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The Loophole in the Florida Notice Requirement to Foster Caregivers

*Eve Lumsden**

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I. INTRODUCTION

Foster care is a transitional and emotionally challenging experience for any child involved in the process, regardless of age.¹ The right foster caregiver and the correct foster environment can drastically alter a foster child's circumstances for the better, just as the wrong environment or caregiver can have negative consequences on a child who is already in the traumatic process of being removed from their home.²

Often, when a foster caregiver opens their home and their family to a child in need of placement, a bonding experience begins between the foster child, the caregiver and the caregiver's family. Whether the placement is meant to be for a few days or a year, the love and care shown by foster caregivers during the time that the foster child is in their care can help heal emotional wounds of the child, and also teaches the foster child that emotional attachments are healthy and helps rebuild their sense of trust and belonging.³

The legal process to enter a child into the foster system in Florida as set forth in Chapters 39, 61, and 409 of the Florida Statutes is fairly straightforward.⁴ Once a dangerous living situation involving a child is reported to the Department of Children and Family Services (hereinafter "DCF"), DCF assigns a Child Protective Investigator who begins an investigation into the welfare of the child. The investigation consists of visits to the child's residence and interviews with the child, caregivers, family members and other individuals who know the child, such as teachers and therapists.⁵ The visits are to be unannounced whenever possible to allow the investigator to ascertain the child's "real world" living situation, and if the investigator deems that an investigation is

¹FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES, <https://www.myflfamilies.com/service-programs/foster-care/> (last visited Nov. 8, 2019).

²Committee on Early Childhood, Adoption and Dependent Care, *Developmental Issues for Young Children in Foster Care*, AAP NEWS AND JOURNALS GATEWAY (Nov. 2000), <https://pediatrics.aappublications.org/content/106/5/1145>.

³*Id.*

⁴FLA. STAT. ANN. § 39, § 409 (2019), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0400-0499/0409/0409ContentsIndex.html_11/9/19 (last visited Nov. 9, 2019).

⁵*Child Protection: Your Rights and Responsibilities*, FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES <https://eds.myflfamilies.com/DCFFormsInternet/Search/OpenDCFForm.aspx?FormId=673> (last visited Jan. 25, 2020).

necessary, any subsequent investigation should be concluded within sixty days from commencement.⁶ Once the investigation is concluded, if DCF finds a dangerous living situation for the child, the child is removed from the home and the search begins to find the correct placement for the child.

The ultimate goal of DCF is the permanent placement of the child in a safe and loving home. In Florida, the courts believe that reunification of the child with their biological parent(s) is the best option whenever it is in the best interest of the child; however, if that is not possible, DCF will look to relatives to shelter the child first, then close friends or licensed caregivers.⁷ Florida Statutes 39.301 and 61.403 outline the process for court hearings, Guardian ad Litem appointment, and the numerous other legal safety nets built into the child's removal processes to ensure that the child is placed correctly after removal from their home.⁸ Placement of a child with a family member, known as "kinship care," is the preferred placement as, according to the American Bar Association, these placements become permanent with higher frequency than placement outside of family.⁹

Kin caregivers also provide higher levels of permanency and children experience less reentry into foster care when living with kin. Relatives are more likely to provide a permanent home through guardianship, custody or adoption. Currently about 32% of children adopted from foster care are adopted by relatives. Another 9% exit foster care to some form of guardianship with kin.¹⁰

If kinship care is not available to the child then, based upon the needs of the child (developmental, emotional, physical,) the child will be placed with a non-kinship family who can foster him or her.

Foster caregivers who care for nonrelative children open their homes to children after going through an extensive process to ensure that both the caregiver and their home environment are safe.¹¹ The

⁶*Id.*

⁷*Id.*

⁸FLA. STAT. ANN. § 39.301 (2019), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0000-0099/0039/Sections/0039.301.html (last visited Jan. 25, 2020).

⁹Heidi Redlich Epstein, *Kinship Care is Better for Children and Families*, AMERICAN BAR ASSOCIATION (Jul. 01, 2017), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-36/july-aug-2017/kinship-care-is-better-for-children-and-families/.

¹⁰*Id.*

¹¹FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES (2019), <https://www.myflfamilies.com/service-programs/foster-care/how-do-I.shtml>.

court specifies the timeframe that the child will be in their care; the timeframe is based upon each individual case. Typically a child is in foster care for six months to a year, until the biological parent(s) have completed a course of treatment known as the Specialized Case Plan and eliminated the situation that forced the child's removal; once those items are satisfactorily completed, the child can return to their home.¹² While a foster child resides in their foster home, numerous hearings take place regarding review of the child's case, the progress of the biological parent toward compliance with their court-ordered plan and, ultimately, permanency.¹³ The final hearing that takes place is called a Permanency Hearing; the goal of this hearing is to determine what the best permanent placement will be for the child based upon several factors, including whether the biological parent substantially complied with their case plan to remove any danger to the child from the home, and whether it is in the best interest of the child to seek a permanent home elsewhere.¹⁴

While the foster caregiver is free to attend this hearing, often they are unable to do so due to other obligations such as work or caring for another foster child/children. If the foster caregiver is unable to attend the Permanency Hearing, the foster caregiver is not legally required to be notified of the hearing's outcome, and frequently will not be notified unless the case manager chooses to inform the caregiver. This is because the foster caregiver is not considered a "party to the suit;" thus, when factors such as overburdened and overworked case managers and court staff and a lack of accountability for notification are added into the equation, it can lead to delays in, and a lack of, communication between the state and the foster caregiver.

According to Black's Law Dictionary, the definition of a "party" in the legal sense is "A person concerned or having or taking part in any affair, matter, transaction, or proceeding, considered individually."¹⁵ While it is true that a foster caregiver does not take part in the actual lawsuit between the state and the biological parent, I argue that a foster caregiver is absolutely a person concerned with the matter, as the caregiver is the entity taking care of the child and

¹²FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES, *supra* note 5.

¹³*Id.*

¹⁴FLA. STAT. ANN. § 39.621 (2019), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0000-0099/0039/Sections/0039.621.html (last visited Nov. 9, 2019).

¹⁵*Party*, BLACK'S LAW DICTIONARY, <https://thelawdictionary.org/party/> (last visited Mar. 3, 2020).

meeting their daily needs in the absence of the child's parent's ability to do so. Therefore, the foster caregiver has a heightened interest in all aspects of the proceedings relating to their foster child. Further, the foster child continues to form attachments with the caregiver and their family every day that they are in the caregiver's home; thus, all members of the home have a heightened interest in the proceedings and their outcome.

The growing national trend is for foster caregivers to open their homes not just on a temporary basis, but in the hopes of finding a child to become a permanent addition to their home.¹⁶ When a child has been placed with a foster caregiver for long enough that the foster caregiver knows that the primary custodian of the child is not substantially complying with their case plan and it is likely that the court will terminate the biological parent's parental rights, the foster caregiver can apply for preemptive adoption qualification to speed the process of adopting the child once the parental rights are severed by a court order. Preadoption qualification consists of a background check, a home study, and a social study.¹⁷ Once a caregiver has passed all of these items, when their foster child is placed up for adoption, the process of the caregiver adopting the child is streamlined. States tend to give top priority to foster caregivers already caring for the child when considering adoption.¹⁸

The glaring and painful loophole in the Florida law involves the lack of a statute requiring notification to the foster caregiver of the outcome of the permanency hearing within a specified time that would hold the state to a heightened standard by ensuring that the caregiver is notified in each case. As outlined above, some foster caregivers simply open their homes to foster children on an "as-needed" basis, to care for children until they are reunified or placed up for adoption. But the growth in Florida of "foster-to-adopt" homes who go through the dual licensing and inspection/check process in order to have children in pre-adoptive homes prior to the termination of parental rights (hereinafter "TPR"), and adopted by

¹⁶*Preparing and Supporting Foster Parents Who Adopt*, CHILD WELFARE INFORMATION GATEWAY (Jan. 2013)

https://www.childwelfare.gov/pubPDFs/f_fospro.pdf.

¹⁷For a complete list of what each of these studies and checks entails, see CHILD WELFARE INFORMATION GATEWAY,

<https://www.childwelfare.gov/topics/systemwide/laws-policies/state/?CWIGFunctionsaction=statestatutes:main.getResults>.

¹⁸*Adopting from Foster Care*, ADOPTIVE FAMILIES,

<https://www.adoptivefamilies.com/how-to-adopt/foster-care-adoption/adopting-from-foster-care/> (last visited March 2, 2020).

their caregivers immediately afterward, is substantial.¹⁹ If a foster caregiver has applied for pre-adoption approval, even received the approval, and the foster child's biological parent(s) have not substantially complied with their reunification case plan, the foster caregiver will likely believe that the process to terminate parental rights will begin at or immediately following the permanency hearing and the child will be available for adoption after the final court proceeding. However, if the preceding is a caregiver's belief and, for any reason, a court reunifies a child with their biological parent during a permanency hearing and the foster caregiver was not in court when that ruling was made, the following scenario can and does occur.

Imagine that a foster family and child are sitting down as a family to the same dinner they have had every night for a year when a representative from the Department of Children and Families arrives on their doorstep, packs up the child and their belongings and leaves the home within minutes, with the foster caregiver never hearing from the child or the court again because the foster caregiver is not considered a party to the suit. In this situation the government has no legal requirement to notify the foster caregiver prior to removal of the child of anything relating to the suit or the child, so has done no legal wrong, but the emotional consequences to the foster family and to the child can be devastating, with no legal remedy.

II. THE NEED FOR THE FOSTER CARE SYSTEM

A. WHY AND HOW CHILDREN ENTER THE SYSTEM

The Office of Child Welfare of the Florida Department of Children and Families is charged with providing for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development.²⁰ When a dangerous living situation is reported to DCF and an investigation is conducted, a child is not automatically removed from the home. The Child Protective Investigator looks for signs of abuse,

¹⁹*What You Need to Know About Adoption and Foster Care in Florida*, AMERICAN ADOPTIONS (2020), <https://www.americanadoptions.com/florida-adoption/florida-foster-care-adoption>.

²⁰*DCF Quick Facts*, FLORIDA DEPARTMENT OF CHILDREN and FAMILIES, <https://www.myflfamilies.com/general-information/quick-facts/cw/> (last visited November 7, 2019).

abandonment or neglect of the child or children within the home, and for the source of the abuse, abandonment or neglect.²¹ The investigator then assesses the child's current and future safety and documents the present or impending dangers to the child; once this is done the investigator may implement a safety plan, modifiable at any time by the investigator, to rectify the dangerous situation.²² The plan must be sufficient, feasible, sustainable, and specific, and can include duties and responsibilities for anyone who has contact with the child.²³ If for any reason a plan cannot be created, or those who must comply with the plan are found unable to comply, then a shelter order will be created to remove the child from the home.²⁴

As outlined above, once a shelter order is created, there should be a hearing within twenty-four hours of the removal of the child from the home and the creation of the order at the request of the attorney representing the child. During the shelter hearing, the court may appoint a Guardian ad Litem to represent the legal best interests of the child in all future actions, will give the parent(s) the opportunity to be heard and to present evidence, will determine a schedule of visitation between the parent(s) and child(ren), and will advise the parent(s) in plain language what is expected of them for reunification with the child.²⁵ The court will then look for family or close friends (fictive kin) with which to place the child; if none are available, the child will be placed into licensed foster care.²⁶

B. STATISTICS – NEW ENTRIES AND REPEAT/EXTENDED FOSTER CHILDREN

As of January 10, 2019, over 13,000 children in Florida were placed in “kinship foster care,” where the children were placed with an individual who was deemed to be an important person in the child's life. 10,000 of those were licensed foster care homes, and at the time, 740 of those children were up for adoption.²⁷ Essentially,

²¹FLA. STAT. ANN. § 39.301 (2019), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0000-0099/0039/Sections/0039.301.html (last visited Jan. 25, 2020).

²²*Id.*

²³*Id.*

²⁴*Id.*

²⁵FLA. STAT. ANN. § 39.402 (2019), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0039/Sections/0039.402.html (last visited Jan. 25, 2020).

²⁶*Id.*

²⁷DCF Quick Facts, *supra*, note 20.

over 10,000 children were being cared for by a replacement caregiver because their primary home environment was somehow unsafe for them but were in a state of limbo about whether or not they would be reunified with their parent(s). That number fluctuates as children are reunified or adopted and as new children enter the system daily.

As of the end of Fiscal Year 2016, the last year that this data was collected, 7.2% of all children in foster care in Florida re-entered foster care within 12 months of exiting care.²⁸ To put that into perspective, if we apply the 7.2% to the 10,000 children in Florida in foster care as of January 10, 2019, then over 720 of those would re-enter the foster care system more than once after exiting the system – in layman’s terms, the court would reunify the child with the parent who would then create another unsafe environment for the child, forcing the state to take the child from the parent again. Florida performed slightly under the national average on this area in 2016, with the national average being 7.7%.²⁹ Imagine the impact on a foster child who was in a safe, stable and caring foster environment only to be forced to return home, and then be moved yet again into the home of another stranger after facing danger with their parent. If a foster caregiver grows attached to their foster child, and that foster child is removed from their home either for reunification with their parent or to be placed in a pre-adoption home, and the placement does not work out so the child is returned to the foster care system, the state is not required to call the former foster caregiver to return the child. Thus, as of the end of Fiscal Year 2018, children in foster care longer than 1,000 days (almost three years) in Florida typically move care an average of 4.16 times in that span.³⁰ This “ping pong” effect on foster children, denying them permanency, can be detrimental to their physical and emotional well-being, and denies them the opportunity to be placed long-term with the same caring family.³¹

²⁸2018 Annual Performance Report, FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES (2018), <https://www.myflfamilies.com/service-programs/child-welfare/docs/2018LMRs/2018%20Annual%20Performance%20Report.pdf>

²⁹*Id.*

³⁰*Id.*

³¹Kim Phagan-Hansel and Christie Renick, *As Florida Faces Child Welfare Lawsuit, Legislature Tries to Speed Up Foster Care Exits*, THE CHRONICLE OF SOCIAL CHANGE (Feb. 21, 2018), <https://chronicleofsocialchange.org/politics/florida-faces-child-welfare-lawsuit-legislature-tries-speed-foster-care-exits/29997>.

III. WHAT DOES IT TAKE TO BE A FOSTER CAREGIVER IN FLORIDA?

A. LEGALLY: START-TO-FINISH

Becoming a foster caregiver can take up to five months from beginning to end. Background screening is conducted on all adults in the home; this includes FBI (National), FDLE (State), local law enforcement checks, child abuse registry checks, civil checks through the Clerk of Court in the county of residence and checks through the Department of Motor Vehicles.³² If the applicant has lived in the state of Florida for less than 5 years, abuse history checks, local law enforcement checks and civil checks will also be completed in the previous state of residence.³³ All children in the home must have a child abuse registry check and all children twelve years of age and older must also have an FDLE check and local law enforcement check.³⁴ The applicant must have legal, stable and documented income that is sufficient to support themselves and their family without the assistance of the board rate, and the applicant must perform thirty hours of Pre-service training.³⁵ All applicants, married and single, must identify a “back-up;” this is someone who can assist with the care of the foster children in the home in order to give the caregiver a break or in the event of an emergency. All back-ups must be cleared through the background screening process. Typically, three types of references totaling six altogether, will be vetted as well. Medical clearance must be granted, and homes must comply with various safety and health inspections.³⁶

In order for a home to be compliant, there are numerous safety standards that must be met, both large and small. From providing clear and safe walkways and safety barriers on swimming pools, to having a thermometer in the refrigerator to provide food temperatures and stocked first aid kits, the safety of the children within the home is of the utmost priority.³⁷ As you can see, the decision to foster children is not usually made lightly, and the work that goes into ensuring that foster caregivers are trained and safe,

³²*Becoming A Foster Parent*, KIDS CENTRAL AND FOSTER CARE, <https://www.kidscentralinc.org/wp-content/uploads/2016/08/Becoming-a-Foster-Parent.pdf> (last visited Jan. 25, 2020).

³³*Id.*

³⁴*Id.*

³⁵*Id.*

³⁶*Id.*

³⁷*Id.*

and that children are given the best environments in which to thrive, is rigorous.

B. WHAT DO CAREGIVERS GET?

DCF reports that families who foster children in Florida receive roughly \$420.00 per month per child five years of age and younger, while foster caregivers receive \$440.00 per month for children ages six through twelve.³⁸ Foster caregivers of children over thirteen years old receive over \$500.00 per month and more than that for children with special needs.³⁹ Special needs for foster children are defined as children who have medical, physical or emotional disorders from birth or heredity that require care above and beyond that of other children.⁴⁰

Therapeutic foster caregivers require specialized training to care for children with special needs that have arisen either from heredity or from trauma; their foster homes are typically more structured than other foster homes based upon the needs of the child(ren).⁴¹ Therapeutic caregivers must have flexible schedules and be available to open their doors to state representatives who will check on the child's progress and welfare at any time. Further, children who require therapeutic care typically require it around the clock, so being a therapeutic caregiver is a rewarding but strenuous role.

C. OBSTACLES TO BECOMING OR STAYING A FOSTER CAREGIVER

Unfortunately, despite the resources available to foster caregivers and the training that it takes to become a foster caregiver, some foster parents feel unsupported by either DCF, their social circle, or both.⁴² Foster caregivers may not fully understand the

³⁸Jennifer Mellon, *Foster Care in Florida*, ADOPTION.COM, <https://adoption.com/foster-care-in-florida> (last visited Nov. 8, 2019).

³⁹*Id.*

⁴⁰*Foster Care*, FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES, <https://www.myflfamilies.com/service-programs/foster-care/special-need-for-your-heart/> (last visited Jan. 25, 2020).

⁴¹*Foster Parent Qualifications*, KIN-SHIP SERVICES, INC., <http://www.kinshipservices.com/foster-parent-qualifications.html> (last visited Jan. 25, 2020).

⁴²Derek Williams, *Why Do Foster Parents Quit*, ADOPTION.ORG, <https://adoption.org/foster-parents-quit> (last visited Nov. 8, 2019).

spectrum of emotions that a foster child goes through, and may not understand why they cannot “fix” the foster child. They may feel alienated from past friends or family who do not understand the emotional gravity of their fostering, or the corresponding challenges.⁴³ At times, a foster caregiver may receive a child whose needs are so far outside of the caregiver’s ability to meet them that the caregiver experiences “burnout” and needs a reprieve.⁴⁴

In a one-year span between 2011 and 2012 in Florida, 1,307 foster homes terminated fostering.⁴⁵ While there is good news in that 25% of those stopped fostering because they adopted the child in their care, this still leaves a shortage of foster families with the number of children in need of fostering growing.⁴⁶ Without new data collected by the Florida Department of Children and Families, it is hard to know whether that number has changed significantly year-over-year since 2012, but with only that information on hand, the decrease in the number of foster caregivers coupled with the increase in the number of children entering the foster system each year does not bode well for the ability of children to find loving, caring homes.

IV. FLORIDA’S LEGAL LOOPHOLE REGARDING NOTIFICATION OF FOSTER PARENTS: NOT A PARTY TO THE SUIT

A. A SAD STORY

When I became a Volunteer Advocate for Children (VAC) in the state of Florida, I interviewed a foster caregiver who runs a therapeutic foster home where a foster child for whom I was a VAC was placed. She agreed to allow me to use her story, below, without identifying her or her family. About six years ago, she had two small children of her own and was fostering two young boys (brothers) for a year in a case where the biological parents were not substantially complying with the plan for reunification; the only hearing left to

⁴³*Id.*

⁴⁴*In For the Long Haul: How Foster Parents Can Prevent Burnout*, CHILDREN FIRST FOSTER FAMILY AGENCY, <https://www.childrenfirstffa.com/2017/06/26/how-foster-care-parents-prevent-burnout-redding/> (last visited Jan. 25, 2020).

⁴⁵*Annual Quality Assurance Report*, FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES (2012), http://centerforchildwelfare.fmhi.usf.edu/qa/QA_Docs/QA-FPTurnover2012.pdf.

⁴⁶*Id.*

take place after a year of fostering was the Permanency Hearing. The caregiver and her husband applied for pre-adoption with the state, with the goal of adopting both boys after the parental rights were terminated. It was her firm belief that after a year of noncompliance the boys would not be reunified with their biological parents. The state granted approval for her to adopt her “sons” pending the closing of the children’s case.

The foster caregiver did not attend the final hearing for the boys’ case as she was home caring for another foster child with special needs. At the Permanency Hearing the boys were ordered to be reunified with the biological parents (there was apparently a substantial change in their circumstances that amounted to enough short-term compliance that the judge felt that reunification was warranted). This was before Governor Rick Scott signed the “Child’s Best Hope Law” bill in Florida, changing the standard for removal and placement of children from “fit and proper” to “best interest of the child.”⁴⁷ Today, the outcome of the hearing would likely be different under the new law.

Because the foster caregiver was not at the hearing and was not a party to the suit, it was not required by law that she be notified of the outcome of the final hearing. The case manager, an overworked attorney with too many cases, never notified the foster caregiver. The foster mom was caught completely off-guard when DCF came to her home to collect the children the next evening while they were eating dinner; she was simply awaiting word that the court was going to set a date to terminate the biological parents’ rights so that she could begin the adoption process. The boys were packed up and taken away in the span of half an hour, and she had no further contact with them. The heartbreak for her family was devastating; her children had lost what they considered to be their siblings. She and her husband almost gave up fostering, and they did give up on adopting, having lost faith in the system. She found out a year later that both boys had gone back into the foster care system less than six months after reunification, and she had not been called to be a caregiver. She does not know what happened to them since then. Even after six years, telling the story still brings her to tears.

⁴⁷*Governor Scott Signs the Child’s Best Hope Law – Supportive Words From The Advocacy Community*, GUARDIAN AD LITEM FOR CHILDREN (Mar. 24, 2016), <https://guardianadlitem.org/governor-scott-signs-the-childs-best-hope-law/>.

B. THE ADOPTION AND SAFE FAMILIES ACT RELATING TO
NOTICE

The Adoption and Safe Families Act, passed by Congress in 1997, states that its primary goal is to achieve permanence for children by breaking the traditional role of reunification and allowing foster children to be available for adoption sooner than in previous years.⁴⁸ The Act says that foster parents, pre-adoptive parents, and any relative providing care for a child must be given notice of, and the opportunity to be heard in, any review or hearing to be held with respect to the child.⁴⁹ These parameters state what the rights of the caregiver are prior to the permanency hearing and during the hearing but are woefully silent on any parameters set for the state following the permanency hearing. The act specifically states that foster caregivers, pre-adoptive parents, or relatives providing care for a child do not need to be made *parties* to the action; which is one way that caregivers would automatically be notified of the suit's outcome.⁵⁰ This means that, although caregivers can go to court and present information, they do not have the same legal rights as DCF, the child's birth parents, or the child. Caregivers are not *required* to attend court hearings under the law.⁵¹

As discussed *infra*, many foster caregivers have more than one child in their home at a time, and therapeutic foster caregivers have even more responsibility. Most therapeutic foster caregivers are not allowed by the state to work as they are required to be available around-the-clock for their wards with special needs.⁵² The caregivers are expected to be available to their foster children for any and all needs including extracurricular activities, therapy, and other activities that take place within and outside of the home; foster

⁴⁸Seth A. Grob, JD, *Out of the Shadows and Into the Courtroom: An Analysis of Foster Parents' Legal Rights*, <https://www.grobeirich.com/Articles/Out-of-the-Shadows-and-Into-the-Courtroom-An-Analysis-of-Foster-Parents-Legal-Rights.pdf> (last visited Mar. 3, 2020).

⁴⁹*Id.*

⁵⁰*Id.*

⁵¹FLA. STAT. ANN. § 39.4087 (2019), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0039/Sections/0039.4087.html (last visited Jan. 25, 2020).

⁵²Julie Seibert, Rose Feinberg, Asha Ayub, Amy Helburn and Deborah Gibbs, *State Practices in Treatment/Therapeutic Foster Care*, DEPARTMENT OF HEALTH AND HUMAN SERVICES (Apr. 2018), <https://aspe.hhs.gov/system/files/pdf/259121/TREATMENTFOSTERCARE.pdf>

caregivers are on the go as much as, if not more than, if their foster children were their biological children. They are not allowed to leave their foster children in the care of another individual who is not certified to care for them; these factors make it difficult for foster caregivers to attend court hearings. Therefore, communication between case managers, Guardians ad Litem, and caregivers, is integral to the well-being of the child, not just because the caregiver needs to know what new resources may be available to the child through the state (such as therapy) or be made aware of a change in biological parents' visitation rights, but also because knowing what is happening with the child's placement dynamically impacts the foster family's lives.

V. HOW TO FIX IT

A. MIRROR OTHER STATES WITH MORE AGGRESSIVE NOTIFICATION REQUIREMENTS

Although all states require permanency hearings within their state statutes, states require the hearings on different timelines.⁵³ Florida has a timeline for a Permanency Hearing of no later than twelve months after a child is removed from their home by DCF.⁵⁴ Further, as of 2016 the only state that voluntarily conferred party status onto current foster parents to allow them to actively participate in a foster child's suit was Hawaii, and no state *required* that a foster caregiver be made party to the suit to enforce notice of the hearing's result to the foster caregiver.⁵⁵ The closest that Florida comes to requiring notification of foster parents about the outcome of the permanency hearing is located in Fla. Stat. § 39.4087 (2019), "Department goals and requirements relating to caregivers; dispute resolution." Section (1)(j) states "[t]he department will strive to: . . . inform the caregiver as soon as possible of any decision made by a court or child-caring agency relating to a child who is placed with the caregiver."⁵⁶ Further sections of the statute elaborate on the

⁵³*Court Hearings for the Permanent Placement of Children*, CHILD WELFARE INFORMATION GATEWAY, <https://www.childwelfare.gov/pubPDFs/planning.pdf> (last visited Mar. 3, 2020).

⁵⁴FLA. STAT. ANN. § 39.621 (2019), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0039/Sections/0039.621.html (last visited Jan. 25, 2020).

⁵⁵*Id.* at 55.

⁵⁶*Id.* at 51.

caregiver's right to escalate the situation within DCF if the caregiver does not feel that the statute was complied with; however, if escalation is deemed necessary by the caregiver, by the time the situation is escalated the child is likely out of the caregiver's home and on their way to a different living situation. Essentially, the escalation cannot rectify the harm to the caregiver and their family. Realistically, in a system such as DCF which is overburdened, overworked, underfunded and under-resourced, communication is frequently poor to the foster caregivers and the process is nowhere near being improved; how can it be, without the adequate resources?⁵⁷

But do foster caregivers really need to be made party to the suit just to be notified of the results of the Placement Hearing? The answer is a resounding "no," and the reason lies within a statute called the Foster Parents Bill of Rights. First enacted by California in 2001, and followed in subsequent years by sixteen other states but not Florida, these statutes outline further rights and procedures afforded to foster caregivers to show the value that the states place on the caregivers.⁵⁸ Many of these state statutes have verbiage that mirrors Florida Statute 39.4087, requiring parties involved with the case to notify the foster caregiver of any information relevant to the fostering of the child. What is lacking in these statutes, however, is a timeframe for notification and any repercussions to the state for not adhering to the plain language of the statute. Further, many of these statutes close with verbiage such as "This section does not establish any legally enforceable right or cause of action on behalf of any person," effectively minimizing the role of this statute in the course of dealings between the state and foster caregivers.⁵⁹

Some states have been more proactive in enacting a fully-formed notification statute than others; a shining example of a state who "gets it right" is Kentucky. Under Ky. Rev. Stat. 620.365,

To receive an explanatory notice from the cabinet, consistent with KRS 620.130 and when it is in the best interest of the child, when a foster child's case plan has changed and, except in an immediate response to a child protective services investigation

⁵⁷Patricia Borns, *To Get Children in Stable Homes Faster, New Florida Law Tougher on Parents' Rights*, *Timetable*, NEWS-PRESS (Jul. 12, 2019), <https://www.news-press.com/story/news/2019/07/12/florida-lawmakers-get-tough-terminating-parental-rights/1639020001/>.

⁵⁸*Foster Care Bill of Rights*, MASON'S MANUAL OF LEGISLATIVE PROCEDURE (Oct. 29, 2019), <http://www.ncsl.org/research/human-services/foster-care-bill-of-rights.aspx#Parents>.

⁵⁹*Id.*

involving the foster home, an explanatory notice of termination or change in placement affecting the foster home within fourteen (14) days of the change or termination in placement.

Kentucky further takes the best interest of the child into consideration for long-term planning under Ky. Rev. Stat. section 620.360(1)(o), “[T]o have priority consideration for placement if a child who has previously been placed in the foster home reenters foster care . . . to the extent that it is in the best interest of the child.”⁶⁰ Subsection (p) provides priority consideration of the foster caregiver for adoption of a child who has been in the care of the foster parent for more than twelve consecutive months, and subsection (q) allows for contact between the foster caregiver and the child once the child has left the foster caregiver’s home unless the child or a legal guardian specifically refuses the contact.⁶¹

Other states who have statutorily adopted the Foster Parent Bill of Rights but who have not placed a timeframe or other parameter within the language for the benefit of the caregivers are Oklahoma, Illinois, Arkansas and Alabama. Okla. Stat. Tit. 10, § 1-9-119 states “Be given written notice of (1) plans to terminate the placement of the child with the foster parent... and (2) the reasons for the changes or termination of placement.”⁶² In Illinois, Ill. Rev. Stat. Ch. 20, § 520/1-15 states “A foster parent’s rights include, but are not limited to . . . the right to be given reasonable notice of any change in a child’s case plan, plans to terminate the placement of the foster child with the foster parent, and the reasons for the change or termination of the placement.”⁶³ Arkansas’s “Foster Parent Handbook” states “Give advance notice, whenever possible, when a child is to be removed from their home.”⁶⁴ Alabama states that foster caregivers have “The right to necessary information on an ongoing basis which is relevant to the care of the child, including timely information on changes in the case plan or termination of the placement and the reasons for the changes or termination of placement to the foster parent”⁶⁵

Under the Foster Parents Bill of Rights, some states have taken even further steps to protect the family unit that is built when a foster child resides in a foster home. Louisiana, for example, outlines help

⁶⁰*Id.*

⁶¹*Id.*

⁶²*Id.*

⁶³*Id.*

⁶⁴*Id.*

⁶⁵*Id.*

available when a foster family suffers the loss of a foster child in La. Rev. Stat. Ann. 46:286.13(7) et. seq:

Foster parents shall be entitled to the following rights granted to them by the Department of Children and Family Services: the right to access agency staff for assistance in dealing with emergencies on a twenty-four-hour basis, to assistance in dealing with family loss and separation when a child leaves their home, and access to available advocacy services to help support the foster parent in their role as caregiver.⁶⁶

Arizona addresses the loss of a foster child on a caregiving family as well, stating that foster families are “[t]o be assisted in dealing with family loss and separation when a child leaves the foster home.”⁶⁷ It is commendable that these states recognize the family unit that is created by fostering, and grief and loss that parties feel when that unit is fractured.

B. FLORIDA LEGISLATION

i. What Has Happened

Prior to April 2019, foster parents were mentioned in Florida statutes only in relation to the guardianship or day-to-day activities of the child, or regarding payments to and training of the foster parent.⁶⁸ No statutory provisions were made to give the foster parents rights or to recognize them as an integral part of the case plan of the foster child. Bill 1432 was filed on February 27, 2019 with the Florida Senate and proposed that new Florida Statute 39.4087 be titled “Foster Parent Bill of Rights.”⁶⁹ Contained within this proposed bill were various clauses to provide the notice to, and rights of, foster caregivers that mirror states who have adopted the Foster Parents Bill of Rights; one such proposed clause was “The department shall provide timely written notification of changes to

⁶⁶LA. REV. STAT. ANN. 46:286.13(7) (2018), <http://legis.la.gov/Legis/Law.aspx?d=410788> (last visited Jan. 25, 2020).

⁶⁷Foster Care Bill of Rights, *supra* at 58.

⁶⁸ONLINE SUNSHINE, http://www.leg.state.fl.us/statutes/index.cfm?StatuteYear=2018&AppMode=Display_Results&Mode=Search%2520Statutes&Submenu=2&Tab=statutes&Search_String=foster+parent (last visited Mar. 3, 2020).

⁶⁹S.B. 1432, 2019 SJ 597 (Fla. 2019), <https://www.flsenate.gov/Session/Bill/2019/1432> (last visited Jan. 25, 2020).

the case plan or termination of the placement, and the reasons for the changes or termination of placement.”⁷⁰

The bill was introduced to the Senate on March 5, 2019. It was first read in front of the Senate on April 10, 2019, and on April 23, 2019 it received a 15-0 vote to move the bill through.⁷¹ However, after all of the unanimous votes through the Senate and the House, a companion bill was passed on April 29, 2019, with a different title and verbiage.⁷² The bill’s title became “Department goals and requirements relating to caregivers; dispute resolution,” and the notification clause was changed to the much-less-specific “Inform the caregiver as soon as possible of any decision made by a court or child-rearing agency relating to a child who is placed with the caregiver.”⁷³ The differences in the initially proposed verbiage of “department shall provide timely written notification” and the revised and approved “inform the caregiver as soon as possible,” while at first seemingly innocuous, are in fact legally alarming, and although the initially proposed clause is lacking the timeframe specificity of a clause such as Kentucky’s, it would still hold the state to a higher burden of responsibility for notification than the language that was passed. Also worthy of note is the legislative intent that was originally included in Bill 1432:

The Legislature finds that foster parents providing care for children who are in the custody of the department play an integral, indispensable, and vital role in the state’s effort to care for dependent children displace from their homes. The Legislature further finds that it is in the best interest of the state’s child welfare system to acknowledge foster parents as active and participating members of this system and to support them through a bill of rights for foster parents who care for children in the custody of the department through direct approval and placement by the department.⁷⁴

Reading the companion bill, this author argues that the weight initially intended by the legislative intent of Bill 1432 has been

⁷⁰*Id.*

⁷¹*Id.*

⁷²*Id.*

⁷³FLA. STAT. ANN. § 39.4087 (2019),

http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0039/Sections/0039.4087.html (last visited Jan. 25, 2020).

⁷⁴FLORIDA SENATE,

<https://www.flsenate.gov/Session/Bill/2019/1432/BillText/c2/PDF#page=1> (last visited Mar. 3, 2020).

dampened by the final passed version. During Bill 1432's trajectory through the Senate, the first time a companion bill was introduced was on April 25, 2019 – five days before the bill was passed, six weeks after its introduction and two days after the original bill was read on the floor and received a unanimous “YEA” vote.⁷⁵ The original aim of the Senate with this bill, as described in the bill's analysis, was to establish rights and roles for foster parents in Florida and also provide “roles and responsibilities required of the department related to foster parents.”⁷⁶ Note the emphasis on placing the burden on the department. Within the published “Bill Analysis and Fiscal Impact Statement,” the Committee on Children, Families and Elder Affairs discussed the new structure of the statute, the goals of the bill and the effect of the proposed changes.⁷⁷ However, there is no discussion within this document nor on any website related to the passage of the bill that sheds light on why the language of the notification clause was changed, even under the “Technical Deficiencies” section in which the Committee outlined numerous legal and logistical challenges that the state may have faced when trying to implement the provisions of the original bill. All documentation and analysis of the bill is strangely silent on this one provision while so thoroughly discussing changes to others.

What could be the legislative intent behind not holding Florida to a timeframe to notify caregivers of the outcome of the permanency hearing? It has been stated numerous times and in various forums, including within the legislative intent language in original Bill 1432, that the foster caregiver is one of the most valuable assets to the child's case because of their ability to care for the child, their ability to give feedback to the court about the child's emotional and mental progression, feedback about the child's relationships they have formed while in foster care, and their ability to enunciate the child's wishes for their own future when the child may otherwise be reticent to do so.⁷⁸ If the state's goal is to foster open, honest communication between foster families and the courts, why does the state fail foster caregivers in this vital, yet seemingly simple, notification endeavor?

⁷⁵SENATE BILL 1432, *supra* at 69.

⁷⁶*Id.*

⁷⁷*Id.*

⁷⁸Cecilia Feirmonte, Regina Deihl, and Kianne Kocer, *Permanency, Foster Parents and the Law* (2002), http://www.hunter.cuny.edu/socwork/nrcfcpp/downloads/curricula/LRMC1-Permanency%20Foster_Parents_and_the_Law.pdf.

ii. What Needs to Happen Next

Since Bill 1432 did not pass the Senate in its original form⁷⁹, I would challenge Florida's government to pass another bill revising Florida Statute 39.4087 and implementing a timeframe for foster parent notification that mirrors or substantially adopts verbiage from the Kentucky statute, and which reflects the legislative intent originally written into Bill 1432. This solution should be done through a petition signed by Florida foster caregivers to support the need for the elaboration of their rights and presented to a Florida Senator for sponsorship. Bill 1432 in its original form was introduced by Senator Dennis Baxley, Republican, who has served within the Florida Senate since 2016.⁸⁰ Senator Baxley is a legislator active in bill proposition, proposing over 160 bills since 2017 and co-proposing over 60 bills within the same timeframe.⁸¹ Encouragingly, Senator Baxley has historically re-introduced bills if they have "died on the table," or have never gotten signed into law; for example, in 2017 Senator Baxley introduced Bill S 434, "Adoptee Birth Certificates."⁸² This bill died in committee review, so Senator Baxley reintroduced the bill under the same name as Bill S 576 in 2018.⁸³ Because of his willingness to pursue a bill until its fruition, it would not be farfetched for Senator Baxley to introduce an entirely new bill to remedy the deficiencies created by the passage of the companion bill. If Senator Baxley would not take up the cause again, the petition should be presented to other Senators until it finds a sponsor.

Here, a Senator will need to sponsor and introduce the new bill to the Senate, the bill to include the appropriate notification and accountability language as outlined above.⁸⁴ The new bill should also include the legislative intent explaining why the 2019 bill was not complete enough; this language may prevent a committee from changing the new bill and also may help the committees, Senate and House of Representatives understand the need for the introduction

⁷⁹THE FLORIDA SENATE, <https://www.flsenate.gov/Senators/2016-2018/S12/5192> (last visited Mar. 3, 2020).

⁸⁰*Id.*

⁸¹*Id.*

⁸²*Id.*

⁸³*Id.*

⁸⁴THE FLORIDA SENATE, <https://www.flsenate.gov/PublishedContent/ADMINISTRATIVEPUBLICATIONS/idea-to-law.pdf> (last visited Mar. 3, 2020).

of a new bill modifying a bill that was just passed in 2019. The bill would then be referred to a committee (possibly multiple committees) based upon its content who would then review the bill to determine if it should be passed through to the next step, fail altogether, or be amended prior to further review.⁸⁵ If the bill is passed by majority vote it may then either commence to another committee or to the full Senate, where the full Senate would vote on the bill.⁸⁶

If the bill were to pass in the Senate, it would be sent to the House of Representatives for review, proceeding through the same process.⁸⁷ The bill would then be sent to the Florida Governor; the Governor could sign the bill as it was presented to him and pass the signed bill to the Secretary of State, could decline to sign and still pass the bill along to the Secretary of State, or could veto the bill.⁸⁸ If the Governor vetoed the bill, it could still proceed to the Secretary of State to become active with a two-thirds affirmative vote by both Houses.⁸⁹ The bill would become active on the sixtieth day after conclusion of the proceedings or upon the date set by the Governor if he were to sign the document.⁹⁰

VI. CONCLUSION

Whether the government did not want it documented, or simply did not state a reason, the lack of information about why the statute was not changed to benefit both caregivers and foster children to the fullest extent possible can lead only to speculation. Are the caseworkers who would supply notification simply too overworked/overwhelmed to be able to communicate this information, even via a pre-typed form email? Is the cost of an electronic portal that would automatically notify caregivers of the outcome of a Permanency Hearing not within the budget to create or implement for the foreseeable future? Is the state leery of giving foster caregivers a more substantial role in the proceedings when they are not a party to the suit and potentially opening itself up to liability, or to being burdened with challenges facing foster caregivers with which it is not currently equipped to help? None of

⁸⁵*Id.*

⁸⁶*Id.*

⁸⁷*Id.*

⁸⁸*Id.*

⁸⁹*Id.*

⁹⁰*Id.*

these scenarios seems plausible given the small amount of effort that it would take to notify, and the huge emotional benefit to caregivers that the information would provide. The most plausible scenario is that, for various broad reasons, the state does not want to hold its workers to a timeframe and subject them to repercussions for not adhering to it. Further, as the timeframe is still a scarcity in the statutes of all states, Florida may be waiting to see how the nation addresses the issue, and how the states who have adopted timeframes within their statutes fare. The lack of a notice requirement in the Florida statutes to foster caregivers when a court makes a decision about the placement of a foster child in their care may seem like a small issue. However, the impact on both the children and the foster families can be life changing. While Florida is a long way from making foster caregivers parties to their foster child's suit, they also missed a vital opportunity in 2019 to create a more inclusive and beneficial statute that would provide emotional support through only a small effort of communication on the part of the case attorneys.

Florida should follow more progressive states such as Kentucky, Rhode Island and Louisiana and implement statutes requiring notification within a specified timeframe to foster caregivers prior to the removal of foster children from their foster homes. Based upon the state's overwhelming need for foster caregivers and the stated Congressional goal of the 1997 Adoption and Safe Families Act of finding "forever homes" for foster children, timely and honest communication between the state and the caregivers can and will go a long way toward keeping foster caregivers motivated to open their homes to foster children and affirming the caregivers' faith in the system. While foster caregivers have various reasons for opening their homes to children in need, they all voluntarily choose to take on an emotionally daunting and resource-draining endeavor to care for our state's hurt and lost children, and we cannot afford to lose these vital nurturers for the short- or long-term because of an overburdened and under-communicative governmental system.

As the Florida Senate website, www.flsenate.gov, provides contact information for each Senator, it is this author's intention to arrange a meeting with Senator Baxley to discuss the contents of this paper and to not only understand the legislative intent behind the change of Bill 1432 to its final form of Statute 39.4087, but to encourage and actively participate in the submission of a new bill to

further the Foster Parents Bill of Rights to protect all of Florida's valuable foster caregivers.