HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1461 Termination of Parental Rights

SPONSOR(S): Murzin

TIED BILLS: **IDEN./SIM. BILLS:** SB 2576

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Constitution & Civil Law		Davis	Birtman
2) Safety & Security Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill requires the court to calculate a parent's period of incarceration beginning on the date the parent enters the federal, state, or county correction institution as a ground for the termination of parental rights based on the parent's incarceration.

The bill also provides that twelve months after an adjudication of dependency or placement in shelter care, whichever comes first, the court should consider a parent's failure to comply with a case plan as evidence of continued abuse, abandonment, or neglect.

It does not appear that this bill will have a fiscal impact on state government.

The bill provides an effective date of July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty: The bill requires the court to calculate a parent's period of incarceration beginning on the date the parent enters the federal, state, or county correction institution as a ground for the termination of parental rights based on the parent's incarceration.

Empower Families: The bill changes Florida's termination of parental rights standard to potentially increase the number of successful termination of parental right trials.

B. EFFECT OF PROPOSED CHANGES:

Termination of Parental Rights Generally

Florida courts have long recognized that parents have a "fundamental liberty interest in determining the care and upbringing of their children free from the heavy hand of government paternalism."[1] The right of parental privilege is not absolute, but is limited only by the principle that the welfare or "best interest" of the child is paramount.[2]

Although a parent's interest in maintaining parental ties is essential, a child's entitlement to a safe environment is more so.[3] Because the State has a compelling interest in protecting its children, it may permanently and involuntarily terminate parental rights, but only after showing by clear and convincing evidence that the parent poses a "substantial risk of significant harm to the child."[4] In addition, because termination of parental rights implicates a fundamental liberty interest, termination must be the least restrictive means of protecting the child.[5]

Recognizing these constitutional principles, the framework for terminating parental rights in Florida requires the State to establish with clear and convincing evidence (1) the existence of statutory grounds; (2) that termination is in the child's best interest; and (3) that termination is the least restrictive means of protecting the child.[6]

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[1] *Padgett v. Department of Health and Rehabilitative Services*, 577 So.2d 565, 570 (Fla. 1991). *See also, Santosky v. Kramer*,
455 U.S. 745, 753 (1982).
[2] *Padgett*, 577 So.2d at 570 (Fla. 1991).
[3] *Id.* at 571.
[4] *Id.*
[5] *Id.*
[6] *T.C. v. Department of Children and Families*, 961 So.2d 1060, 1061 (Fla. App. 4 Dist. 2007). *See also,* s. 39.809 (1), F.S.

Grounds for Termination of Parental Rights in Florida

A proceeding to terminate parental rights may be initiated by the Department of Children and Family Services (the department), the guardian ad litem or any other interested person.[7] The petition for termination must include allegations that one of the grounds for termination has been met, that the parents were informed of their right to counsel, and that termination is in the best interest of the child.[8]

Unless certain exceptions apply, the department is mandated to file a petition to terminate parental rights if:

- At the time of the 12-month judicial review hearing, a child is not returned to the physical custody of the parents;
- A child has been in out-of-home care under the responsibility of the state for 15 of the most recent 22 months;
- A parent has been convicted of murder or manslaughter of the other parent, or of a felony battery that resulted in serious bodily injury to the child or to any other child of the parent; or
- A court determines that reasonable efforts to reunify the child and parent are not required.[9]

Pursuant to s. 39.806(1), F.S., the following are grounds for the termination of parental rights in Florida:

(a) Voluntary surrender;

(b) Abandonment;[10]

(c) Conduct that demonstrates that the continuing involvement in the parent-child relationship threatens the life, safety, well-being, or physical, mental, or emotional health of the child, irrespective of the provision of services;

(d) Incarceration (under certain circumstances);[11]

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[7] Section 39.802(1), F.S.
[8] Section 39.802(4), F.S.
[9] Section 39.8055, F.S.
[10] According to s. 39.01, F.S.,"Abandoned" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver responsible for the child's welfare, while being able, makes no provision for the child's support and makes no effort to communicate with the child, which situation is sufficient to evince a willful rejection of parental obligations. If the efforts of the parent or legal custodian, or caregiver primarily responsible for the child's welfare, to support and communicate with the child are, in the opinion of the court, only marginal efforts that do not evince a settled purpose to assume all parental duties, the court may declare the child to be abandoned. The term "abandoned" does not include an abandoned newborn infant as described in s. 383.50, a "child in need of services" as defined in chapter 984, or a "family in need of services" as defined in chapter 984. The incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment.
[11] The circumstances include: 1. The period of time for which the parent is expected to be incarcerated will constitute a substantial portion of the period of time before the child will attain the age of 18 years; 2. The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or 3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child.

(e) Failure to comply with the case plan;

(f) Egregious conduct that threatens the life, safety, or health of the child or the child's sibling;

(g) Aggravated child abuse, sexual battery or sexual abuse, or chronic abuse of the child;

(h) Murder, voluntary manslaughter, or felony assault of the child or another child;

(i) Parental rights to a sibling have been terminated involuntarily.

Reasonable efforts to preserve and reunify families are not required if a court determines that any of the events described in paragraphs (1)(e)-(i) has occurred.[12]
In determining the best interests of the child, the court must consider and evaluate all relevant factors, including the parents' ability to provide and care for the child, the mental and physical health needs of the child, and the emotional ties between the parents and child.[13]

Section 39.811(6), F.S., provides that the parental rights of one parent may be severed without severing the parental rights of the other parent only under certain, specified circumstances, one of which is if the parent whose rights are being terminated meets any of the grounds specified in s. 39.806 (1)(d) and (f)-(i), F.S.[14]

Incarceration:

Currently in s.39.806(1)(d)1., F.S., grounds for the termination of parental rights may be established if the period of time for which the parent is expected to be incarcerated will constitute a substantial portion of the period of the time before the child will attain the age of 18.

According to the Department of Children and Families, termination of parental rights (TPR) pursuant to s. 39.806(1)(d), F.S., also known as "extended incarceration" has been a troubling ground for many parties involved in dependency proceedings.[15]

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[12] Section 39.806(2), F.S.
[13] Section 39.810, F.S., identifies the following factors to be considered by a court in determining the manifest best interest of the child: (1) availability of a permanent custody arrangement with a relative of the child; (2) ability of the parent to for the provide the child; (3) capacity of the parent to care for the child; (4) mental and physical health needs of the child; (5) love, affection, and other emotional ties existing between the child and the parent; (6) likelihood of an older child remaining in long-term foster care upon termination; (7) child's ability to form a significant relationship with a parental substitute and the likelihood that the child will enter into a more stable and permanent family relationship as a result of permanent termination; (8) length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity; (9) depth of the relationship existing between the child and the present custodian; (10) reasonable preferences and wishes of the child; (11) recommendations for the child provided by the child's guardian ad litem or legal representative.
[14] The parental rights of one parent may be severed without severing the parental rights of the other parent only under the following circumstances:
(a) If the child has only one surviving parent;
(b) If the identity of a prospective parent has been established as unknown after sworn testimony;
(c) If the parent whose rights are being terminated became a parent through a single-parent adoption;
(d) If the protection of the child demands termination of the rights of a single parent; or
(e) If the parent whose rights are being terminated meets any of the criteria specified in s. 39.806(1)(d) and (f)-(i).
[15] In B.C. v. Department of Children and Families, 887 So. 2d 1046 (Fla. 2004),the court held that "four years remaining in the father's sentence (from the filing of the petition in January 2002 to the January 2006 maximum release date) was not a substantial portion of the remaining fourteen-year minority of the child. This amounts to 28.6 percent of the child's remaining minority. This percentage is commensurate with the percentages of remaining incarceration that were determined not to constitute a substantial portion of the remaining minority in … ., *W.W.,* 811 So.2d at 792 (holding that incarceration for a period constituting twenty-five percent of the child's minority was *not* a substantial portion); *A.W.,* 816

In 2004, addressing a variety of different results from various district courts of appeal, the Florida Supreme Court issued B.C. v. Dept. of Children and Families,[16] in which the Supreme Court held that before any termination could occur pursuant to s. 39.806(1)(d)1, F.S., the court had to find by clear and convincing evidence that the term remaining in the parent's incarceration constituted a substantial portion of time before the child reached the age of 18. Furthermore, the Supreme Court linked the substantial amount of time to the date of filing of a TPR petition.

In B.C., the Supreme Court noted:

> " *the conclusion we reach as to the interpretation of this statute would encourage the State to pursue termination, if at all, early in a prison term. A termination decision at that point can facilitate the timely development of a permanency plan when the child is younger and can therefore gain greater benefit from the stability created by permanency. In contrast, a construction that encompasses the entire prison sentence, regardless of when the termination petition is filed, creates no incentive to resolve the issue of parental rights of an incarcerated parent when the decision is of greatest significance to the child."* B.C. v. Dept. of Children and Families.[17]

Case Plan:

According to s. 39.6011(6)(b)2.,F.S., in each case where a child has been placed in out of home care, a case plan must be prepared within 60 days after the department removes the child from the home and shall be submitted before the disposition hearing for the court to review and approve.

According to the Department Of Children and Families, the termination of parental rights pursuant to s. 39.806(1)(e), F.S., also known as "case plan failure," is one of the more common grounds for termination of parental rights under Chapter 39. Once a child is removed from care, and after an adjudication of dependency, parents are offered a case plan listing the services required for parents to complete which, if completed, generally results in reunification.[18] Should the parents fail to complete their case plan within a twelve month period and the child continues to be abused, abandoned or neglected, the Department may seek termination of parental rights pursuant to s. 39.806(1)(e), F.S.

Currently, the statutory time frame for s. 39.806(1)(e), F.S., only begins to run twelve months after a shelter placement or disposition/case plan acceptance, absent a finding that the parents have materially breached their case plan.

The Bill:

So.2d 1261(Fla.2d DCA 2002) (holding that remaining incarceration constituting twenty-six percent and thirty-two percent of the remaining minority of the children did *not* constitute a substantial portion). In re A.W.,the measurement of the child's remaining minority runs from the date the TPR petition is filed.The court is limited to relying solely on the length of the parent's sentence and may not consider the quality of that time in the child's development. Remaining incarceration constituting twenty-six percent and thirty-two percent of the remaining minority of the children did not constitute a substantial portion of child's minority. In re J.D.C., 819 So. 2d 264 (Fla. 2d DCA 2002),the court must consider whether the time for which a parent is expected to be incarcerated in the future constitutes a substantial portion of the time before the child reaches eighteen, not whether the time the parent has been incarcerated in the past was a substantial portion of the child's life to that point.

[16] B.C. v. Dept. of Children and Families, 887 So.2d 1046 (Fla. 2004).

[17] B.C. v. Dept. of Children and Families, 887 So.2d 1046,1054 (Fla. 2004).

[18] Section.39.6012,F.S.

The bill revises s. 39.806(1)(d),F.S., providing the calculation of the total period of incarceration shall start when the parent of a child is incarcerated in a federal, state, or county correctional institution or facility and the total period of the parent's incarceration is significant to the child, considering the child's age and the child's need for a permanent stable home.

According to the Department of Children and Families, the bill clarifies the calculation for determining when a parent's length of incarceration is detrimental to establishing permanency for a child, which will increase the number of successful termination of parental right trials.

The bill also revises s. 39.806(1) (e), F.S., providing that twelve months after an adjudication of dependency or placement in shelter care, whichever comes first, the court should consider a parent's failure to comply with a case plan as evidence of continued abuse, abandonment, or neglect.

The bill deletes statutory language, "allowing the 12 month period to run only after the child's placement into shelter care or the entry of a disposition order placing the custody of the child with the department or a person other than the parent and the approval by the court of a case plan with a goal of reunification with the parent, whichever comes first."

C. SECTION DIRECTORY:

Section 1: Revises ss. 39.806(1)(d) and (e), F.S., regarding grounds for the termination of parental rights.

Section 2: 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:

   The Department of Children and Families has reported that this bill has no fiscal impact on state expenditures.

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:

Not applicable because the bill does not appear to require counties or cities to spend spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

The bill potentially implicates Article 1, Section 23, of the Florida Constitution relating to privacy rights.[19] Parents have a right to raise their children free from governmental intrusion, unless the state can show harm to the child.

The termination of parental rights implicates a fundamental liberty interest, which must be the least restrictive means of protecting the child.[20]

In 2004, addressing a variety of different results from various district courts of appeal, the Florida Supreme Court issued B.C. v. Dept. of Children and Families,[21] in which the Supreme Court held that before any termination could occur pursuant to s. 39.806(1)(d)1., F.S., the court had to find by clear and convincing evidence that the term remaining in the parent's incarceration constituted a substantial portion of time before the child reached the age of 18. Furthermore, the Supreme Court linked this to the date of filing of a TPR petition.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rule making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

[19] Article 1, Section 23. Right of privacy.--Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

[20] *Padgett*, 577 So.2d at 571 (Fla. 1991).

[21] B.C. v. Dept. of Children and Families, 887 So.2d 1046 (Fla. 2004).

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES