

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1093 Abuse, Neglect, and Abandonment Education  
**SPONSOR(S):** Children, Families & Seniors Subcommittee, Valdés and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1100

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	17 Y, 0 N, As CS	Woodruff	Brazzell
2) Health Care Appropriations Subcommittee	13 Y, 0 N	Fontaine	Clark
3) Health & Human Services Committee		Woodruff	Calamas

### SUMMARY ANALYSIS

Chapter 39, F.S., creates the dependency system charged with protecting child welfare. Florida's child welfare system identifies children and families in need of services through reports to the central abuse hotline and child protective investigations. The Department of Children and Families (DCF) and community-based care lead agencies work with those families to address the problems endangering children, if possible. If the problems cannot be addressed, the child welfare system finds safe out-of-home placements for these children.

When the state takes a child into its custody, it accepts responsibility for the child's safety. Courts have found that foster children have a constitutional right to be free from unnecessary pain and a fundamental right to physical safety. Florida law sets forth goals for the delivery of services to children in shelter or foster care, including that services should be directed by the principle that the health and safety of children should be of paramount concern.

The bill amends current law to require the design and delivery of child welfare services to be directed by the principle that the health and safety of children, including the freedom from abuse, abandonment, or neglect, is of paramount concern. It requires DCF to operate with the understanding that the rights of children in shelter or foster care are critical to their safety, permanency, and well-being. It requires DCF to work with all stakeholders to help children become knowledgeable about their rights.

The bill requires case managers or other staff to provide verbal and written instructions on how to identify and report child abuse, abandonment, or neglect to a child entering shelter or foster care. The case manager or other staff must review this information with a child every six months and upon every placement change until the child leaves shelter or foster care. The case manager must document in court reports and case notes the date the child received the information.

The bill also authorizes and encourages district school boards to establish educational programs for students ages 5 through 18 relating to the process for identifying and reporting abuse, neglect, or abandonment. This program may be provided in conjunction with other programs required by law.

The bill has an insignificant, negative, nonrecurring fiscal impact on state government that can be absorbed within existing resources. The bill has no fiscal impact on local government.

The bill has an effective date of July 1, 2021.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

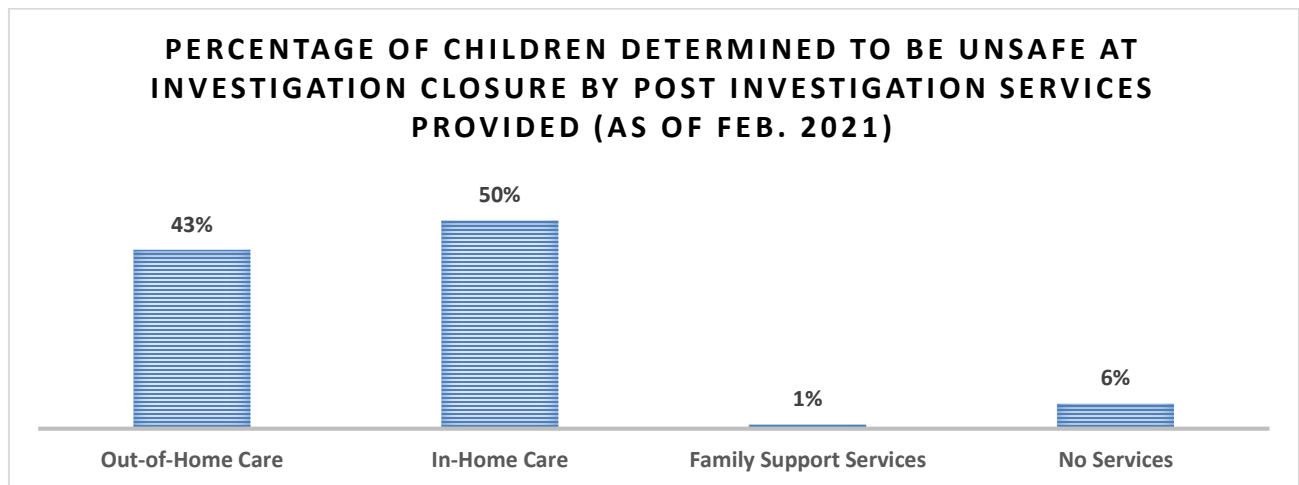
### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

#### **Florida's Child Welfare System**

Chapter 39, F.S., creates the dependency system charged with protecting child welfare. Florida's child welfare system identifies children and families in need of services through reports to the central abuse hotline and child protective investigations. The Department of Children and Families (DCF) and community-based care lead agencies (CBCs) work with those families to address the problems endangering children, if possible. If the problems cannot be addressed, the child welfare system finds safe out-of-home placements for these children.

DCF's practice model is based on the safety of the child within the home by using in-home services, such as parenting coaching and counseling, to maintain and strengthen that child's natural supports in his or her environment. The graph below shows the responses for children determined to be unsafe, depicting the percentage of such children placed in out-of-home placements, receiving services in the home or through family support services, which are offered to families on a voluntary basis, and receiving no services.<sup>1</sup>



DCF contracts for case management, out-of-home services, and related services with CBCs. The outsourced provision of child welfare services is intended to increase local community ownership of service delivery and design. CBCs contract with a number of subcontractors for case management and direct care services to children and their families. There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.

DCF remains responsible for a number of child welfare functions, including operating the central abuse hotline, performing child protective investigations, and providing children's legal services.<sup>2</sup> Ultimately, DCF is responsible for program oversight and the overall performance of the child welfare system.<sup>3</sup>

<sup>1</sup> Florida Department of Children and Families, Child Welfare Key Indicators Monthly Report, (Feb. 2021), [http://centerforchildwelfare.fmhi.usf.edu/qa/cwkeyindicator/KI\\_Monthly\\_Report\\_Feb%202021.pdf](http://centerforchildwelfare.fmhi.usf.edu/qa/cwkeyindicator/KI_Monthly_Report_Feb%202021.pdf) (last visited Mar. 21, 2021).

<sup>2</sup> OPPAGA, report 06-50.

<sup>3</sup> *Id.*

## Rights of and Goals for Delivery of Services to Children in Foster Care

The U.S. and Florida Constitutions provide rights to individuals, including children in foster care, as do certain federal and state laws. Examples include basic rights and a right to privacy under Article I, §2 and Article I, §23 of the Florida Constitution, the right to high quality education under Article IX of the Florida Constitution, and due process rights under the U.S. Constitution.

When a state takes a child into custody, it accepts responsibility for the child's safety.<sup>4</sup> Courts have found that foster children have a constitutional right to be free from unnecessary pain and a fundamental right to physical safety.<sup>5</sup> When a state fails to meet that obligation, it deprives the child of a liberty interest under the Fourteenth Amendment.<sup>6</sup>

Section 39.4085, F.S., sets forth goals<sup>7</sup> for the delivery of services to children in shelter or foster care, including that services should be directed by the principle that the health and safety of children should be of paramount concern and children in shelter or foster care should:

- Receive a copy of these goals and have the goals fully explained to them when they are placed in the custody of DCF.
- Enjoy individual dignity, liberty, pursuit of happiness, and the protection of their civil and legal rights as a person while in the custody of the state.
- Have their privacy protected, have their personal belongings secure and transported with them, and unless otherwise ordered by the court, have uncensored communication, including receiving and sending unopened communications and having access to a telephone.
- Have personnel providing services who are sufficiently qualified and experienced to assess risk children face prior to removal from their home and to meet the needs of the children once they are in DCF's custody.
- Remain in the custody of their parents or legal custodians unless and until there has been a determination by a qualified person exercising competent professional judgment that removal is necessary to protect their physical, mental, or emotional health or safety.
- Have a full risk, health, educational, medical, and psychological screening, and, if needed, assessment and testing upon adjudication into foster care; and to have their photograph and fingerprints included in their case management file.
- Be referred to and receive services, including necessary medical, emotional, psychological, psychiatric, and educational evaluations and treatment, as soon as practicable after identification of the need for such services by the screening and assessment process.
- Be placed in a home with no more than one other child, unless part of a sibling group.
- Be placed away from other children known to pose a threat of harm to them, either because of their own risk factors or those of the other child.
- Be placed in a home where the shelter or foster caregiver is aware of and understands the child's history, needs, and risk factors.
- Be the subject of a plan developed by the counselor and the shelter or foster caregiver to deal with identified behaviors that may present a risk to the child or others.
- Be involved and incorporated, where appropriate, in the development of the case plan, to have a case plan that will address their specific needs, and to object to any of the provisions in the case plan.
- Receive meaningful case management and planning that will quickly return the child to the family or move the child on to other forms of permanency.
- Receive regular communication with a case manager, at least once a month, which includes meetings with the child alone and conferring with the caregiver.

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<sup>4</sup> *Ray v. Foltz*, 370 F.3d 1079, 1082 (11<sup>th</sup> Cir. 2004)(citing *Taylor v. Ledbetter*, 818 F.2d 791-95 (11<sup>th</sup> Cir. 1987).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> The provisions in S. 39.4085, F.S., establish goals, not rights. The section does not require the delivery of any particular service or level of service in excess of existing appropriations. A person does not have a cause of action against the state or any of its subdivisions, agencies, contractors, subcontractors, or agents, based upon the adoption of or failure to provide adequate funding for the achievement of these goals by the Legislature. The section does not require the expenditure of funds to meet the goals except funds specifically appropriated for such purpose.

- Enjoy regular visitation, at least once a week, with their siblings unless the court orders otherwise.
- Enjoy regular visitation with parents, at least once a month, unless the court orders otherwise.
- Receive a free and appropriate education, minimal disruption to their education, and retention in their home school, if appropriate; referral to the child study team; all special educational services, including, where appropriate, the appointment of a parent surrogate; the sharing of all necessary information between the school board and DCF, including information on attendance and educational progress.
- Be able to raise grievances with DCF over the care they are receiving from their caregivers, case managers, or other service providers.
- Be heard by the court, if appropriate, at all review hearings.
- Have a guardian ad litem appointed to represent, within reason, their best interests and, where appropriate, an attorney ad litem appointed to represent their legal interests. Their guardian ad litem and attorney ad litem must have immediate and unlimited access to the children they represent.
- Have all their records available for review by their guardian ad litem and attorney ad litem if they deem such review is necessary.
- Organize as a group for purposes of ensuring they receive the services and living conditions to which they are entitled and to provide support for one another while in DCF's custody.
- Be afforded prompt access to all available state and federal programs.

In accordance with s. 39.4091, F.S., caregivers for children in out-of-home care must use the "reasonable and prudent standard". This means that the caregiver must use sensible parental decision-making that maintains the child's health, safety, and best interests while at the same time encourages the child's emotional and developmental growth when determining whether to allow a child in out-of-home care to participate in extracurricular, enrichment, and social activities.<sup>8</sup>

The federal Preventing Sex Trafficking and Strengthening Families Act requires that as part of case planning beginning at age 14 children in foster care must be given a document describing their rights with respect to safety, exploitation, education, health, visitation, and court participation.<sup>9</sup> They must also be informed of their rights to be provided certain specific documents such as copies of consumer credit reports. Children are to sign an acknowledgement that they received these documents.<sup>10</sup>

## Educational Programs

### *Child Abuse, Abandonment, and Neglect*

Section 39.001(9), F.S., requires the Office of Adoption and Child Protection, within the Governor's Office, to establish a comprehensive statewide approach for, in part, the prevention of child abuse, abandonment, and neglect.<sup>11</sup> The Office of Adoption and Child Protection works in partnership with DCF, the Department of Education (DOE), and the Department of Health (DOH) to develop ways to inform and instruct appropriate district personnel in all school districts in the detection of child abuse, abandonment, and neglect, and the proper action to be taken if there is a suspicion of child abuse, abandonment, or neglect.

The Office of Adoption and Child Protection, DCF, DOE, and DOH must also work together to develop curriculum materials to assist personnel in providing instruction through a multidisciplinary approach on the identification, intervention, and prevention of child abuse, abandonment, and neglect.<sup>12</sup> The

<sup>8</sup> Florida Department of Children and Families, CFOP 170-11, Ch. 6 (Sept. 2020), <https://www.myflfamilies.com/admin/publications/cfops/CFOP%20170-xx%20Child%20Welfare/CFOP%20170-11%20%20Placement/CFOP%20170-11,%20%20%20%20Placement.pdf>

<sup>9</sup> 42 U.S.C. §675(1)(B).

<sup>10</sup> Florida Department of Children and Families, *2021 Agency Bill Analysis for HB 1093* (March 7, 2021).

<sup>11</sup> S. 39.001(9), F.S.

<sup>12</sup> S. 39.001(10)(b)2., F.S.

curriculum materials are geared toward a sequential program of instruction at the four progression levels (K-3, 4-6, 7-9, and 10-12).<sup>13</sup> All school districts are encouraged to utilize the curriculum.

### *Mental Health Awareness*

Beginning with the 2018-2019 school year, DOE established an evidence-based youth mental health awareness and assistance training program to help school personnel identify and understand the signs of emotional disturbance, mental illness, and substance use disorders, and provide such personnel with the skills to help a person who is developing or experiencing an emotional disturbance, mental health, or substance use problem.<sup>14</sup>

A school safety specialist, who is a certified youth mental health awareness and assistance trainer, ensures that all school personnel within the school district receives youth mental health awareness and assistance training.<sup>15</sup> The training program includes:

- An overview of mental illnesses and substance use disorders and the need to reduce the stigma of mental illness.
- Information on the potential risk factors and warning signs of emotional disturbance, mental illness, or substance use disorders, including, but not limited to, depression, anxiety, psychosis, eating disorders, and self-injury, as well as common treatments for those conditions and how to assess risks.
- Information on how to engage at-risk students with the skills, resources, and knowledge required to assess the situation, and how to identify and encourage the students to use appropriate professional help and other support strategies, including, but not limited to, peer, social, or self-help care.<sup>16</sup>

### *Educational Instruction*

The law requires school districts to provide a variety of programs for children in kindergarten through grade 12, including a health education program.<sup>17</sup> The health education program must address concepts of:

- Community health.
- Consumer health.
- Environmental health.
- Family life, including the awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy.
- Mental and emotional health.
- Injury prevention and safety.
- Internet safety.
- Nutrition.
- Personal health.
- Prevention and control of disease.
- Substance use and abuse.

In addition, the health education curriculum for students ages 7 through 12 must include a teen dating violence and abuse component that includes, but is not limited to, the definition of dating violence and abuse, the warning signs of dating violence and abusive behavior, the characteristics of healthy relationships, measures to prevent and stop dating violence and abuse, and community resources available to victims of dating violence and abuse.<sup>18</sup>

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<sup>13</sup> S. 39.001(10)(b)5., F.S.

<sup>14</sup> S. 1012.584(1), F.S.

<sup>15</sup> S. 1012.584 (2), F.S.

<sup>16</sup> S. 1012.584(3), F.S.

<sup>17</sup> S. 1003.42(n), F.S.

<sup>18</sup> *Id.*

There is currently no educational program required by law directly addressing the identification and reporting of child abuse, abandonment, or neglect.

### **Effect of Proposed Changes**

CS/HB 1093 requires the design and delivery of child welfare services to be directed by the principle that the health and safety of children, including the freedom from abuse, abandonment, or neglect, is of paramount concern. It requires DCF to operate with the understanding that the rights of children in shelter or foster care are critical to their safety, permanency, and well-being and to work with all stakeholders to help such children become knowledgeable about their rights

It requires case managers or other staff to provide verbal and written instructions to a child entering shelter or foster care in an understandable manner on how to identify and report child abuse, abandonment, or neglect. The case manager or other staff must review this information with a child every six months and upon every placement change until the child leaves shelter or foster care. The case manager must document in court reports and case notes the date the child received the information.

CS/HB 1093 also authorizes and encourages district school boards to establish an educational program for students ages 5 through 18 relating to the process for identifying and reporting abuse, abandonment, or neglect. This program may be provided in conjunction with the youth mental health awareness and assistance training program required under s. 1012.584, F.S., any other mental health education program offered by the school district, or any of the educational instruction programs required under s. 1003.42(2), F.S.

The bill has an effective date of July 1, 2021.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amending s. 39.4085, F.S., relating to legislative findings and declaration of intent for goals for dependent children.

**Section 2:** Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

The bill has an insignificant, negative, nonrecurring fiscal impact on DCF for technology enhancements, which DCF estimates is \$120,000.<sup>19</sup> If the proposed changes related to Face Sheets in HB 1473 are enacted, the technology changes proposed in HB 1093 can be absorbed into those work efforts.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

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<sup>19</sup> Department of Children and Families, 2021 *Agency Legislative Bill Analysis for HB 1093*, (March 7, 2021)

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate, but likely insignificant, fiscal impact on CBCs. CBCs may incur a workload increase to review the required information with children in shelter or foster care.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

DCF has sufficient rulemaking authority to implement the bill's provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 23, 2021, the Children, Families, and Seniors Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee amendment. The strike-all:

- Aligns the bill's language with current law.
- Specifies the case manager or other staff is the person responsible to inform a child entering shelter or foster care on identifying and reporting child abuse, abandonment, or neglect.
- Removes the authorization and encouragement of district school boards to establish educational programs for instructional personnel about child abuse, abandonment, and neglect.

The bill analysis is drafted to the committee substitute as passed by the Children, Families, and Seniors Subcommittee.