to missing children.

The bill provides rulemaking authority to the department related to criminal history records checks when making placement decisions.

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

None.

#### D. STATEMENT OF THE SPONSOR

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 1, 2008, the Healthcare Council adopted 5 amendments to the PCB that do the following:

- Clarifies that reports to the Hotline may be made via the 1-800 number, fax or on the Internet website;
- Makes clarifying changes to provisions related to protective injunctions;
- Technical amendment; and
- Provides an alternative for personal motor vehicle insurance for community-based care lead agency staff who are using their own vehicles for agency purposes.
- Removes the provisions relating to the Interstate Compact on the Placement of Children (ICPC).

The PCB was reported favorable as amended and the analysis reflects the amendments.