

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 1377 Adoption of Children in Dependency Court
SPONSOR(S): Health & Human Services Committee, Stevenson and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1322

FINAL HOUSE FLOOR ACTION: 116 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 1377 passed the House on May 3, 2023, as CS/CS/SB 1322.

The Florida Adoption Act, Ch. 63, F.S., applies to all adoptions, whether through a private entity or through the state child welfare system. Ch. 63 seeks to provide a stable and permanent home for an adoptable child promptly while preventing the disruption of that child's placement and holding parents accountable for meeting the needs of the child.

For a dependent child in the child welfare system whose permanency goal is adoption, state-funded community-based care lead agencies are responsible for finding an adoptive family. However, s. 63.082, F.S., allows a private adoption entity to intervene in a child welfare case to instead place a dependent child with prospective adoptive parents chosen by the child's parent or the private adoption entity. In making a decision on an intervention petition, the court must consider how the proposed adoption meets best interest factors outlined in statute. If the court determines the adoptive parents are appropriate and that the adoption is in the best interest of the child, the court orders the transfer of custody to the prospective adoptive parents. Following the transition, the private adoption entity is responsible for supervising the adoption process and must update the court every 90 days.

The bill amends s. 63.082, F.S., related to interventions by private adoption agencies in dependency court. The bill limits the time period in which a parent may consent to private adoption later during a dependency case. The bill grants the court greater discretion regarding a private adoption entity's ability to intervene in the dependency process and accepting a home study from prospective adoptive parents; it also requires the court to give greater consideration to keeping the child in the current placement, under certain conditions. The bill requires birth certificates to be filed with petitions for adoptions and for clerks of court to maintain an adoption case separately from the related termination of parental rights case; it also allows payment of a birth mother's medical expenses after a child's birth without a finding that the mother's medical needs require such support.

The bill requires the Office of Program Policy Analysis and Government Accountability to conduct a national study of adoption intervention, and a review of adoption generally in Florida, and report to the Legislature by January 1, 2024.

The bill has no fiscal impact on state or local government.

The bill was approved by the Governor on June 19, 2023, ch. 2023-257, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Florida's Child Welfare System

Ch. 39, F.S., creates the state child welfare system, which is charged with protecting the welfare of children in Florida. Florida's child welfare system identifies children and families in need of services through reports to the central abuse hotline and through child protective investigations. The Department of Children and Families (DCF) and the 19 DCF subcontracted community-based care lead agencies (CBCs) throughout Florida¹ work with families to address the problems endangering children and provide resources when possible. If the concerns for a child's welfare are not remedied, DCF and the CBCs work to find safe out-of-home placements for that child.

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 the child's natural support system while keeping the child in the child's own home and environment.

DCF contracts with CBCs for case management, out-of-home services, and related services. 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 families under the supervision of DCF.

DCF retains in-house responsibility for a number of child welfare functions, including:

- Operating the central abuse hotline;
- Performing child protective investigations; and
- Providing children's legal services.²

Ultimately, DCF is responsible for program oversight and the overall performance of the child welfare system.³

Child Welfare Outcomes

The Child Welfare Outcomes Report (Report) is an annual report which presents data on national performance and child welfare-related contextual factors relevant to specific state performance.⁴ The Report includes data and statistics about the performance of individual states in seven outcome categories,⁵ including:

- Reducing recurrence of child abuse and/or neglect.
- Reducing the incidence of child abuse and/or neglect in foster care.
- Increasing permanency for children in foster care.
- Reducing time in foster care to reunification without increasing reentry.
- Reducing time in foster care to adoption.
- Increasing placement stability.
- Reducing placements of young children in group homes or institutions.

¹ These 19 CBCs together serve the state's 20 judicial circuits.

² Ch. 39, F.S.

³ *Id.*

⁴ The U.S. Department of Health and Human Services (HHS) created the Child Welfare Outcomes Report to meet requirements of Section 203(a) of the Adoption and Safe Families Act of 1997 (ASFA). ASFA created Section 479A of the Social Security Act (the Act) to require HHS to issue an annual report that assesses state performance in operating child protection and child welfare programs under Titles IV-B and IV-E of the Act.

⁵ Child Welfare Outcomes 2019: Report to Congress, Executive Summary, pg. IV, <https://www.acf.hhs.gov/sites/default/files/documents/cb/cwo-report-to-congress-2019.pdf>.

The 2019 Report revealed that the national median performance over time on achieving timely reunifications⁶ has declined consistently over the preceding five years, with a 7.1-percent decline in performance from 2015-2019. The Report also found that states were more likely to complete adoptions between 12 and 23 months from the child’s entry into foster care.⁷ In 2019, Florida was only one of two states, along with Utah, to report that at least ten percent of adoptions occurred in under 12 months.⁸

Dependency Process

Under current law, any person who knows or suspects that a child has been abused, abandoned, or neglected must report such knowledge or suspicion to the central abuse hotline (hotline).⁹ The hotline¹⁰ receives more than 350,000 child-related calls annually.¹¹

Calls received are screened to determine if the criteria are met which warrant initiating a protective investigation. Statewide, there are more than 240,000 child protective investigations conducted annually.¹² When a child protective investigation necessitates the removal of a child from the home, a series of dependency court proceedings are triggered and must occur in order to adjudicate the child “dependent” and subsequently place the child in foster care.

Main steps in the dependency process include:

- An initial call or report of suspected abuse, abandonment, or neglect to the hotline.
- A child protective investigation in response to the abuse hotline report to determine the safety of the child.
- Placement in foster care, if necessary.
- The court issuing a finding that the child is “dependent”, and if placed in foster care, confirming that removal is necessary for the child’s safety and welfare.
- Case planning for the parents to address the problems which resulted in the child’s removal.
- Reunification with the child’s parent or another option to establish permanency, such as adoption.¹³

The table below depicts key court proceedings in the dependency process where a child is removed from the home and placed in out-of-home care.

Dependency Court Process

Proceeding	Description	Statute
Removal	A child protective investigation determines the child’s home is unsafe, and the investigator removes the child.	s. 39.401, F.S.

⁶ For the Child Welfare Outcomes Reports, a reunification is considered to be timely if it occurs in less than 12 months from the date of entry into foster care. *Id.* at pg. 44.

⁷ *Id.* at 47.

⁸ *Id.*

⁹ S. 39.201(1), F.S.

¹⁰ Department of Children and Families, *Florida Abuse Hotline- Overview*, <https://www2.myflfamilies.com/service-programs/abuse-hotline/overview.shtml>, (last visited Mar. 11, 2023).

¹¹ Child Welfare Key Indicators Monthly Report, *System Overview*, https://www2.myflfamilies.com/service-programs/child-welfare/kids/results-oriented-accountability/performanceManagement/docs/KI_Monthly_Report_December%202022.pdf (last visited Mar. 11, 2023).

¹² *Id.*

¹³ The state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents accountable for meeting the needs of children. S. 63.022, F.S.

Shelter Hearing	This hearing occurs within 24 hours after removal. The judge determines whether to keep the child out-of-home.	s. 39.401, F.S.
Petition for Dependency	This petition occurs within 21 days of the shelter hearing. This petition asks the court to find the child dependent.	s. 39.501, F.S.
Arraignment Hearing and Shelter Review	This hearing and review occurs within 28 days of the shelter hearing. This allows the parent to admit, deny, or consent to the allegations within the petition for dependency and allows the court to review any shelter placement.	s. 39.506, F.S.
Adjudicatory Hearing	This trial is held within 30 days of arraignment. The judge determines whether a child is dependent at this trial.	s. 39.507, F.S.
Disposition Hearing	If the child is found dependent, disposition occurs within 15 days of arraignment or 30 days of adjudication. The judge reviews the case plan and placement of the child, and orders the case plan for the family and the placement of the child.	s. 39.506, F.S. s. 39.521, F.S.
Postdisposition Hearing	The court may change temporary placement at a postdisposition hearing any time after disposition but before the child is residing in the permanent placement approved at a permanency hearing.	s. 39.522, F.S.
Judicial Review Hearings	The court must review the case plan and placement every 6 months, or upon motion of a party.	s. 39.701, F.S.
Petition for Termination of Parental Rights	Once the child is in out-of-home for 12 months, if DCF determines that reunification is no longer a viable goal, termination of parental rights is in the best interest of the child, and other requirements are met, DCF files a petition for termination of parental rights (TPR).	s. 39.802, F.S. s. 39.8055, F.S. s. 39.806, F.S. s. 39.810, F.S.
Advisory Hearing	This hearing is set as soon as possible after all parties have been served with the petition for TPR. The hearing allows the parent to admit, deny, or consent to the allegations in the petition for TPR.	s. 39.808, F.S.
Adjudicatory Hearing	This trial is set within 45 days after the advisory hearing. The judge determines whether to terminate parental rights to the child at this trial.	s. 39.809, F.S.

Permanency

When children are placed in out-of-home care, child welfare agencies must find safe, permanent homes for them as quickly as possible. In most cases, children are reunified with their families upon the parents' completion of a specific case plan. When reunification is not possible, DCF will seek to place a child in a permanent home with relatives or with a possible adoptive family. Florida law requires a permanency hearing to occur no later than 12 months after the child was removed from the home or within 30 days after a court determined that reasonable efforts to return the child to either parent are not required or not possible, whichever occurs first.¹⁴ The purpose of the permanency hearing is for the court to determine when the child will achieve permanency or whether modifying the permanency goal is in the child's best interest.¹⁵ A permanency hearing must be held at least every 12 months for any child who continues to be supervised by DCF or awaits adoption.¹⁶

The permanency goals under Florida law, listed in order of preference are:

- Reunification;
- Adoption, if a petition for termination of parental rights has been or will be filed;

¹⁴ S. 39.621(1), F.S.

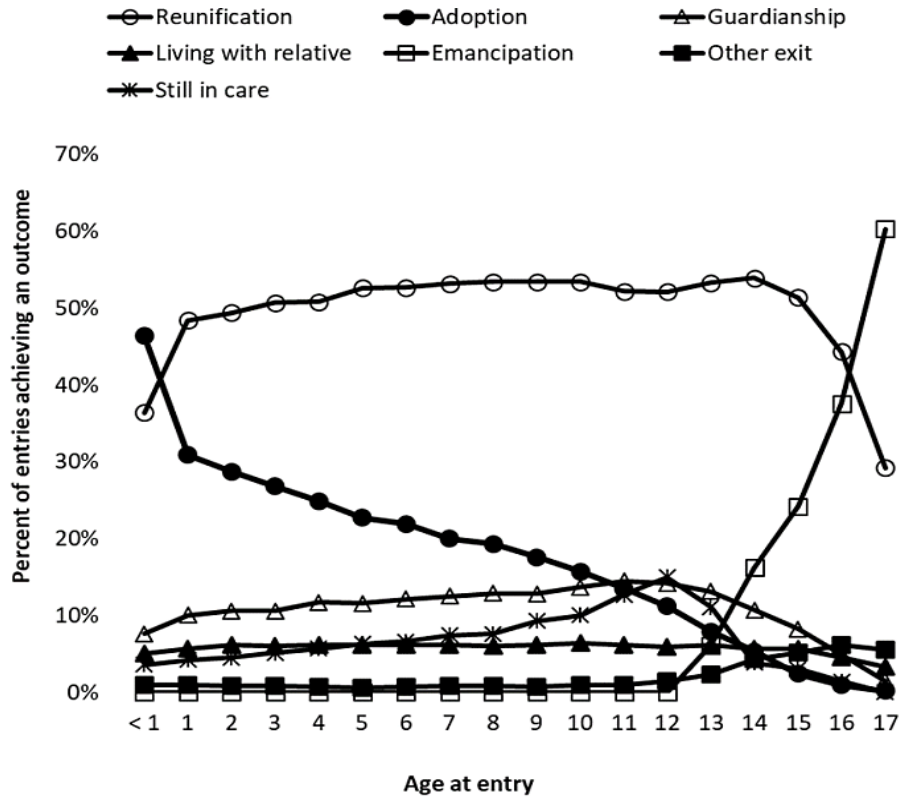
¹⁵ *Id.*

¹⁶ *Id.*

- Permanent guardianship under s. 39.6221, F.S.;
- Permanent placement with a fit and willing relative under 39.6231, F.S.; or
- Placement in another planned permanent living arrangement under s. 39.6241, F.S.¹⁷

Permanency Outcomes by Age of Entry

The federal Department of Health and Human Services analyzed national permanency outcomes for children in the foster care system using state reported data.¹⁸ The graph below illustrates the outcomes of children exiting care, broken down by age at entry into the dependency system.



- Reunification is the most likely outcome for children who enter care between ages 1 and 16.
- Children under age 1 who enter care are the only group for whom adoption is the most likely outcome. The likelihood of adoption decreases the older the child is when entering care.
- Guardianship likelihood increases the older the child is when entering care, until age 13.
- Most likely to still be in care after 4 years are those who enter care between ages 9 and 13.
- Emancipation likelihood increases the older the age of entry, for entry between ages 13 and 17.

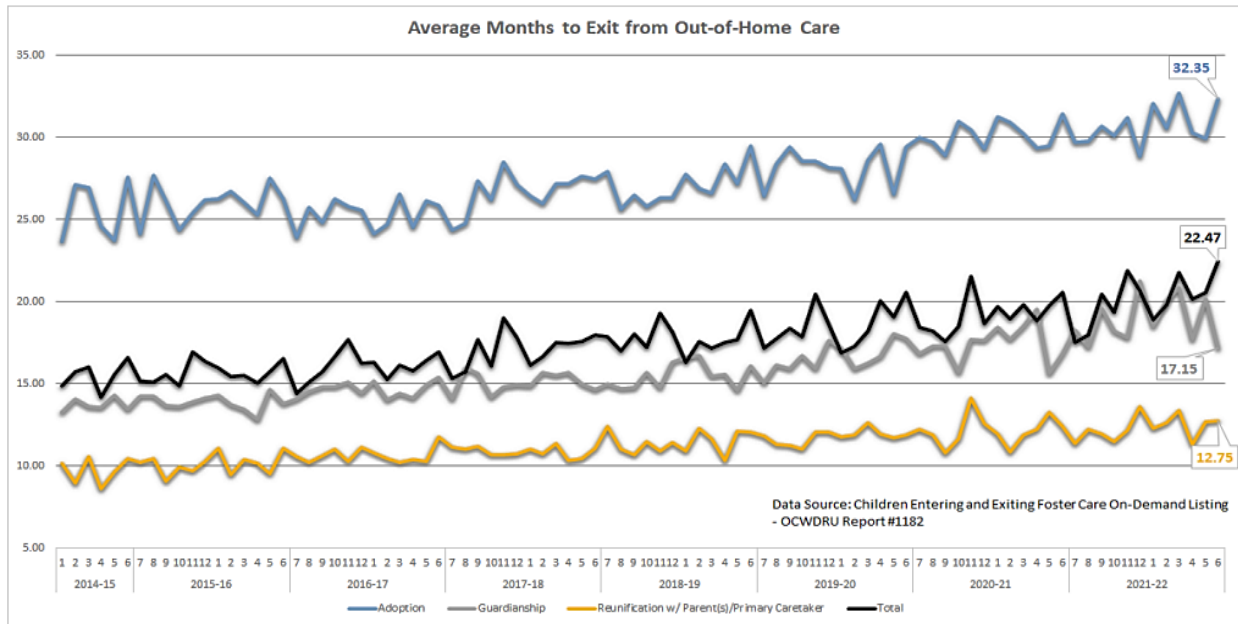
Children who enter foster care between the ages of 9 and 13 who do not reunify within the first two years are more likely to stay in foster care longer, either waiting to be adopted or aging out of care without being adopted. For youth entering at age 16 or older, aging out of care is the most likely outcome. Aging out of care generally means a youth reached the state’s legal age of adulthood without achieving permanency. Additionally, older children who are not reunified within the first year are significantly less likely to be reunified in subsequent years when compared to younger children who enter care and do not reunify in the first year.

¹⁷ S. 39.621(3), F.S.

¹⁸ U.S. Department of Health and Human Services, *Administration for Children and Families, ACYF-CB-IM-21-01*, <https://www.acf.hhs.gov/sites/default/files/documents/cb/im2101.pdf> (last visited Mar. 13, 2023).

Length of Stay by Permanency Outcome

Overall, the length of stay for children that exited out-of-home care has been steadily increasing and is nearly eight months longer than it was in January 2014.¹⁹ Children who exit to adoption have the longest average length of stay in the child welfare system, currently at 32.35 months.



Adoption

Adoption is a method of achieving permanency for children in the child welfare system who are unable to be reunified with their parents. Research indicates that children generally have better outcomes through adoption than through placement in long-term foster care.²⁰

CBCs deliver adoption services for children in the dependency system.²¹ For example, CBCs provide pre- and post-adoption services and administer maintenance adoption subsidies, which provide ongoing financial support for children adopted out of the foster care system.

The Florida Adoption Act, ch. 63, F.S., applies to all adoptions, whether private or from the child welfare system, involving the following entities:²²

- Department of Children and Families (DCF);
- Child-placing agencies licensed by DCF under s. 63.202, F.S.;
- Child-caring agencies registered under s. 409.176, F.S.;
- An attorney licensed to practice in Florida; or
- A child-placing agency licensed in another state which is qualified by DCF to place children in Florida.

¹⁹ DCF, *Child Welfare Key Indicators Monthly Report*, Feb. 2023 https://www2.myflfamilies.com/service-programs/child-welfare/kids/results-oriented-accountability/performanceManagement/docs/KI_Monthly_Report_Jan2023.pdf (last visited Mar. 9, 2023), p. 39.

²⁰ Evan B. Donaldson Adoption Institute, *Keeping the Promise: Critical Need for Post-Adoption Services to Enable Children and Families to Succeed*, Oct. 2010, p. 8.

²¹ S. 409.986(1), F.S.

²² S. 63.032(3), F.S.

Chapter 63, F.S., provides extensive legislative intent for the purpose and process of adoption,²³ and for cooperation between private adoption entities and DCF in matters relating to permanent placement options for children in the care of DCF whose parents wish to place the child up for adoption through a private adoption plan.²⁴ While the child welfare system uses adoption as a way to achieve permanency for children after the rights of the parents are terminated, ch. 63, F.S., allows a child welfare-involved parent whose parental rights have not been terminated to work with a private adoption entity to choose a permanent home and adoptive parents for the child.

Proceedings to Terminate Parental Rights in Adoption Cases

Before a child may be legally adopted by a family, the parental rights of the child's current legal parents must be terminated. When a child is being adopted by a relative or stepparent, or the adoptee is legally an adult, a separate termination of rights proceeding is not necessary and the adoptive parent may file a joint petition for termination of parental rights and adoption. Otherwise, the adoption and the termination of parental rights are separate petitions and proceedings.

Petition for Adoption

Section 63.087, F.S, requires a petition for adoption to include:

- The minor's name, gender, date of birth, and place of birth. The petition must contain all names by which the minor is or has been known, excluding the minor's prospective adoptive name but including the minor's legal name at the time of the filing of the petition. In the case of an infant child whose adoptive name appears on the original birth certificate, the adoptive name shall not be included in the petition, nor shall it be included elsewhere in the termination of parental rights proceeding.
- All information required by the Uniform Child Custody Jurisdiction and Enforcement Act and the Indian Child Welfare Act.
- A statement of the grounds under s. 63.089, F.S., upon which the petition is based.
- The name, address, and telephone number of any adoption entity seeking to place the minor for adoption.
- The name, address, and telephone number of the division of the circuit court in which the petition is to be filed.
- A certification of compliance with the requirements of s. 63.0425, F.S., regarding notice to grandparents of an impending adoption.

Payment of Birth Mothers' Expenses

Section 63.212, F.S., prohibits any person from selling or surrendering a child, or receiving a child in exchange, for money or anything of value. However, this section allows certain adoptive parents and to pay the actual prenatal care and living expenses of the mother of the child to be adopted and the actual living and medical expenses of such mother for a reasonable time, not to exceed 6 weeks after the birth of the child. However, the post-natal living and medical expenses of a mother giving birth to a child which will be adopted may only be paid for if her medical needs require that support.

Affidavits of Expenses and Receipts

Section 63.132, F.S., requires the prospective adoptive parent and any adoption entity to, before the hearing on the petition for adoption, file two copies of an affidavit that itemizes all disbursements and receipts of anything of value made or agreed to be made by or on behalf of the prospective adoptive parent and any adoption entity in connection with the adoption or in connection with any prior proceeding to terminate parental rights which involved the minor who is the subject of the petition for adoption. Such disbursements include professional and legal fees, either made, or agreed to be made,

²³ S. 63.022, F.S.

²⁴ S. 63.022(5), F.S.

by or on behalf of the prospective adoptive parent and any adoption entity in connection with the adoption or related termination of parental rights proceeding for the minor being adopted. The adoption entity and the prospective adoptive parents must sign the affidavit.

The affidavit must show any expenses or receipts incurred in connection with the following types of expenditures and indicate whether any were paid for by collateral sources, including, but not limited to, health insurance, Medicaid, Medicare, or public assistance:

- The birth of the minor.
- The placement of the minor with the petitioner.
- The medical or hospital care received by the mother or by the minor during the mother's prenatal care and confinement.
- The living expenses of the birth mother, which must be itemized in detail.
- The services relating to the adoption or to the placement of the minor for adoption that were received by or on behalf of the petitioner, the adoption entity, either parent, the minor, or any other person.

For each legal or counseling fee itemized, the affidavit must specify the:

- Service provided for which the fee is being charged,
- Date the service was provided,
- Time required to provide the service if the service was charged by the hour,
- Person or entity that provided the service, and
- Hourly fee charged.

The court must issue a separate order approving or disapproving the fees, costs, and expenses itemized in the affidavit. The court may approve only fees, costs, and expenditures allowed under s. 63.097, F.S. The court may reject in whole or in part any fee, cost, or expenditure listed if the court finds that the expense is:

- Contrary to this chapter,
- Not supported by a receipt in the record, if the expense is not a fee of the adoption entity. or
- Not a reasonable fee or expense, considering the requirements of this chapter and the totality of the circumstances.

Intervention by an Adoption Entity into a Dependency Proceeding

S. 63.082, F.S., allows a private adoption entity to intervene in a ch. 39, F.S., child welfare matter. The intervention process allows a child welfare-involved parent to have the parent's dependent child removed from the child's current placement and adopted by other adoptive parents chosen by the birth parent or private adoption entity. Alternatively, a child-welfare involved parent could also choose to have the child adopted by the child's current foster parents.

The court must provide written notice to the child welfare-involved parent of the right to participate in a private adoption plan at several points during the dependency process, including:

- At the arraignment hearing held pursuant to s. 39.506, F.S.;
- Detailed in the order approving the case plan pursuant to s. 39.603, F.S.; and
- Specified in the order that changes the permanency goal to adoption and termination of parental rights pursuant to s. 39.621, F.S.²⁵

For a child already under DCF care and supervision, a birth parent's consent for placement of a minor with a private adoption entity or qualified adoptive parents is valid, binding, and enforceable by the court.²⁶ After the parent executes the consent, the process is as follows:

²⁵ S. 63.082(6)(g), F.S.

²⁶ S. 63.082(6)(a), F.S.

- The court permits the adoption entity to intervene in the dependency case.²⁷
- The adoption entity provides the court with the preliminary home study of the prospective adoptive parents and any other evidence of the suitability of the proposed placement.²⁸
- The dependency court holds a hearing to determine if the required documents to intervene have been filed and whether a change in the child's placement is appropriate.²⁹
- Upon the court's determination that the prospective adoptive parents are appropriate and that the adoption appears to be in the best interest of the minor child, the court immediately orders transfer of custody of the minor child to the prospective adoptive parents, under the supervision of the adoption entity, though the transfer itself may occur over a reasonable period of time³⁰
- DCF provides information to the prospective adoptive parents when they receive placement of the dependent child regarding approved parent training classes. DCF files an acknowledgment of the parent's receipt of this information with the court.
- The adoption entity keeps the dependency court informed of the status of the adoption proceedings at least every 90 days from the date of the order changing placement of the child until the date the adoption is finalized.³¹

Home Studies

The adoption entity intervening in the dependency case must provide the court a copy of the preliminary home study of the prospective adoptive parents and any other evidence of the suitability of the placement. Unless the court believes the home study did not provide adequate information to determine the best interests of the child, the court must deem the home study sufficient.³²

Best Interest Standard

S. 63.022 F.S., requires the best interests of the child to be the primary guiding factor for a court in an adoption proceeding.³³ S. 63.082(6)(e), F.S., lists those considered in determining whether the child's best interests are served by transferring custody to the prospective adoptive parent or private adoption entity selected by the child's parent:

- The permanency offered;
- The established bonded relationship between the child and the current caregiver in any potential adoptive home in which the child has been residing;
- The stability of the potential adoptive home in which the child has been residing as well as the desirability of maintaining continuity of placement;
- The importance of maintaining sibling relationships, if possible;
- The reasonable preferences and wishes of the child, if the court deems the child to be of sufficient maturity, understanding, and experience to express a preference;
- Whether a petition for termination of parental rights has been filed based on certain acts of extreme abuse.³⁴
- What is best for the child; and
- The right of the parent to determine an appropriate placement for the child.

Transitions

²⁷ S. 63.082(6)(b), F.S.

²⁸ *Id.*

²⁹ S. 63.082(6)(c), F.S.

³⁰ S. 63.072(d), F.S.

³¹ S. 63.082(6)(f), F.S.

³² S. 63.082(6)(b), F.S.

³³ S. 63.022(2), F.S.

³⁴ S. 39.806(1)(f), (g), and (h), F.S. These grounds are the parents' engaging in egregious conduct; subjecting a child to aggravated child abuse, sexual battery, or sexual abuse; or committing the murder, manslaughter, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent or another child, or a felony battery that resulted in serious bodily injury to the child or to another child.

The court may establish reasonable requirements for the transfer of custody in the transfer order, including a reasonable period of time to transition final custody to the prospective adoptive parents. DCF administrative rule requires the adoption entity to prepare a transition plan in conjunction with the CBC or subcontractor, the current caregiver, and prospective adoptive parents. The transition must respect the child's developmental stage and psychological needs, ensure the child has all of his or her belongings, and allow for a gradual transition from the caregiver's home.³⁵

Placement Transitions in Child Welfare

While it is important to minimize the number of placement transitions in a child's case, a change in placement may be necessary in some situations, like when a child is being adopted by a family other than the one with whom the child is currently living. However, poorly executed or improperly timed transitions of even necessary placement changes may adversely affect a child's healthy development and capacity to attach to others.³⁶ Additionally, visitation with a future caregiver does not establish the same bond that develops with a caregiver who provides day-to-day care.³⁷

Once a child establishes an attachment to a caregiver such that the caregiver becomes the child's psychological parent, transitioning to another caregiver's home should occur in a way that is emotionally protective to reduce placement change trauma.³⁸ One approach to accomplishing this is placement transition planning. Placement transition planning may be used for any move from one caregiver to another. Placement transition planning and visitation should be tailored to the individual child's circumstances, and consideration must be given to certain factors, including the child's age and level of attachment to the current caregiver.

Special consideration should be given to transitioning infants and toddlers who are removed from their placement during developmental phases that may be adverse to such change. Given an infant or toddler's lack of verbal skills and ability to express concerns and understand what is happening to them, special care and attention must be implemented for proceedings involving young children.³⁹ As such, transitions are of special concern given that the fundamental task in early childhood is the formation of attachment. Poorly-implemented transitions may inhibit a child's ability to form attachments and create necessary bonds.

Research indicates that the earliest bonds formed by children with their caregivers have a tremendous impact that continues throughout life.⁴⁰ Typical attachment stages include:

- **0-8 weeks:** The stage for developing secure attachment is being set. During this pre-attachment period the mother will 'warm up' the emotional bond with her sensitive and consistent responses. The infant may distinguish between caregivers but in general displays little preference. Baby separation anxiety in relation to the mother has not kicked in yet.
- **2-6 months:** The child starts to distinguish more clearly between known and unknown figures. The child starts to get a sense of how his or her mother will react when the child is anxious or distressed.

³⁵ R. 65C-16.019, F.A.C.

³⁶ Vogler, P., Crivello, G., & Woodhead, M., *Early Childhood Transitions Research: A Review of Concepts, Theory, and Practice*, <https://files.eric.ed.gov/fulltext/ED522697.pdf> (last visited Mar. 18, 2023).

³⁷ See Segal, J., Glenn, M., & Robinson, L., *What is Secure Attachment and Bonding?*, <https://www.helpguide.org/articles/parenting-family/what-is-secure-attachment-and-bonding.htm> (last visited Mar. 18, 2023).

³⁸ Hudson et al., *Healthy Beginnings, Healthy Features: A Judges Guide*, ABA Center on Children and the Law, National Council of Juvenile and Family Court Judges, & Zero to Three National Policy Center, 2009, https://www.americanbar.org/content/dam/aba/administrative/child_law/healthy_beginnings_authcheckdam.pdf (last visited Mar. 18, 2023).

³⁹ Child Advocates, *Smooth Transitions for Young Children in Foster Care*, <https://www.childadvocates.net/smooth-transitions-young-children-foster-care/> (last visited Mar. 18, 2023).

⁴⁰ Winson, R. & Chicot, R. *The Importance of Early Bonding on the Long-Term Mental Health and Resilience of Children*. (2016 Feb. 24). London J. Prim. Care. 2016; 8(1): 12-14. doi: 10.1080/17571472.2015.1133012.

- **6-11 months:** The baby has developed a clear understanding as to who the baby's primary caregiver is.
- **18-24 months:** The child's attachment behavior is very clear. The child is very conscious of good strategies for reaching the desired proximity of the child's caregiver.⁴¹

Objection to Placement Changes in Dependency System

Section 39.522, F.S., allows any party to a dependency case⁴² or the current caregiver, rather than just the parents or other legal custodians, to object to a need for a change of placement at postdisposition. If a party or current caregiver objects to a change of placement, the court is required to hear from all parties as to why a change of placement is not in the child's best interests. When determining whether a change of legal custody or placement is in the child's best interests, the court must consider the best interest factors in s. 39.01375, F.S., and the report filed by the multidisciplinary team (MDT), if applicable, unless the change of custody or placement is made pursuant to an adoption intervention under s. 63.082(6), F.S. The court must consider the priority of placements established under s. 39.4021, F.S.⁴³, when making a decision regarding a child in out-of-home care.

The court must conduct a hearing if a long-term caregiver objects to DCF moving a child from the caregiver's home. There is a rebuttable presumption that it is in the child's best interest to remain permanently in the current placement if:

- The child has been in the same safe and stable placement for 9 consecutive months or more.
- Reunification is not a permanency option for the child.
- The caregiver is able, willing, and eligible for consideration as an adoptive parent or permanent custodian for the child.
- The caregiver is not requesting the change in physical placement.
- The change in physical placement being sought is not to reunify the child with a parent or sibling or transition the child to a relative caregiver.

If DCF or a CBC is considering moving a child from a placement where the caregiver meets the criteria for the rebuttable presumption, it must notify the caregiver of the intent to move the child and convene an MDT staffing at least 21 days before the intended move, unless an emergency situation exists.

If the MDT participants do not reach a unanimous consensus, DCF must provide its official decision to all parties. The caregiver must notify the court and DCF of its objection to DCF's official position and the intent to request an evidentiary hearing within 5 days of receiving notice of the placement move. After receiving the caregiver's objection, neither DCF nor the CBC may move the child unless there is an emergency situation, defined as there being an imminent risk to the health or safety of the child, other children, or others in the home or facility if the child remains in the placement.

The court must conduct an initial case status hearing within 7 days of receiving written notice of the caregiver's objection to moving the child. At the status hearing, the court must:

- Grant party status to the caregiver for the limited purpose of filing a motion for a hearing on the objection and presenting evidence.

⁴¹ Positive Parenting Ally, *Psychology Attachment Behavior*, <https://www.positive-parenting-ally.com/psychology-attachment.html> (last visited Mar. 18, 2023).

⁴² S. 39.01, F.S., defines "party" as the parent or parents of the child, the petitioner, the department, the guardian ad litem or the representative of the guardian ad litem program when the program has been appointed, and the child.

⁴³ The priority of placements is:

1. Nonoffending parent.
2. Relative caregiver.
3. Adoptive parent of the child's sibling, when the department or community-based care lead agency is aware of such sibling.
4. Fictive kin with a close existing relationship to the child.
5. Nonrelative caregiver that does not have an existing relationship with the child.
6. Licensed foster care.
7. Group or congregate care.

- Appoint an attorney for child who is the subject of the custody proceeding.
- Advise the caregiver of the right to counsel for the evidentiary hearing.
- Appoint a court-selected neutral and independent licensed professional with expertise in the science and research of child-parent bonding.

Effect of Proposed Changes

Adoption

The bill revises the process of petitioning for an adoption, whether the adoption is through an intervention or not, by:

- Requiring a clerk of the court to issue separate case numbers for an adoption case and a termination of parental rights proceeding;
- Requiring the child's birth certificate to be filed with the court prior to a final termination of parental rights hearing; and
- Specifying that notice on the hearing regarding the petition to adopt be given as prescribed by the Florida Family Law Rules of Procedure.

The bill changes the requirements regarding adoption fees by:

- Requiring detailed information only for *hourly* legal and counseling fees,
- Allowing the court to reject fees not supported by a receipt, if one was requested, and
- Allowing living and medical expenses to be paid for a mother for a reasonable time, not to exceed 6 weeks, after the birth of the child, whether or not medical needs require that support.

Intervention by an Adoption Entity into a Dependency Proceeding

The bill amends s. 63.082, F.S., related to interventions by a private adoption entity in a child welfare proceeding. The bill limits a parent's ability to execute a consent to adopt through a private entity later in a dependency case. The bill allows a court greater discretion regarding the ability of a private adoption entity to intervene and greater discretion to accept and assign weight to a home study for prospective adoptive parents. The bill also requires a court to give greater consideration to keeping a child in the child's current placement with a longer-term caregiver, under certain conditions. Further, the bill requires greater consideration of the child's needs in a transition if custody of the child is transferred to the prospective adoptive parents or a private adoption entity.

Ability to Intervene

The bill invalidates any adoption consent executed by a parent after 30 days after a petition for the termination of parental rights is filed against that parent, which means parents wishing to avail themselves of this process will need to do so sooner. However, the bill requires DCF to provide written notice in the petition for dependency, and the court to provide written notice in the order of dependency and disposition order, of the right to a private adoption plan to the parent.

The bill gives the court the authority to determine whether to allow the intervention of a private adoption agency, rather than requiring the court to approve intervention. Under the bill, the court must grant an evidentiary hearing on the motion to intervene.

Home Study

The bill removes current law that limits the court's ability to consider whether a home study submitted by the adoption entity is sufficient. Instead, the bill requires the court to determine if the preliminary home study is adequate and provides the information required to make a best interest determination; if so, that home study may be the basis for a court order of change of placement.

Best Interest Factors

In determining whether the change of placement to the potential adoptive parents is in the best interests of the child, the court must consider and weigh all relevant factors, and the bill specifies at least 7 mandatory factors. These are generally the same factors currently in s. 63.082, F.S., but the bill revises them so that the court:

- Considers the permanency specifically offered *by each placement*, not just permanency; and
- Presumes the prospective adoptive placement (current placement) is stable if the child has been in the current placement for at least 9 continuous months or 15 of the last 24 months immediately preceding the filing of the motion to intervene.

The bill substantially maintains the following factors:

- The established bond between the child and the current caregiver;
- The importance of maintaining sibling relationships, if possible;
- The reasonable preferences and wishes of the child, if the court deems the child to be of sufficient maturity, understanding, and experience to express a preference;
- Whether a petition for termination of parental rights is based on certain acts of extreme abuse; and
- What is best for the child.

The bill removes the consideration of the right of the parent to determine an appropriate placement for the child as a best interest factor.

Rebuttable Presumption of Remaining with Current Caregiver Under Certain Conditions

The bill includes findings and intent language regarding minimizing the trauma of a child in the child welfare system and reducing the disruption of stable, potential adoptive placements. It establishes a rebuttable presumption that a placement is stable and it is in the child's best interest to remain in the current placement rather than be subject to transition to a new home under an adoption intervention. This presumption only applies if:

- The child has been in the current placement for at least 9 continuous months or 15 of the last 24 months immediately preceding the filing of the motion to intervene, and
- The current placement is a prospective adoptive placement.

If these criteria are met, the court must grant party status to the current caregiver who is a prospective adoptive placement for the limited purpose of filing motions and presenting evidence related to the intervention. This limited party status expires upon the issuance of a final order on the motion to intervene and the change of placement of the child.

To rebut the presumption, the intervening party must prove by clear and convincing evidence that it is in the best interest of the child to disrupt the current stable prospective adoptive placement, based on the factors discussed above, as well as any others considered relevant by the court.

Transition Plan

The bill requires any transfer of custody to the prospective adoptive parents to be completed in accord with a transition plan developed by DCF in cooperation with the child's current caregiver and the prospective adoptive parents. This changes the entity developing the plan from the adoption entity to DCF, requiring DCF to change its rules. The purpose of the plan is to minimize the trauma of removal from the current placement. The transition plan must allow for a reasonable period of time to transition the placement and take the needs of each child into account, including each child's age, relationships, bonds, and preferences.

Adoption and Intervention Study

The bill requires the Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) to review the state processes that allow private adoption entities to intervene or participate in dependency cases. The study must review, at a minimum:

- Processes and requirements for intervention or participation of private adoption entities in dependency cases;
- Any statutory fee limits for intervention adoption services, including attorney fees, recruitment fees, marketing fees, matching fees, and counseling fees; and
- Any regulations on marketing and client recruitment methods or strategies.

OPPAGA must also:

- Update and expand a study published in 2008 by OPPAGA related to adoptions, to analyze time to permanency, and
- Provide a general overview of ch. 63 and adoption generally.

DCF must give OPPAGA names and contact information for registered residential child-caring agencies and licensed child-placing agencies by July 15, 2023. By October 1, 2023, these organizations must provide OPPAGA with the data required under the bill. OPPAGA must submit the analysis and report to the President of the Senate and the Speaker of the House of Representatives by January 1, 2024.

The bill has an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DCF, through its CBCs, will need to prepare the transition plans for a child who is being adopted and is transitioning from the current placement. Under current DCF rule, these plans are prepared by the private adoption entity, though the CBC remains involved in the process. It is estimated that there will be no significant fiscal impact to DCF for this new requirement.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private adoption entities involved in interventions may conduct fewer interventions, if parents who would otherwise have executed consents more than 30 days after the filing of a termination of parental rights petition do not choose to execute consents for adoption earlier in the process.

Some caregivers from whom children are proposed to be placed with different adoptive parents under the current statute will have an opportunity to be a party to the adoption intervention case, which may require the involvement of counsel.

CBCs will have additional responsibilities for the creation of transition plans for children transitioning to new placements under the bill.

D. FISCAL COMMENTS:

None.