

## Committee Substitute for Senate Bill No. 1760

An act relating to child welfare; amending s. 39.01, F.S., relating to definitions with respect to specified provisions relating to juvenile proceedings; redefining the term "diligent search"; defining the term "next of kin"; amending s. 39.401, F.S., relating to taking a child alleged to be dependent into custody; requiring the Department of Children and Family Services to request a child's parent or custodian to disclose certain information regarding parents, prospective parents, and next of kin; amending s. 39.402, F.S., relating to placement in a shelter; providing for the court to require parent or custodian present at emergency shelter hearing to provide certain information on the record regarding parents, prospective parents, or next of kin; amending s. 39.405, F.S.; revising certain guidelines relating to filing of affidavit of diligent search in dependency cases; removing requirement for appointment of guardian ad litem, under specified circumstances; amending s. 39.4051, F.S., relating to special procedures in dependency cases when identity or location of parent is unknown; revising duties of the Department of Children and Family Services with respect to diligent searches; reenacting s. 39.462(1)(a), F.S., relating to process and service in proceedings to terminate parental rights, to incorporate an amendment in references thereto; creating s. 39.4052, F.S.; requiring written notice to identified adult relatives of a child taken into care; creating s. 39.4053, F.S.; prescribing duties of the department and guidelines relating to due diligence in the identification and notification of parents, relatives, and custodians of a child in departmental custody; amending s. 39.41, F.S., relating to powers of disposition; providing for diligent search; conforming terminology; amending s. 39.4625, F.S., relating to special procedures in termination of parental rights cases when identity or location of parent is unknown; revising guidelines relating to court inquiry and diligent search; reenacting s. 39.462(1)(a), F.S., relating to elements of petition for termination of parental rights, to incorporate an amendment in references thereto; amending s. 39.464, F.S., relating to grounds for termination of parental rights; conforming provisions relating to diligent search; reenacting s. 39.4611(1)(a) and (b) and (2), to incorporate an amendment in references thereto; amending s. 415.5018, F.S.; providing for the sharing of certain criminal history information; amending s. 415.51, F.S.; providing for the release of certain confidential reports to law enforcement; amending s. 415.505, F.S., relating to child protective investigations and institutional child abuse or neglect investigations; requiring the agent of the department to request the parent or custodian to disclose certain information regarding parents, prospective parents, or next of kin when child is taken into custody; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (27) of section 39.01, Florida Statutes, 1996 Supplement, is amended, present subsections (48) through (76) of that section are renumbered as subsections (49) through (77), respectively, and a new subsection (48) is added to that section, to read:

39.01 Definitions.—When used in this chapter:

(27) “Diligent search” means the efforts of a social service agency in accordance with the requirements of s. 39.4051(6) to locate a parent or prospective parent whose identity or location is unknown, or a relative made known to the social services agency by the parent or custodian of a child. When the search is for a parent, prospective parent, or relative of a child in the custody of the department, this search must be initiated as soon as the agency is made aware of the existence of such parent, prospective parent, or relative. A diligent search shall include interviews with persons who are likely to have information about the identity or location of the person being sought, comprehensive database searches, and records searches, including searches of employment, residence, utilities, Armed Forces, vehicle registration, child support enforcement, law enforcement, and corrections records, and any other records likely to result in identifying and locating the person being sought. The initial diligent search must be completed within 90 days after a child is taken into custody. After the completion of the initial diligent search, the department, unless excused by the court, shall have a continuing duty to search for relatives with whom it may be appropriate to place the child, until such relatives are found or until the child is placed for adoption, initiated as soon as the agency is made aware of the existence of such a parent, with the search progress reported at each court hearing until the parent is either identified and located or the court excuses further search.

(48) “Next of kin” means an adult relative of a child who is the child’s brother, sister, grandparent, aunt, uncle, or first cousin.

Section 2. Subsection (4) is added to section 39.401, Florida Statutes, to read:

39.401 Taking a child alleged to be dependent into custody.—

(4) When a child is taken into custody pursuant to this section, the Department of Children and Family Services shall request that the child’s parent or custodian disclose the names, relationships, and addresses of all parents and prospective parents and all next of kin of the child, so far as are known.

Section 3. Paragraph (a) of subsection (7) of section 39.402, Florida Statutes, is amended to read:

39.402 Placement in a shelter.—

(7)(a) A child may not be held in a shelter longer than 24 hours unless an order so directing is entered by the court after an emergency shelter hearing. At the emergency shelter hearing, the court shall appoint a guardian ad litem to represent the child unless the court finds that such representation is unnecessary. The parents or legal custodians of the child shall be

given such notice as best ensures their actual knowledge of the time and place of the hearing and shall be given an opportunity to be heard and to present evidence at the emergency shelter hearing. The court shall require the parents or custodians present at the hearing to provide to the court on the record the names, addresses, and relationships of all parents, prospective parents, and next of kin of the child, so far as are known.

Section 4. Subsection (9) of section 39.405, Florida Statutes, is repealed, subsections (10) through (17) of that section are renumbered as subsections (9) through (16), respectively, and subsection (8) of that section is amended to read:

39.405 Notice, process, and service.—

(8) It is not necessary to the validity of a proceeding covered by this part that the parents or legal custodians be present if their identity or residence is unknown after a diligent search has been made, ~~but in this event the petitioner shall file an affidavit of diligent search prepared by the person who made the search and inquiry, and the court may appoint a guardian ad litem for the child.~~

~~(9) When an affidavit of diligent search has been filed under subsection (8), the petitioner shall continue to search for and attempt to serve the person sought until excused from further search by the court. The petitioner shall report on the results of the search at each court hearing until the person is identified or located or further search is excused by the court.~~

Section 5. Subsection (5) of section 39.4051, Florida Statutes, is amended to read:

39.4051 Identity or location of parent unknown; special procedures.—

(5) If the inquiry under subsection (1) identifies a parent or prospective parent, and that person's location is unknown, ~~the court shall direct the department shall~~ to conduct a diligent search for that person before the scheduling of a disposition hearing regarding the dependency of the child unless the court finds that the best interest of the child requires proceeding without notice to the person whose location is unknown.

Section 6. For the purpose of incorporating the amendments to section 39.4051, Florida Statutes, in references thereto, paragraph (a) of subsection (1) of section 39.462, Florida Statutes, is amended to read:

39.462 Process and services.—

(1) Before the court may terminate parental rights, in addition to the other requirements set forth in this part, the following requirements must be met:

(a) Notice of the date, time, and place of the advisory hearing for the petition to terminate parental rights and copy of the petition must be personally served upon the following persons, specifically notifying them that a petition has been filed:

1. The parents of the child.
2. The legal custodians or guardian of the child.
3. If the parents who would be entitled to notice are dead or unknown, a living relative of the child, unless upon diligent search and inquiry no such relative can be found.
4. Any person who has physical custody of the child.
5. Any grandparent entitled to priority for adoption under s. 63.0425.
6. Any prospective parent who has been identified under s. 39.4051 or s. 39.4625.
7. The guardian ad litem for the child, if one has been appointed.

The document containing the notice to respond or appear must contain, in type at least as large as the balance of the document, the following or substantially similar language: "FAILURE TO RESPOND TO THIS NOTICE OR TO APPEAR AT THIS HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF THIS CHILD (OR THESE CHILDREN)."

Section 7. Section 39.4052, Florida Statutes, is created to read:

39.4052 Affirmative duty of written notice to adult relatives.—

(1) When a child is taken into care pursuant to this part, adult relatives made known to the department by a parent or custodian of a child shall be provided with written notice from the department which states:

(a) The nature, time, and place of the pending proceeding.

(b) The various possible outcomes both of the impending proceeding and of future proceedings including termination of parental rights, reunification, foster care placement, long-term foster care placement, and shelter care.

(c) That the adult relatives may be evaluated for temporary custody of the child.

(d) That the adult relatives may maintain or establish a relationship with a child in care through visitation or other contacts.

(e) That the adult relatives may choose not to receive further notice regarding future proceedings.

(2) Notice of future proceedings shall be provided to the adult relative, unless he or she requests in writing that such notice be discontinued or the court excuses further notice for good cause shown.

(3) The department shall make a good-faith attempt to provide the written notice required by this section as soon as possible after the identity of the adult relative is made known to the department.

Section 8. Section 39.4053, Florida Statutes, is created to read:

39.4053 Diligent search; child in custody of department.—

(1) Within 90 days after taking a child into custody, the department shall either identify and locate, or shall complete a diligent search for, the parents, prospective parents, and legal custodians of the child, and the next of kin of the child. The purpose of identifying and locating these persons, or of conducting a diligent search for them, is to ensure the proper placement of the child with parents, with relatives, or in the custody of the department. Any relatives who are located pursuant to this section shall be assessed as to their willingness to provide emotional support to the parents during reunification, including assisting the parents to achieve a safe, stable home, and as to their own custodial intentions toward the child who is in the custody of the department. In any search for parents or prospective parents under this section, the department shall consider the results of the inquiry conducted by the court pursuant to s. 39.4051(1).

(2) If the department fails to place the child for adoption within 12 months after termination of parental rights becomes final, the department shall notify the persons specified in subsection (1) of the child's status unless excused by the court for good cause shown.

Section 9. Paragraph (b) of subsection (4) of section 39.41, Florida Statutes, is amended to read:

39.41 Powers of disposition.—

(4)

~~(b) If a diligent search is efforts are made to locate an adult relative willing and able to care for the child but, because no suitable relative is found, the child is placed with the department or a nonrelative custodian, both the department and the court shall consider transferring temporary legal custody to a willing adult relative or adult nonrelative approved by the court at a later date, but neither the department nor the court is obligated to so place the child if it is in the child's best interest to remain in the current placement. For the purposes of this paragraph, "diligent efforts to locate an adult relative" means a search similar to the diligent search for a parent, but without the continuing obligation to search after an initial adequate search is completed.~~

Section 10. Section 39.4625, Florida Statutes, is amended to read:

39.4625 Identity or location of parent unknown after filing of termination of parental rights petition; special procedures.—

(1) If the identity or location of a parent is unknown and a petition for termination of parental rights is filed, the court shall conduct an ~~the following~~ inquiry of the parent who is available, or, if no parent is available, of any relative or custodian of the child who is present at the hearing and likely to have relevant ~~the~~ information.;

~~(a) Whether the mother of the child was married at the probable time of conception of the child or at the time of birth of the child.~~

~~(b) Whether the mother was cohabiting with a male at the probable time of conception of the child.~~

~~(c) Whether the mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father.~~

~~(d) Whether the mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.~~

~~(e) Whether any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother resided at the time of or since conception of the child, or in which the child has resided or resides.~~

~~(2) The information required in subsection (1) may be supplied to the court or the department in the form of a sworn affidavit by a person having personal knowledge of the facts.~~

~~(3) If the inquiry under subsection (1) identifies any person as a parent or prospective parent, the court shall require notice of the hearing to be provided to that person.~~

~~(4) If the inquiry under subsection (1) fails to identify any person as a parent or prospective parent, the court shall so find and may proceed without further notice.~~

~~(2)(5) If the inquiry under subsection (1) identifies a parent or prospective parent whose, and that person's location is unknown, and the court determines that an adequate diligent search has been conducted, no further diligent search shall be required by the court shall direct the department to conduct a diligent search for that person before scheduling an adjudicatory hearing regarding the dependency of the child unless it is determined by the court to be in finds that the best interest of the child requires proceeding without actual notice to the person whose location is unknown.~~

~~(6) The diligent search required by subsection (5) must include, at a minimum, inquiries of all known relatives of the parent or prospective parent, inquiries of all offices of program areas of the department likely to have information about the parent or prospective parent, inquiries of other state and federal agencies likely to have information about the parent or prospective parent, inquiries of appropriate utility and postal providers, and inquiries of appropriate law enforcement agencies.~~

~~(3)(7) If a diligent search is required by the court pursuant to this section, any agency contacted by petitioner with a request for information pursuant to subsection (6) shall release the requested information to the petitioner without the necessity of a subpoena or court order.~~

~~(8) If the inquiry and diligent search identifies a prospective parent, that person must be given the opportunity to become a party to the proceedings~~

~~by completing a sworn affidavit of parenthood and filing it with the court or the department. A prospective parent who files a sworn affidavit of parenthood while the child is a dependent child but no later than at the time of or prior to the adjudicatory hearing in the termination of parental rights proceeding for the child shall be considered a parent for all purposes under this section.~~

Section 11. For the purpose of incorporating the amendment to section 39.4625, Florida Statutes, in references thereto, paragraph (a) of subsection (1) of section 39.462, Florida Statutes, is reenacted to read:

39.462 Process and services.—

(1) Before the court may terminate parental rights, in addition to the other requirements set forth in this part, the following requirements must be met:

(a) Notice of the date, time, and place of the advisory hearing for the petition to terminate parental rights and copy of the petition must be personally served upon the following persons, specifically notifying them that a petition has been filed:

1. The parents of the child.
2. The legal custodians or guardian of the child.
3. If the parents who would be entitled to notice are dead or unknown, a living relative of the child, unless upon diligent search and inquiry no such relative can be found.
4. Any person who has physical custody of the child.
5. Any grandparent entitled to priority for adoption under s. 63.0425.
6. Any prospective parent who has been identified under s. 39.4051 or s. 39.4625.
7. The guardian ad litem for the child, if one has been appointed.

The document containing the notice to respond or appear must contain, in type at least as large as the balance of the document, the following or substantially similar language: “FAILURE TO RESPOND TO THIS NOTICE OR TO APPEAR AT THIS HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF THIS CHILD (OR THESE CHILDREN).”

Section 12. Paragraph (b) of subsection (1) of section 39.464, Florida Statutes, is amended to read:

39.464 Grounds for termination of parental rights.—

(1) The department, the guardian ad litem, a licensed child-placing agency, or any person who has knowledge of the facts alleged or who is

informed of said facts and believes that they are true, may petition for the termination of parental rights under any of the following circumstances:

(b) When the identity or location of the parent or parents is unknown and, if the court requires a diligent search pursuant to s. 39.4625, cannot be ascertained by diligent search as provided in s. 39.4625 within 90 ~~60~~ days.

Section 13. For the purpose of incorporating the amendment to section 39.464, Florida Statutes, in a reference thereto, paragraphs (a) and (b) of subsection (1) and subsection (2) of section 39.4611, Florida Statutes, are reenacted to read:

39.4611 Elements of petition for termination of parental rights.—

(1) A petition for termination of parental rights filed under this chapter must contain facts supporting the following allegations:

(a) That at least one of the grounds listed in s. 39.464 has been met.

(b) That the parents of the child were informed of their right to counsel at all hearings that they attend and that a dispositional order adjudicating the child dependent was entered in any prior dependency proceeding relied upon in offering a parent a case plan as described in s. 39.464.

(2) When a petition for termination of parental rights is filed under s. 39.464(1), a separate petition for dependency need not be filed and the department need not offer the parents a case plan with a goal of reunification, but may instead file with the court a case plan with a goal of termination of parental rights.

Section 14. Subsection (3) of section 415.5018, Florida Statutes, 1996 Supplement, is amended to read:

415.5018 District authority and responsibilities.—

(3) CHILD PROTECTIVE INVESTIGATION; COUNTY SHERIFF'S OFFICE OR LOCAL POLICE DEPARTMENT OPTION.—Within existing resources, a district, with the approval of the district health and human services board, and the secretary of the department shall enter into an agreement with a county sheriff's office or local police department that is jurisdictionally responsible to allow such law enforcement entity to assume a lead in conducting any potential criminal investigations as well as partial or full responsibility for conducting certain components of protective investigations under ss. 415.502-415.514 that are related to cases involving a criminal investigation. The written agreement must specify how the requirements of ss. 415.502-415.514 will be met. For the purposes of such agreement, the jurisdictionally responsible law enforcement entity is authorized to share Florida criminal history information that is not otherwise exempt from s. 119.07(1) with the district personnel directly responsible for child protective investigation and emergency child placement. The agencies entering into such agreement must comply with s. 943.0525 to the extent applicable. Criminal justice information provided by such law enforcement entity shall be used only for the purposes specified in the agreement and shall be provided at no charge.



(a) The agreement between the district and the county sheriff's office or local police department must include the following assurances and information:

1. Assurance that the county sheriff's office or local police department will be in compliance with the procedural requirements of ss. 415.502-415.514.

2. Description of a protocol between the district and the county sheriff's office or local police department that at a minimum addresses the following:

- a. Response to reports of abuse and neglect.
  - b. Investigations.
  - c. Assessment of risk.
  - d. Evidence gathering.
  - e. Classification of reports.
  - f. Appeals of classifications.
  - g. Communication and involvement with the state attorney.
  - h. Confidentiality of reports and access to information.
  - i. Utilization of the child protection team.
  - j. Storage and maintenance of records and other information.
3. Description of the transition of responsibility that assures the integrity and continuity of protective investigations.
4. Description of any necessary changes to department rules.

(b) County sheriff's office or local police department personnel assuming responsibility for conducting certain components of protective investigations shall receive training from the department relevant to child protective investigations and services.

(c) The secretary of the department shall dispose of a proposed agreement by approving or disapproving the agreement between a district and the county sheriff's office or local police department within 60 days after receipt. The secretary may negotiate modifications within this 60-day period.

Section 15. Subsection (4) of section 415.51, Florida Statutes, 1996 Supplement, is amended to read:

415.51 Confidentiality of reports and records in cases of child abuse or neglect.—

(4) The name of any person reporting child abuse, abandonment, or neglect may not be released to any person other than employees of the department responsible for child protective services or, the central abuse hotline,

or the appropriate state attorney or law enforcement agency, without the written consent of the person reporting. This does not prohibit the subpoenaing of a person reporting child abuse, abandonment, or neglect when deemed necessary by the court, the state attorney, or the department, provided the fact that such person made the report is not disclosed. Any person who reports a case of child abuse or neglect may, at the time he makes the report, request that the department notify him that a child protective investigation occurred as a result of the report. The department shall mail such a notice to the reporter within 10 days after completing the child protective investigation.

Section 16. Present paragraphs (e) through (i) of subsection (1) of section 415.505, Florida Statutes, 1996 Supplement, are redesignated as paragraphs (f) through (j), respectively, and a new paragraph (e) is added to that subsection, to read:

415.505 Child protective investigations; institutional child abuse or neglect investigations.—

(1)

(e) When a child is taken into custody pursuant to this section, the authorized agent of the department shall request that the child's parent or custodian disclose the names, relationships, and addresses of all parents and prospective parents and all next of kin, so far as are known.

Section 17. This act shall take effect July 1, 1998, except that this section and sections 14 and 15 of this act shall take effect upon becoming a law.

Approved by the Governor May 30, 1997.

Filed in Office Secretary of State May 30, 1997.