

Tab 1	SB 414 by Perry (CO-INTRODUCERS) Boyd; (Compare to H 01349) Economic Self-sufficiency					
223470	A	S		CF, Perry	Delete L.14 - 52:	03/22 12:22 PM
Tab 2	CS/SB 634 by HP, Gibson (CO-INTRODUCERS) Baxley, Farmer; (Similar to CS/H 00309) Dementia-related Staff Training					
Tab 3	SB 908 by Rodrigues; (Similar to CS/H 00897) Strong Families Tax Credit					
637528	A	S		CF, Rodrigues	Delete L.328 - 333:	03/22 09:02 AM
Tab 4	SB 1100 by Book; (Compare to H 01093) Child Welfare					
Tab 5	CS/SB 1132 by HP, Bean; (Similar to CS/H 00485) Personal Care Attendants					
Tab 6	SB 1814 by Rodriguez; (Similar to H 01387) Medical Records of Children Available for Adoption					
Tab 7	SB 1844 by Rouson; Mental Health and Substance Abuse Disorder Services Commission					
674814	D	S		CF, Rouson	Delete everything after	03/22 09:57 AM
Tab 8	SB 1854 by Farmer; Defendants with a Traumatic Brain Injury					
179092	D	S		CF, Farmer	Delete everything after	03/22 10:52 AM
Tab 9	SB 1920 by Book; Child Welfare					
163466	D	S	FAV	CF, Book	Delete everything after	03/16 03:22 PM
134864	AA	S		CF, Book	Delete L.93 - 444:	03/22 12:20 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS
Senator Book, Chair
Senator Albritton, Vice Chair

MEETING DATE: Tuesday, March 23, 2021
TIME: 12:30—3:00 p.m.
PLACE: *Mallory Horne Committee Room, 37 Senate Building*

MEMBERS: Senator Book, Chair; Senator Albritton, Vice Chair; Senators Brodeur, Garcia, Harrell, Rouson, Torres, and Wright

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A2 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W PENSACOLA STREET, TALLAHASSEE, FL 32301			
1	SB 414 Perry (Compare H 1349)	Economic Self-sufficiency; Requiring the Auditor General to perform audits of specified programs at specified intervals beginning in a specified calendar year; requiring the audits to review specified elements of such programs; requiring the Auditor General to make a specified determination, if possible; providing reporting requirements for the results of such audits, etc.	CF 03/23/2021 AHS AP
2	CS/SB 634 Health Policy / Gibson (Similar CS/H 309)	Dementia-related Staff Training; Citing this act as the "Florida Alzheimer's Disease and Dementia Training Act"; requiring certain entities, as a condition of licensure, to provide specified dementia-related training for new employees within a specified timeframe; requiring annual dementia-related training for certain employees; providing that such additional training counts toward a certified nursing assistant's total annual training; authorizing certain health care practitioners to count certain continuing education hours toward the dementia-related training requirements under certain circumstances, etc.	HP 03/10/2021 Fav/CS CF 03/23/2021 AP

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Tuesday, March 23, 2021, 12:30—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 908 Rodrigues (Similar CS/H 897)	Strong Families Tax Credit; Providing credits against oil and gas production taxes and sales taxes payable by direct pay permitholders, respectively, under the Strong Families Tax Credit; revising the calculation of the corporate income tax credit for the Florida alternative minimum tax; creating the Strong Families Tax Credit; specifying requirements for the Department of Children and Families in designating eligible charitable organizations; providing credits against excise taxes on certain alcoholic beverages and the insurance premium tax, respectively, under the Strong Families Tax Credit, etc.	
		CF 03/23/2021 FT AP	
4	SB 1100 Book (Compare H 1093)	Child Welfare; Specifying the rights of children and young adults in out-of-home care; requiring the Florida Children's Ombudsman to serve as an autonomous entity within the department for certain purposes; requiring that a case plan be developed in a face-to-face conference with a caregiver of a child under certain circumstances; providing additional requirements for the licensure and operation of family foster homes, residential child-caring agencies, and child-placing agencies, etc.	
		CF 03/23/2021 AHS AP	
5	CS/SB 1132 Health Policy / Bean (Compare CS/H 485)	Personal Care Attendants; Authorizing nursing home facilities to employ personal care attendants if they are participating in a certain training program developed by the Agency for Health Care Administration, in consultation with the Board of Nursing; providing limitations on such personal care attendants' practice; requiring the agency to notify the Division of Law Revision of the date certain rules take effect; authorizing certain persons to be employed by a nursing home facility as personal care attendants for a specified period if a certain training requirement is met, etc.	
		HP 03/17/2021 Fav/CS CF 03/23/2021 AP	

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Tuesday, March 23, 2021, 12:30—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	SB 1814 Rodriguez (Similar H 1387)	Medical Records of Children Available for Adoption; Requiring the Department of Children and Families, adoption entities, and community-based care lead agencies or their subcontracted agencies, respectively, to provide certain written notification to prospective adoptive parents regarding the medical records of the child available for adoption; requiring the Department of Health to provide certain medical records to adopting parents within a specified time after entry of a judgment of adoption; prohibiting the department from disposing of such records for a specified time, etc. CF 03/23/2021 HP RC	
7	SB 1844 Rouson (Linked S 1852)	Mental Health and Substance Abuse Disorder Services Commission; Creating the Mental Health and Substance Abuse Disorder Services Commission within the Department of Children and Families; providing the purpose of the commission; requiring the commission to convene by a specified date; specifying the composition of the commission; providing the duties and authority of the commission, etc. CF 03/23/2021 AHS AP	
8	SB 1854 Farmer	Defendants with a Traumatic Brain Injury; Requiring the Agency for Persons with Disabilities, along with the Department of Children and Families, to establish and implement within each judicial circuit a diversion program for defendants who are found to have a traumatic brain injury; specifying circumstances under which a defendant is incompetent to proceed due to a traumatic brain injury; providing for the required evaluation of such defendants by mental health experts; authorizing a court to commit such defendants to a traumatic brain injury diversion program or to appoint additional experts under certain circumstances, etc. CF 03/23/2021 CJ AP	

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Tuesday, March 23, 2021, 12:30—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	SB 1920 Book	Child Welfare; Specifying circumstances under which a court is required, on or after a specified date, to appoint a guardian ad litem; renaming the Guardian Ad Litem Qualifications Committee as the Child Well-Being Qualifications Committee; specifying that the executive director of the Statewide Guardian Ad Litem Office may be reappointed; creating the Statewide Office of Child Representation within the Justice Administration Commission; specifying when the court is authorized or required to appoint an attorney for the child, etc.	
		CF 03/16/2021 Temporarily Postponed CF 03/23/2021 ACJ AP	
		Judicial testimony from Honorable Kathleen J. Kroll	

Other Related Meeting Documents



223470

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Children, Families, and Elder Affairs (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete lines 14 - 52

and insert:

Section 1. Subsections (6) and (15) of section 1002.81, Florida Statutes, are amended to read:

1002.81 Definitions.—Consistent with the requirements of 45 C.F.R. parts 98 and 99 and as used in this part, the term:

~~(6) "Earned income" means gross remuneration derived from work, professional service, or self-employment. The term~~



223470

11 ~~includes commissions, bonuses, back pay awards, and the cash~~
12 ~~value of all remuneration paid in a medium other than cash.~~

13 ~~(15) "Unearned income" means income other than earned~~
14 ~~income. The term includes, but is not limited to:~~

15 ~~(a) Documented alimony and child support received.~~

16 ~~(b) Social security benefits.~~

17 ~~(c) Supplemental security income benefits.~~

18 ~~(d) Workers' compensation benefits.~~

19 ~~(e) Reemployment assistance or unemployment compensation~~
20 ~~benefits.~~

21 ~~(f) Veterans' benefits.~~

22 ~~(g) Retirement benefits.~~

23 ~~(h) Temporary cash assistance under chapter 414.~~

24 Section 2. Paragraph (a) of subsection (1) of section
25 1002.87, Florida Statutes, is amended to read:

26 1002.87 School readiness program; eligibility and
27 enrollment.—

28 (1) Each early learning coalition shall give priority for
29 participation in the school readiness program as follows:

30 (a) Priority shall be given first to a child younger than
31 13 years of age from a family that includes a parent who is
32 receiving temporary cash assistance under chapter 414 and
33 subject to the federal work requirements or a parent who has an
34 Intensive Service Account or an Individual Training Account
35 under s. 445.009.

36 Section 3. (1) The Office of Early Learning within the
37 Department of Education shall, in coordination with the
38 University of Florida Anita Zucker Center for Excellence in
39 Early Childhood Studies, conduct an analysis of, at a minimum,



223470

40 recipients of the Supplemental Nutrition Assistance Program
41 established under 7 U.S.C. ss. 2011 et seq., the temporary cash
42 assistance program established under chapter 414, Florida
43 Statutes, the Medicaid program under s. 409.963, Florida
44 Statutes, the school readiness program under part VI of chapter
45 1002, Florida Statutes, and the housing choice voucher program
46 established under 42 U.S.C. s. 1437.

47 (2) The analysis must include a review of eligibility
48 criteria, the manner in which each program establishes and
49 documents eligibility and disbursement policies, the frequency
50 of eligibility determinations, and the number of families
51 receiving multiple program services as compared to the total
52 number of eligible families.

53 (3) As part of the analysis, the University of Florida
54 Anita Zucker Center for Excellence in Early Childhood Studies
55 shall develop participant profiles based on the number of
56 families receiving multiple program services which include
57 family composition and the most frequent program services or
58 combination of services families are accessing in each county or
59 geographic region.

60 (4) Each agency responsible for the administration of a
61 program that is required to be analyzed under subsection (1)
62 shall enter into a data-sharing agreement with the Office of
63 Early Learning and the University of Florida Anita Zucker Center
64 for Excellence in Early Childhood Studies by September 1, 2021.
65 Upon execution of the data-sharing agreement, each such agency,
66 by November 1, 2021, shall submit a program services data file
67 to the University of Florida Anita Zucker Center for Excellence
68 in Early Childhood Studies which contains program service data



223470

69 from the preceding 10 federal fiscal years, as available. By
70 November 1, 2022, and each November 1 thereafter, each such
71 agency shall submit a supplemental data file to the University
72 of Florida Anita Zucker Center for Excellence in Early Childhood
73 Studies containing program service data from the preceding
74 federal fiscal year.

75 (5) By each June 30, the University of Florida Anita Zucker
76 Center for Excellence in Early Childhood Studies shall provide a
77 report to the Office of Early Learning based on the results of
78 the analysis required by this section.

79 (6) Within 30 days after receiving the report, the Office
80 of Early Learning shall submit it to the Governor, the President
81 of the Senate, and the Speaker of the House of Representatives.

82 (7) This section shall expire on June 30, 2023, unless
83 reviewed and reenacted by the Legislature before that date.

84
85 ===== T I T L E A M E N D M E N T =====

86 And the title is amended as follows:

87 Delete lines 3 - 9

88 and insert:

89 s. 1002.81, F.S.; deleting obsolete language; amending
90 s. 1002.87, F.S.; revising the priority the early
91 learning coalition is required to give children for
92 participation in a school readiness program; requiring
93 the Office of Early Learning within the Department of
94 Education, in coordination with the University of
95 Florida Anita Zucker Center for Excellence in Early
96 Childhood Studies, to conduct an analysis of certain
97 assistance programs; providing requirements for the



223470

98 analysis; requiring certain agencies to enter into a
99 data-sharing agreement with certain entities and
100 annually provide certain data by a specified date;
101 requiring the University of Florida Anita Zucker
102 Center for Excellence in Early Childhood Studies to
103 provide an annual report on the analysis to the Office
104 of Early Learning by a specified date; requiring the
105 Office of Early Learning to submit the annual report
106 to the Governor and the Legislature within a certain
107 timeframe; providing for the scheduled expiration of
108 the assistance program analysis project;

By Senator Perry

8-00049-21

2021414__

1 A bill to be entitled
2 An act relating to economic self-sufficiency; amending
3 s. 11.45, F.S.; requiring the Auditor General to
4 perform audits of specified programs at specified
5 intervals beginning in a specified calendar year;
6 requiring the audits to review specified elements of
7 such programs; requiring the Auditor General to make a
8 specified determination, if possible; providing
9 reporting requirements for the results of such audits;
10 providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Paragraph (n) is added to subsection (2) of
15 section 11.45, Florida Statutes, to read:

16 11.45 Definitions; duties; authorities; reports; rules.—

17 (2) DUTIES.—The Auditor General shall:

18 (n) Beginning during the 2021 calendar year, and at least
19 every 3 years thereafter, conduct performance audits of the
20 Supplemental Nutrition Assistance Program established under 7
21 U.S.C. ss. 2011 et seq., the Temporary Cash Assistance Program
22 as provided under s. 414.095, the Medicaid program designated in
23 s. 409.963, the school readiness program set forth in part VI of
24 chapter 1002, and the Housing Choice Voucher Program established
25 under 42 U.S.C. s. 1437f. Such audits must include a review of
26 eligibility criteria; the manner by which each program
27 establishes and documents eligibility and disbursement policies;
28 the frequency of eligibility determinations; the clarity of both
29 written and verbal communication in which eligibility

8-00049-21

2021414__

30 requirements are conveyed to current and potential program
31 recipients; opportunities for improving service efficiency and
32 efficacy made possible by improved integration of state data
33 system platforms, processes, and procedures related to data
34 collection, analysis, documentation, and interagency sharing;
35 and the number and size of families receiving multiple program
36 services compared to all eligible families, including whether
37 they are single-parent or two-parent households. If possible,
38 the Auditor General also shall determine the number of families
39 receiving services who are claiming the Earned Income Tax
40 Credit. The Auditor General shall provide the results of the
41 audits in a report to the Governor, the President of the Senate,
42 the Speaker of the House of Representatives, the Chief Financial
43 Officer, and the Legislative Auditing Committee within 30 days
44 after completion of the audits, but no later than December 31,
45 2021, and every 3 years thereafter.

46
47 The Auditor General shall perform his or her duties
48 independently but under the general policies established by the
49 Legislative Auditing Committee. This subsection does not limit
50 the Auditor General's discretionary authority to conduct other
51 audits or engagements of governmental entities as authorized in
52 subsection (3).

53 Section 2. This act shall take effect July 1, 2021.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 414

INTRODUCER: Senators Perry and Boyd

SUBJECT: Economic Self-sufficiency

DATE: March 22, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Cox	CF	Pre-meeting
2.			AHS	
3.			AP	

I. Summary:

SB 414 requires the Auditor General to conduct an audit of certain federal and state programs once every three years beginning during Calendar Year 2021. The audits must review and analyze specified information and data.

The Auditor General must provide a report of the results to the Governor, President of the Senate, Speaker of the House of Representatives, Chief Financial Officer, and the Legislative Auditing Committee within 30 days after completion of the audit, but no later than December 31, 2021, and every three years thereafter.

There is no anticipated fiscal impact on state, county, or municipal governments. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Several Florida government entities are responsible for administering federal and state funded programs to assist low-income families with food, housing, and other services which are summarized below.¹ Many of these programs are part of the Economic Self-Sufficiency Program that is administered by the DCF and designed to promote economic self-sufficient communities.²

¹ The DCF, *Agency Analysis for SB 414*, p. 2, January 11, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter referred to as “The DCF Analysis”).

² The DCF, *Program Overview*, available at <https://myflfamilies.com/service-programs/access/overview.shtml> (last visited March 22, 2021).

Supplemental Nutrition Assistance Program

Supplemental Nutrition Assistance Program (SNAP) is a federal nutrition program, previously known as “food stamps”, which assists low-income families with funds to purchase food.³ Each state plan must meet the eligibility requirements and may not impose any additional eligibility requirements as a condition for participating in the program.⁴ The program applies a gross income standard of eligibility and excludes certain income from the calculation.⁵ If the household’s income is higher than the permitted amount, the household is not eligible for SNAP.⁶ The program includes a nutrition education and obesity prevention grant program.⁷

The Florida Department of Agriculture and Consumer Services (FDACS) Division of Food, Nutrition, and Wellness (FNW) is responsible for supervising and administering child nutrition and commodity food distribution programs that are paid for by state or federal funds.⁸ FNW’s current responsibilities with respect to SNAP is limited to certifying which children are eligible for free meals under the National School Lunch Program. Eligibility is determined by a review of documents held by Florida’s SNAP administering agency, the Department of Children and Families (DCF).⁹ The certification is to verify that the child is a member of a household that receives assistance under the SNAP or the TANF programs.¹⁰ FNW utilizes a technology system, known as the Florida Direct Certification System, which allows schools to securely upload student enrollment files that are validated for SNAP and TANF participation with the DCF and returned to the school with the student’s eligibility.¹¹

In Fiscal Year 2020, 1,218,001 children in Florida participated in the National School Lunch Program, which is over 500,000 less than the number of children who participated in Fiscal Year 2019.¹² The DCF reports that the U.S. Department of Agriculture (USDA)’s Food and Nutrition Services (FNS) conducts annual reviews of the SNAP to measure the accuracy of state eligibility and benefit determination through the assignment of error rates.¹³ The SNAP Management Evaluation conducts ongoing assessments of the DCF’s compliance with responsibilities for the administration of the program as required under federal law.¹⁴

³ USA Gov, *Food Assistance*, available at <https://www.usa.gov/food-help> (last visited March 22, 2021).

⁴ 7 U.S.C. §2014(b).

⁵ 7 U.S.C. §2014(b) and (c).

⁶ *Id.*

⁷ 7 U.S.C. §2036a.

⁸ The FDACS, *Agency Analysis for SB 414*, p. 1-2, January 12, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter referred to as “The FDACS Analysis”).

⁹ *Id.* at p. 2.

¹⁰ *Id.*

¹¹ The FDACS Analysis p. 2.

¹² U.S. Department of Agriculture Food and Nutrition Service, *National School Lunch Program: Total Participation*, February 12, 2021, available at <https://fns-prod.azureedge.net/sites/default/files/resource-files/01slfypart-3.pdf> (last visited March 22, 2021).

¹³ The DCF Analysis at p. 5.

¹⁴ *Id.*; 7 U.S.C. §275.5.

Housing Choice Voucher Program

Federal law provides for housing assistance for low-income families in need of stable and safe housing.¹⁵ Public housing agencies enter into annual contribution contracts with public housing agencies, or the Secretary may take on the role of a public housing agency in specified circumstances.¹⁶ The contract establishes a maximum amount of monthly rent of no more than 10 percent of the fair market rental established by the Secretary, with some specified exceptions, that the owner may receive with respect to each unit for which assistance payments will be made.¹⁷ Contracts may provide for adjustments to the maximum monthly rent annually or more frequently.¹⁸

Generally, a family's income may not exceed 50 percent of the median income for the county or metropolitan area in which they live.¹⁹ Seventy-five percent of the voucher provided to public housing agencies must be allocated to families whose income does not exceed 30 percent of the median income in the area.²⁰ If eligible, the public housing agency will provide a housing voucher if available or place the family on a waiting list.²¹

The Florida Housing Finance Corporation administers the Housing Choice Voucher Program.²² On February 25, 2021, the HUD announced that it awarded Florida \$281.5 million in grants to local communities for affordable housing.²³

Temporary Cash Assistance Program

The DCF administers the Temporary Cash Assistance (TCA) program²⁴ which is meant to help families become self-supporting.²⁵ TCA is a state program that provides cash assistance to families with children under the age of 18 or under 19 for full time secondary school students that meet the specified requirements.²⁶ Applicants must meet a number of technical, income, and resource requirements.²⁷ The statute provides for cash assistance based upon the family size and amount the family has to pay, if any, for shelter.²⁸ The TCA program has no time limit for child only cases receiving benefits, but does have a time limit of 48 months during the lifetime of an adult.²⁹

¹⁵ 42 U.S.C. §1437f(a).

¹⁶ 42 U.S.C. §1437f(b).

¹⁷ 42 U.S.C. §1437f(c)(1)(A).

¹⁸ 42 U.S.C. §1437f(c)(2)(A).

¹⁹ The U.S. Department of Housing and Urban Development (HUD), *Housing Choice Vouchers Fact Sheet*, available at https://www.hud.gov/topics/housing_choice_voucher_program_section_8 (last visited March 22, 2021).

²⁰ *Id.*

²¹ *Id.*

²² The DCF Analysis at p. 2.

²³ The HUD, *Florida*, available at <https://www.hud.gov/states/florida> (last visited March 22, 2021).

²⁴ The DCF Analysis at p.2.

²⁵ DCF TCA.

²⁶ The DCF, *Temporary Cash Assistance (TCA)*, available at <https://www.myflfamilies.com/service-programs/access/temporary-cash-assistance.shtml> (last visited March 22, 2021) (hereinafter cited as “DCF TCA”).

²⁷ Section 414.095, F.S.

²⁸ Section 414.095(10), F.S.

²⁹ Benefits Application, *Florida Temporary Cash Assistance (TCA & TANF) Application Information*, available at http://benefitsapplication.com/program_info/FL/Temporary%20Cash%20Assistance#:~:text=Florida%20Temporary%20Cas

Medicaid Program

Title XIX of the Social Security Act provides for medical assistance including eligible prescriptions for qualified individuals.³⁰ States that have an approved plan are eligible to receive a percentage of reimbursement of specified sums.³¹ State plans must meet specified criteria which includes that the state will contribute not less than 40 percent of the non-federal share of the expenses authorized under the plan and federal law.³² States are required to provide information to permit monitoring of the program performance.³³ The Improper Payments Information Act³⁴ requires federal agencies to conduct annual reviews of the program to identify significant erroneous payments.³⁵ This is done by the Payment Error Rate Measurement (PERM) program conducting a 17-state three-year rotation process which means that each state is reviewed once every three years.³⁶

The DCF is responsible for the Medicaid program eligibility requirements and has authority to develop rules and the agreement with Social Security Administration.³⁷ Medicaid program payments are made only for services included in the program that are made on behalf of eligible individuals to qualified providers in accordance with federal and state law.³⁸ As of September 2020, Florida had enrolled 4,006,720 individuals in Medicaid and Children's Health Insurance Program.³⁹ When states are not under PERM review, the state is required to conduct Medicaid Eligibility Quality Control activities which are ordinarily based on the PERM findings to reduce or eliminate the identified deficiencies by the next PERM review.⁴⁰

School Readiness Program

Ch. 1002, F.S., provides for Florida's School Readiness Program. The Florida Office of Early Learning (OEL) is the designated lead agency that must comply with the responsibilities under federal law, including the Child Care and Development Block Grant Trust Fund pursuant to 45 C.F.R. parts 98 and 99.⁴¹ Early Learning Coalitions are vested with powers and tasked with duties to operate the program under Florida law including, in part, providing parents with information about available community resources and determining children's and providers' eligibility.⁴² The program also provides assistance, for instance, with applying for various

<https://www.medicaid.gov/state-overviews/stateprofile.html?state=Florida> (last visited March 22, 2021).

³⁰ 42 U.S.C. §1396a.

³¹ 42 U.S.C. §1396b.

³² 42 U.S.C. §1396a.

³³ 42 C.F.R. §431.954(a)(1).

³⁴ Pub. L. 107-300.

³⁵ 42 C.F.R. §431.954(a)(2).

³⁶ The DCF Analysis at p. 5.

³⁷ Section 409.963, F.S.

³⁸ *Id.*

³⁹ Medicaid.gov, *Medicaid & CHIP in Florida*, available at <https://www.medicaid.gov/state-overviews/stateprofile.html?state=Florida> (last visited March 22, 2021).

⁴⁰ The DCF Analysis at p. 5.

⁴¹ Section 1002.82(1), F.S.

⁴² Section 1002.84(3) and (7), F.S.

subsidies, negotiating discounts with child care providers, and identifying summer camp programs.⁴³

The OEL reports that approximately 62 percent of the 1.1 million children who are younger than 6 years old in Florida are enrolled in the School Readiness Program.⁴⁴ Over 200,000 children received school readiness services from over 7,600 providers in 2017-18.⁴⁵

Preschool Development Grant

Florida's OEL is one of 20 states that receives the Preschool Development Birth to Five Renewal Grant (PDG-R).⁴⁶ It provides Florida with \$13.4 million in funding each year for a total of three years.⁴⁷ The PDG-R will be used to improve Florida's programs and services to support young children and their families.⁴⁸ This is being done, in part, by analyzing data to determine whether the programs operate efficiently.⁴⁹

OEL collaborates with the University of Florida Anita Zucker Center for Excellence in Early Childhood Studies (UF) to perform certain work required under the Strategic Plan which drives how the grant funds will be used.⁵⁰ UF is currently conducting analysis of state programs to determine needs and unduplicated count of children within the programs and developing reporting capacity of the current needs assessment portal (ECENA).⁵¹

Auditor General

The Auditor General is appointed as required under s. 2, Art. III of the Florida Constitution.⁵² One function of the auditor is to conduct financial or operational audits of various government entities or agencies in specified periods of time.⁵³ The Auditor General is also required to conduct performance audits which includes, in part, an examination of a program, activity, or function of a government entity.⁵⁴ Florida Statutes do not currently require performance audits every three years for state agencies or their programs,⁵⁵ but the Auditor General has wide

⁴³ Section 1002.92(3)(e) to (g), F.S.

⁴⁴ The OEL, *School Readiness*, available at <http://www.floridaearlylearning.com/school-readiness> (last visited March 22, 2021).

⁴⁵ *Id.*

⁴⁶ The OEL, *Preschool Development Birth through Five Renewal Grant (PDG-R)*, available at <http://www.floridaearlylearning.com/statewide-initiatives/preschool-development-grant-birth-through-five> (last visited March 22, 2021) (hereinafter cited as "OEL PDG-R").

⁴⁷ *Id.*

⁴⁸ Florida's State Advisory Council, *Florida Early Childhood Strategic Plan*, p. iii, July 2019, available at http://www.floridaearlylearning.com/Content/Uploads/floridaearlylearning.com/images/Strategic_Plan_FINAL_FINAL_10.16.19.pdf (last visited March 22, 2021).

⁴⁹ OEL PDG-R.

⁵⁰ *Id.*; University of Florida, *Preschool Development Grant University of Florida Anita Zucker Center for Excellence in Early Childhood Studies Scope of Work*, available at https://education.ufl.edu/research/files/2019/06/Preschool-Development-Grant_07-31-19.pdf (last visited March 22, 2021) (hereinafter cited as "UF Scope of Work").

⁵¹ UF Scope of Work.

⁵² Section 11.42(1), F.S.

⁵³ Section 11.45(2), F.S.

⁵⁴ Section 11.45(1)(j), F.S.

⁵⁵ The Florida Department of Education (DOE), *Agency Analysis for SB 414*, p. 2, January 13, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The DOE Analysis").

discretion to conduct audits not expressly provided for in the Florida Statutes of, amongst other entities, public records associated with any appropriation made by the Legislature to a nongovernmental agency, corporation, or person.⁵⁶

III. Effect of Proposed Changes:

The bill requires the Auditor General to conduct an audit once every three years beginning in Calendar Year 2021 of the following programs:

- Supplemental Nutrition Assistance Program;⁵⁷
- Temporary Cash Assistance Program;⁵⁸
- Medicaid program;⁵⁹
- School readiness program;⁶⁰ and
- Housing Choice Voucher Program.⁶¹

The audit must review and analyze the following information:

- The program eligibility criteria;
- The manner by which each program establishes and documents eligibility and disbursement policies;
- The frequency of eligibility determinations;
- The clarity of both written and verbal communication in which eligibility requirements are conveyed to current and potential program recipients;
- Opportunities for improving service efficiency and efficacy;
- The number and size of families receiving multiple program services compared to all eligible families; and
- The number of families receiving services who are claiming the Earned Income Tax Credit, if possible.

The Auditor General must provide a report with the results of the audit to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Legislative Auditing Committee within 30 days after completion of the audit, but no later than December 31, 2021, and every three years thereafter.

The FDACS reports an audit required under the proposed bill will not affect FNW's direct certification process.⁶²

The bill is effective July 1, 2021.

⁵⁶ Section 11.45(3), F.S.

⁵⁷ 7 U.S.C. ss. 2011 et seq.

⁵⁸ Section 414.095, F.S.

⁵⁹ Section 409.963, F.S.

⁶⁰ Ch. 1002, F.S.

⁶¹ 42 U.S.C. s. 1437f.

⁶² The FDACS Analysis at p. 2.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The DCF Office of Administrative Services finds that the bill does not increase or decrease taxes, fees, or fines.⁶³

B. Private Sector Impact:

The DCF Office of Administrative Services finds there is no fiscal impact to the private sector generated by this bill.⁶⁴

C. Government Sector Impact:

The DCF Office of Administrative Services finds there is no fiscal impact on state or local governments generated by this bill.⁶⁵

The FDACS reports that the bill has no fiscal impact on the agency.⁶⁶

The DOE reports that the bill requires additional staff for the Auditor General and affected programs to perform the additional duties and functions which will incur

⁶³ The DCF Analysis at p. 4.

⁶⁴ *Id.*

⁶⁵ The DCF Analysis at p. 3.

⁶⁶ The FDACS Analysis at p. 2.

indeterminate costs.⁶⁷ The OEL will absorb costs for the additional responsibilities related to audit requests.⁶⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 11.45 of the Florida Statutes:

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁶⁷ The DOE Analysis at p. 4.

⁶⁸ *Id.*

By the Committee on Health Policy; and Senators Gibson, Baxley,
and Farmer

588-02672-21

2021634c1

1 A bill to be entitled
2 An act relating to dementia-related staff training;
3 providing a short title; creating s. 430.5025, F.S.;
4 defining terms; requiring certain entities, as a
5 condition of licensure, to provide specified dementia-
6 related training for new employees within a specified
7 timeframe; requiring certain employees to receive
8 additional dementia-related training under certain
9 circumstances within a specified timeframe; providing
10 requirements for the training; requiring annual
11 dementia-related training for certain employees;
12 requiring certain employees to receive additional
13 training developed or approved by the Department of
14 Elderly Affairs under certain circumstances; providing
15 that such additional training counts toward a
16 certified nursing assistant's total annual training;
17 authorizing certain health care practitioners to count
18 certain continuing education hours toward the
19 dementia-related training requirements under certain
20 circumstances; requiring the department to approve
21 such continuing education hours to satisfy the
22 dementia-related training requirements; requiring the
23 department or its designee to develop a registration
24 process for training providers; specifying
25 requirements for such registration; requiring the
26 department or its designee to issue unique identifiers
27 to approved training providers; requiring the
28 department or its designee to approve courses used to
29 satisfy the dementia-related training requirements;

588-02672-21

2021634c1

30 requiring such courses to be approved in various;
31 requiring training providers to develop certain
32 assessments and passing scores for a specified
33 purpose; requiring certain employees to take and pass
34 such assessments upon completion of the training;
35 requiring training providers to issue such employees a
36 certificate upon completing the training and passing
37 the assessments; providing requirements for the
38 certificate; providing that certain employees do not
39 need to repeat certain training when changing
40 employment, under certain circumstances; requiring
41 licensees to maintain copies of training
42 certifications for each of their employees and direct
43 care workers; requiring licensees to make such copies
44 available for inspection for a specified purpose;
45 requiring the department to adopt rules; amending ss.
46 400.1755, 400.4785, 400.6045, 429.178, 429.52, 429.83,
47 and 429.917, F.S.; revising dementia-related staff
48 training requirements for nursing homes, home health
49 agencies, hospices, facilities that provide special
50 care for persons with Alzheimer's disease or related
51 disorders, assisted living facilities, adult family-
52 care homes, and adult day care centers, respectively,
53 to conform to changes made by the act; providing an
54 effective date.

55
56 Be It Enacted by the Legislature of the State of Florida:

57
58 Section 1. This act may be cited as the "Florida

588-02672-21

2021634c1

59 Alzheimer's Disease and Dementia Training Act."

60 Section 2. Section 430.5025, Florida Statutes, is created
61 to read:

62 430.5025 Care for persons with Alzheimer's disease or a
63 related disorder; staff training.-

64 (1) As used in this section, the term:

65 (a) "Department" means the Department of Elderly Affairs.

66 (b) "Direct care worker" means an individual who, as part
67 of his or her employment duties, provides or has access to
68 provide direct contact assistance with personal care or
69 activities of daily living to clients, patients, or residents of
70 any facility licensed under part II, part III, or part IV of
71 chapter 400 or chapter 429.

72 (c) "Employee" means any staff member who has regular
73 contact or incidental contact on a recurring basis with clients,
74 patients, or residents of a facility licensed under part II,
75 part III, or part IV of chapter 400 or chapter 429. The term
76 includes, but is not limited to, direct care workers; staff
77 responsible for housekeeping, the front desk, maintenance, and
78 other administrative functions; and any other individuals who
79 may have regular contact or incidental contact on a recurring
80 basis with clients, patients, or residents.

81 (d) "Licensee" means a person or an entity licensed under
82 part II, part III, or part IV of chapter 400 or chapter 429.

83 (2) As a condition of licensure, licensees must provide to
84 each of their employees, within 30 days after their employment
85 begins, 1 hour of dementia-related training, which must include
86 methods for interacting with persons with Alzheimer's disease or
87 a related disorder and for identifying warning signs of

588-02672-21

2021634c1

88 dementia.

89 (3) In addition to the training requirements of subsection
90 (2), licensees must require all employees who are direct care
91 workers to receive at least 3 hours of evidence-based training
92 if the direct care workers are expected to, or their
93 responsibilities require them to, have direct contact with
94 clients, patients, or residents with Alzheimer's disease or a
95 related disorder or with populations that are at a greater risk
96 for Alzheimer's disease or a related disorder. The training must
97 be completed within the first 3 months after employment begins
98 and must include, but need not be limited to, an overview of
99 Alzheimer's disease and related disorders and person-centered
100 care, assessment and care planning, activities of daily living,
101 and dementia-related behaviors and communication for clients,
102 patients, and residents with Alzheimer's disease or a related
103 disorder. Each calendar year thereafter, the licensee must
104 require all of its direct care workers to receive at least 4
105 hours of continuing education, approved by the department, on
106 these topics and any related changes in state or federal law.

107 (4) If a licensee advertises that it provides special care
108 for individuals with Alzheimer's disease or a related disorder
109 which includes direct care to such individuals, the licensee
110 must require its direct care workers to complete 4 hours of
111 training developed or approved by the department. This training
112 is in addition to the training requirements of subsections (2)
113 and (3) and must be completed within 4 months after employment
114 begins.

115 (5) Completion of the 4 hours of training developed or
116 approved by the department under subsection (4) shall count

588-02672-21

2021634c1

117 toward a certified nursing assistant's annual training
118 requirements.

119 (6) If a health care practitioner as defined in s. 456.001
120 completes continuing education hours as required by that
121 practitioner's licensing board, he or she may count those
122 continuing education hours toward satisfaction of the training
123 requirements of subsections (3) and (4) if the course curriculum
124 covers the topics required under those subsections. The
125 department must approve such continuing education hours for
126 purposes of satisfying the training requirements of subsections
127 (3) and (4).

128 (7) The department or its designee shall develop a process
129 for registering training providers and maintain a list of those
130 providers approved to provide training required under this
131 section. To be approved, a training provider must have at least
132 2 years of experience related to Alzheimer's disease or related
133 disorders, gerontology, health care, or a related field. The
134 department or its designee shall issue each approved training
135 provider a unique registration identifier.

136 (8) The department or its designee shall approve the
137 courses that licensees may use to satisfy the training
138 requirements under this section. The department or its designee
139 must approve training offered in a variety of formats,
140 including, but not limited to, Internet-based training, videos,
141 teleconferencing, and classroom instruction.

142 (9) For each training topic required under this section,
143 the training provider shall develop an assessment that measures
144 an individual's understanding of the topic and indicate a
145 minimum required score to pass the assessment. Upon completion

588-02672-21

2021634c1

146 of any training under this section, the employee or direct care
147 worker must pass the related assessment. If an employee or a
148 direct care worker completes a training and passes the related
149 assessment, the training provider must issue the employee or
150 direct care worker a certificate that includes the training
151 provider's name and unique identifier, the topic covered in the
152 training, the date of completion, and the signature of the
153 training provider. The certificate is evidence of completion of
154 the training and assessment in the identified topic, and the
155 employee or direct care worker is not required to repeat
156 training in that topic if he or she changes employment to a
157 different licensee, but he or she must comply with any
158 applicable continuing education requirements under this section.
159 Licensees must maintain copies of certificates issued to each of
160 their employees or direct care workers under this section and
161 must make them available for inspection to meet the requirements
162 of licensure.

163 (10) The department shall adopt rules to implement this
164 section.

165 Section 3. Section 400.1755, Florida Statutes, is amended
166 to read:

167 400.1755 Care for persons with Alzheimer's disease or
168 related disorders; staff training requirements.-

169 ~~(1) As a condition of licensure, facilities licensed under~~
170 ~~this part must provide to each of their employees training as~~
171 ~~required in s. 430.5025, upon beginning employment, basic~~
172 ~~written information about interacting with persons with~~
173 ~~Alzheimer's disease or a related disorder.~~

174 ~~(2) All employees who are expected to, or whose~~

588-02672-21

2021634c1

175 ~~responsibilities require them to, have direct contact with~~
176 ~~residents with Alzheimer's disease or a related disorder must,~~
177 ~~in addition to being provided the information required in~~
178 ~~subsection (1), also have an initial training of at least 1 hour~~
179 ~~completed in the first 3 months after beginning employment. This~~
180 ~~training must include, but is not limited to, an overview of~~
181 ~~dementias and must provide basic skills in communicating with~~
182 ~~persons with dementia.~~

183 ~~(3) An individual who provides direct care shall be~~
184 ~~considered a direct caregiver and must complete the required~~
185 ~~initial training and an additional 3 hours of training within 9~~
186 ~~months after beginning employment. This training shall include,~~
187 ~~but is not limited to, managing problem behaviors, promoting the~~
188 ~~resident's independence in activities of daily living, and~~
189 ~~skills in working with families and caregivers.~~

190 ~~(a) The required 4 hours of training for certified nursing~~
191 ~~assistants are part of the total hours of training required~~
192 ~~annually.~~

193 ~~(b) For a health care practitioner as defined in s.~~
194 ~~456.001, continuing education hours taken as required by that~~
195 ~~practitioner's licensing board shall be counted toward this~~
196 ~~total of 4 hours.~~

197 ~~(4) For an employee who is a licensed health care~~
198 ~~practitioner as defined in s. 456.001, training that is~~
199 ~~sanctioned by that practitioner's licensing board shall be~~
200 ~~considered to be approved by the Department of Elderly Affairs.~~

201 ~~(5) The Department of Elderly Affairs or its designee must~~
202 ~~approve the initial and continuing training provided in the~~
203 ~~facilities. The department must approve training offered in a~~

588-02672-21

2021634c1

204 ~~variety of formats, including, but not limited to, Internet-~~
205 ~~based training, videos, teleconferencing, and classroom~~
206 ~~instruction. The department shall keep a list of current~~
207 ~~providers who are approved to provide initial and continuing~~
208 ~~training. The department shall adopt rules to establish~~
209 ~~standards for the trainers and the training required in this~~
210 ~~section.~~

211 ~~(6) Upon completing any training listed in this section,~~
212 ~~the employee or direct caregiver shall be issued a certificate~~
213 ~~that includes the name of the training provider, the topic~~
214 ~~covered, and the date and signature of the training provider.~~
215 ~~The certificate is evidence of completion of training in the~~
216 ~~identified topic, and the employee or direct caregiver is not~~
217 ~~required to repeat training in that topic if the employee or~~
218 ~~direct caregiver changes employment to a different facility or~~
219 ~~to an assisted living facility, home health agency, adult day~~
220 ~~care center, or adult family care home. The direct caregiver~~
221 ~~must comply with other applicable continuing education~~
222 ~~requirements.~~

223 Section 4. Section 400.4785, Florida Statutes, is amended
224 to read:

225 400.4785 Patients with Alzheimer's disease or other related
226 disorders; staff training requirements; certain disclosures.-

227 (1) A home health agency must provide ~~the following~~ staff
228 training as required in s. 430.5025:-

229 ~~(a) Upon beginning employment with the agency, each~~
230 ~~employee must receive basic written information about~~
231 ~~interacting with participants who have Alzheimer's disease or~~
232 ~~dementia-related disorders.~~

588-02672-21

2021634c1

233 ~~(b) In addition to the information provided under paragraph~~
234 ~~(a), newly hired home health agency personnel who will be~~
235 ~~providing direct care to patients must complete 2 hours of~~
236 ~~training in Alzheimer's disease and dementia-related disorders~~
237 ~~within 9 months after beginning employment with the agency. This~~
238 ~~training must include, but is not limited to, an overview of~~
239 ~~dementia, a demonstration of basic skills in communicating with~~
240 ~~persons who have dementia, the management of problem behaviors,~~
241 ~~information about promoting the client's independence in~~
242 ~~activities of daily living, and instruction in skills for~~
243 ~~working with families and caregivers.~~

244 ~~(c) For certified nursing assistants, the required 2 hours~~
245 ~~of training shall be part of the total hours of training~~
246 ~~required annually.~~

247 ~~(d) For a health care practitioner as defined in s.~~
248 ~~456.001, continuing education hours taken as required by that~~
249 ~~practitioner's licensing board shall be counted toward the total~~
250 ~~of 2 hours.~~

251 ~~(e) For an employee who is a licensed health care~~
252 ~~practitioner as defined in s. 456.001, training that is~~
253 ~~sanctioned by that practitioner's licensing board shall be~~
254 ~~considered to be approved by the Department of Elderly Affairs.~~

255 ~~(f) The Department of Elderly Affairs, or its designee,~~
256 ~~must approve the required training. The department must consider~~
257 ~~for approval training offered in a variety of formats. The~~
258 ~~department shall keep a list of current providers who are~~
259 ~~approved to provide the 2-hour training. The department shall~~
260 ~~adopt rules to establish standards for the employees who are~~
261 ~~subject to this training, for the trainers, and for the training~~

588-02672-21

2021634c1

262 ~~required in this section.~~

263 ~~(g) Upon completing the training listed in this section,~~
264 ~~the employee shall be issued a certificate that states that the~~
265 ~~training mandated under this section has been received. The~~
266 ~~certificate shall be dated and signed by the training provider.~~
267 ~~The certificate is evidence of completion of this training, and~~
268 ~~the employee is not required to repeat this training if the~~
269 ~~employee changes employment to a different home health agency.~~

270 ~~(2)(h)~~ A licensed home health agency whose unduplicated
271 census during the most recent calendar year was composed
272 ~~comprised~~ of at least 90 percent of individuals aged 21 years or
273 younger at the date of admission is exempt from the training
274 requirements in this section.

275 ~~(3)(2)~~ An agency licensed under this part which claims that
276 it provides special care for persons who have Alzheimer's
277 disease or other related disorders must disclose in its
278 advertisements or in a separate document those services that
279 distinguish the care as being especially applicable to, or
280 suitable for, such persons. The agency must give a copy of all
281 such advertisements or a copy of the document to each person who
282 requests information about the agency and must maintain a copy
283 of all such advertisements and documents in its records. The
284 Agency for Health Care Administration shall examine all such
285 advertisements and documents in the agency's records as part of
286 the license renewal procedure.

287 Section 5. Subsection (1) of section 400.6045, Florida
288 Statutes, is amended to read:

289 400.6045 Patients with Alzheimer's disease or other related
290 disorders; staff training requirements; certain disclosures.-

588-02672-21

2021634c1

291 (1) A hospice licensed under this part must provide ~~the~~
292 ~~following~~ staff training as required in s. 430.5025;

293 ~~(a) Upon beginning employment with the agency, each~~
294 ~~employee must receive basic written information about~~
295 ~~interacting with persons who have Alzheimer's disease or~~
296 ~~dementia-related disorders.~~

297 ~~(b) In addition to the information provided under paragraph~~
298 ~~(a), employees who are expected to, or whose responsibilities~~
299 ~~require them to, have direct contact with participants who have~~
300 ~~Alzheimer's disease or dementia-related disorders must complete~~
301 ~~initial training of at least 1 hour within the first 3 months~~
302 ~~after beginning employment. The training must include an~~
303 ~~overview of dementias and must provide instruction in basic~~
304 ~~skills for communicating with persons who have dementia.~~

305 ~~(c) In addition to the requirements of paragraphs (a) and~~
306 ~~(b), an employee who will be providing direct care to a~~
307 ~~participant who has Alzheimer's disease or a dementia-related~~
308 ~~disorder must complete an additional 3 hours of training within~~
309 ~~9 months after beginning employment. This training must include,~~
310 ~~but is not limited to, the management of problem behaviors,~~
311 ~~information about promoting the patient's independence in~~
312 ~~activities of daily living, and instruction in skills for~~
313 ~~working with families and caregivers.~~

314 ~~(d) For certified nursing assistants, the required 4 hours~~
315 ~~of training shall be part of the total hours of training~~
316 ~~required annually.~~

317 ~~(e) For a health care practitioner as defined in s.~~
318 ~~456.001, continuing education hours taken as required by that~~
319 ~~practitioner's licensing board shall be counted toward the total~~

588-02672-21

2021634c1

320 of ~~4~~ hours.

321 ~~(f) For an employee who is a licensed health care~~
322 ~~practitioner as defined in s. 456.001, training that is~~
323 ~~sanctioned by that practitioner's licensing board shall be~~
324 ~~considered to be approved by the Department of Elderly Affairs.~~

325 ~~(g) The Department of Elderly Affairs or its designee must~~
326 ~~approve the required 1-hour and 3-hour training provided to~~
327 ~~employees or direct caregivers under this section. The~~
328 ~~department must consider for approval training offered in a~~
329 ~~variety of formats. The department shall keep a list of current~~
330 ~~providers who are approved to provide the 1-hour and 3-hour~~
331 ~~training. The department shall adopt rules to establish~~
332 ~~standards for the employees who are subject to this training,~~
333 ~~for the trainers, and for the training required in this section.~~

334 ~~(h) Upon completing any training described in this section,~~
335 ~~the employee or direct caregiver shall be issued a certificate~~
336 ~~that includes the name of the training provider, the topic~~
337 ~~covered, and the date and signature of the training provider.~~
338 ~~The certificate is evidence of completion of training in the~~
339 ~~identified topic, and the employee or direct caregiver is not~~
340 ~~required to repeat training in that topic if the employee or~~
341 ~~direct caregiver changes employment to a different hospice or to~~
342 ~~a home health agency, assisted living facility, nursing home, or~~
343 ~~adult day care center.~~

344 Section 6. Subsections (2) through (8) of section 429.178,
345 Florida Statutes, are amended to read:

346 429.178 Special care for persons with Alzheimer's disease
347 or other related disorders.-

348 (2) ~~(a)~~ An individual who is employed by a facility that

588-02672-21

2021634c1

349 provides special care for residents who have Alzheimer's disease
350 or other related disorders, ~~and who has regular contact with~~
351 ~~such residents,~~ must complete the ~~up to 4 hours of initial~~
352 ~~dementia-specific training as required in s. 430.5025 developed~~
353 ~~or approved by the department. The training must be completed~~
354 ~~within 3 months after beginning employment and satisfy the core~~
355 ~~training requirements of s. 429.52(3)(g).~~

356 (b) ~~A direct caregiver who is employed by a facility that~~
357 ~~provides special care for residents who have Alzheimer's disease~~
358 ~~or other related disorders and provides direct care to such~~
359 ~~residents must complete the required initial training and 4~~
360 ~~additional hours of training developed or approved by the~~
361 ~~department. The training must be completed within 9 months after~~
362 ~~beginning employment and satisfy the core training requirements~~
363 ~~of s. 429.52(3)(g).~~

364 (c) ~~An individual who is employed by a facility that~~
365 ~~provides special care for residents with Alzheimer's disease or~~
366 ~~other related disorders, but who only has incidental contact~~
367 ~~with such residents, must be given, at a minimum, general~~
368 ~~information on interacting with individuals with Alzheimer's~~
369 ~~disease or other related disorders, within 3 months after~~
370 ~~beginning employment.~~

371 (3) ~~In addition to the training required under subsection~~
372 ~~(2), a direct caregiver must participate in a minimum of 4~~
373 ~~contact hours of continuing education each calendar year. The~~
374 ~~continuing education must include one or more topics included in~~
375 ~~the dementia-specific training developed or approved by the~~
376 ~~department, in which the caregiver has not received previous~~
377 ~~training.~~

588-02672-21

2021634c1

378 ~~(4) Upon completing any training listed in subsection (2),~~
379 ~~the employee or direct caregiver shall be issued a certificate~~
380 ~~that includes the name of the training provider, the topic~~
381 ~~covered, and the date and signature of the training provider.~~
382 ~~The certificate is evidence of completion of training in the~~
383 ~~identified topic, and the employee or direct caregiver is not~~
384 ~~required to repeat training in that topic if the employee or~~
385 ~~direct caregiver changes employment to a different facility. The~~
386 ~~employee or direct caregiver must comply with other applicable~~
387 ~~continuing education requirements.~~

388 ~~(5) The department, or its designee, shall approve the~~
389 ~~initial and continuing education courses and providers.~~

390 ~~(6) The department shall keep a current list of providers~~
391 ~~who are approved to provide initial and continuing education for~~
392 ~~staff of facilities that provide special care for persons with~~
393 ~~Alzheimer's disease or other related disorders.~~

394 (3)~~(7)~~ Any facility more than 90 percent of whose residents
395 receive monthly optional supplementation payments is not
396 required to pay for the training and education programs required
397 under this section. A facility that has one or more such
398 residents must ~~shall~~ pay a reduced fee that is proportional to
399 the percentage of such residents in the facility. A facility
400 that does not have any residents who receive monthly optional
401 supplementation payments must pay a reasonable fee, as
402 established by the department, for such training and education
403 programs.

404 (4)~~(8)~~ The department shall adopt rules to establish
405 standards for trainers and training and to implement this
406 section.

588-02672-21

2021634c1

407 Section 7. Subsection (1) of section 429.52, Florida
408 Statutes, is amended to read:

409 429.52 Staff training and educational requirements.—

410 (1) Each new assisted living facility employee who has not
411 previously completed core training must attend a preservice
412 orientation provided by the facility before interacting with
413 residents. The preservice orientation must be at least 2 hours
414 in duration and cover topics that help the employee provide
415 responsible care and respond to the needs of facility residents.
416 Upon completion, the employee and the administrator of the
417 facility must sign a statement that the employee completed the
418 required preservice orientation. The facility must keep the
419 signed statement in the employee's personnel record. Each
420 assisted living facility shall provide staff training as
421 required in s. 430.5025.

422 Section 8. Section 429.83, Florida Statutes, is amended to
423 read:

424 429.83 Residents with Alzheimer's disease or other related
425 disorders; training; certain disclosures.—

426 (1) An adult family-care home licensed under this part must
427 provide staff training as required in s. 430.5025.

428 (2) An adult family-care home licensed under this part
429 which claims that it provides special care for persons who have
430 Alzheimer's disease or other related disorders must Disclose in
431 its advertisements or in a separate document those services that
432 distinguish the care as being especially applicable to, or
433 suitable for, such persons. The home must give a copy of all
434 such advertisements or a copy of the document to each person who
435 requests information about programs and services for persons

588-02672-21

2021634c1

436 with Alzheimer's disease or other related disorders offered by
437 the home and must maintain a copy of all such advertisements and
438 documents in its records. The agency shall examine all such
439 advertisements and documents in the home's records as part of
440 the license renewal procedure.

441 Section 9. Subsection (1) of section 429.917, Florida
442 Statutes, is amended to read:

443 429.917 Patients with Alzheimer's disease or other related
444 disorders; staff training requirements; certain disclosures.—

445 (1) An adult day care center licensed under this part must
446 provide ~~the following~~ staff training as required in s. 430.5025+

447 ~~(a) Upon beginning employment with the facility, each~~
448 ~~employee must receive basic written information about~~
449 ~~interacting with participants who have Alzheimer's disease or~~
450 ~~dementia-related disorders.~~

451 ~~(b) In addition to the information provided under paragraph~~
452 ~~(a), newly hired adult day care center personnel who are~~
453 ~~expected to, or whose responsibilities require them to, have~~
454 ~~direct contact with participants who have Alzheimer's disease or~~
455 ~~dementia-related disorders must complete initial training of at~~
456 ~~least 1 hour within the first 3 months after beginning~~
457 ~~employment. The training must include an overview of dementias~~
458 ~~and must provide instruction in basic skills for communicating~~
459 ~~with persons who have dementia.~~

460 ~~(c) In addition to the requirements of paragraphs (a) and~~
461 ~~(b), an employee who will be providing direct care to a~~
462 ~~participant who has Alzheimer's disease or a dementia-related~~
463 ~~disorder must complete an additional 3 hours of training within~~
464 ~~9 months after beginning employment. This training must include,~~

588-02672-21

2021634c1

465 ~~but is not limited to, the management of problem behaviors,~~
466 ~~information about promoting the participant's independence in~~
467 ~~activities of daily living, and instruction in skills for~~
468 ~~working with families and caregivers.~~

469 ~~(d) For certified nursing assistants, the required 4 hours~~
470 ~~of training shall be part of the total hours of training~~
471 ~~required annually.~~

472 ~~(e) For a health care practitioner as defined in s.~~
473 ~~456.001, continuing education hours taken as required by that~~
474 ~~practitioner's licensing board shall be counted toward the total~~
475 ~~of 4 hours.~~

476 ~~(f) For an employee who is a licensed health care~~
477 ~~practitioner as defined in s. 456.001, training that is~~
478 ~~sanctioned by that practitioner's licensing board shall be~~
479 ~~considered to be approved by the Department of Elderly Affairs.~~

480 ~~(g) The Department of Elderly Affairs or its designee must~~
481 ~~approve the 1-hour and 3-hour training provided to employees and~~
482 ~~direct caregivers under this section. The department must~~
483 ~~consider for approval training offered in a variety of formats.~~
484 ~~The department shall keep a list of current providers who are~~
485 ~~approved to provide the 1-hour and 3-hour training. The~~
486 ~~department shall adopt rules to establish standards for the~~
487 ~~employees who are subject to this training, for the trainers,~~
488 ~~and for the training required in this section.~~

489 ~~(h) Upon completing any training described in this section,~~
490 ~~the employee or direct caregiver shall be issued a certificate~~
491 ~~that includes the name of the training provider, the topic~~
492 ~~covered, and the date and signature of the training provider.~~
493 ~~The certificate is evidence of completion of training in the~~

588-02672-21

2021634c1

494 ~~identified topic, and the employee or direct caregiver is not~~
495 ~~required to repeat training in that topic if the employee or~~
496 ~~direct caregiver changes employment to a different adult day~~
497 ~~care center or to an assisted living facility, nursing home,~~
498 ~~home health agency, or hospice. The direct caregiver must comply~~
499 ~~with other applicable continuing education requirements.~~

500 ~~(i) An employee who is hired on or after July 1, 2004, must~~
501 ~~complete the training required by this section.~~

502 Section 10. This act shall take effect July 1, 2021.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 634

INTRODUCER: Health Policy Committee and Senator Gibson and others

SUBJECT: Dementia-related Staff Training

DATE: March 22, 2021 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Brown</u>	<u>HP</u>	Fav/CS
2.	<u>Moody</u>	<u>Cox</u>	<u>CF</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 634 creates s. 430.5025, F.S., to establish the Florida Alzheimer’s Disease and Dementia Training Act. The bill establishes universal Alzheimer’s disease and related disorder (ADRD) training requirements to be used by nursing homes, home health agencies, hospice providers, assisted living facilities, adult family-care homes, and adult day care centers to replace each license type’s individual training requirements on that topic.

The bill requires a licensee, as defined in the bill, to provide each of its employees one hour of dementia-related training within 30 days of his or her employment. Additionally, each licensee must require employees who are direct care workers, as defined by the bill, and who are expected to or required to have direct contact with clients, patients, or residents with ADRD to receive at least three hours of initial training within the first three months of employment and four hours of continuing education annually. If the licensee advertises that it provides special care for individuals with Alzheimer’s disease, the licensee must require each of its direct care workers to complete four additional hours of training.

The bill requires the Department of Elder Affairs (DOEA) or its designee to approve the courses that may be used to satisfy the training requirements in the bill and to develop an assessment for each required topic. The DOEA is required to adopt rules for implementation.

The bill also amends ss. 400.1755, 400.4785, 400.6045, 429.178, 429.52, 429.83, and 429.917, F.S., to eliminate individual ADRD training requirements for nursing homes, home health service providers, hospice providers, assisted living facilities (ALF), adult family-care homes, and adult day care centers in favor of the uniform requirements established by the bill.

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

II. Present Situation:

Dementia and Alzheimer's Disease

Dementia is the loss of cognitive functioning—thinking, remembering, and reasoning—and behavioral abilities to such an extent that it interferes with a person's daily life and activities. These functions include memory, language skills, visual perception, problem solving, self-management, and the ability to focus and pay attention. Some people with dementia cannot control their emotions, and their personalities may change. Dementia ranges in severity from the mildest stage, when it is just beginning to affect a person's functioning, to the most severe stage, when the person must depend completely on others for basic activities of living.¹

Alzheimer's disease is the most common type of dementia. It is a progressive disease that begins with mild memory loss and can lead to loss of the ability to carry on a conversation and respond to one's environment. Alzheimer's disease affects parts of the brain that control thought, memory, and language. It can seriously affect a person's ability to carry out daily activities. Although scientists are studying the disease, what causes Alzheimer's disease is unknown.²

There are an estimated 580,000 individuals living with Alzheimer's disease in the state of Florida.³ By 2025, it is projected that 720,000 Floridians will have Alzheimer's disease.⁴ Most individuals with Alzheimer's can live in the community with support, often provided by spouses or other family members. In the late stages of the disease, many patients require care 24 hours per day and are often served in long-term care facilities.

¹ National Institute on Aging, *What is Dementia? Symptoms, Types, and Diagnosis*, available at <https://www.nia.nih.gov/health/what-dementia-symptoms-types-and-diagnosis>, (last visited on March 22, 2021).

² Centers for Disease Control and Prevention, *Alzheimer's Disease and Healthy Aging*, available at <https://www.cdc.gov/aging/aginginfo/alzheimers.htm#AlzheimersDisease>, (last visited March 22, 2021).

³ Alzheimer's Association, *Alzheimer's Statistics Florida*, available at <https://www.alz.org/media/Documents/florida-alzheimers-facts-figures-2018.pdf>, (last visited March 22, 2021).

⁴ *Id.*

Dementia and Alzheimer’s Disease Training

Overview by Facility Type

	All Employees	Employees with Expected or Required Direct Contact	Employees Providing Direct Care	Health Care Practitioner Continuing Education Sufficient?	Training Approved?	Additional Reqs.
Nursing Homes	Provided with basic written information about interacting with persons with ADRD upon beginning employment.	1 hour of training within the first 3 months of employment.	Additional 3 hours of training within the first 9 months of employment.	Yes	By DOEA.	
Home Health Agencies		Not specified.	2 hours of training within the first 9 months of employment.	Yes	By DOEA.	HHA’s that serve 90% individuals under age 21 are exempt.
Hospice Providers	ADRD upon beginning employment.	1 hour of training within the first 3 months of employment.	Additional 3 hours of training within the first 9 months of employment.	Yes	By DOEA.	
ALFs⁵	Employees with incidental contact must be given information within 3 months.	4 hours within 3 months of employment	4 additional hours within 9 months of employment + 4 hours CE annually	Not specified.	By DOEA	
Adult Day Care Centers	Same as nursing homes, home health agencies, and Hospice.	1 hour of training within the first 3 months of employment.	Additional 3 hours of training within the first 9 months of employment.	Yes	By DOEA	
Adult Family-Care Homes	None	None	None	Not Specified	By the Agency for Health Care Administration (AHCA)	

Details for each facility type are below:

⁵ Training is required if the ALF advertises that it provides special care for persons with Alzheimer’s disease or related disorders. Section 429.178, F.S.

Nursing Homes

Section 400.1755, F.S., requires each nursing home to provide the following training:

- Provide each of its employee's basic written information about interacting with persons with ADRD upon beginning employment.
- All employees who are expected to, or whose responsibilities require them to, have direct contact with residents with ADRD must also have an initial training of at least one hour completed in the first three months after beginning employment. This training must include, but is not limited to, an overview of dementias and must provide basic skills in communicating with persons with dementia.
- An individual who provides direct care must complete the required initial training and an additional three hours of training within nine months after beginning employment. This training must include, but is not limited to, managing problem behaviors, promoting the resident's independence in activities of daily living, and skills in working with families and caregivers. Health care practitioners' continuing education can be counted toward the required training hours.
- The DOEA or its designee must approve the initial and continuing training provided in the facilities. The DOEA must approve training offered in a variety of formats, including, but not limited to, Internet-based training, videos, teleconferencing, and classroom instruction. The DOEA must keep a list of current providers who are approved to provide initial and continuing training. The DOEA must adopt rules to establish standards for the trainers and the training required in this section of statute.
- Upon completing any training listed in the section, the employee or direct caregiver must be issued a certificate that includes the name of the training provider, the topic covered, and the date and signature of the training provider. The certificate is evidence of completion of training in the identified topic, and the employee or direct caregiver is not required to repeat training in that topic if the employee or direct caregiver changes employment to a different facility or to an assisted living facility, home health agency, adult day care center, or adult family-care home. The direct caregiver must comply with other applicable continuing education requirements.

Home Health Agencies

Section 400.4785, F.S., requires a home health agency to provide the following staff training:

- Upon beginning employment with the agency, each employee must receive basic written information about interacting with participants who have ADRD.
- Newly-hired home health agency personnel who will be providing direct care to patients must complete two hours of training in ADRD within nine months after beginning employment with the agency. This training must include, but is not limited to, an overview of dementia, a demonstration of basic skills in communicating with persons who have dementia, the management of problem behaviors, information about promoting the client's independence in activities of daily living, and instruction in skills for working with families and caregivers.
- For certified nursing assistants, the required two hours of training are part of the total hours of training required annually.

- For a health care practitioner, as defined in s. 456.001, F.S.,⁶ continuing education hours taken as required by that practitioner's licensing board are counted toward the total of two hours.
- For an employee who is a licensed health care practitioner, training that is sanctioned by that practitioner's licensing board must be considered to be approved by the DOEA.
- The DOEA, or its designee, must approve the required training. The DOEA must consider for approval training offered in a variety of formats. The DOEA must keep a list of current providers who are approved to provide the two-hour training. The DOEA must adopt rules to establish standards for the employees who are subject to this training, for the trainers, and for the training required in this section of statute.
- Upon completing the training listed in the section, the employee must be issued a certificate that states that the training mandated under the section has been received. The certificate must be dated and signed by the training provider. The certificate is evidence of completion of this training, and the employee is not required to repeat this training if the employee changes employment to a different home health agency.
- A licensed home health agency whose unduplicated census during the most recent calendar year was composed of at least 90 percent of individuals aged 21 years or younger at the date of admission, is exempt from the training requirements in this section of statute.

Hospice Providers

Section 400.6045, F.S., requires a hospice provider to provide the following staff training:

- Upon beginning employment with the agency, each employee must receive basic written information about interacting with persons who have ADRD.
- Employees who are expected to, or whose responsibilities require them to, have direct contact with participants who have ADRD must complete initial training of at least one hour within the first three months after beginning employment. The training must include an overview of dementias and must provide instruction in basic skills for communicating with persons who have dementia.
- In addition, an employee who will be providing direct care to a participant who has ADRD must complete an additional three hours of training within nine months after beginning employment. This training must include, but is not limited to, the management of problem behaviors, information about promoting the patient's independence in activities of daily living, and instruction in skills for working with families and caregivers.
- For certified nursing assistants, the required four hours of training is part of the total hours of training required annually.
- For a health care practitioner as defined in s. 456.001, F.S., continuing education hours taken as required by that practitioner's licensing board are counted toward the total of four hours.
- For an employee who is a licensed health care practitioner as defined in s. 456.001, F.S., training that is sanctioned by that practitioner's licensing board is considered to be approved by the DOEA.

⁶ Section 456.001(4), F.S., defines "health care practitioner" as any person licensed under ch. 457, F.S.; ch. 458, F.S.; ch. 459, F.S.; ch. 460, F.S.; ch. 461, F.S.; ch. 462, F.S.; ch. 463, F.S.; ch. 464, F.S.; ch. 465, F.S.; ch. 466, F.S.; ch. 467, F.S.; part I, part II, part III, part V, part X, part XII, or part XIV of ch. 468, F.S.; ch. 478, F.S.; ch. 480, F.S.; part I or part II of ch. 483, F.S.; ch. 484, F.S.; ch. 486, F.S.; ch. 490, F.S.; or ch. 491, F.S.

- The DOEA or its designee must approve the required one-hour and three-hour training provided to employees or direct caregivers under this section of statute. The DOEA must consider for approval training offered in a variety of formats. The DOEA must keep a list of current providers who are approved to provide the one-hour and three-hour training. The DOEA must adopt rules to establish standards for the employees who are subject to this training, for the trainers, and for the training required in this section of statute.
- Upon completing any training described in the section, the employee or direct caregiver must be issued a certificate that includes the name of the training provider, the topic covered, and the date and signature of the training provider. The certificate is evidence of completion of training in the identified topic, and the employee or direct caregiver is not required to repeat training in that topic if the employee or direct caregiver changes employment to a different hospice or to a home health agency, assisted living facility, nursing home, or adult day care center.
- A hospice that claims it provides special care for persons who have ADRD must disclose in its advertisements or in a separate document those services that distinguish the care as being especially applicable to, or suitable for, such persons. The hospice must give a copy of all such advertisements or a copy of the document to each person who requests information about programs and services for persons with ADRD offered by the hospice and must maintain a copy of all such advertisements and documents in its records. The Agency for Health Care Administration (AHCA) must examine all such advertisements and documents in the hospice's records as part of the license renewal procedure.

Assisted Living Facilities

Section 429.178, F.S., requires an ALF that advertises it provides special care for persons with ADRD to provide the following training:

- An employee who has regular contact with such residents must complete up to four hours of initial dementia-specific training developed or approved by the DOEA. The training must be completed within three months after beginning employment and satisfy the core training requirements of s. 429.52(3)(g), F.S.
- A direct caregiver who provides direct care to such residents must complete the required initial training and four additional hours of training developed or approved by the DOEA. The training must be completed within nine months after beginning employment and satisfy the core training requirements of s. 429.52(3)(g), F.S.
- An individual who is employed by a facility that provides special care for residents with ADRD, but who only has incidental contact with such residents, must be given, at a minimum, general information on interacting with individuals with ADRD, within three months after beginning employment.
- A direct caregiver must also participate in a minimum of four contact hours of continuing education each calendar year. The continuing education must include one or more topics included in the dementia-specific training, developed or approved by the DOEA, in which the caregiver has not received previous training.
- Upon completing any specified training, the employee or direct caregiver must be issued a certificate that includes the name of the training provider, the topic covered, and the date and signature of the training provider. The certificate is evidence of completion of training in the identified topic, and the employee or direct caregiver is not required to repeat training in that topic if the employee or direct caregiver changes employment to a different facility. The

employee or direct caregiver must comply with other applicable continuing education requirements.

- The DOEA, or its designee, must approve the initial and continuing education courses and providers.
- The DOEA must keep a current list of providers who are approved to provide initial and continuing education for staff of facilities that provide special care for persons with ADRD.

Adult Family-Care Homes

Adult family-care home providers are required to undergo 12 hours of training some of which must be related to Identifying and meeting the special needs of disabled adults and frail elders. However, providers are not currently required to undergo training specific to ADRD.⁷

Adult Day Care Centers

Section 429.917, F.S., requires an adult day care center to provide the following staff training:

- Upon beginning employment with the facility, each employee must receive basic written information about interacting with participants who have ADRD.
- In addition to the information provided, newly-hired adult day care center personnel who are expected to, or whose responsibilities require them to, have direct contact with participants who have ADRD must complete initial training of at least one hour within the first three months after beginning employment. The training must include an overview of dementias and must provide instruction in basic skills for communicating with persons who have dementia.
- In addition to the previous requirements, an employee who will be providing direct care to a participant who has ADRD must complete an additional three hours of training within nine months after beginning employment. This training must include, but is not limited to, the management of problem behaviors, information about promoting the participant's independence in activities of daily living, and instruction in skills for working with families and caregivers.
- For certified nursing assistants, the required four hours of training is part of the total hours of training required annually.
- For a health care practitioner as defined in s. 456.001, F.S., continuing education hours taken as required by that practitioner's licensing board are counted toward the total of four hours.
- For an employee who is a licensed health care practitioner as defined in s. 456.001, F.S., training that is sanctioned by that practitioner's licensing board is considered to be approved by the DOEA.
- The DOEA or its designee must approve the one-hour and three-hour training provided to employees and direct caregivers under this section of statute. The DOEA must consider for approval training offered in a variety of formats. The DOEA must keep a list of current providers who are approved to provide the one-hour and three-hour training. The DOEA must adopt rules to establish standards for the employees who are subject to this training, for the trainers, and for the training required in this section of statute.
- Upon completing any training described in the section, the employee or direct caregiver must be issued a certificate that includes the name of the training provider, the topic covered, and

⁷ See s. 429.75, F.S., and Fla. Admin. Code R. 59A-37.007 (2020).

the date and signature of the training provider. The certificate is evidence of completion of training in the identified topic, and the employee or direct caregiver is not required to repeat training in that topic if the employee or direct caregiver changes employment to a different adult day care center or to an assisted living facility, nursing home, home health agency, or hospice. The direct caregiver must comply with other applicable continuing education requirements.

Current Administration of ADRD Training

The DOEA has authority for administering the existing ADRD training⁸ and currently does so through a contract with the University of South Florida (USF).⁹ USF, through its Training Academy on Aging, reviews and approves ADRD Training Providers and Training Curriculum Programs for the DOEA. The mission of the ADRD training program is to improve the care of individuals with ADRDs who receive services from nursing homes, assisted living facilities, home health agencies, adult day care centers, and hospice care facilities. The ADRD training program is designed to ensure that agency and facility staff members who have regular contact with or provide direct care to, persons with ADRD receive the relevant ADRD training.¹⁰

III. Effect of Proposed Changes:

Sections 1 and 2 of CS/SB 634 establish the Florida Alzheimer’s Disease and Dementia Training Act. The bill creates s. 430.5025, F.S., to establish universal ADRD training requirements for nursing homes, home health agencies, hospice providers, ALFs, and adult day care centers. The bill defines the following terms:

- “Department” means the Department of Elderly Affairs.¹¹
- “Direct care worker” means an individual who, as part of his or her employment duties, provides or has access to provide direct contact assistance with personal care or activities of daily living to clients, patients, or residents of any facility licensed under part II, part III, or part IV of ch. 400, F.S., or part I or part III of ch. 429, F.S.
- “Employee” means any staff member who has regular contact or incidental contact on a recurring basis with clients, patients, or residents of a facility licensed under part II, part III, or part IV of ch. 400, F.S., or part I or part III of ch. 429, F.S. The term includes, but is not limited to, direct care workers; staff responsible for housekeeping, the front desk, maintenance, and other administrative functions; and any other individuals who may have regular contact or incidental contact on a recurring basis with clients, patients, or residents.
- “Licensee” means a person or an entity licensed under part II, part III, or part IV of ch. 400, F.S., or part I or part III of ch. 429, F.S.

The bill requires that, as a condition of licensure, each licensee must provide one hour of dementia-related training to each of its employees within 30 days of their employment. The

⁸ Fla. Admin. Code R. 58A-5.0194 (2020).

⁹ Contract XQ092, effective July 1, 2020, and AHCA Agreement AA412, effective July 21, 2020, between Department of Elder Affairs, USF Board of Trustees, and the Agency for Health Care Administration (Agency).

¹⁰ Department of Elder Affairs, *Senate Bill 634 Fiscal Analysis* (February 2, 2021) (on file with the Senate Committee on Health Policy).

¹¹ Also known as the Department of Elder Affairs (DOEA).

training must include methods for interacting with persons with ADRD and for identifying warning signs of dementia.

Any employee who is a direct care worker, as defined, must receive at least three hours of additional training within the first three months of employment if the direct care worker is expected or required to have direct contact with clients, patients, or residents with ADRD or with populations that are at a greater risk for ADRD. The three hours of training must include, but need not be limited to, an overview of ADRDs and person-centered care, assessment and care planning, activities of daily living, and dementia-related behaviors and communication for clients, patients, and residents with ADRD. Each such employee must also receive at least four hours of continuing education, approved by the DOEA, annually on the above topics and any related changes in state or federal law.

If the licensee advertises that it provides special care for individuals with ADRD, the licensee must require its direct care workers to complete four additional hours of initial training with a curriculum developed or approved by the DOEA. This training will count toward a certified nursing assistant's annual training requirements.

If the employee is a health care practitioner, as defined in 456.001, F.S., the employee may count his or her continuing education hours for licensure to satisfy the three-hour and four-hour training requirements if his or her continuing education covers the required topics and the hours are approved by the DOEA.

The DOEA or its designee is required to approve the courses that licensees may use to satisfy the training requirements in the bill, and the approved courses must be in a variety of formats, including but not limited to, Internet-based training, videos, teleconferencing, and classroom instruction. The DOEA or its designee must develop a process for registering training providers and maintaining a list of those providers approved to provide training required under the bill. To be approved, a training provider must have at least two years of experience related to ADRD, gerontology, health care, or a related field. The DOEA or its designee must issue each approved training provider a unique registration identifier.

The DOEA or its designee is also required to develop an assessment for each training topic required by the bill. Upon completion of any such training, the employee or direct care worker must pass the related assessment. If an employee or a direct care worker completes a training and passes the related assessment, the training provider must issue the employee or direct care worker a certificate that includes the training provider's name and unique identifier, the topic covered in the training, the date of completion, and the signature of the training provider. The certificate is evidence of completion of the training and assessment in the identified topic, and the employee or direct care worker is not required to repeat training in that topic if he or she changes employment to a different licensee, but he or she must comply with any applicable continuing education requirements.

The DOEA is required to adopt rules to implement section 2 of the bill.

Sections 7 and 8 amend ss. 429.52 and 429.83, F.S., to require all adult family-care homes and ALFs to provide ADRD staff training pursuant to the requirements established in the bill.

Currently, no adult family-care homes and only ALFs who advertise they provide special care for patients with ADRD are required to provide such training.

Sections 3 through 6 and section 9 amend ss. 400.1755, 400.4785, 400.6045, 429.178, and 429.917, F.S., respectively, to repeal the individual ADRD training requirements in the licensure statutes for nursing homes, home health agencies, hospice providers, ALFs, and adult day care centers in favor of the uniform training requirements established by the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 634 may have an indeterminate negative fiscal impact on a facility required to provide ADRD training by the bill if such training is more extensive than what is required to be provided by the facility under current law.

C. Government Sector Impact:

The DOEA reports that the bill does not have any fiscal impact to local or state government.¹²

¹² The DOEA, *Agency Analysis for SB 634*, p. 4, February 11, 2021 (on file with Senate Committee on Children, Families, and Elder Affairs).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 400.1755, 400.4785, 400.6045, 429.178, 429.52, 429.83, and 429.917.

This bill creates section 430.5025 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on March 10, 2021:

The CS adds adult family-care homes to the list of providers who are required to comply with the ADRD training requirements established by the bill and removes the authority for the DOEA to establish a uniform curriculum for ADRD training.

- B. **Amendments:**

None.



637528

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Children, Families, and Elder Affairs
(Rodrigues) recommended the following:

Senate Amendment

Delete lines 328 - 333

and insert:

(a) Apply for admittance into the Department of Law
Enforcement's Volunteer and Employee Criminal History System
and, if accepted, conduct background screening on all volunteers
and staff working directly with children in any program funded
under this section pursuant to s. 943.0542. Background screening
shall use level 2 screening standards pursuant to s. 435.04 and



637528

11 additionally include, but need not be limited to, a check of the
12 Dru Sjodin National Sex Offender Public Website.

By Senator Rodrigues

27-00309B-21

2021908__

1 A bill to be entitled
2 An act relating to the Strong Families Tax Credit;
3 creating ss. 211.0252 and 212.1833, F.S.; providing
4 credits against oil and gas production taxes and sales
5 taxes payable by direct pay permitholders,
6 respectively, under the Strong Families Tax Credit;
7 specifying requirements and procedures for, and
8 limitations on, the credits; amending s. 220.02, F.S.;
9 revising the order in which the corporate income tax
10 credit under the Strong Families Tax Credit is
11 applied; amending s. 220.13, F.S.; revising the
12 definition of the term "adjusted federal income";
13 amending s. 220.186, F.S.; revising the calculation of
14 the corporate income tax credit for the Florida
15 alternative minimum tax; creating s. 220.1876, F.S.;
16 providing a credit against the corporate income tax
17 under the Strong Families Tax Credit; specifying
18 requirements and procedures for, and limitations on,
19 the credit; creating s. 402.62, F.S.; creating the
20 Strong Families Tax Credit; defining terms; specifying
21 requirements for the Department of Children and
22 Families in designating eligible charitable
23 organizations; specifying requirements for eligible
24 charitable organizations receiving contributions;
25 specifying duties of the Department of Children and
26 Families; specifying a limitation on, and application
27 procedures for, the tax credit; specifying
28 requirements and procedures for, and restrictions on,
29 the carryforward, conveyance, transfer, assignment,

27-00309B-21

2021908__

30 and rescindment of credits; specifying requirements
31 and procedures for the Department of Revenue;
32 providing construction; authorizing the Department of
33 Revenue, the Division of Alcoholic Beverages and
34 Tobacco of the Department of Business and Professional
35 Regulation, and the Department of Children and
36 Families to develop a cooperative agreement and adopt
37 rules; authorizing certain interagency information
38 sharing; creating ss. 561.1212 and 624.51056, F.S.;
39 providing credits against excise taxes on certain
40 alcoholic beverages and the insurance premium tax,
41 respectively, under the Strong Families Tax Credit;
42 specifying requirements and procedures for, and
43 limitations on, the credits; authorizing the
44 Department of Revenue to adopt emergency rules to
45 implement provisions related to the Strong Families
46 Tax Credit; providing an appropriation; requiring the
47 Florida Institute for Child Welfare to provide a
48 certain report to the Governor and the Legislature by
49 a specified date; providing an effective date.

50
51 Be It Enacted by the Legislature of the State of Florida:

52
53 Section 1. Section 211.0252, Florida Statutes, is created
54 to read:

55 211.0252 Credit for contributions to eligible charitable
56 organizations.—Beginning January 1, 2022, there is allowed a
57 credit of 100 percent of an eligible contribution made to an
58 eligible charitable organization under s. 402.62 against any tax

27-00309B-21

2021908__

59 due under s. 211.02 or s. 211.025. However, the combined credit
60 allowed under this section and s. 211.0251 may not exceed 50
61 percent of the tax due on the return on which the credit is
62 taken. If the combined credit allowed under this section and s.
63 211.0251 exceeds 50 percent of the tax due on the return, the
64 credit must first be taken under s. 211.0251. Any remaining
65 liability must be taken under this section, but may not exceed
66 50 percent of the tax due. For purposes of the distributions of
67 tax revenue under s. 211.06, the department shall disregard any
68 tax credits allowed under this section to ensure that any
69 reduction in tax revenue received which is attributable to the
70 tax credits results only in a reduction in distributions to the
71 General Revenue Fund. Section 402.62 applies to the credit
72 authorized by this section.

73 Section 2. Section 212.1833, Florida Statutes, is created
74 to read:

75 212.1833 Credit for contributions to eligible charitable
76 organizations.—Beginning January 1, 2022, there is allowed a
77 credit of 100 percent of an eligible contribution made to an
78 eligible charitable organization under s. 402.62 against any tax
79 imposed by the state and due under this chapter from a direct
80 pay permitholder as a result of the direct pay permit held
81 pursuant to s. 212.183. For purposes of the dealer's credit
82 granted for keeping prescribed records, filing timely tax
83 returns, and properly accounting and remitting taxes under s.
84 212.12, the amount of tax due used to calculate the credit shall
85 include any eligible contribution made to an eligible charitable
86 organization from a direct pay permitholder. For purposes of the
87 distributions of tax revenue under s. 212.20, the department

27-00309B-21

2021908__

88 shall disregard any tax credits allowed under this section to
89 ensure that any reduction in tax revenue received which is
90 attributable to the tax credits results only in a reduction in
91 distributions to the General Revenue Fund. Section 402.62
92 applies to the credit authorized by this section. A dealer who
93 claims a tax credit under this section must file his or her tax
94 returns and pay his or her taxes by electronic means under s.
95 213.755.

96 Section 3. Subsection (8) of section 220.02, Florida
97 Statutes, is amended to read:

98 220.02 Legislative intent.—

99 (8) It is the intent of the Legislature that credits
100 against either the corporate income tax or the franchise tax be
101 applied in the following order: those enumerated in s. 631.828,
102 those enumerated in s. 220.191, those enumerated in s. 220.181,
103 those enumerated in s. 220.183, those enumerated in s. 220.182,
104 those enumerated in s. 220.1895, those enumerated in s. 220.195,
105 those enumerated in s. 220.184, those enumerated in s. 220.186,
106 those enumerated in s. 220.1845, those enumerated in s. 220.19,
107 those enumerated in s. 220.185, those enumerated in s. 220.1875,
108 those enumerated in s. 220.1876, those enumerated in s. 220.193,
109 those enumerated in s. 288.9916, those enumerated in s.
110 220.1899, those enumerated in s. 220.194, and those enumerated
111 in s. 220.196.

112 Section 4. Paragraph (a) of subsection (1) of section
113 220.13, Florida Statutes, is amended to read:

114 220.13 "Adjusted federal income" defined.—

115 (1) The term "adjusted federal income" means an amount
116 equal to the taxpayer's taxable income as defined in subsection

27-00309B-21

2021908__

117 (2), or such taxable income of more than one taxpayer as
118 provided in s. 220.131, for the taxable year, adjusted as
119 follows:

120 (a) *Additions.*—There shall be added to such taxable income:

121 1.a. The amount of any tax upon or measured by income,
122 excluding taxes based on gross receipts or revenues, paid or
123 accrued as a liability to the District of Columbia or any state
124 of the United States which is deductible from gross income in
125 the computation of taxable income for the taxable year.

126 b. Notwithstanding sub-subparagraph a., if a credit taken
127 under s. 220.1875 or s. 220.1876 is added to taxable income in a
128 previous taxable year under subparagraph 11. and is taken as a
129 deduction for federal tax purposes in the current taxable year,
130 the amount of the deduction allowed shall not be added to
131 taxable income in the current year. The exception in this sub-
132 subparagraph is intended to ensure that the credit under s.
133 220.1875 or s. 220.1876 is added in the applicable taxable year
134 and does not result in a duplicate addition in a subsequent
135 year.

136 2. The amount of interest which is excluded from taxable
137 income under s. 103(a) of the Internal Revenue Code or any other
138 federal law, less the associated expenses disallowed in the
139 computation of taxable income under s. 265 of the Internal
140 Revenue Code or any other law, excluding 60 percent of any
141 amounts included in alternative minimum taxable income, as
142 defined in s. 55(b)(2) of the Internal Revenue Code, if the
143 taxpayer pays tax under s. 220.11(3).

144 3. In the case of a regulated investment company or real
145 estate investment trust, an amount equal to the excess of the

27-00309B-21

2021908__

146 net long-term capital gain for the taxable year over the amount
147 of the capital gain dividends attributable to the taxable year.

148 4. That portion of the wages or salaries paid or incurred
149 for the taxable year which is equal to the amount of the credit
150 allowable for the taxable year under s. 220.181. This
151 subparagraph shall expire on the date specified in s. 290.016
152 for the expiration of the Florida Enterprise Zone Act.

153 5. That portion of the ad valorem school taxes paid or
154 incurred for the taxable year which is equal to the amount of
155 the credit allowable for the taxable year under s. 220.182. This
156 subparagraph shall expire on the date specified in s. 290.016
157 for the expiration of the Florida Enterprise Zone Act.

158 6. The amount taken as a credit under s. 220.195 which is
159 deductible from gross income in the computation of taxable
160 income for the taxable year.

161 7. That portion of assessments to fund a guaranty
162 association incurred for the taxable year which is equal to the
163 amount of the credit allowable for the taxable year.

164 8. In the case of a nonprofit corporation which holds a
165 pari-mutuel permit and which is exempt from federal income tax
166 as a farmers' cooperative, an amount equal to the excess of the
167 gross income attributable to the pari-mutuel operations over the
168 attributable expenses for the taxable year.

169 9. The amount taken as a credit for the taxable year under
170 s. 220.1895.

171 10. Up to nine percent of the eligible basis of any
172 designated project which is equal to the credit allowable for
173 the taxable year under s. 220.185.

174 11. Any ~~The~~ amount taken as a credit for the taxable year

27-00309B-21

2021908__

175 under s. 220.1875 or s. 220.1876. The addition in this
176 subparagraph is intended to ensure that the same amount is not
177 allowed for the tax purposes of this state as both a deduction
178 from income and a credit against the tax. This addition is not
179 intended to result in adding the same expense back to income
180 more than once.

181 12. The amount taken as a credit for the taxable year under
182 s. 220.193.

183 13. Any portion of a qualified investment, as defined in s.
184 288.9913, which is claimed as a deduction by the taxpayer and
185 taken as a credit against income tax pursuant to s. 288.9916.

186 14. The costs to acquire a tax credit pursuant to s.
187 288.1254(5) that are deducted from or otherwise reduce federal
188 taxable income for the taxable year.

189 15. The amount taken as a credit for the taxable year
190 pursuant to s. 220.194.

191 16. The amount taken as a credit for the taxable year under
192 s. 220.196. The addition in this subparagraph is intended to
193 ensure that the same amount is not allowed for the tax purposes
194 of this state as both a deduction from income and a credit
195 against the tax. The addition is not intended to result in
196 adding the same expense back to income more than once.

197 Section 5. Subsection (2) of section 220.186, Florida
198 Statutes, is amended to read:

199 220.186 Credit for Florida alternative minimum tax.—

200 (2) The credit pursuant to this section shall be the amount
201 of the excess, if any, of the tax paid based upon taxable income
202 determined pursuant to s. 220.13(2)(k) over the amount of tax
203 which would have been due based upon taxable income without

27-00309B-21

2021908__

204 application of s. 220.13(2)(k), before application of this
205 credit without application of any credit under s. 220.1875 or s.
206 220.1876.

207 Section 6. Section 220.1876, Florida Statutes, is created
208 to read:

209 220.1876 Credit for contributions to eligible charitable
210 organizations.—

211 (1) For taxable years beginning on or after January 1,
212 2022, there is allowed a credit of 100 percent of an eligible
213 contribution made to an eligible charitable organization under
214 s. 402.62 against any tax due for a taxable year under this
215 chapter after the application of any other allowable credits by
216 the taxpayer. An eligible contribution must be made to an
217 eligible charitable organization on or before the date the
218 taxpayer is required to file a return pursuant to s. 220.222.
219 The credit granted by this section shall be reduced by the
220 difference between the amount of federal corporate income tax,
221 taking into account the credit granted by this section, and the
222 amount of federal corporate income tax without application of
223 the credit granted by this section.

224 (2) A taxpayer who files a Florida consolidated return as a
225 member of an affiliated group pursuant to s. 220.131(1) may be
226 allowed the credit on a consolidated return basis; however, the
227 total credit taken by the affiliated group is subject to the
228 limitation established under subsection (1).

229 (3) Section 402.62 applies to the credit authorized by this
230 section.

231 (4) If a taxpayer applies and is approved for a credit
232 under s. 402.62 after timely requesting an extension to file

27-00309B-21

2021908__

233 under s. 220.222(2):

234 (a) The credit does not reduce the amount of tax due for
235 purposes of the department's determination as to whether the
236 taxpayer was in compliance with the requirement to pay tentative
237 taxes under ss. 220.222 and 220.32.

238 (b) The taxpayer's noncompliance with the requirement to
239 pay tentative taxes shall result in the revocation and
240 rescindment of any such credit.

241 (c) The taxpayer shall be assessed for any taxes,
242 penalties, or interest due from the taxpayer's noncompliance
243 with the requirement to pay tentative taxes.

244 Section 7. Section 402.62, Florida Statutes, is created to
245 read:

246 402.62 Strong Families Tax Credit.—

247 (1) DEFINITIONS.—As used in this section, the term:

248 (a) "Annual tax credit amount" means, for any state fiscal
249 year, the sum of the amount of tax credits approved under
250 paragraph (5)(b), including tax credits to be taken under s.
251 211.0252, s. 212.1833, s. 220.1876, s. 561.1212, or s.
252 624.51056, which are approved for taxpayers whose taxable years
253 begin on or after January 1 of the calendar year preceding the
254 start of the applicable state fiscal year.

255 (b) "Division" means the Division of Alcoholic Beverages
256 and Tobacco of the Department of Business and Professional
257 Regulation.

258 (c) "Eligible charitable organization" means an
259 organization designated by the Department of Children and
260 Families to be eligible to receive funding under this section.

261 (d) "Eligible contribution" means a monetary contribution

27-00309B-21

2021908__

262 from a taxpayer, subject to the restrictions provided in this
263 section, to an eligible charitable organization. The taxpayer
264 making the contribution may not designate a specific child
265 assisted by the eligible charitable organization as the
266 beneficiary of the contribution.

267 (e) "Tax credit cap amount" means the maximum annual tax
268 credit amount that the Department of Revenue may approve for a
269 state fiscal year.

270 (2) STRONG FAMILIES TAX CREDITS; ELIGIBILITY.—

271 (a) The Department of Children and Families shall designate
272 as an eligible charitable organization an organization that
273 meets all of the following requirements:

274 1. Is exempt from federal income taxation under s.
275 501(c)(3) of the Internal Revenue Code.

276 2. Is a Florida entity formed under chapter 605, chapter
277 607, or chapter 617 and whose principal office is located in
278 this state.

279 3. Provides services to:

280 a. Prevent child abuse, neglect, abandonment, or
281 exploitation;

282 b. Assist fathers in learning and improving parenting
283 skills or to engage absent fathers in being more engaged in
284 their children's lives;

285 c. Provide books to the homes of children eligible for a
286 federal free or reduced-price meals program or those testing
287 below grade level in kindergarten through Grade 5;

288 d. Assist families with children who have a chronic illness
289 or a physical, intellectual, developmental, or emotional
290 disability; or

27-00309B-21

2021908__

291 e. Provide workforce development services to families of
292 children eligible for a federal free or reduced-price meals
293 program.

294 4. Provides to the Department of Children and Families
295 accurate information, including, at a minimum, a description of
296 the services provided by the organization which are eligible for
297 funding under this section; the total number of individuals
298 served through those services during the last calendar year and
299 the number served during the last calendar year using funding
300 under this section; basic financial information regarding the
301 organization and services eligible for funding under this
302 section; outcomes for such services; and contact information for
303 the organization.

304 5. Annually submits a statement signed, under penalty of
305 perjury, by a current officer of the organization, that the
306 organization meets all criteria to qualify as an eligible
307 charitable organization, has fulfilled responsibilities under
308 this section for the previous fiscal year if the organization
309 received any funding through this credit during the previous
310 year, and intends to fulfill its responsibilities during the
311 upcoming year.

312 6. Provides any documentation requested by the Department
313 of Children and Families to verify eligibility as an eligible
314 charitable organization or compliance with this section.

315 (b) The Department of Children and Families may not
316 designate as an eligible charitable organization an organization
317 that:

318 1. Provides abortions, pays for or provides coverage for
319 abortions, or financially supports any other entity that

27-00309B-21

2021908__

320 provides, pays for, or provides coverage for abortions; or

321 2. Has received more than 50 percent of its total annual
322 revenue from the Department of Children and Families, either
323 directly or via a contractor of the department, in the prior
324 fiscal year.

325 (3) RESPONSIBILITIES OF ELIGIBLE CHARITABLE ORGANIZATIONS.—

326 An eligible charitable organization that receives a contribution
327 under this section must do all of the following:

328 (a) Conduct background screenings on all volunteers and
329 staff working directly with children in any program funded under
330 this section. The background screening shall use level 2
331 screening standards pursuant to s. 435.04. The Department of
332 Children and Families shall specify requirements for background
333 screening in rule.

334 (b) Expend 100 percent of any contributions received under
335 this section for direct services to state residents for the
336 purposes specified in subparagraph (2) (a)3.

337 (c) Annually submit to the Department of Children and
338 Families:

339 1. An audit of the eligible charitable organization
340 conducted by an independent certified public accountant in
341 accordance with auditing standards generally accepted in the
342 United States, government auditing standards, and rules adopted
343 by the Auditor General. The audit report must include a report
344 on financial statements presented in accordance with generally
345 accepted accounting principles. The audit report must be
346 provided to the Department of Children and Families within 180
347 days after completion of the eligible charitable organization's
348 fiscal year; and

27-00309B-21

2021908__

349 2. A copy of the eligible charitable organization's most
350 recent federal Internal Revenue Service Return of Organization
351 Exempt from Income Tax form (Form 990).

352 (d) Notify the Department of Children and Families within 5
353 business days after the eligible charitable organization ceases
354 to meet eligibility requirements or fails to fulfill its
355 responsibilities under this section.

356 (e) Upon receipt of a contribution, provide the taxpayer
357 that made the contribution with a certificate of contribution. A
358 certificate of contribution must include the taxpayer's name
359 and, if available, its federal employer identification number,
360 the amount contributed, the date of contribution, and the name
361 of the eligible charitable organization.

362 (4) RESPONSIBILITIES OF THE DEPARTMENT.—The Department of
363 Children and Families shall do all of the following:

364 (a) Annually redesignate eligible charitable organizations
365 that have complied with all requirements of this section.

366 (b) Remove the designation of organizations that fail to
367 meet all requirements of this section. An organization that has
368 had its designation removed by the department may reapply for
369 designation as an eligible charitable organization, and the
370 department shall redesignate such organization if it meets the
371 requirements of this section and demonstrates through its
372 application that all factors leading to its removal as an
373 eligible charitable organization have been sufficiently
374 addressed.

375 (c) Publish information about the tax credit program and
376 eligible charitable organizations on a Department of Children
377 and Families website. The website shall, at a minimum, provide

27-00309B-21

2021908__

378 all of the following:

379 1. The requirements and process for becoming designated or
380 redesignated as an eligible charitable organization.

381 2. A list of the eligible charitable organizations that are
382 currently designated by the department and the information
383 provided under subparagraph (2)(a)5. regarding each eligible
384 charitable organization.

385 3. The process for a taxpayer to select an eligible
386 charitable organization as the recipient of funding through a
387 tax credit.

388 (d) Compel the return of funds that are provided to an
389 eligible charitable organization that fails to comply with the
390 requirements of this section. Eligible charitable organizations
391 that are subject to return of funds are ineligible to receive
392 funding under this section for a period 10 years after final
393 agency action to compel the return of funding.

394 (5) STRONG FAMILIES TAX CREDITS; APPLICATIONS, TRANSFERS,
395 AND LIMITATIONS.—

396 (a) The tax credit cap amount is \$5 million in each state
397 fiscal year.

398 (b) Beginning October 1, 2021, a taxpayer may submit an
399 application to the Department of Revenue for a tax credit or
400 credits to be taken under one or more of s. 211.0252, s.
401 212.1833, s. 220.1876, s. 561.1212, or s. 624.51056.

402 1. The taxpayer shall specify in the application each tax
403 for which the taxpayer requests a credit and the applicable
404 taxable year for a credit under s. 220.1876 or s. 624.51056 or
405 the applicable state fiscal year for a credit under s. 211.0252,
406 s. 212.1833, or s. 561.1212. For purposes of s. 220.1876, a

27-00309B-21

2021908

407 taxpayer may apply for a credit to be used for a prior taxable
408 year before the date the taxpayer is required to file a return
409 for that year pursuant to s. 220.222. For purposes of s.
410 624.51056, a taxpayer may apply for a credit to be used for a
411 prior taxable year before the date the taxpayer is required to
412 file a return for that prior taxable year pursuant to ss.
413 624.509 and 624.5092. The application must specify the eligible
414 charitable organization to which the proposed contribution will
415 be made. The Department of Revenue shall approve tax credits on
416 a first-come, first-served basis and must obtain the division's
417 approval before approving a tax credit under s. 561.1212.

418 2. Within 10 days after approving or denying an
419 application, the Department of Revenue shall provide a copy of
420 its approval or denial letter to the eligible charitable
421 organization specified by the taxpayer in the application.

422 (c) If a tax credit approved under paragraph (b) is not
423 fully used within the specified state fiscal year for credits
424 under s. 211.0252, s. 212.1833, or s. 561.1212 or against taxes
425 due for the specified taxable year for credits under s. 220.1876
426 or s. 624.51056 because of insufficient tax liability on the
427 part of the taxpayer, the unused amount must be carried forward
428 for a period not to exceed 10 years. For purposes of s.
429 220.1876, a credit carried forward may be used in a subsequent
430 year after applying the other credits and unused carryovers in
431 the order provided in s. 220.02(8).

432 (d) A taxpayer may not convey, transfer, or assign an
433 approved tax credit or a carryforward tax credit to another
434 entity unless all of the assets of the taxpayer are conveyed,
435 assigned, or transferred in the same transaction. However, a tax

27-00309B-21

2021908__

436 credit under s. 211.0252, s. 212.1833, s. 220.1876, s. 561.1212,
437 or s. 624.51056 may be conveyed, transferred, or assigned
438 between members of an affiliated group of corporations if the
439 type of tax credit under s. 211.0252, s. 212.1833, s. 220.1876,
440 s. 561.1212, or s. 624.51056 remains the same. A taxpayer shall
441 notify the Department of Revenue of its intent to convey,
442 transfer, or assign a tax credit to another member within an
443 affiliated group of corporations. The amount conveyed,
444 transferred, or assigned is available to another member of the
445 affiliated group of corporations upon approval by the Department
446 of Revenue. The Department of Revenue shall obtain the
447 division's approval before approving a conveyance, transfer, or
448 assignment of a tax credit under s. 561.1212.

449 (e) Within any state fiscal year, a taxpayer may rescind
450 all or part of a tax credit approved under paragraph (b). The
451 amount rescinded shall become available for that state fiscal
452 year to another eligible taxpayer as approved by the Department
453 of Revenue if the taxpayer receives notice from the Department
454 of Revenue that the rescindment has been accepted by the
455 Department of Revenue. The Department of Revenue must obtain the
456 division's approval before accepting the rescindment of a tax
457 credit under s. 561.1212. Any amount rescinded under this
458 paragraph must become available to an eligible taxpayer on a
459 first-come, first-served basis based on tax credit applications
460 received after the date the rescindment is accepted by the
461 Department of Revenue.

462 (f) Within 10 days after approving or denying the
463 conveyance, transfer, or assignment of a tax credit under
464 paragraph (d), or the rescindment of a tax credit under

27-00309B-21

2021908__

465 paragraph (e), the Department of Revenue shall provide a copy of
466 its approval or denial letter to the eligible charitable
467 organization specified by the taxpayer. The Department of
468 Revenue shall also include the eligible charitable organization
469 specified by the taxpayer on all letters or correspondence of
470 acknowledgment for tax credits under s. 212.1833.

471 (g) For purposes of calculating the underpayment of
472 estimated corporate income taxes under s. 220.34 and tax
473 installment payments for taxes on insurance premiums or
474 assessments under s. 624.5092, the final amount due is the
475 amount after credits earned under s. 220.1876 or s. 624.51056
476 for contributions to eligible charitable organizations are
477 deducted.

478 1. For purposes of determining if a penalty or interest
479 under s. 220.34(2)(d)1. will be imposed for underpayment of
480 estimated corporate income tax, a taxpayer may, after earning a
481 credit under s. 220.1876, reduce any estimated payment in that
482 taxable year by the amount of the credit.

483 2. For purposes of determining if a penalty under s.
484 624.5092 will be imposed, an insurer, after earning a credit
485 under s. 624.51056 for a taxable year, may reduce any
486 installment payment for such taxable year of 27 percent of the
487 amount of the net tax due as reported on the return for the
488 preceding year under s. 624.5092(2)(b) by the amount of the
489 credit.

490 (6) PRESERVATION OF CREDIT.—If any provision or portion of
491 this section, s. 211.0252, s. 212.1833, s. 220.1876, s.
492 561.1212, or s. 624.51056 or the application thereof to any
493 person or circumstance is held unconstitutional by any court or

27-00309B-21

2021908__

494 is otherwise declared invalid, the unconstitutionality or
495 invalidity shall not affect any credit earned under s. 211.0252,
496 s. 212.1833, s. 220.1876, s. 561.1212, or s. 624.51056 by any
497 taxpayer with respect to any contribution paid to an eligible
498 charitable organization before the date of a determination of
499 unconstitutionality or invalidity. The credit shall be allowed
500 at such time and in such a manner as if a determination of
501 unconstitutionality or invalidity had not been made, provided
502 that nothing in this subsection by itself or in combination with
503 any other provision of law may result in the allowance of any
504 credit to any taxpayer in excess of one dollar of credit for
505 each dollar paid to an eligible charitable organization.

506 (7) ADMINISTRATION; RULES.—

507 (a) The Department of Revenue, the division, and the
508 Department of Children and Families may develop a cooperative
509 agreement to assist in the administration of this section, as
510 needed.

511 (b) The Department of Revenue may adopt rules necessary to
512 administer this section and ss. 211.0252, 212.1833, 220.1876,
513 561.1212, and 624.51056, including rules establishing
514 application forms, procedures governing the approval of tax
515 credits and carryforward tax credits under subsection (5), and
516 procedures to be followed by taxpayers when claiming approved
517 tax credits on their returns.

518 (c) The division may adopt rules necessary to administer
519 its responsibilities under this section and s. 561.1212.

520 (d) The Department of Children and Families may adopt rules
521 necessary to administer this section, including, but not limited
522 to, rules establishing application forms for organizations

27-00309B-21

2021908__

523 seeking designation as eligible charitable organizations under
524 this act.

525 (e) Notwithstanding any provision of s. 213.053 to the
526 contrary, sharing information with the division related to this
527 tax credit is considered the conduct of the Department of
528 Revenue's official duties as contemplated in s. 213.053(8)(c),
529 and the Department of Revenue and the division are specifically
530 authorized to share information as needed to administer this
531 program.

532 Section 8. Section 561.1212, Florida Statutes, is created
533 to read:

534 561.1212 Credit for contributions to eligible charitable
535 organizations.—Beginning January 1, 2022, there is allowed a
536 credit of 100 percent of an eligible contribution made to an
537 eligible charitable organization under s. 402.62 against any tax
538 due under s. 563.05, s. 564.06, or s. 565.12, except excise
539 taxes imposed on wine produced by manufacturers in this state
540 from products grown in this state. However, a credit allowed
541 under this section may not exceed 90 percent of the tax due on
542 the return on which the credit is taken. For purposes of the
543 distributions of tax revenue under ss. 561.121 and 564.06(10),
544 the division shall disregard any tax credits allowed under this
545 section to ensure that any reduction in tax revenue received
546 which is attributable to the tax credits results only in a
547 reduction in distributions to the General Revenue Fund. The
548 provisions of s. 402.62 apply to the credit authorized by this
549 section.

550 Section 9. Section 624.51056, Florida Statutes, is created
551 to read:

27-00309B-21

2021908__

552 624.51056 Credit for contributions to eligible charitable
553 organizations.—

554 (1) For taxable years beginning on or after January 1,
555 2022, there is allowed a credit of 100 percent of an eligible
556 contribution made to an eligible charitable organization under
557 s. 402.62 against any tax due for a taxable year under s.
558 624.509(1) after deducting from such tax deductions for
559 assessments made pursuant to s. 440.51; credits for taxes paid
560 under ss. 175.101 and 185.08; credits for income taxes paid
561 under chapter 220; and the credit allowed under s. 624.509(5),
562 as such credit is limited by s. 624.509(6). An eligible
563 contribution must be made to an eligible charitable organization
564 on or before the date the taxpayer is required to file a return
565 pursuant to ss. 624.509 and 624.5092. An insurer claiming a
566 credit against premium tax liability under this section is not
567 required to pay any additional retaliatory tax levied under s.
568 624.5091 as a result of claiming such credit. Section 624.5091
569 does not limit such credit in any manner.

570 (2) Section 402.62 applies to the credit authorized by this
571 section.

572 Section 10. The Department of Revenue is authorized, and
573 all conditions are deemed met, to adopt emergency rules under
574 section 120.54(4), Florida Statutes, for the purpose of
575 implementing provisions related to the Strong Families Tax
576 Credit created by this act. Notwithstanding any other law,
577 emergency rules adopted under this section are effective for 6
578 months after adoption and may be renewed during the pendency of
579 procedures to adopt permanent rules addressing the subject of
580 the emergency rules.

27-00309B-21

2021908__

581 Section 11. For the 2021-2022 fiscal year, the sum of
582 \$208,000 in nonrecurring funds is appropriated from the General
583 Revenue Fund to the Department of Revenue for the purpose of
584 implementing the provisions related to the Strong Families Tax
585 Credit created by this act.

586 Section 12. The Florida Institute for Child Welfare shall
587 analyze the use of funding provided by the tax credit authorized
588 under section 402.62, Florida Statutes, and submit a report to
589 the Governor, the President of the Senate, and the Speaker of
590 the House of Representatives by October 31, 2025. The report
591 must, at a minimum, include the total funding amount and
592 categorize the funding by type of program, describe the programs
593 that were funded, and assess the outcomes that were achieved
594 using the funding.

595 Section 13. This act shall take effect July 1, 2021.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 908

INTRODUCER: Senator Rodrigues

SUBJECT: Strong Families Tax Credit

DATE: March 22, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Cox</u>	<u>CF</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>FT</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 908 creates s. 402.60, F.S., known as the Strong Families Tax Credit. This tax credit program provides tax credits for businesses that make monetary donations to certain eligible charitable organizations that provide services focused on child welfare and well-being, specifically:

- Preventing child abuse, neglect, abandonment, or exploitation;
- Assisting fathers in learning and improving parenting skills or to engage absent fathers in being more engaged in their children’s lives;
- Providing books to the homes of children eligible for a free or reduced-price meal program or those testing below grade level in kindergarten through fifth grade;
- Assisting families who have children with a chronic illness or a physical, intellectual, developmental, or emotional disability; or
- Providing workforce development services to families of children eligible for a free or reduced-price meal program.

The tax credits are a dollar-for-dollar credit against certain tax liabilities up to \$5 million annually and can be taken against the business’s liability for several state taxes, including corporate income tax; insurance premium tax; severance taxes on oil and gas production; alcoholic beverage tax on beer, wine, and spirits; or self-accrued sales tax liability of direct pay permit holders.

The bill specifies requirements and procedures for, and limitations on, receiving the tax credits.

The bill also directs the Florida Institute for Child Welfare, an entity that performs research on child welfare initiatives contributing to a more effective child welfare system, to perform an analysis of the tax credit and the use of the funds and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 31, 2025.

The bill appropriates \$208,000 in non-recurring general revenue funds to the Department of Revenue to implement the bill, addressing the fiscal impact to that agency.

The bill has an indeterminate, positive fiscal impact on state revenue and an insignificant, negative fiscal impact on the DCF.

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

II. Present Situation:

Department of Children and Families

The Department of Children and Families (DCF) mission is to work in partnership with local communities to protect the vulnerable, promote strong and economically self-sufficient families, and advance personal and family recovery and resiliency.¹ The DCF must develop a strategic plan to fulfil its mission and establish measurable goals, objectives, performance standards, and quality assurance requirements to ensure DCF is accountable to taxpayers.²

Under s. 20.19(4), F.S., the DCF is required to provide services relating to:

- Adult protection.
- Child care regulation.
- Child welfare.
- Domestic violence.
- Economic self-sufficiency.
- Homelessness.
- Mental health.
- Refugees.
- Substance abuse.

The DCF must develop a strategic plan for fulfilling its mission and establish a set of measurable goals, objectives, performance standards, and quality assurance requirements to ensure it is accountable. The DCF must also deliver services by contract through private providers to the extent allowed by law and funding.³ These private providers include managing entities delivering behavioral health services and community-based care lead agencies to deliver child welfare services.

Florida's Child Welfare System

Current law requires any person who knows or suspects that a child has been abused, abandoned, or neglected to report such knowledge or suspicion to the Florida central abuse hotline (hotline).⁴ A child protective investigation begins if the hotline determines the allegations meet the statutory

¹ Section 20.19(1), F.S.

² *Id.*

³ *Id.*

⁴ Section 39.201(a), F.S.

definition of abuse,⁵ abandonment,⁶ or neglect.⁷ A child protective investigator investigates the situation either immediately, or within 24 hours after the report is received, depending on the nature of the allegation.⁸

After conducting an investigation, if the child protective investigator determines that the child is in need of protection and supervision that necessitates removal, the investigator may initiate formal proceedings to remove the child from his or her home.⁹ However, the DCF's practice model is based on the safety of the child within his or her home, using in-home services such as parenting coaching and counseling to maintain and strengthen that child's natural supports in his or her environment. The DCF contracts for case management, out-of-home services, and related services with CBCs.¹⁰

The DCF outsources foster care and related services to service agencies with an increased *local community ownership* of providing services.¹¹ CBCs contract with a number of subcontractors for case management and direct care services to children and their families. There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.¹²

The DCF remains responsible for a number of child welfare functions, including operating the hotline, performing child protective investigations, and providing children's legal services. Ultimately, the DCF is responsible for program oversight and the overall performance of the child welfare system.¹³

⁵ Section 39.01(2), F.S. The term "abuse" means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

⁶ Section 39.01(1), F.S. The term "abandoned" or "abandonment" 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, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.

⁷ Sections 39.01(50) and 39.201(2)(a), F.S. "Neglect" occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering necessary services.

⁸ Section 39.201(5), F.S.

⁹ Section 39.401, F.S.

¹⁰ Section 409.987, F.S.

¹¹ The Florida Department of Children and Families (DCF), *Community-Based Care*, available at <https://www.myflfamilies.com/service-programs/community-based-care/overview.shtml> (last visited Mar. 22, 2021).

¹² The DCF, *Community-Based Care Lead Agency Map*, available at <https://www.myflfamilies.com/service-programs/community-based-care/lead-agency-map.shtml> (last visited Mar. 22, 2020).

¹³ Office of Program Policy Analysis & Government Accountability (OPPAGA), *Child Welfare System Performance Mixed in First Year of Statewide Community-Based Care, Report 06-50*, p. 2, June 2006, available at <https://oppaga.fl.gov/Documents/Reports/06-50.pdf> (last visited March 22, 2021).

Florida Institute for Child Welfare

In 2014, the Legislature established the Florida Institute for Child Welfare (FICW) at the Florida State University College of Social Work.¹⁴ The Legislature created the FICW to provide research and evaluation that contributes to a more sustainable, accountable, and effective child welfare system. The purpose of the FICW is to advance the well-being of children and families by improving the performance of child protection and child welfare services through research, policy analysis, evaluation, and leadership development.¹⁵ Current law requires the FICW to establish an affiliate network of public and private universities with accredited degrees in social work. In 2017, the FICW expanded its affiliate network to include research affiliates, and there are now over 50 research faculty affiliates.¹⁶

Federal Income Tax

Generally, individuals and corporations are required to file a federal income tax return annually.¹⁷ Individuals pay tax on his or her taxable income at a graduated tax rate.¹⁸ Corporations pay tax at a rate of 21 percent of taxable income with specified exceptions.¹⁹ Federal law provides for tax credits for individuals and businesses in specified situations,²⁰ and imposes an alternative minimum tax of an amount not to exceed a certain amount.²¹

State Revenue Sources

Described below are select taxes imposed by Florida on certain businesses and products within the state.

Individual Income Tax

A person's taxable income is determined based upon his or her adjusted federal income.²² Adjusted federal income means an amount equal to the taxpayer's taxable income for the taxable year adjusted with additions which include, in part, credits such as that under ss. 220.181 and 220.194, F.S., and subtractions which include, in part, net operating losses and net capital losses.²³ A taxpayer's taxable income for the taxable year means taxable income as defined under federal law and reportable for federal income tax purposes for the tax year subject to limitations and other specified exceptions.²⁴

¹⁴ Chapter 2014-224, L.O.F.

¹⁵ Section 1004.615, F.S.

¹⁶ See the Florida Institute for Child Welfare, available at <https://ficw.fsu.edu/> (last visited March 22, 2021).

¹⁷ 26 U.S.C. §§1 and 11.

¹⁸ 26 U.S.C. §1.

¹⁹ 26 U.S.C. §11.

²⁰ 26 U.S.C. §§21 to 53.

²¹ 26 U.S.C. §55.

²² Section 220.13, F.S.

²³ Section 220.13(1), F.S.

²⁴ Section 220.13(2), F.S.

Corporate Income Tax

Florida imposes a 5.5 percent tax on the taxable income of certain corporations and financial institutions doing business in Florida.²⁵ Corporate income tax is remitted to the Department of Revenue (DOR) and distributed to General Revenue. Net collections of corporate income tax in FY 2020-21 are forecast to be \$2.81 billion.²⁶

Credits against corporate income tax or franchise tax are applied in the order as enumerated in the following sections: 631.828,²⁷ 220.191,²⁸ 220.181,²⁹ 220.183,³⁰ 220.182,³¹ 220.1895,³² 220.195,³³ 220.184,³⁴ 220.186,³⁵ 220.1845,³⁶ 220.19,³⁷ 220.185,³⁸ 220.1875,³⁹ 220.193,⁴⁰ 288.9916,⁴¹ 220.1899,⁴² 220.194,⁴³ and 220.196, F.S.^{44,45}

Alternative Minimum Tax (AMT)

Florida AMT must be computed if federal AMT was paid for the same tax year.⁴⁶ Florida alternative minimum taxable income is multiplied by 3.3 percent to determine Florida AMT.⁴⁷ Florida alternative minimum taxable income is multiplied by 3.3 percent to determine the Florida AMT.⁴⁸ The tax due is the higher of the regular Florida corporate income tax or the Florida AMT, and the corporation is allowed a credit in future years for the amount paid.⁴⁹

²⁵ Sections 220.11(2) and 220.63(2), F.S.

²⁶ *General Revenue Consensus Estimating Conference Comparison Report*, p. 27, December 21, 2020, available at <http://edr.state.fl.us/Content/conferences/generalrevenue/grpackage.pdf> (last visited Mar. 22, 2020) (hereinafter cited as “GR Consensus Report”).

²⁷ Credit for assessment paid by a member of a health maintenance organization.

²⁸ Capital investment tax credit.

²⁹ Enterprise zone job credit.

³⁰ Community contribution tax credit.

³¹ Enterprise zone property tax credit.

³² Rural job tax credit and urban high-crime area job tax credit.

³³ Emergency excise tax credit.

³⁴ Hazardous waste facility tax credit.

³⁵ Credit for Florida alternative minimum tax.

³⁶ Contaminated site rehabilitation tax credit.

³⁷ Child care tax credit.

³⁸ State housing tax credit.

³⁹ Credit for contributions to eligible nonprofit scholarship-funding organizations.

⁴⁰ Florida renewable energy production credit.

⁴¹ New market tax credit.

⁴² Entertainment industry tax credit.

⁴³ Corporate income tax credit for spaceflight projects.

⁴⁴ Research and development tax credit.

⁴⁵ Section 220.02(8), F.S.

⁴⁶ Section 220.186, F.S.; Florida Department of Revenue, *Corporate Income Tax*, p. 2, available at https://floridarevenue.com/Forms_library/current/gt800017.pdf (last visited March 22, 2021) (hereinafter cited as “DOR Florida AMT”).

⁴⁷ DOR Florida AMT.

⁴⁸ *Id.*

⁴⁹ *Id.*

Insurance Premium Tax

Florida imposes a 1.75 percent tax on most Florida insurance premiums.⁵⁰ Insurance premium taxes are paid by insurance companies under ch. 624, F.S., and are remitted to the DOR. These revenues are distributed to General Revenue with additional distributions to the Insurance Regulatory Trust Fund, the Police & Firefighters Premium Tax Trust Fund, and the Emergency Management Preparedness & Assistance Trust Fund. Net collections of insurance premium taxes are forecast to be \$930.1 million in FY 2020-21 with distributions to General Revenue of \$681 million.⁵¹

Severance Taxes on Oil and Gas Production

Oil and gas production severance taxes are imposed on persons who sever oil or gas in Florida for sale, transport, storage, profit, or commercial use.⁵² These taxes are remitted to the DOR and distributed to General Revenue with additional distributions to the Minerals Trust Fund and to the counties where production occurred. Receipts from the severance taxes on oil and gas are estimated to be \$1.3 million in FY 2020-2021 with distributions to General Revenue of \$9.3 million.⁵³

Sales Taxes Paid by Direct Pay Permit Holders

Section 212.183, F.S., authorizes the DOR to establish a process for the self-accrual of sales taxes due under ch. 212, F.S. The process involves the DOR granting a direct pay permit to a taxpayer, who then pays the taxes directly to the DOR.⁵⁴

Alcoholic Beverage Taxes

Florida imposes excise taxes on malt beverages, wines, and other beverages.⁵⁵ The taxes are due from manufacturers, distributors and vendors of malt beverages, and from manufacturers and distributors of wine, liquor, and other specified alcoholic beverages. Taxes are remitted to the Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR).⁵⁶

Distributions of the excise taxes on alcoholic beverages are made to the General Revenue Fund, the Alcoholic Beverage and Tobacco Trust Fund, and Viticulture Trust Fund. Collections of

⁵⁰ Section 624.509, F.S. (Different tax rates apply to wet marine and transportation insurance, self-insurance, and annuity premiums.)

⁵¹ GR Consensus Report, p. 34.

⁵² Sections 211.02(1) and 211.025, F.S.

⁵³ GR Consensus Report, p. 38.

⁵⁴ Section 212.183, F.S., and r. 12A-1.0911, F.A.C. Direct pay permit holders include: dealers who annually make purchases in excess of \$10 million per year in any county; dealers who annually purchase at least \$100,000 of tangible personal property, including maintenance and repairs for their own use; dealers who purchase promotional materials whose ultimate use is unknown at purchase; eligible air carriers, vessels, railroads, and motor vehicles engaged in interstate and foreign commerce; and dealers who lease realty from a number of independent property owners.

⁵⁵ Sections 563.05, 564.06, and 565.12, F.S.

⁵⁶ Section 561.02, F.S. The Division is responsible for supervising the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of all alcoholic beverages in Florida.

alcoholic beverage taxes are forecast to be \$757.1 million in FY 2020-21 with distributions to General Revenue of \$297.5 million.⁵⁷

Currently, there are no statutory provisions for a tax credit program for eligible contributions made to eligible organizations that work to promote the welfare of children.

Background Screening

Background Screening Process

Current law establishes standard procedures for criminal history background screening of prospective employees and ch. 435, F.S., outlines the screening requirements. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,⁵⁸ and may include criminal records checks through local law enforcement agencies.⁵⁹ A level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.⁶⁰

Every person required by law to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening to his or her employer.⁶¹ Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to the FDLE.⁶²

For both level 1 and 2 screenings, the employer must submit the information necessary for screening to the FDLE within five working days after receiving it.⁶³ Additionally, for both levels of screening, the FDLE must perform a criminal history record check of its records.⁶⁴ For a level 1 screening, this is the only information searched, and once complete, the FDLE responds to the employer or agency, who must then inform the employee whether screening has revealed any disqualifying information.⁶⁵ For level 2 screening, the FDLE also requests the FBI to conduct a national criminal history record check of its records for each employee for whom the request is made.⁶⁶ The person undergoing screening must supply any missing criminal or other necessary information upon request to the requesting employer or agency within 30 days after receiving the request for the information.⁶⁷

⁵⁷ GR Consensus Report, p. 31.

⁵⁸ The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site, available at <https://www.nsopw.gov/> (last visited February 23, 2021).

⁵⁹ Section 435.03, F.S.

⁶⁰ Section 435.04, F.S.

⁶¹ Section 435.05(1)(a), F.S.

⁶² Section 435.04(1)(a), F.S.

⁶³ Section 435.05(1)(b)-(c), F.S.

⁶⁴ *Id.*

⁶⁵ Section 435.05(1)(b), F.S.

⁶⁶ Section 435.05(1)(c), F.S.

⁶⁷ Section 435.05(1)(d), F.S.

Disqualifying Offenses

Regardless of whether the screening is level 1 or level 2, the screening employer or agency must make sure that the applicant has good moral character by ensuring that the employee has not been arrested for and is awaiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any of the 52 offenses enumerated in s. 435.04(2), F.S., or similar law of another jurisdiction.⁶⁸

III. Effect of Proposed Changes:

Strong Families Tax Credit Program

Tax Credits for Contributions to Eligible Charitable Organizations

The bill creates s. 402.62, F.S., known as the Strong Families Tax Credit Program. This program provides tax credits for businesses that make monetary donations to certain eligible charitable organizations that provide services focused on child welfare and well-being. The tax credits are a dollar-for-dollar credit against certain tax liabilities.

The tax credit can be taken against the business's liability for several state taxes, including:

- Corporate income tax;
- Insurance premium tax;
- Severance taxes on oil and gas production;
- Alcoholic beverage tax on beer, wine, and spirits; or
- Self-accrued sales tax liability of direct pay permit holders.

New sections are created in each of the applicable tax chapters to create the credit authorized in s. 402.62, F.S., as discussed further below.

The annual tax credit cap for all credits under this program is \$5 million per state fiscal year.

Certification and Responsibilities of Eligible Charitable Organizations

To qualify for the program, an eligible charitable organization must be exempt as a 501(c)(3) organization under the Internal Revenue Code, must be a Florida entity with its principal office in the state of Florida, and must provide services to:

- Prevent child abuse, neglect, abandonment, or exploitation;
- Assist fathers in learning and improving parenting skills or to engage absent fathers in being more engaged in their children's lives;
- Provide books to the homes of children eligible for a free or reduced-price meal program or those testing below grade level in kindergarten through fifth grade;
- Assist families who have children with a chronic illness or a physical, intellectual, developmental, or emotional disability; or
- Provide workforce development services to families of children eligible for a free or reduced-price meal program.

⁶⁸ See s. 435.04(2), F.S., for a full list.

An eligible charitable organization cannot:

- Provide, pay for, or provide coverage for abortions or financially support any other entity that provides, pays for or provides coverage for abortions, or
- Receive more than 50% of its total annual revenue from the DCF, either directly or indirectly in the prior fiscal year.

Additionally, to participate in the program, the organization must:

- Spend 100% of received funds on direct services for Florida residents for an approved purpose under the Strong Families tax credit;
- Conduct level 2 background screening of any volunteers or staff that work directly with children;
- Annually provide a copy of its most recent IRS Return of Organization Exempt from Income Tax form (Form 990); and
- Annually submit to the DCF an audit by an independent certified public accountant in accordance with generally accepted accounting principles, government standards and rules adopted by the Auditor General;⁶⁹
- Notify the DCF within 5 days if the charitable organization ceases to meet eligibility requirements or fails to comply with requirements under the section; and
- Provide the taxpayer with a certificate of contribution upon receipt of a contribution.⁷⁰

Responsibilities of the Department of Children and Families

The DCF must annually redesignate eligible charitable organizations and remove organizations that fail to meet the specified criteria. A charitable organization that has its designation removed is able to apply for redesignation. The DCF must redesignate the organization if it meets the criteria and the application demonstrates that the factors leading to its removal have been sufficiently addressed. The DCF is also responsible for creating and maintaining a section of their website dedicated to this tax credit program and providing information on the process for becoming an eligible charitable organization, a list of current eligible charitable organizations, and the process for a taxpayer to select an eligible charitable organization as the recipient of funding through the tax credit program. Finally, the DCF must compel the return of funds received by a charitable organization that fails to comply with the requirements of the section. If an organization is subject to such return of funds, it is ineligible to receive funding under the section for a period of 10 years after final agency action to compel the return.

Application and Approval of Tax Credits by DOR

Businesses that wish to participate in the program by making a donation to an eligible charitable organization must apply to the DOR beginning October 1, 2021, for an allocation of tax credit. The taxpayer must specify in the application each tax for which the taxpayer requests a credit, the applicable taxable year for a credit under s. 220.1876, F.S., or s. 624.51056, F.S., relating to the corporate income and insurance premium tax credits, and the applicable state fiscal year for a credit under ss. 211.0252, F.S., 212.1833, F.S., or 561.1212, F.S., relating to oil and gas

⁶⁹ The audit must include the financial statements of the organization and must be provided to the DCF within 180 days after completion of the charitable organization's fiscal year.

⁷⁰ A certificate of contribution must include the taxpayer's name, the federal employer identification number, amount contributed, date of contribution, and the name of the eligible charitable organization.

production, direct pay permit sales, and alcoholic beverage tax credits, respectively. For purposes of s. 220.1876, F.S., a taxpayer may apply for a credit to be used for a prior taxable year before the date the taxpayer is required to file a return for that year pursuant to s. 220.222, F.S. For purposes of s. 624.51056, F.S., a taxpayer may apply for a credit to be used for a prior taxable year before the date the taxpayer is required to file a return for that year pursuant to s. 624.509, F.S., or s. 624.5092, F.S. The DOR is required to approve the tax credits on a first-come, first-served basis and must obtain the approval of the Division prior to approving an alcoholic beverage tax credit under s. 561.1212, F.S.

The DOR must provide a copy of a letter approving or denying an application within 10 days after a decision is made.

Any unused credit may be carried forward up to ten years. The bill generally does not allow a taxpayer to convey, transfer, or assign the credit to another entity unless all of the assets of the taxpayer are conveyed, transferred, or assigned in the same transaction. Upon approval of the DOR, transfers may be made between members of an affiliated group of corporations if the credit transferred will be taken against the same type of tax.

For purposes of calculating underpayment, the final amount due is the amount after credits earned for contributions to eligible charitable organizations are deducted. Provisions are made for determining whether penalties or interest will be imposed.

Rescinding Tax Credits

A taxpayer may rescind all or part of an approved tax credit in any state fiscal year, and such amount will become available for that state fiscal year to another eligible taxpayer as approved by the DOR if the taxpayer received notice that the rescindment has been accepted. The DOR must obtain the Division's approval before accepting the rescindment under s. 561.1212. Any rescindment amount available for other eligible taxpayers must become available on a first-come, first-served basis based on tax credit applications received after the date of rescindment is accepted by the DOR.

Revenue Sources

Corporate Income Tax

The bill creates s. 220.1876, F.S., which, beginning January 1, 2022, authorizes a credit of 100% of an eligible contribution to an eligible charitable organization against any tax due under ch. 220, F.S., for corporate income tax after any other allowable credits by the taxpayer. An eligible contribution must be made prior to the date the taxpayer is required to file a return. The credit must be reduced by the difference between the amount of federal corporate income tax, taking into account the credit created under s. 220.1876, and the amount of federal corporate income tax without application of the credit granted by this section. A taxpayer who files a Florida consolidated return is eligible for the credit but is subject to such limits.

Section 402.62 applies to the credit created under s. 220.1876, F.S. If an extension to file a return is requested, the credit does not reduce the amount of tentative tax due. A taxpayer's noncompliance with the requirement to pay tentative taxes must result in the revocation and

rescindment of any such credit, and the taxpayer will be assessed for any taxes, penalties, or interest due from such noncompliance.

The bill amends two additional provisions that are solely related to corporate income tax related to the ordering and administration of tax credits to:

- Specify the order that credits for contributions to eligible charitable organizations are to be claimed relative to other credits authorized under ch. 220, F.S., and
- Add tax credit amounts claimed under s. 220.1876, F.S., back to taxable income for the purpose of determining a taxpayer's "adjusted federal income."

Insurance Premium Tax

The bill creates s. 624.51056, F.S., which, beginning January 1, 2022, authorizes a credit of 100% of an eligible contribution to an eligible charitable organization against any tax due under s. 624.509(1), F.S., after deducting from such tax deductions for assessments made pursuant to s. 440.51 and credits for taxes paid under ss. 175.01, F.S., 185.08, F.S., ch. 220, F.S., or s. 624.509, F.S. The contribution must be made prior to the date the taxpayer is required to file a return. The credit is not limited by s. 624.5091, F.S., and no additional retaliatory tax may be levied under that section. Section 402.62, F.S., applies to the credit authorized under this section.

Severance Taxes on Oil and Gas Production

The bill creates s. 211.0252, F.S., which, beginning July 1, 2022, authorizes a credit of 100% of an eligible contribution to an eligible charitable organization against any tax due under s. 211.02, F.S., or s. 211.025, F.S., for oil or gas production. However, the credit may not exceed 50% of the tax due on the return the credit is taken, and this credit may be used only after any credit under s. 211.0251, F.S., has been used, up to a total of 50% of the liability on the return. The bill directs DOR to disregard tax credits under this section for purposes of the distributions of tax revenue under s. 211.06, F.S., so that only amounts distributed to the General Revenue Fund are reduced.

Sales Taxes Paid by Direct Pay Permit Holders

The bill creates s. 212.1833, F.S., which, beginning July 1, 2022, authorizes a credit of 100% of an eligible contribution to an eligible charitable organization against any state sales tax due from a direct pay permit holder as a result of the direct pay permit held pursuant to s. 212.183, F.S. The bill directs the DOR to disregard tax credits under this section for purposes of the distributions of tax revenue under s. 212.20, F.S., so that only amounts distributed to the General Revenue Fund are reduced.

Alcoholic Beverage Taxes

The bill creates s. 561.1212, F.S., to authorize a credit of 100% of an eligible contribution to an eligible charitable organization against tax due under s. 563.05, F.S., s. 564.06, F.S., or s. 565.12, F.S., except for taxes imposed on domestic wine production, beginning January 1, 2022. Further, the credit is limited to 90% of the tax due on the return the credit is taken. The Division is directed to disregard tax credits under this section for purposes of the distributions of tax revenue under ss. 561.121 and 564.06(10), F.S., so that only amounts distributed to the General Revenue Fund are reduced.

The bill provides rulemaking authority to the DOR, DCF, Auditor General, and the DBPR. In addition, the DOR is granted emergency rulemaking authority for purposes of implementing the act.

Specific Appropriation

An appropriation of \$208,000 nonrecurring funds from General Revenue is provided to the DOR for implementation costs.

Florida Institute of Child Welfare Study

The bill directs the FICW to perform an analysis of the tax credit and the use of the funds and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representative by October 31, 2025.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Revenues:

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill. However, the DCF Office of Administrative Services finds that this bill may decrease

taxes, and the tax credit is capped at \$5 million for each state fiscal year.⁷¹ Under current law:⁷²

- The revenue for the state portion of an employee’s state and national criminal history record check will be \$24 per name submitted; and
- The revenue for the state portion of a volunteer’s state and national criminal history record check will be \$18 per volunteer name submitted;

These funds are also subject to a general revenue service charge of eight percent pursuant to ch. 215, FS.⁷³

Expenditures:

HB 897 is substantially similar to SB 908. The DOR reports in its analysis for HB 897 that the new tax credit will have non-recurring operational impacts of approximately \$204,000.⁷⁴ Ongoing operational impacts on the DOR will be accommodated within current resources.⁷⁵ The bill appropriates \$208,000 in non-recurring general revenue funds to the DOR to implement its provisions.

The DCF will incur administrative costs to implement the bill, which current resources are adequate to absorb.⁷⁶

B. Private Sector Impact:

Eligible charitable organizations under the Strong Families Tax Credit will benefit from the dollar-for-dollar credit against certain tax liabilities up to a cap of \$5 million.⁷⁷

Charitable organizations will be required to obtain an audit from an independent certified public accountant.⁷⁸

C. Government Sector Impact:

The state may receive a reduction in revenue of taxes up to \$5 million.⁷⁹

The DCF will incur additional costs for the new administrative responsibilities provided for under the bill which can be completed with existing resources.⁸⁰

⁷¹ The DCF, *Agency Analysis for SB 908*, p. 4, February 5, 2021 (on file with the Committee on Children, Families, and Elder Affairs) (hereinafter cited as “The DCF Analysis”).

⁷² Section 943.053, F.S.; The Florida Department of Law Enforcement, *Agency Analysis for SB 908*, p. 4-5, February 15, 2021 (on file with the Committee on Children, Families, and Elder Affairs) (hereinafter cited as “The FDLE Analysis”).

⁷³ The FDLE Analysis, p. 4-5.

⁷⁴ The DOR, *Agency Analysis of 2021 House Bill 897*, p. 9, March 3, 2021, (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁷⁵ *Id.*

⁷⁶ The DCF Analysis, p. 4.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ The DCF Analysis, p. 4.

⁸⁰ *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 220.02, 220.13, and 220.186.

This bill creates the following sections of the Florida Statutes: 211.0252, 212.1833, 220.1876, 402.62, 561.1212, and 624.51056.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Book

32-00628-21

20211100__

1 A bill to be entitled
2 An act relating to child welfare; amending s. 39.4085,
3 F.S.; providing legislative findings and intent;
4 specifying the rights of children and young adults in
5 out-of-home care; providing roles and responsibilities
6 of the Department of Children and Families, community-
7 based care lead agencies, and other agency staff;
8 providing roles and responsibilities of caregivers;
9 requiring the department to adopt certain rules;
10 providing applicability; creating s. 39.4088, F.S.;
11 requiring the Florida Children's Ombudsman to serve as
12 an autonomous entity within the department for certain
13 purposes; providing general roles and responsibilities
14 of the ombudsman; requiring the ombudsman to collect
15 certain data; requiring the ombudsman, in consultation
16 with the department and other specified entities and
17 by a specified date, to develop standardized
18 information explaining the rights of children and
19 young adults placed in out-of-home care; requiring the
20 department, community-based care lead agencies, and
21 agency staff to use the information provided by the
22 ombudsman in carrying out specified responsibilities;
23 requiring the department to establish a statewide
24 toll-free telephone number for the ombudsman;
25 requiring the department to adopt certain rules;
26 amending s. 39.6011, F.S.; requiring that a case plan
27 be developed in a face-to-face conference with a
28 caregiver of a child under certain circumstances;
29 providing additional requirements for the content of a

32-00628-21

20211100__

30 case plan; providing additional requirements for a
31 case plan when a child is 14 years of age or older or
32 is of an appropriate age and capacity; requiring the
33 department to provide a copy of the case plan to the
34 caregiver of a child placed in a licensed foster home;
35 amending s. 39.604, F.S.; requiring a caseworker to
36 provide specified information relating to subsidies
37 that early learning coalitions provide to caregivers
38 of certain children; amending s. 39.701, F.S.;

39 providing additional requirements for social study
40 reports for judicial review; amending s. 409.1415,
41 F.S.; providing additional requirements for
42 caregivers; amending s. 409.175, F.S.; providing
43 additional requirements for the licensure and
44 operation of family foster homes, residential child-
45 caring agencies, and child-placing agencies; amending
46 s. 409.1753, F.S.; requiring a lead agency, rather
47 than the department, to provide caregivers with a
48 telephone number when the caseworker is unavailable;
49 amending s. 409.988, F.S.; requiring lead agencies to
50 recruit and retain foster homes; amending s. 39.6013,
51 F.S.; conforming a cross-reference; providing an
52 effective date.

53
54 Be It Enacted by the Legislature of the State of Florida:

55
56 Section 1. Section 39.4085, Florida Statutes, is amended to
57 read:

58 (Substantial rewording of section. See

32-00628-21

20211100__

59 s. 39.4085, F.S., for present text.)

60 39.4085 Foster Children's Bill of Rights.-

61 (1) LEGISLATIVE FINDINGS AND INTENT.-

62 (a) The Legislature finds that children in, and young
63 adults leaving, out-of-home care face more developmental,
64 psychosocial, and economic challenges than their peers outside
65 of the child welfare system; are more likely to be unemployed,
66 undereducated, homeless, and dependent upon public assistance;
67 and more likely to experience early parenthood and to suffer
68 from substance abuse and mental health disorders.

69 (b) The Legislature also finds that emotional trauma,
70 separation from family, frequent changes in placement, and
71 frequent changes in school enrollment, as well as being
72 dependent upon the state to make decisions regarding current and
73 future life options, may contribute to feelings of limited
74 control over life circumstances for children and young adults in
75 out-of-home care.

76 (c) The Legislature also recognizes that there are basic
77 human rights guaranteed to everyone by the United States
78 Constitution, but children and young adults in out-of-home care
79 have additional rights that they should be aware of in order to
80 better advocate for themselves.

81 (d) Therefore, it is the intent of the Legislature to
82 empower these children and young adults by helping them become
83 better informed of their rights so they can become stronger
84 self-advocates.

85 (2) BILL OF RIGHTS.-The department's child welfare system
86 shall operate with the understanding that the rights of children
87 and young adults in out-of-home care are critical to their

32-00628-21

20211100__

88 safety, permanence, and well-being and shall work with all
89 stakeholders to help such children and young adults become
90 knowledgeable about their rights and the resources available to
91 them. A child should be able to remain in the custody of his or
92 her parents or legal custodians unless a qualified person
93 exercising competent professional judgment determines that
94 removal is necessary to protect the child's physical, mental, or
95 emotional health or safety. Except as otherwise provided in this
96 chapter, the rights of a child placed in out-of-home care are:

97 (a) To live in a safe, healthful, and comfortable home
98 where he or she is treated with respect and provided with
99 healthful food, appropriate clothing, and adequate storage space
100 for personal use and where the caregiver is aware of and
101 understands the child's history, needs, and risk factors and
102 respects the child's preferences for attending religious
103 services and activities.

104 (b) To be free from physical, sexual, emotional, or other
105 abuse or corporal punishment. This includes the child's right to
106 be placed away from other children or young adults who are known
107 to pose a threat of harm to him or her because of his or her own
108 risk factors or those of the other child or young adult.

109 (c) To receive medical, dental, vision, and mental health
110 services as needed; to be free of the administration of
111 psychotropic medication or chemical substances unless authorized
112 by a parent or the court; and not to be locked in any room,
113 building, or facility unless placed in a residential treatment
114 center by court order.

115 (d) To be able to have contact and visitation with his or
116 her parents, other family members, and fictive kin and to be

32-00628-21

20211100__

117 placed with his or her siblings and, if not placed together with
118 his or her siblings, to have frequent visitation and ongoing
119 contact with his or her siblings, unless prohibited by court
120 order.

121 (e) To be able to contact the Florida Children's Ombudsman,
122 as described in s. 39.4088, regarding violations of rights; to
123 speak to the ombudsman confidentially; and to be free from
124 threats or punishment for making complaints.

125 (f) To maintain a bank account and manage personal income,
126 consistent with his or her age and developmental level, unless
127 prohibited by the case plan, and to be informed about any funds
128 being held in the master trust on behalf of the child.

129 (g) To attend school and participate in extracurricular,
130 cultural, and personal enrichment activities consistent with his
131 or her age and developmental level and to have social contact
132 with people outside of the foster care system, such as teachers,
133 church members, mentors, and friends.

134 (h) To attend independent living program classes and
135 activities if he or she meets the age requirements and to work
136 and develop job skills at an age-appropriate level that is
137 consistent with state law.

138 (i) To attend all court hearings and address the court.

139 (j) To have fair and equal access to all available
140 services, placement, care, treatment, and benefits and not to be
141 subjected to discrimination on the basis of race, national
142 origin, color, religion, sex, mental or physical disability,
143 age, or pregnancy.

144 (k) If he or she is 14 years of age or older or, if
145 younger, is of an appropriate age and capacity, to participate

32-00628-21

20211100__

146 in creating and reviewing his or her case plan, to receive
147 information about his or her out-of-home placement and case
148 plan, including being told of changes to the plan, and to have
149 the ability to object to provisions of the case plan.

150 (1) If he or she is 16 years of age or older, to have
151 access to existing information regarding the educational and
152 financial assistance options available to him or her, including,
153 but not limited to, the coursework necessary for vocational and
154 postsecondary educational programs, postsecondary educational
155 services and support, the Keys to Independence program, and the
156 tuition waiver available under s. 1009.25.

157 (m) Not to be removed from an out-of-home placement by the
158 department or a community-based care lead agency unless the
159 caregiver becomes unable to care for the child, the child
160 achieves permanency, or the move is otherwise in the child's
161 best interest and, if moved, the right to a transition that
162 respects his or her relationships and personal belongings under
163 s. 409.1415.

164 (n) To have a guardian ad litem appointed to represent his
165 or her best interest and, if appropriate, an attorney appointed
166 to represent his or her legal interests.

167 (3) ROLES AND RESPONSIBILITIES OF THE DEPARTMENT,
168 COMMUNITY-BASED CARE LEAD AGENCIES, AND OTHER AGENCY STAFF.—

169 (a) The department shall develop training related to the
170 rights of children and young adults in out-of-home care under
171 this section. All child protective investigators, case managers,
172 and other appropriate staff must complete annual training
173 relating to these rights.

174 (b) The department shall provide a copy of this bill of

32-00628-21

20211100__

175 rights to all children and young adults entering out-of-home
176 care, and the department shall explain the bill of rights to the
177 child or young adult in a manner the child or young adult can
178 understand. Such explanation must occur in a manner that is the
179 most effective for each individual and must use words and
180 terminology that make sense to the child or young adult. If a
181 child or young adult has cognitive, physical, or behavioral
182 challenges that would prevent him or her from fully
183 comprehending the bill of rights as presented, such information
184 must be documented in the case record.

185 (c) The caseworker or other appropriate agency staff shall
186 document in court reports and case notes the date he or she
187 reviewed the bill of rights in age-appropriate language with the
188 child or young adult.

189 (d) The bill of rights must be reviewed with the child or
190 young adult by appropriate staff upon entry into out-of-home
191 care and must be subsequently reviewed with the child or young
192 adult every 6 months until the child leaves care and upon every
193 change in placement. Each child or young adult must be given the
194 opportunity to ask questions about any of the rights that he or
195 she does not clearly understand.

196 (e) Facilities licensed to care for six or more children
197 and young adults in out-of-home care must post information about
198 the rights of these individuals in a prominent place in the
199 facility.

200 (4) ROLES AND RESPONSIBILITIES OF CAREGIVERS.—All
201 caregivers shall ensure that a child or young adult in their
202 care is aware of and understands his or her rights under this
203 section and must assist the child or young adult in contacting

32-00628-21

20211100__

204 the Florida Children's Ombudsman, if necessary.

205 (5) RULEMAKING.—The department shall adopt rules to
206 implement this section.

207 (6) APPLICABILITY.—This section may not be used for any
208 purpose in any civil or administrative action and does not
209 expand or limit any rights or remedies provided under any other
210 law.

211 Section 2. Section 39.4088, Florida Statutes, is created to
212 read:

213 39.4088 Florida Children's Ombudsman.—The Florida
214 Children's Ombudsman shall serve as an autonomous entity within
215 the department for the purpose of providing children and young
216 adults who are placed in out-of-home care with a means to
217 resolve issues related to their care, placement, or services
218 without fear of retribution. The ombudsman shall have access to
219 any record of a state or local agency which is necessary to
220 carry out his or her responsibilities and may meet or
221 communicate with any child or young adult in the child or young
222 adult's placement or elsewhere.

223 (1) GENERAL ROLES AND RESPONSIBILITIES OF THE OMBUDSMAN.—
224 The ombudsman shall:

225 (a) Disseminate information on the rights of children and
226 young adults in out-of-home care under s. 39.4085 and the
227 services provided by the ombudsman.

228 (b) Attempt to resolve a complaint informally.

229 (c) Conduct whatever investigation he or she determines is
230 necessary to resolve a complaint.

231 (d) Update the complainant on the progress of the
232 investigation and notify the complainant of the final outcome.

32-00628-21

20211100__

233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261

The ombudsman may not investigate, challenge, or overturn court-ordered decisions.

(2) DATA COLLECTION.—The ombudsman shall:

(a) Document the number, source, origin, location, and nature of all complaints.

(b) Compile all data collected over the course of the year, including, but not limited to, the number of contacts to the Florida Children’s Ombudsman toll-free telephone number; the number of complaints made, including the type and source of those complaints; the number of investigations performed by the ombudsman; the trends and issues that arose in the course of investigating complaints; the number of referrals made; and the number of pending complaints.

(c) Post the compiled data on the department’s website.

(3) DEVELOPMENT AND DISSEMINATION OF INFORMATION.—

(a) By January 1, 2022, the ombudsman, in consultation with the department, children’s advocacy and support groups, and current or former children and young adults in out-of-home care, shall develop standardized information explaining the rights granted under s. 39.4085. The information must be age-appropriate, reviewed and updated by the ombudsman annually, and made available through a variety of formats.

(b) The department, community-based care lead agencies, and other agency staff must use the information provided by the ombudsman to carry out their responsibilities to inform children and young adults in out-of-home care of their rights pursuant to the duties established under s. 409.1415.

(c) The department shall establish the statewide Florida

32-00628-21

20211100__

262 Children's Ombudsman toll-free telephone number and post the
263 number on the homepage of the department's website.

264 (4) RULEMAKING.—The department shall adopt rules to
265 implement this section.

266 Section 3. Present subsections (4) through (9) of section
267 39.6011, Florida Statutes, are redesignated as subsections (5)
268 through (10), respectively, paragraph (f) is added to subsection
269 (2) of that section and a new subsection (4) is added to that
270 section, and paragraph (a) of subsection (1) and paragraph (c)
271 of present subsection (7) of that section are amended, to read:

272 39.6011 Case plan development.—

273 (1) The department shall prepare a draft of the case plan
274 for each child receiving services under this chapter. A parent
275 of a child may not be threatened or coerced with the loss of
276 custody or parental rights for failing to admit in the case plan
277 of abusing, neglecting, or abandoning a child. Participating in
278 the development of a case plan is not an admission to any
279 allegation of abuse, abandonment, or neglect, and it is not a
280 consent to a finding of dependency or termination of parental
281 rights. The case plan shall be developed subject to the
282 following requirements:

283 (a) The case plan must be developed in a face-to-face
284 conference with the parent of the child, any court-appointed
285 guardian ad litem, and, if appropriate, the child and the
286 temporary custodian or caregiver of the child.

287 (2) The case plan must be written simply and clearly in
288 English and, if English is not the principal language of the
289 child's parent, to the extent possible in the parent's principal
290 language. Each case plan must contain:

32-00628-21

20211100__

291 (f) If the child has attained 14 years of age or is
292 otherwise of an appropriate age and capacity:

293 1. A document that describes the rights of the child under
294 s. 39.4085 and the right to be provided with the documents
295 pursuant to s. 39.701.

296 2. A signed acknowledgment by the child or young adult, or
297 the caregiver if the child is too young or otherwise unable to
298 sign, that the child has been provided with a copy of the
299 document and that the rights contained in the document have been
300 explained to the child in a way that the child understands.

301 3. Documentation that a consumer credit report for the
302 child was requested from all three credit reporting agencies
303 pursuant to federal law at no charge to the child and that any
304 results were provided to the child. The case plan must include
305 documentation of any barriers to obtaining the credit reports.
306 If the consumer credit report reveals any accounts, the case
307 plan must detail how the department ensured the child received
308 assistance with interpreting the credit report and resolving any
309 inaccuracies, including any referrals made for such assistance.

310 (4) If the child has attained 14 years of age or, if
311 younger, is of an appropriate age and capacity, the child must:

312 (a) Be consulted on the development of the case plan; have
313 the opportunity to attend a face-to-face conference, if
314 appropriate; have the opportunity to express a placement
315 preference; and have the option to choose two members for the
316 case planning team who are not a foster parent or caseworker for
317 the child.

318 1. An individual selected by a child to be a member of the
319 case planning team may be rejected at any time if there is good

32-00628-21

20211100__

320 cause to believe that the individual would not act in the best
321 interest of the child. One individual selected by a child to be
322 a member of the child's case planning team may be designated to
323 act as the child's advisor and, as necessary, advocate with
324 respect to applying the reasonable and prudent parent standard
325 to the child.

326 2. The child may not be included in any aspect of case plan
327 development if information could be revealed or discussed which
328 is of a nature that would best be presented to the child in a
329 therapeutic setting.

330 (b) Sign the case plan, unless there is reason to waive the
331 child's signature.

332 (c) Receive an explanation of the provisions of the case
333 plan from the department.

334 (d) After the case plan is agreed on and signed by all
335 parties, and after jurisdiction attaches and the case plan is
336 filed with the court, be provided a copy of the case plan within
337 72 hours before the disposition hearing.

338 (8) ~~(7)~~ After the case plan has been developed, the
339 department shall adhere to the following procedural
340 requirements:

341 (c) After the case plan has been agreed upon and signed by
342 the parties, a copy of the plan must be given immediately to the
343 parties, including the child if appropriate, to the caregiver if
344 the child is placed in a licensed foster home, and to other
345 persons as directed by the court.

346 1. A case plan must be prepared, but need not be submitted
347 to the court, for a child who will be in care no longer than 30
348 days unless that child is placed in out-of-home care a second

32-00628-21

20211100__

349 time within a 12-month period.

350 2. In each case in which a child has been placed in out-of-
351 home care, a case plan must be prepared within 60 days after the
352 department removes the child from the home and shall be
353 submitted to the court before the disposition hearing for the
354 court to review and approve.

355 3. After jurisdiction attaches, all case plans must be
356 filed with the court, and a copy provided to all the parties
357 whose whereabouts are known, not less than 3 business days
358 before the disposition hearing. The department shall file with
359 the court, and provide copies to the parties, all case plans
360 prepared before jurisdiction of the court attached.

361 Section 4. Paragraph (c) is added to subsection (3) of
362 section 39.604, Florida Statutes, to read:

363 39.604 Rilya Wilson Act; short title; legislative intent;
364 child care; early education; preschool.—

365 (3) REQUIREMENTS.—

366 (c) For children placed in a licensed foster home and who
367 are required to be enrolled in an early education or a child
368 care program under this section, the caseworker shall inform the
369 caregiver of the amount of the subsidy provided by an early
370 learning coalition, that this amount may not be sufficient to
371 pay the full cost of the services, and that the caregiver will
372 be responsible for paying the difference between the subsidy and
373 the full cost charged by the early education or child care
374 program.

375 Section 5. Paragraph (a) of subsection (2) and paragraph
376 (a) of subsection (3) of section 39.701, Florida Statutes, are
377 amended to read:

32-00628-21

20211100__

378 39.701 Judicial review.—

379 (2) REVIEW HEARINGS FOR CHILDREN YOUNGER THAN 18 YEARS OF
380 AGE.—

381 (a) *Social study report for judicial review.*—Before every
382 judicial review hearing or citizen review panel hearing, the
383 social service agency shall make an investigation and social
384 study concerning all pertinent details relating to the child and
385 shall furnish to the court or citizen review panel a written
386 report that includes, but is not limited to:

387 1. A description of the type of placement the child is in
388 at the time of the hearing, including the safety of the child
389 and the continuing necessity for and appropriateness of the
390 placement.

391 2. Documentation of the diligent efforts made by all
392 parties to the case plan to comply with each applicable
393 provision of the plan.

394 3. The amount of fees assessed and collected during the
395 period of time being reported.

396 4. The services provided to the foster family or caregiver
397 in an effort to address the needs of the child as indicated in
398 the case plan.

399 5. A statement that either:

400 a. The parent, though able to do so, did not comply
401 substantially with the case plan, and the agency
402 recommendations;

403 b. The parent did substantially comply with the case plan;
404 or

405 c. The parent has partially complied with the case plan,
406 with a summary of additional progress needed and the agency

32-00628-21

20211100__

407 recommendations.

408 6. A statement from the foster parent or caregiver
409 providing any material evidence concerning the well-being of the
410 child, the impact of any services provided to the child, the
411 working relationship between the parents and caregivers, and the
412 return of the child to the parents.

413 7. A statement concerning the frequency, duration, and
414 results of the parent-child visitation, if any, and the agency
415 and caregiver recommendations for an expansion or restriction of
416 future visitation.

417 8. The number of times a child has been removed from his or
418 her home and placed elsewhere, the number and types of
419 placements that have occurred, and the reason for the changes in
420 placement.

421 9. The number of times a child's educational placement has
422 been changed, the number and types of educational placements
423 which have occurred, and the reason for any change in placement.

424 10. If the child has reached 13 years of age but is not yet
425 18 years of age, a statement from the caregiver on the progress
426 the child has made in acquiring independent living skills.

427 11. Copies of all medical, psychological, and educational
428 records that support the terms of the case plan and that have
429 been produced concerning the parents or any caregiver since the
430 last judicial review hearing.

431 12. Copies of the child's current health, mental health,
432 and education records as identified in s. 39.6012.

433 13. Documentation that the Foster Children's Bill of
434 Rights, as described in s. 39.4085, has been provided to and
435 reviewed with the child.

32-00628-21

20211100__

436 14. A signed acknowledgment by the child, or the caregiver
437 if the child is too young or otherwise unable to sign, stating
438 that the child has been provided an explanation of the rights
439 under s. 39.4085.

440 (3) REVIEW HEARINGS FOR CHILDREN 17 YEARS OF AGE.—

441 (a) In addition to the review and report required under
442 paragraphs (1)(a) and (2)(a), respectively, the court shall hold
443 a judicial review hearing within 90 days after a child's 17th
444 birthday. The court shall also issue an order, separate from the
445 order on judicial review, that the disability of nonage of the
446 child has been removed pursuant to ss. 743.044, 743.045,
447 743.046, and 743.047, and for any of these disabilities that the
448 court finds is in the child's best interest to remove. The court
449 shall continue to hold timely judicial review hearings. If
450 necessary, the court may review the status of the child more
451 frequently during the year before the child's 18th birthday. At
452 each review hearing held under this subsection, in addition to
453 any information or report provided to the court by the foster
454 parent, legal custodian, or guardian ad litem, the child shall
455 be given the opportunity to address the court with any
456 information relevant to the child's best interest, particularly
457 in relation to independent living transition services. The
458 department shall include in the social study report for judicial
459 review written verification that the child has:

460 1. A current Medicaid card and all necessary information
461 concerning the Medicaid program sufficient to prepare the child
462 to apply for coverage upon reaching the age of 18, if such
463 application is appropriate.

464 2. A certified copy of the child's birth certificate and,

32-00628-21

20211100__

465 if the child does not have a valid driver license, a Florida
466 identification card issued under s. 322.051.

467 3. A social security card and information relating to
468 social security insurance benefits if the child is eligible for
469 those benefits. If the child has received such benefits and they
470 are being held in trust for the child, a full accounting of
471 these funds must be provided and the child must be informed as
472 to how to access those funds.

473 4. All relevant information related to the Road-to-
474 Independence Program, including, but not limited to, eligibility
475 requirements, information on participation, and assistance in
476 gaining admission to the program. If the child is eligible for
477 the Road-to-Independence Program, he or she must be advised that
478 he or she may continue to reside with the licensed family home
479 or group care provider with whom the child was residing at the
480 time the child attained his or her 18th birthday, in another
481 licensed family home, or with a group care provider arranged by
482 the department.

483 5. An open bank account or the identification necessary to
484 open a bank account and to acquire essential banking and
485 budgeting skills.

486 6. Information on public assistance and how to apply for
487 public assistance.

488 7. A clear understanding of where he or she will be living
489 on his or her 18th birthday, how living expenses will be paid,
490 and the educational program or school in which he or she will be
491 enrolled.

492 8. Information related to the ability of the child to
493 remain in care until he or she reaches 21 years of age under s.

32-00628-21

20211100__

494 39.013.

495 9. A letter providing the dates that the child is under the
496 jurisdiction of the court.

497 10. A letter stating that the child is in compliance with
498 financial aid documentation requirements.

499 11. The child's educational records.

500 12. The child's entire health and mental health records.

501 13. The process for accessing his or her case file.

502 14. A statement encouraging the child to attend all
503 judicial review hearings occurring after the child's 17th
504 birthday.

505 15. Information on how to obtain a driver license or
506 learner's driver license.

507 16. Been provided with the Foster Children's Bill of
508 Rights, as described in s. 39.0485, and that the rights have
509 been reviewed with the child.

510 17. Signed an acknowledgment stating that he or she has
511 been provided an explanation of the rights or, if the child is
512 too young or otherwise unable to sign, that such acknowledgment
513 has been signed by the child's caregiver.

514 Section 6. Paragraph (b) of subsection (2) of section
515 409.1415, Florida Statutes, is amended to read:

516 409.1415 Parenting partnerships for children in out-of-home
517 care.—

518 (2) PARENTING PARTNERSHIPS.—

519 (b) To ensure that a child in out-of-home care receives
520 support for healthy development which gives the child the best
521 possible opportunity for success, caregivers, birth or legal
522 parents, the department, and the community-based care lead

32-00628-21

20211100__

523 agency shall work cooperatively in a respectful partnership by
524 adhering to the following requirements:

525 1. All members of the partnership must interact and
526 communicate professionally with one another, must share all
527 relevant information promptly, and must respect the
528 confidentiality of all information related to the child and his
529 or her family.

530 2. The caregiver; the birth or legal parent; the child, if
531 appropriate; the department; and the community-based care lead
532 agency must participate in developing a case plan for the child
533 and the birth or legal parent. All members of the team must work
534 together to implement the case plan. The caregiver must have the
535 opportunity to participate in all team meetings or court
536 hearings related to the child's care and future plans. The
537 department and community-based care lead agency must support and
538 facilitate caregiver participation through timely notification
539 of such meetings and hearings and provide alternative methods
540 for participation for a caregiver who cannot be physically
541 present at a meeting or hearing.

542 3. A caregiver must strive to provide, and the department
543 and community-based care lead agency must support, excellent
544 parenting, which includes:

545 a. A loving commitment to the child and the child's safety
546 and well-being.

547 b. Appropriate supervision and positive methods of
548 discipline.

549 c. Encouragement of the child's strengths.

550 d. Respect for the child's individuality and likes and
551 dislikes.

32-00628-21

20211100__

552 e. Providing opportunities to develop the child's interests
553 and skills.

554 f. Being aware of the impact of trauma on behavior.

555 g. Facilitating equal participation of the child in family
556 life.

557 h. Involving the child within his or her community.

558 i. A commitment to enable the child to lead a normal life.

559 4. A child in out-of-home care must be placed with a
560 caregiver who has the ability to care for the child, is willing
561 to accept responsibility for providing care, and is willing and
562 able to learn about and be respectful of the child's culture,
563 religion, and ethnicity; special physical or psychological
564 needs; circumstances unique to the child; and family
565 relationships. The department, the community-based care lead
566 agency, and other agencies must provide a caregiver with all
567 available information necessary to assist the caregiver in
568 determining whether he or she is able to appropriately care for
569 a particular child.

570 5. A caregiver must have access to and take advantage of
571 all training that he or she needs to improve his or her skills
572 in parenting a child who has experienced trauma due to neglect,
573 abuse, or separation from home; to meet the child's special
574 needs; and to work effectively with child welfare agencies, the
575 courts, the schools, and other community and governmental
576 agencies.

577 6. The department and community-based care lead agency must
578 provide a caregiver with the services and support they need to
579 enable them to provide quality care for the child.

580 7. Once a caregiver accepts the responsibility of caring

32-00628-21

20211100__

581 for a child, the child may be removed from the home of the
582 caregiver only if:

- 583 a. The caregiver is clearly unable to safely or legally
584 care for the child;
- 585 b. The child and the birth or legal parent are reunified;
- 586 c. The child is being placed in a legally permanent home in
587 accordance with a case plan or court order; or
- 588 d. The removal is demonstrably in the best interests of the
589 child.

590 8. If a child must leave the caregiver's home for one of
591 the reasons stated in subparagraph 7., and in the absence of an
592 unforeseeable emergency, the transition must be accomplished
593 according to a plan that involves cooperation and sharing of
594 information among all persons involved, respects the child's
595 developmental stage and psychological needs, ensures the child
596 has all of his or her belongings, allows for a gradual
597 transition from the caregiver's home, and, if possible, allows
598 for continued contact with the caregiver after the child leaves.

599 9. When the case plan for a child includes reunification,
600 the caregiver, the department, and the community-based care lead
601 agency must work together to assist the birth or legal parent in
602 improving his or her ability to care for and protect the child
603 and to provide continuity for the child.

604 10. A caregiver must respect and support the child's ties
605 to his or her birth or legal family, including parents,
606 siblings, and extended family members, and must assist the child
607 in maintaining allowable visitation and other forms of
608 communication. The department and community-based care lead
609 agency must provide a caregiver with the information, guidance,

32-00628-21

20211100__

610 training, and support necessary for fulfilling this
611 responsibility.

612 11. A caregiver must work in partnership with the
613 department and community-based care lead agency to obtain and
614 maintain records that are important to the child's well-being,
615 including, but not limited to, child resource records, medical
616 records, school records, photographs, and records of special
617 events and achievements.

618 12. A caregiver must advocate for a child in his or her
619 care with the child welfare system, the court, and community
620 agencies, including schools, child care providers, health and
621 mental health providers, and employers. The department and
622 community-based care lead agency must support a caregiver in
623 advocating for a child and may not retaliate against the
624 caregiver as a result of this advocacy.

625 13. A caregiver must be as fully involved in the child's
626 medical, psychological, and dental care as he or she would be
627 for his or her biological child. The department and community-
628 based care lead agency must support and facilitate such
629 participation. The caregiver, the department, and the community-
630 based care lead agency must share information with each other
631 about the child's health and well-being.

632 14. A caregiver must support a child's school success,
633 including, when possible, maintaining school stability by
634 participating in school activities and meetings. The department
635 and community-based care lead agency must facilitate this
636 participation and be informed of the child's progress and needs.

637 15. A caregiver must ensure that a child in his or her care
638 who is between 13 and 17 years of age learns and masters

32-00628-21

20211100__

639 independent living skills.

640 16. A caregiver must pay the difference between the subsidy
641 from an early learning coalition and the full cost charged by an
642 early education or child care program.

643 17. A caregiver must ensure that the child in the
644 caregiver's care is aware of and understands his or her rights
645 under s. 39.4085.

646 18. A caregiver must assist the child in contacting the
647 Florida Children's Ombudsman, if necessary.

648 19. The case manager and case manager supervisor must
649 mediate disagreements that occur between a caregiver and the
650 birth or legal parent.

651 Section 7. Paragraph (b) of subsection (5) of section
652 409.175, Florida Statutes, is amended to read:

653 409.175 Licensure of family foster homes, residential
654 child-caring agencies, and child-placing agencies; public
655 records exemption.—

656 (5) The department shall adopt and amend rules for the
657 levels of licensed care associated with the licensure of family
658 foster homes, residential child-caring agencies, and child-
659 placing agencies. The rules may include criteria to approve
660 waivers to licensing requirements when applying for a child-
661 specific license.

662 (b) The requirements for licensure and operation of family
663 foster homes, residential child-caring agencies, and child-
664 placing agencies shall include:

665 1. The operation, conduct, and maintenance of these homes
666 and agencies and the responsibility which they assume for
667 children served and the evidence of need for that service.

32-00628-21

20211100__

668 2. The provision of food, clothing, educational
669 opportunities, services, equipment, and individual supplies to
670 assure the healthy physical, emotional, and mental development
671 of the children served.

672 3. The appropriateness, safety, cleanliness, and general
673 adequacy of the premises, including fire prevention and health
674 standards, to provide for the physical comfort, care, and well-
675 being of the children served.

676 4. The ratio of staff to children required to provide
677 adequate care and supervision of the children served and, in the
678 case of family foster homes, the maximum number of children in
679 the home.

680 5. The good moral character based upon screening,
681 education, training, and experience requirements for personnel
682 and family foster homes.

683 6. The department may grant exemptions from
684 disqualification from working with children or the
685 developmentally disabled as provided in s. 435.07.

686 7. The provision of preservice and inservice training for
687 all foster parents and agency staff.

688 8. Satisfactory evidence of financial ability to provide
689 care for the children in compliance with licensing requirements.

690 9. The maintenance by the agency of records pertaining to
691 admission, progress, health, and discharge of children served,
692 including written case plans and reports to the department.

693 10. The provision for parental involvement to encourage
694 preservation and strengthening of a child's relationship with
695 the family.

696 11. The transportation safety of children served.

32-00628-21

20211100__

697 12. The provisions for safeguarding the cultural,
698 religious, and ethnic values of a child.

699 13. Provisions to safeguard the legal rights of children
700 served, as well as the rights of children established under s.
701 39.4085.

702 Section 8. Section 409.1753, Florida Statutes, is amended
703 to read:

704 409.1753 Foster care; duties.—The department shall ensure
705 that each lead agency provides, ~~within each district,~~ each
706 foster home with ~~is given~~ a telephone number for the foster
707 parent to call during normal working hours whenever immediate
708 assistance is needed and the child's caseworker is unavailable.
709 This number must be staffed and answered by individuals
710 possessing the knowledge and authority necessary to assist
711 foster parents.

712 Section 9. Paragraph (m) is added to subsection (1) of
713 section 409.988, Florida Statutes, to read:

714 409.988 Lead agency duties; general provisions.—

715 (1) DUTIES.—A lead agency:

716 (m) Shall recruit and retain foster homes. In performing
717 such duty, a lead agency shall:

718 1. Develop a plan to recruit and retain foster homes using
719 best practices identified by the department and specify how the
720 lead agency complies with s. 409.1753.

721 2. Annually submit such plan to the department for
722 approval.

723 3. Provide to the department a quarterly report detailing
724 the number of licensed foster homes and beds and occupancy rate.

725 4. Conduct exit interviews with foster parents who

32-00628-21

20211100__

726 voluntarily give up their license to determine the reasons for
727 giving up their license and identify suggestions for how to
728 better recruit and retain foster homes, and provide a quarterly
729 summary of the exit interviews to the department.

730 Section 10. Subsection (8) of section 39.6013, Florida
731 Statutes, is amended to read:

732 39.6013 Case plan amendments.—

733 (8) Amendments must include service interventions that are
734 the least intrusive into the life of the parent and child, must
735 focus on clearly defined objectives, and must provide the most
736 efficient path to quick reunification or permanent placement
737 given the circumstances of the case and the child's need for
738 safe and proper care. A copy of the amended plan must be
739 immediately given to the persons identified in s. 39.6011(8)(c)
740 ~~s. 39.6011(7)(e)~~.

741 Section 11. This act shall take effect October 1, 2021.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1100

INTRODUCER: Senator Book

SUBJECT: Child Welfare

DATE: March 22, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Cox</u>	<u>CF</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AHS</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1100 makes a number of changes related to the care of children and young adults in out-of-home care and to provisions relating to caregivers. The bill consolidates provisions in current law into a Foster Children’s Bill of Rights. The bill provides roles and responsibilities for the Department of Children and Families (DCF or department), the community-based care lead agencies and other agency staff, and those of caregivers, to ensure that children and young adults in out-of-home care are informed of these rights.

The bill also codifies the role and responsibilities of the Foster Children’s Ombudsman to serve as an autonomous entity within the department, to receive and resolve complaints from children in out-of-home care. The bill requires the department to establish a statewide toll-free telephone number for the Foster Children’s Ombudsman and post the number on the homepage of the department’s website.

The bill makes changes relating to case plan development, to require that information related to the rights be provided to a child who has attained 14 years of age or is otherwise of an appropriate age and capacity to understand be included in the case plan. The bill also requires that if the child is 14 years of age, or is otherwise of an appropriate age and capacity to understand, he or she must be involved in the case planning process.

The bill clarifies roles and responsibilities of foster parents and other caregivers of children in out-of-home care. The bill requires caseworkers to inform foster parents of the costs and requirements for child care and requires each community-based care lead agency to develop a plan to recruit and retain foster homes.

The bill is expected to have a \$120,000 fiscal impact on state government. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2021.

II. Present Situation:

Florida Law

Currently, the provisions of Florida law pertaining proceedings related to dependent children are contained in chapter 39, F.S. Statements of the purposes and intent with regard to child safety and protection found in ch. 39, F.S., include the provisions that:

- The health and well-being of all children under the care of the state are of paramount concern;
- The child's family ties are preserved and strengthened whenever possible by only removing the child from parental custody when his or her welfare or public safety cannot be otherwise assured;
- Judicial procedures, as well as other procedures to assure due process to children and other parties, are conducted fairly in order to protect constitutional and other legal rights; and
- Children under the jurisdiction of the courts are provided equal treatment with respect to goals, objectives, services, and case plans, without regard to the location of their placement.¹

Current law also stipulates that all children of this state are afforded general protections to include:

- Protection from abuse, neglect, and exploitation;
- A permanent and stable home;
- A safe and nurturing environment which will preserve a sense of personal dignity and integrity;
- Adequate nutrition, shelter, and clothing;
- Effective treatment for physical, social, and emotional needs;
- Equal opportunity and access to education, recreation and other community resources;
- Access to preventive services;
- An independent, trained advocate, when intervention is necessary, and a skilled guardian or caregiver in a safe environment when alternative placement is necessary; and
- The ability to contact their guardian ad litem or attorney ad litem, if appointed, by having that individual's name entered on all orders of the court.²

Pursuant to s. 39.013(2), F.S., the circuit court has exclusive original jurisdiction of all proceedings under chapter 39, for children voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, or the department, and for the adoption of children whose parental rights have been terminated. Jurisdiction attaches when the initial shelter petition, dependency petition, or termination of parental rights petition is filed, or when a child is taken into the custody of the department. The circuit court may assume jurisdiction over any such proceeding regardless of whether the child was in the physical custody of both parents, was in the sole legal or physical custody of only one parent, caregiver, or some other person, or was not in the physical or legal custody of any person when the event or condition occurred that brought the child to the attention of the court. When the court obtains jurisdiction of any child who has been found to be dependent, the court shall retain jurisdiction, unless relinquished by its order,

¹ Section 39.001(1)(b)1., (f), (l), and (m), F.S.

² Section 39.001(3)(a)-(j), F.S.

until the child reaches 21 years of age, or 22 years of age if the child has a disability, with a number of exceptions.³

Currently, decisions on how to properly care for dependent children and how to assess need for such services as counseling, education, and vocational training are discretionary judgmental decisions made pursuant to broad authority vested in the department by the Legislature and have been found by the courts to be immune from tort liability. In *Department of Health and Rehabilitative Services*⁴ v. *B.J.M.*,⁵ the Florida Supreme Court held that the decisions of the HRS regarding placement of juveniles and rehabilitative services provided to juveniles constituted performance of discretionary governmental functions and therefore the HRS was immune from tort liability. The court found that:

Decisions on how to properly care for a dependent child or rehabilitate a delinquent juvenile, and to assess the need for counseling, education, and vocational training are discretionary judgmental decisions to be made pursuant to the broad discretion vested in the HRS by the Legislature. These decisions represent the cutting edge of the HRS policy. Additionally, it is apparent that both the nature of and the amount of services that may be provided is limited by the HRS resources, and by the legislative-executive policy decisions as to what resources to provide and how those resources may be utilized.

The HRS, along with other governmental agencies in this state, must constantly take into account practical considerations, such as budgetary constraints, when deciding how to allocate its limited funds among a virtually unlimited number of needs. (citation omitted) As a result, in setting up its programs and providing services, the HRS is to a great extent financially “strait-jacketed.” When there are thousands of children in need and resources provide for only a fraction, decisions as to allocation may be difficult and sometimes arbitrary. For the courts to impose liability for tort damages on the HRS for decisions as to the provision of services would not only “saddle [it] with a potentially crushing burden of financial liability, but would also [cause] the judicial branch of government to trespass into the domain of the legislative branch.”⁶

In addition, the court held that the express provisions related to provided services pursuant to a case plan provided additional support for the HRS’ lack of offering services being immune from tort liability. The relevant provisions cited include:

- In no case shall employees or agents of the department or a social service agency acting in good faith be liable for damages as a result of failing to provide services agreed to under the case plan unless the failure to provide such services occurs as a result of bad faith or malicious purpose, or occurs in a manner exhibiting wanton and willful disregard of human rights, safety, or property.
- The inability or failure of the department or of a social service agency or the employees or agents of the social service agency to provide the services agreed to under the case plan shall

³ Those exceptions are found in s. 39.013(2)(a)-(d), F.S.

⁴ The Department of Health and Rehabilitative Services (HRS) became the Department of Children and Family Services (DCFS) in 1996. *See* ch. 1996-403, L.O.F. The Department was subsequently renamed the Department of Children and Families (DCF) in 2012. *See* ch. 2012-84, L.O.F.

⁵ 656 So. 2d 906 (Fla. 1995)

⁶ *See Department of Health and Rehabilitative Services v. B.J.M.*, 656 So. 2d 906 (Fla. 1995).

not render the state or the social service agency liable for damages unless such failure to provide services occurs in a manner exhibiting wanton or willful disregard of human rights, safety, or property.⁷

Statutorily Created Bill of Rights in Florida

Currently, there are several “Bills of Rights” specified in Florida Statutes. Typically these provisions enunciate certain rights, and in some cases responsibilities, of particular classes of individuals. Some specifically permit a cause of action for violation of the rights, some specifically disallow a remedy, and others are silent. Rights in statute include, but are not limited to:

- Florida Patient’s Bill of Rights and Responsibilities.⁸
- The Bill of Rights of Persons with Developmental Disabilities.⁹
- Rights of Mental Health Patients.¹⁰
- Residents’ Rights for Nursing Homes.¹¹
- Residents’ Bill of Rights for Assisted Living Facilities.¹²
- Residents’ Bill of Rights for Adult Family-Care Homes.¹³
- Residents’ Rights in Continuing Care Facilities.¹⁴

Foster Children’s Bill of Rights in Other States

According to the National Conference of State Legislatures, as of October 2019, a Foster Children’s Bill of Rights has been enacted in 15 states and Puerto Rico. Foster Children Bills of Rights enacted in other states are typically designed to inform foster children of their rights within the child welfare system and are required to be posted in a place where children will see them. Many include provisions requiring foster children to be informed about why they are in foster care and how the dependency process will proceed. Other commonly seen provision of foster children’s bill of rights address participation in extracurricular or community activities; efforts to maintain educational stability; access to guardians ad litem; access to mental, behavioral and physical health care; and access to or communication with siblings and family members.¹⁵

Foster Children’s Ombudsman

The department created a Florida Children’s Ombudsman position in the 2016-2017 fiscal year with the intent to listen and be a voice for children and youth involved in the child welfare

⁷ Section 39.455(1) and (2), F.S. (1991), which are now renumbered as s. 39.011(1) and (2), F.S

⁸ Section 381.026, F.S.

⁹ Section 393.13, F.S.

¹⁰ Section 394.459, F.S.

¹¹ Section 400.022, F.S.

¹² Section 429.28, F.S.

¹³ Section 429.85, F.S.

¹⁴ Section 651.083, F.S.

¹⁵ See National Conference of State Legislatures, *Foster Care Bill of Rights* (October 29, 2019), available at <http://www.ncsl.org/research/human-services/foster-care-bill-of-rights.aspx#Children> (last visited March 15, 2021).

system.¹⁶ The ombudsman receives complaints about placement, care, and services without fear of retribution. The ombudsman is a resource to identify and explain relevant policies or procedures to children, young adults, and their caregivers.¹⁷ The department also established a toll-free number for children in the child welfare system to reach the ombudsman.

The Children’s Ombudsman cannot respond to emergencies or investigate allegations of abuse or neglect, investigate, challenge, or overturn court-ordered decisions or provide legal advice, or investigate complaints about a guardian ad litem.¹⁸

Legislative Findings and Declaration of Intent for Goals of Dependent Children

Current law provides goals for children who are in out-of-home care.¹⁹ While referred to as goals in s. 39.4085, F.S., they are requirements under other sections of the Florida Statutes, as well as in department rule. For example, a few of those include:

Goal in s. 39.4085, F.S.	Current statute or rule where required
To be involved and incorporated, where appropriate, in the development of the case plan, to have a case plan which will address their specific needs, and to object to any of the provisions of the case plan.	Sections 39.6011 and 39.6013, F.S. Rules 65C-29.009 and 65C-30.006, F.A.C.
To enjoy regular visitation, at least once a week, with their siblings unless the court orders otherwise and to enjoy regular visitation with their parents, at least once a month, unless the court orders otherwise.	Sections 39.4015, 39.402, and 409.1415, F.S.
To be able to raise grievances with the department over the care they are receiving from their caregivers, caseworkers, or other service providers.	Rule 65C-14.006(8), F.A.C.
To be heard by the court, if appropriate, at all review hearings.	Section 39.01(58), F.S. Rule 8.255, Fla. R. Juv. Pro. Art. I, s. 21, FLA. CONST.
To have a guardian ad litem appointed to represent, within reason, their best interests and, where appropriate, an attorney ad litem appointed to represent their legal interests; the guardian ad litem and attorney ad litem shall have immediate and unlimited access to the children they represent.	Sections 39.01305 and 39.822, F.S. Rule 8.217, Fla. R. Juv. Pro.

¹⁶ Department of Children and Families (DCF), *SB 1100 Agency Legislative Bill Analysis*, February 12, 2021, p. 3., (on file with the Senate Committee on Children, Families and Elder Affairs) (hereinafter cited as “The DCF Agency Analysis”).

¹⁷ The DCF, *Florida Children’s Ombudsman*, available at <https://www.myflfamilies.com/service-programs/child-welfare/childrens-ombudsman.shtml> (last visited March 15, 2021).

¹⁸ *Id.*

¹⁹ Section 39.4085, F.S.

Case Plans

Federal law requires that the department or agency in each state that has the responsibility for providing child welfare services must formulate a written case plan for each child placed in its care or custody.²⁰ Federal regulation²¹ requires that, the case plan for each child must:

- Be a written document that is developed jointly with the parents or guardian of the child in foster care;
- Be developed within a reasonable period of time but in no event later than 60 days from the child's removal from the home;
- Include a discussion of how the case plan is designed to achieve a safe placement for the child in the least restrictive, most family-like setting available and in close proximity to the home of the parents when the case plan goal is reunification;
- Include a discussion of how the placement is consistent with the best interests and special needs of the child;
- Include a description of the services offered and provided to prevent removal of the child from the home and to reunify the family; and
- Document the steps to finalize a placement when the case plan goal is or becomes adoption or placement in another permanent home.

The Preventing Sex Trafficking and Strengthening Families Act made numerous changes to existing law regarding child welfare.²² The law calls on a child age 14 and over to be more engaged in his or her case and transition planning. Case plans are required to be developed and modified in consultation with children 14 or over. Each child may choose up to two people (other than the foster parent or caseworker) to be part of the case-planning team.²³

To empower older youth in transition planning for successful adulthoods, the law requires that the case plan include a "list of rights" for youth 14 and over. That list describes the rights of the child regarding "education, health, visitation, and court participation, the right to be provided with [certain] documents..., and the right to stay safe and avoid exploitation."²⁴ The documents referred to in the list of rights include a credit report on the child that the agency must give the child every year until the child leaves care.²⁵ Additionally, when exiting care at age 18 or older, the youth must be provided an official copy of his or her birth certificate, social security card, health insurance information, medical records, and a driver's license or identification card.²⁶

Currently, Florida law requires the department to prepare a draft of the case plan for each child receiving services under ch. 39, F.S. The additional federal requirements relating to involving the child in the case planning process and providing specified documents are not in current law,²⁷ but they are in rule.²⁸

²⁰ 42 U.S.C. 671(16).

²¹ 45 C.F.R s. 1356.21(g).

²² Pub. L. No. 113-183.

²³ Pub. L. No. 113-183, Sec. 113(a), (b)

²⁴ *Id.*, Sec. 113(d).

²⁵ *Id.*, Sec. 114(a).

²⁶ *Id.*

²⁷ Section 39.6011, F.S.

²⁸ 65-C-28.009(2) and (3), F.A.C.

The Rilya Wilson Act

Rilya Wilson disappeared from state custody in January 2001. The child's caregiver maintained that someone from the department removed Rilya from her home sometime in January 2001. The department was unaware that the child was missing until April 2002 due to casework failures. While her caregiver was sentenced to 55 years in prison in 2013 for her disappearance, Rilya remains missing.²⁹

With the disappearance of Rilya Wilson, the responsibility of the state to ensure the safety of the children while in the state's care received heightened attention. On May 6, 2002, Governor Jeb Bush established the Blue Ribbon Panel on Child Protection to examine the child protection system, primarily in Dade County. The Governor's press release stated:³⁰

The recent case of Rilya Wilson has raised very troubling questions about the state's performance in protecting children in the child welfare system. It is essential that we resolve these issues quickly and ensure that children in the care and custody of the state are properly supervised and cared for. In the case of Rilya, the system failed. We must guard against failure in other cases.

I am asking that the Panel focus its attention on the safety of children in the child welfare system. The Panel will also specifically focus on the adequacy of oversight and accountability within the Department of Children and Families.

Frequent and continuous face-to-face contact with children who are in the custody or under the supervision of the state has been identified as a mechanism for ensuring the children's safety and well-being. The current requirement that each child in the custody or supervision of the state receive a monthly home visit offers child protection staff a regular opportunity to check on the well-being of the child.³¹

For a number of children, the increased visibility that participation in early education and childcare programs provides can minimize further abuse, neglect, or abandonment. Participation in these programs can also be an important ingredient in reversing the developmental effects that abuse, neglect, and abandonment can have on children. Early education and child care programs are provided in Florida through the school readiness program which is housed with the Office of Early Learning.³² With the establishment of the school readiness program, the different early education and child care programs and their funding sources were merged for the delivery of a comprehensive program of school readiness services to be designed and administered through local early learning coalitions.³³

²⁹ David Ovalle, *Geralyn Graham get 55 years in Rilya Wilson foster child abuse case*, MIAMI HERALD, Feb. 12, 2013), available at <http://www.miamiherald.com/latest-news/article1947207.html>. (last visited March 15, 2021).

³⁰ Department of Children and Families, Final Progress Report on the Recommendations of the Governor's Blue Ribbon Panel on Child Protection, November 7, 2003, available at <http://centerforchildwelfare.org/kb/FlPerformance/BlueRibbonFinal110703.pdf>, (last visited March 15, 2021).

³¹ 65C-30.007(1)(a), F.A.C.; *See also* 42 U.S.C. s. 422(b)(17).

³² *See* ss.1001.213 and 1002.82, F.S.

³³ *See* ss. 1002.82 and 1002.83, F.S.

Historically, children who have been abused, neglected, or abandoned and are being served through the dependency system have received one of the highest priorities for child care programs. This is due, at least in part, to the interpretation of earlier statutory language that these children were to be provided the highest priority. Current law requires each early learning coalition to give priority for participation in the school readiness program according to specified criteria with an at-risk child younger than 9 years of age being second on the priority list.³⁴

Recruitment and Retention of Foster Homes

Foster parents play an important role in the child welfare system and should be treated as critical partners of the agency. When relatives are not available, foster families are called upon to provide the support and stability a child needs at the most critical time of their lives when they are removed from their homes. It is imperative that foster parents are engaged, developed, and supported by the child welfare agency. This will create an environment that attracts quality foster parents who feel supported and adequately prepared to care for the vulnerable children placed in their homes.³⁵

The Quality Parenting Initiative (QPI) is a national movement for foster care change, made up of a network of states, counties and private agencies. The goal of QPI is to ensure that every child who is removed from home by a child protection agency receives the love, nurturing, advocacy and support he or she needs for healthy development. Key to the project is increasing the number of committed families, including kin, who can parent these children, supporting excellent practice and ensuring that every family can and does meet the child's needs.³⁶

QPI's approach to recruitment and retention of foster parents is based on ensuring strong, respectful relationships between families and children. Essential to raising the standard of care is an insistence on ensuring that everyone serving as a caregiver is willing and able to provide excellent care and has the support necessary to do so. This serves children by raising standards and focusing on finding the right families for children rather than producing as many beds as possible. Those families who can provide loving care will continue fostering because they feel they are respected partners fulfilling an important role in the lives of children and families. They, in turn, are the best recruiters for those who share their commitment to changing lives.³⁷

QPI was launched in 2008 in Florida, and is the only program with a statewide presence related to caregiver issues for children in out-of-home care. QPI is not simply a recruitment and retention tool. It is designed to ensure that every child who is removed from his or her home

³⁴ Section 1002.87(1)(b), F.S.

³⁵ Casey Family Programs, *Effective Practices in Foster Parent Recruitment, Infrastructure, and Retention*, p. 14-15, available at https://calswec.berkeley.edu/sites/default/files/effective_practices_in_foster_parent_recruitment_and_retention.pdf (last visited March 18, 2021)

³⁶ Quality Parenting Initiative, *What is QPI?*, available at <https://www.qpi4kids.org/wp-content/uploads/2020/12/what-is-qpi-PDF.pdf> (last visited March 19, 2021).

³⁷ *Id.*

regardless of whether he or she lives with relatives or in licensed care has excellent parenting that meets his or her emotional, developmental, cognitive and social needs.³⁸

III. Effect of Proposed Changes:

Foster Children’s Bill of Rights

The bill substantially rewords s. 39.4085, F.S., relating to goals for children in out-of-home care, to create a Foster Children’s Bill of Rights for children who are in, and for young adults who are leaving, out-of-home care. The section does not create any new rights, but codifies and places current rights into one section of law. The following table provides each right in s. 39.4085, F.S. and the statutory reference to the current location:

Rights Provided for in the reworded s. 39.4085, F.S.	Present location or reference
To live in a safe, healthful, and comfortable home where he or she is treated with respect and provided with healthful food, appropriate clothing, and adequate storage space for personal use and where the caregiver is aware of and understands the child’s history, needs, and risk factors and respects the child’s preferences for attending religious services and activities	Sections 39.001, 409.175, F.S. Rules 65C-13.025, 65C-13.028, 65C-13.030, and 65C-14.015, F.A.C.
To be free from physical, sexual, emotional, or other abuse or corporal punishment. This includes the child’s right to be placed away from other children or young adults who are known to pose a threat of harm to him or her because of his or her own risk factors or those of the other child or young adult.	Section 39.001, F.S. Rule 65C-13.030, F.A.C.
To receive medical, dental, vision, and mental health services as needed; to be free of the administration of psychotropic medication or chemical substances unless authorized by a parent or the court; and not to be locked in any room, building, or facility unless placed in a residential treatment center by court order.	Sections 39.001 and 39.407, F.S. Rules 65C-28.003 and 65C-28.014, F.A.C.
To be able to have contact and visitation with his or her parents, other family members, and fictive kin and to be placed with his or her siblings and, if not placed together with his or her siblings, to have frequent visitation and ongoing contact with his or her siblings, unless prohibited by court order.	Sections 39.4015, 39.402, and 409.1415, F.S.
To be able to contact the Florida Children’s Ombudsman, as described in s. 39.4088, F.S., regarding violations of rights; to speak to the ombudsman; confidentially; and to be free from threats or punishment for making complaint.	Rule 65C-14.006(8), F.A.C.

³⁸ *Id.*; See also the DCF, Independent Living, *The Quality Parenting Initiative, Frequently Asked Questions*, available at <https://www.myflfamilies.com/service-programs/independent-living/myfuturemychoice-fp-faqs.shtml> (last visited March 22, 2021).

<p>To maintain a bank account and manage personal income, consistent with his or her age and developmental level, unless prohibited by the case plan, and to be informed about any funds being held in the master trust on behalf of the child.</p>	<p>Sections 39.701 and 743.044, F.S.</p>
<p>To attend school and participate in extracurricular, cultural, and personal enrichment activities consistent with his or her age and developmental level and to have social contact with people outside of the foster care system, such as teachers, church members, mentors, and friends.</p>	<p>Sections 39.016, 39.4091, and 409.145, F.S.</p>
<p>To attend independent living program classes and activities if he or she meets the age requirements and to work and develop job skills at an age-appropriate level that is consistent with state law.</p>	<p>Sections 39.3091, 409.1415, and 409.1451, F.S.</p> <p>Rules 65C-28.009, 65C-14.040, and 65C-30.001, F.A.C.</p>
<p>To attend all court hearings and address the court.</p>	<p>Section 39.01, F.S.</p> <p>Rules 8.255, Fla. R. Juv. Pro.</p> <p>Art. I, s. 21, FLA. CONST.</p>
<p>To have fair and equal access to all available services, placement, care, treatment, and benefits and not to be subjected to discrimination on the basis of race, national origin, color, religion, sex, mental or physical disability, age, or pregnancy.</p>	<p>Section 760.01, F.S.</p> <p>Rule 65C-41.002, F.A.C.</p> <p>Art. I, s. 2, FLA. CONST.</p>
<p>If he or she is 14 years of age or older or, if younger, is of an appropriate age and capacity, to participate in creating and reviewing his or her case plan, to receive information about his or her out-of-home placement and case plan, including being told of changes to the plan, and to have the ability to object to provisions of the case plan.</p>	<p>Section 39.6011 and 39.6013, F.S.</p> <p>Rules 65C-29.009 and 65C-30.006, F.A.C.</p>
<p>If he or she is 16 years of age or older, to have access to existing information regarding the educational and financial assistance options available to him or her, including, but not limited to, the coursework necessary for vocational and postsecondary educational programs, postsecondary educational services and support, the Keys to Independence program, and the tuition waiver available under s. 1009.25, F.S.</p>	<p>Section 39.6035 and 39.6012, F.S.</p> <p>Rule 65C-28.009, F.A.C.</p>

<p>Not to be removed from an out-of-home placement by the department or a community-based care lead agency unless the caregiver becomes unable to care for the child, the child achieves permanency, or the move is otherwise in the child’s best interest and, if moved, the right to a transition that respects his or her relationships and personal belongings under s. 409.1415, F.S.</p>	<p>Section 409.1415, F.S.</p>
<p>To have a guardian ad litem appointed to represent his or her best interest and, if appropriate, an attorney appointed to represent his or her legal interests.</p>	<p>Sections 39.01305 and 39.822, F.S. Rule 8.217, Fla. R. Juv. Pro.</p>

The bill also provides roles and responsibilities for the department, the community-based care lead agencies and other agency staff, as well as caregivers, related to ensuring that children and young adults in out-of-home care are informed of these rights. The bill authorizes the department to adopt rules to implement the section and provides that provisions of the bill may not be used for any purpose in any civil or administrative action and does not expand or limit any rights or remedies provided under any other law.

The bill also amends 39.701, F.S., relating to judicial reviews, to require that the social study report required for each judicial review must include documentation that the child has been provided with a copy of the bill of rights, that the rights have been reviewed with the child, and signed acknowledgement by the child or caregiver that the child has been provided with an explanation of the rights.

Florida Children’s Ombudsman

The bill creates s. 39.4088, F.S., relating to the Florida Children’s Ombudsman, to codify and provide duties for an already existing entity within the department which is currently staffed with one position. The ombudsman is required to serve as an autonomous entity for the purpose of providing children and young adults who are placed in out-of-home care with a means to resolve issues related to their care, placement, or services without fear of retribution. The ombudsman will have access to any record of a state or local agency which is necessary to carry out his or her responsibilities and is authorized meet or communicate with any child or young adult in the child or young adult’s placement or elsewhere.

The ombudsman is also required to disseminate information on the rights of children and young adults in out-of-home care under s. 39.4085, F.S., and the services provided by the ombudsman. The ombudsman may attempt to resolve a complaint informally, conduct whatever investigation he or she determines is necessary to resolve a complaint, update the complainant on the progress of the investigation, and notify the complainant of the final outcome. The ombudsman may not investigate, challenge, or overturn court ordered decisions.

The ombudsman is required to collect certain specified data related to complaints received and must compile and post that information on the department’s website. The ombudsman, in consultation with other entities, is required to develop information explaining the rights to

children and young adults in out-of-home care. The department is required to establish a statewide toll-free telephone number for the ombudsman and make the number available on the department's website homepage. The department is given rulemaking authority to implement the section.

Case Plans

The bill amends s. 39.6011, F. S., relating to case plan development, to require that information related to their rights be provided to a child who has attained 14 years of age or is otherwise of an appropriate age and capacity to understand be included in the case plan. The bill requires documentation that consumer credit report checks were requested for the child as required by federal law and that information related to that report was provided to the child.

The bill also requires that if the child is 14 years of age, or is otherwise of an appropriate age and capacity to understand, he or she must be involved in the case planning process. The child may express a placement preference, choose individuals to be on the case planning team and must sign the case plan unless there is reason to waive the signature. A copy of the case plan must be provided to the child. A copy of the case plan must also be provided to the caregiver if the child is placed in a licensed foster home.

Rilya Wilson Act

The bill amends s. 39.604, F.S., relating to the Rilya Wilson Act, to require that when children are placed in a licensed foster home and are required to be enrolled in an early education or child care program under this section, the caseworker shall inform the caregiver of the amount of the subsidy provided by an early learning coalition, that this amount may not be sufficient to pay the full cost of the services, and that the caregiver will be responsible for paying the difference between the subsidy and the full cost charged by the early education or child care program.

Caregiver Responsibilities

The bill amends s. 409.1415, F.S., relating to the care of children, quality parenting, and the reasonable and prudent parent standard, to require that caregivers:

- Pay the difference between the subsidy from an early learning coalition and the full cost charged by an early education or child care program;
- Ensure that the child in the caregiver's care is aware of and understands his or her rights under s. 309.4085, F.S.; and
- Assist a child in contacting the Florida Children's Ombudsman, if necessary.

The department and other providers are responsible for providing a caregiver with information on treatment plans and how the caregiver can support a treatment plan as well as information on how the caregiver can manage behavioral issues.

The bill amends s. 409.175, F.S., relating to the licensure of family foster homes, residential child-caring agencies, and child placing agencies, to provide that the requirements for licensure and operation include provisions to safeguard the rights of children established under the bill of rights.

The bill clarifies that each community-based care lead agency must provide each foster home with a telephone number for the foster parent to call during normal working hours whenever immediate assistance is needed and the child's caseworker is unavailable. Current law is unclear as to whether this is a duty for the department or the lead agency.

The bill amends s. 409.988, F.S., changing the duties of community-based care lead agency to require each lead agency to recruit and retain foster homes. To perform the duty, the bill also requires each lead agency to:

- Develop a plan to recruit and retain foster homes using best practices identified by the department and specify how the lead agency complies with s. 409.1753, F.S.;
- Annually submit such plan to the department for approval;
- Provide to the department a quarterly report detailing the number of licensed foster homes and beds and occupancy rate; and
- Conduct exit interviews with foster parents who voluntarily give up their license to determine the reasons for giving up their license and identify suggestions for how to better recruit and retain foster homes, and provide a quarterly summary of such interviews to the department.

The bill provides an effective date of October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The department reported that the bill is expected to have a \$120,000 fiscal impact on the agency for technology enhancements.³⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 39.4085, 39.6011, 39.6013, 39.604, 39.701, 409.1415, 409.175, 409.1753, and 409.988.

The bill creates section 39.4088 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³⁹ The DCF Agency Analysis, p.10

By the Committee on Health Policy; and Senator Bean

588-02981-21

20211132c1

1 A bill to be entitled
2 An act relating to personal care attendants; amending
3 s. 400.141, F.S.; authorizing nursing home facilities
4 to employ personal care attendants if they are
5 participating in a certain training program developed
6 by the Agency for Health Care Administration, in
7 consultation with the Board of Nursing; providing
8 minimum requirements for such program; providing
9 limitations on such personal care attendants'
10 practice; authorizing the agency to adopt rules;
11 authorizing certain personal care attendant programs
12 to continue operating during the agency's rulemaking
13 process under certain circumstances; requiring the
14 agency to notify the Division of Law Revision of the
15 date certain rules take effect; providing for future
16 repeal; amending s. 400.211, F.S.; authorizing certain
17 persons to be employed by a nursing home facility as
18 personal care attendants for a specified period if a
19 certain training requirement is met; defining the term
20 "personal care attendants"; providing an effective
21 date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Paragraph (w) is added to subsection (1) of
26 section 400.141, Florida Statutes, to read:

27 400.141 Administration and management of nursing home
28 facilities.—

29 (1) Every licensed facility shall comply with all

588-02981-21

20211132c1

30 applicable standards and rules of the agency and shall:

31 (w) Be allowed to employ personal care attendants as
32 defined in s. 400.211(2)(d), if such personal care attendants
33 are participating in the personal care attendant training
34 program developed by the agency, in accordance with 42 C.F.R.
35 ss. 483.151-483.154, in consultation with the Board of Nursing.

36 1. The personal care attendant training program must
37 consist of a minimum of 16 hours of education and must include
38 training in all of the topics and lessons specified in the
39 program curriculum.

40 2. The program curriculum for the personal care attendant
41 training program must include, but need not be limited to, all
42 of the following content areas:

43 a. Residents' rights.

44 b. Confidentiality of residents' personal information and
45 medical records.

46 c. Control of contagious and infectious diseases.

47 d. Emergency response measures.

48 e. Assistance with activities of daily living.

49 f. Measuring vital signs.

50 g. Skin care and pressure sore prevention.

51 h. Portable oxygen use and safety.

52 i. Nutrition and hydration.

53 j. Dementia care.

54 3. A personal care attendant may not perform any task that
55 requires clinical assessment, interpretation, or judgment.

56 4. A personal care attendant must work exclusively for one
57 nursing home facility and may not work as a personal care
58 attendant for more than one nursing home facility before

588-02981-21

20211132c1

59 becoming a certified nursing assistant.

60 5. The agency may adopt rules to implement this paragraph.

61 6. If the Governor's Emergency Order 20-52 or an extension
62 thereof expires or is terminated before the completion of the
63 agency's rulemaking process to implement this paragraph, any
64 personal care attendant program that is operating pursuant to
65 agency approval that was issued during the time in which the
66 executive order was effective may continue to operate as
67 authorized until the agency's rulemaking process is completed,
68 at which time the program must comply with agency rule. The
69 agency shall notify the Division of Law Revision of the date
70 such rules take effect. This subparagraph expires on the
71 effective date of such rules.

72 Section 2. Subsection (2) of section 400.211, Florida
73 Statutes, is amended to read:

74 400.211 Persons employed as nursing assistants;
75 certification requirement.-

76 (2) The following categories of persons who are not
77 certified as nursing assistants under part II of chapter 464 may
78 be employed by a nursing facility for a period of 4 months:

79 (a) Persons who are enrolled in, or have completed, a
80 state-approved nursing assistant program.~~†~~

81 (b) Persons who have been positively verified as actively
82 certified and on the registry in another state with no findings
83 of abuse, neglect, or exploitation in that state.~~† or~~

84 (c) Persons who have preliminarily passed the state's
85 certification exam.

86 (d) Persons who are employed as personal care attendants
87 and who have completed the personal care attendant training

588-02981-21

20211132c1

88 program developed pursuant to s. 400.141(1)(w). As used in this
89 paragraph, the term "personal care attendants" means persons who
90 meet the training requirement in s. 400.141(1)(w) and provide
91 care to and assist residents with tasks related to the
92 activities of daily living.

93
94 The certification requirement must be met within 4 months after
95 initial employment as a nursing assistant in a licensed nursing
96 facility.

97 Section 3. This act shall take effect upon becoming a law.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 1132

INTRODUCER: Health Policy Committee and Senator Bean

SUBJECT: Personal Care Attendants

DATE: March 22, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Brown</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Cox</u>	<u>Cox</u>	<u>CF</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1132 amends ss. 400.141 and 400.211, F.S., to allow nursing homes to employ personal care attendants (PCA) and to allow a PCA to work as a nursing assistant (and count as a certified nursing assistant (CNA) for the purposes of staffing requirements) for a period of up to four months if the PCA is participating in the PCA training program established by the Agency for Health Care Administration (AHCA) in consultation with the Board of Nursing (BON).

The bill defines a PCA as a person who provides care to and assists residents with tasks related to the activities of daily living and who meets specified training requirements. The bill requires the AHCA, in consultation with the BON, to develop a training program for PCAs, in accordance with 42 C.F.R. ss. 483.151-483.154, which must consist of a minimum of 16 hours of education and which will lead to the PCA becoming a CNA. The bill also prohibits a PCA from performing any task that requires clinical assessment, interpretation, or judgment, or from working as a PCA for more than one nursing home before becoming a CNA.

The bill provides that, should the Governor's Emergency Order 20-52 or its extension expire or be terminated before the AHCA is able to adopt rules to implement the PCA training program, the PCA program as it is operating currently may continue to operate until the AHCA adopts such rules.

The bill takes effect upon becoming law.

II. Present Situation:

Nursing Home Staffing Standards

Section 400.23(3), F.S., requires the AHCA to adopt rules¹ providing minimum staffing requirements for nursing home facilities. The requirements must include:

- A minimum weekly average of 3.6 hours of direct care per resident per day provided by a combination of certified nursing assistants (CNA) and licensed nursing staff. A week is defined as Sunday through Saturday.
- A minimum of 2.5 hours of direct care per resident per day provided by CNA staff. A facility may not staff at a ratio of less than one CNA per 20 residents.
- A minimum of 1.0 hour of direct care per resident per day provided by licensed nursing staff. A facility may not staff at a ratio of less than one licensed nurse per 40 residents.
- Nursing assistants employed under s. 400.211(2), F.S., may be included in computing the staffing ratio for certified nursing assistants if their job responsibilities include only nursing-assistant-related duties.
- Each nursing home facility must document compliance with staffing standards and post daily the names of staff on duty for the benefit of facility residents and the public.
- Licensed nurses may be used to meet staffing requirements for CNAs if the licensed nurses are performing the duties of a CNA and the facility otherwise meets minimum staffing requirements for licensed nurses.
- Non-nursing staff providing eating assistance to residents do not count toward compliance with minimum staffing standards.

COVID-19 Personal Care Attendant Program

On March 28, 2020, in response to a request from the Florida Health Care Association to help with a shortage of skilled nursing services during the COVID-19 pandemic, the AHCA approved skilled nursing facilities to temporarily use PCAs to perform resident care procedures usually delivered by CNAs. The goal is to provide nursing centers with additional staff to care for residents during the COVID-19 state of emergency and to train new workers to obtain skills necessary to become a CNA. The Temporary COVID-19 Personal Care Attendant Program is an 8-Hour Preservice Course (5-Hour Classroom and 3-Hour Simulation/Competency Check-Off) with continued on-the-job training. The program has been extended to correspond with COVID-19 state of emergency, or until such time AHCA finds it necessary to extend or discontinue the program to meet needs of crisis.²

Federal Requirements for Nurse Aide Training

42 C.F.R. Subpart D establishes requirements that must be met by states and state agencies for nurse aide training programs and competency evaluations. 42 C.F.R. s. 483.151 establishes

¹ Rule 59A-4.108(4), F.A.C., simply requires that “in accordance with the requirements outlined in subsection 400.23(3)(a), F.S., the nursing home licensee must have sufficient nursing staff, on a 24-hour basis to provide nursing and related services to residents in order to maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care.”

² See Florida Health Care Association, Facility Operations, *Temporary COVID-19 Personal Care Attendant Program* available at https://www.fhca.org/facility_operations/pcaprogram (last visited March 21, 2021).

general requirements for states to approve nurse aide training programs and specifies that the state cannot approve training programs in certain nursing homes that are operating under specified waivers of federal requirements or that have had certain penalties assessed against them. 42 C.F.R. s. 483.152 establishes specific requirements for such training programs including at least 75 clock hours of training, the inclusion of specific subjects, at least 16 hours of supervised practical training, supervision requirements, and 16 hours of training prior to direct contact with a resident. 42 C.F.R. s. 483.154 establish requirements for competency evaluations including written and oral exams and demonstrations of skills.

Florida Requirements for Certification as a Nursing Assistant

Section 464.203, F.S., requires the BON to issue a certificate to practice as a CNA to any person who demonstrates the minimum competency to read and write, successfully passes the required background screening, and has met either of the following requirements:

- Has successfully completed an approved training program³ and achieved a minimum score, established by rule of the BON, on the nursing assistant competency examination, which consists of a written portion and skills-demonstration portion approved by the BON and administered at a site and by personnel approved by the department;
- Has achieved a minimum score, established by rule of the BON, on the nursing assistant competency examination, which consists of a written portion and skills-demonstration portion, approved by the BON and administered at a site and by personnel approved by the department and:
 - Has a high school diploma, or its equivalent; or
 - Is at least 18 years of age.
- Is currently certified in another state or territory of the United States or in the District of Columbia; is listed on that jurisdiction's certified nursing assistant registry; and has not been found to have committed abuse, neglect, or exploitation in that jurisdiction; or
- Has completed the curriculum developed under the Enterprise Florida Jobs and Education Partnership Grant and achieved a minimum score, established by rule of the BON, on the nursing assistant competency examination, which consists of a written portion and skills-demonstration portion, approved by the BON and administered at a site and by personnel approved by the department.

If the applicant fails to pass the certification examination in three attempts the applicant is not eligible to take the exam again until he or she completes an approved training course.

III. Effect of Proposed Changes:

CS/SB 1132 amends s. 400.141, F.S., to allow a nursing home to employ PCAs if the PCA is participating in the PCA training program developed by the AHCA, in consultation with the BON and in accordance with 42 C.F.R. ss. 483-151-483-154.⁴ The bill requires the training program to be at least 16 hours in length and include at least the following topics:

³ Curriculum requirements for CNA training programs are established in Rule 64B9-15.006, F.A.C., and include 80 hours of classroom training and 40 hours of clinical instruction. Additionally the rule requires 16 hours of classroom instruction on specified topics prior to any direct contact with a resident.

⁴ These sections establish requirements for state training programs for nurse aides. (Under Florida law, nurse aides are certified as nursing assistants.)

- Residents' rights.
- Confidentiality of residents' personal information and medical records.
- Control of contagious and infectious diseases.
- Emergency response measures.
- Assistance with activities of daily living.⁵
- Measuring vital signs.
- Skin care and pressure sore prevention.
- Portable oxygen use and safety.
- Nutrition and hydration.
- Dementia care.

The bill prohibits a PCA from performing any task that requires clinical assessment, interpretation, or judgment; requires a PCA to work exclusively for one nursing home facility; and prohibits a PCA from working for more than one nursing home facility before becoming a CNA.

The bill allows the AHCA to adopt rules to implement the program and requires the current PCA program to continue regardless of whether the Governor's Emergency Order 20-52 or its extension expires or is terminated prior to the AHCA adopting rules until such time that the AHCA adopts rules to implement the program. The bill requires the AHCA to notify the Division of Law Revision on the date the implementing rules take effect and the subparagraph extending the current PCA program expires upon the AHCA adopting such rules.

The bill also amends s. 400.211, F.S., to allow a nursing home to hire a PCA, who has completed the training as detailed above, to work as a nursing assistant (and count as a CNA for the purposes of staffing requirements) for a period of up to four months. The bill defines a PCA as a person who meets the above training requirements and who provides care to residents and assists residents with tasks related to the activities of daily living.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁵ Although not defined in nursing home statutes, activities of daily living are defined in other health care and facility statutes. For example, for assisted living facilities activities of daily living are defined as "the functions and tasks for self-care, including eating bathing grooming, dressing, ambulating, and other similar tasks. *See* s. 429.65(1), F.S., and for home health care activities of daily living are included in the definition of personal care and include bathing, dressing, eating, personal hygiene, assistance in physical transfer, ambulation, and in administering medications permitted by rule. *See* s. 400.462(23), F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have an indeterminate fiscal impact on nursing homes that utilize the PCA program created under the bill. The bill may also positively impact persons in a fiscal sense who are employed as PCAs under the program.

C. Government Sector Impact:

The bill may have an indeterminate negative fiscal impact on the AHCA related to developing the PCA training program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 400.141 and 400.211.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on March 17, 2021:

The CS expands the hours of training required to work as a PCA from 8 to 16 and ties the PCA training program to federal requirements for nurse aide training in 42 C.F.R. ss.

483.151-483.154. The CS prohibits PCAs from performing tasks that require clinical assessment, interpretation, or judgment; specifies that a PCA must work exclusively for one nursing home; and prohibits a PCA from working as a PCA for more than one nursing home before being certified as a CNA.

The CS also specifies that the current PCA program will continue until the AHCA adopts rules to implement the PCA training program established by the bill regardless of whether Emergency Order 20-52 or its extension expires or is terminated. The bill requires the AHCA to notify the Division of Law Revision of the date that the rules take effect. These requirements expire on the effective date of the AHCA's rules.

B. Amendments:

None.

By Senator Rodriguez

39-01921A-21

20211814__

1 A bill to be entitled
2 An act relating to medical records of children
3 available for adoption; amending ss. 63.082, 63.085,
4 and 63.093, F.S.; requiring the Department of Children
5 and Families, adoption entities, and community-based
6 care lead agencies or their subcontracted agencies,
7 respectively, to provide certain written notification
8 to prospective adoptive parents regarding the medical
9 records of the child available for adoption; amending
10 s. 63.142, F.S.; requiring the Department of Health to
11 provide certain medical records to adopting parents
12 within a specified time after entry of a judgment of
13 adoption; prohibiting the department from disposing of
14 such records for a specified time; providing an
15 effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Paragraph (d) of subsection (6) of section
20 63.082, Florida Statutes, is amended to read:

21 63.082 Execution of consent to adoption or affidavit of
22 nonpaternity; family social and medical history; revocation of
23 consent.—

24 (6)

25 (d) If after consideration of all relevant factors,
26 including those set forth in paragraph (e), the court determines
27 that the prospective adoptive parents are properly qualified to
28 adopt the minor child and that the adoption is in the best
29 interests of the minor child, the court shall promptly order the

39-01921A-21

20211814__

30 transfer of custody of the minor child to the prospective
31 adoptive parents, under the supervision of the adoption entity.
32 The court may establish reasonable requirements for the transfer
33 of custody in the transfer order, including a reasonable period
34 of time to transition final custody to the prospective adoptive
35 parents. The adoption entity shall thereafter provide monthly
36 supervision reports to the department until finalization of the
37 adoption. If the child has been determined to be dependent by
38 the court, the department shall provide the following written
39 information to the prospective adoptive parents at the time they
40 receive placement of the dependent child:

41 1. Information regarding approved parent training classes
42 available within the community.

43 2. Information that upon adoption, a child's immunization
44 records are removed from the Florida Shots database within the
45 Department of Health, and the necessity to retain the complete
46 set of the child's medical records that are provided to the
47 prospective adoptive parents under s. 63.085(2) (a), as they may
48 be needed for school enrollment and future medical care.

49
50 The department shall file with the court an acknowledgment of
51 the parent's receipt of the information required under this
52 paragraph ~~regarding approved parent training classes available~~
53 ~~within the community.~~

54 Section 2. Paragraph (a) of subsection (2) of section
55 63.085, Florida Statutes, is amended to read:

56 63.085 Disclosure by adoption entity.—

57 (2) DISCLOSURE TO ADOPTIVE PARENTS.—

58 (a) At the time that an adoption entity is responsible for

39-01921A-21

20211814__

59 selecting prospective adoptive parents for a born or unborn
60 child whose parents are seeking to place the child for adoption
61 or whose rights were terminated under ~~pursuant to~~ chapter 39,
62 the adoption entity must provide the prospective adoptive
63 parents with information concerning the background of the child
64 to the extent such information is disclosed to the adoption
65 entity by the parents, legal custodian, or the department. This
66 subsection applies only if the adoption entity identifies the
67 prospective adoptive parents and supervises the placement of the
68 child in the prospective adoptive parents' home. If any
69 information cannot be disclosed because the records custodian
70 failed or refused to produce the background information, the
71 adoption entity has a duty to provide the information if it
72 becomes available. An individual or entity contacted by an
73 adoption entity to obtain the background information must
74 release the requested information to the adoption entity without
75 the necessity of a subpoena or a court order. In all cases, the
76 prospective adoptive parents must receive all available
77 information by the date of the final hearing on the petition for
78 adoption. The information to be disclosed includes:

79 1. A family social and medical history form completed
80 pursuant to s. 63.162(6).

81 2. The biological mother's medical records documenting her
82 prenatal care and the birth and delivery of the child.

83 3. A complete set of the child's medical records
84 documenting all medical treatment and care since the child's
85 birth and before placement. The adoption entity must inform
86 prospective adoptive parents that upon adoption, a child's
87 immunization records are removed from the Florida Shots database

39-01921A-21

20211814__

88 within the Department of Health, and the adoption entity must
89 provide written notification to the prospective adoptive parents
90 regarding the necessity to retain a complete set of the child's
91 medical records as they may be needed for school enrollment and
92 future medical care.

93 4. All mental health, psychological, and psychiatric
94 records, reports, and evaluations concerning the child before
95 placement.

96 5. The child's educational records, including all records
97 concerning any special education needs of the child before
98 placement.

99 6. Records documenting all incidents that required the
100 department to provide services to the child, including all
101 orders of adjudication of dependency or termination of parental
102 rights issued pursuant to chapter 39, any case plans drafted to
103 address the child's needs, all protective services
104 investigations identifying the child as a victim, and all
105 guardian ad litem reports filed with the court concerning the
106 child.

107 7. Written information concerning the availability of
108 adoption subsidies for the child, if applicable.

109 Section 3. Subsection (6) is added to section 63.093,
110 Florida Statutes, to read:

111 63.093 Adoption of children from the child welfare system.—

112 (6) If the community-based care lead agency or its
113 subcontracted agency approves the adoptive parent's application
114 file, the community-based care lead agency or its subcontracted
115 agency, as applicable, must provide written notification to the
116 prospective adoptive parent that upon adoption, a child's

39-01921A-21

20211814__

117 immunization records are removed from the Florida Shots database
118 within the Department of Health, and the necessity to retain a
119 complete set of the child's medical records as they may be
120 needed for school enrollment and future medical care.

121

122 Notwithstanding subsections (1) and (2), this section does not
123 apply to a child adopted through the process provided in s.
124 63.082(6).

125 Section 4. Subsection (4) of section 63.142, Florida
126 Statutes, is amended to read:

127 63.142 Hearing; judgment of adoption.—

128 (4) JUDGMENT.—

129 (a) At the conclusion of the hearing, after the court
130 determines that the date for a parent to file an appeal of a
131 valid judgment terminating that parent's parental rights has
132 passed and no appeal, pursuant to the Florida Rules of Appellate
133 Procedure, is pending and that the adoption is in the best
134 interest of the person to be adopted, a judgment of adoption
135 shall be entered. A judgment terminating parental rights pending
136 adoption is voidable and any later judgment of adoption of that
137 minor is voidable if, upon a parent's motion for relief from
138 judgment, the court finds that the adoption substantially fails
139 to meet the requirements of this chapter. The motion must be
140 filed within a reasonable time, but not later than 1 year after
141 the date the judgment terminating parental rights was entered.

142 (b) Upon entry of a judgment of adoption, the clerk of the
143 court shall transmit a certified copy of the judgment to the
144 Department of Health. Within 15 business days after receipt of
145 the certified copy of the judgment of adoption, the Department

39-01921A-21

20211814__

146 of Health must provide, by e-mail or certified mail, return
147 receipt requested, a complete set of the adopted child's medical
148 records, including the child's immunization records, to the
149 adopting parents. The Department of Health may not dispose of an
150 adopted child's medical and immunization records until 16
151 business days after the court enters the judgment of adoption.

152 Section 5. This act shall take effect July 1, 2021.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1814

INTRODUCER: Senator Rodriguez

SUBJECT: Medical Records of Children Available for Adoption

DATE: March 22, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Cox</u>	<u>CF</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>HP</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1814 makes a number of changes related to medical records of children available for adoption. The Department of Children and Families (DCF or department), adoption entities, and community-based care lead agencies or their subcontracted agencies will be required to provide written notification to prospective adoptive parents that when a child is adopted, his or her immunization records will be removed from the Florida SHOTS database. The adoptive parent must also be provided with written information related to the necessity for the parent to retain the complete set of the child's medical records that are provided to the parent.

The bill also requires the Department of Health (DOH) to provide a complete copy of the child's medical records to the adopting parents within 15 days after receipt of a judgment of adoption and prohibits the DOH from disposing of such records until 16 business days after the judgment of adoption is entered.

The bill is anticipated to have no fiscal impact on state government. See Section V. Fiscal Impact Statement.

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

II. Present Situation:

Florida SHOTS is a free, statewide, centralized online immunization information system that helps parents, healthcare providers, and schools keep track of immunization records to ensure that patients of all ages receive the vaccinations needed to protect them from vaccine-preventable diseases.¹ Florida SHOTS database provides easy access to required immunization records for

¹ Vaccine preventable diseases currently include diphtheria, tetanus, pertussis (whooping cough), poliomyelitis (polio) measles, mumps, rubella, infections hepatitis B, influenza, and pneumococcal infections. Centers for Disease Control and Prevention, *List of Vaccines Used in the United States*, available at <https://www.cdc.gov/vaccines/vpd/vaccines-list.html> (last visited March 20, 2021).

child-care and school attendance regardless of where children go within Florida. In case of disaster, those records remain protected and available.² Florida SHOTS is authorized under s. 381.003, F.S., and is a program of the Florida Health Immunization Section that is supported by the Centers for Disease Control and Prevention.³

For parents, Florida SHOTS provides:

- An accurate and official immunization history; available whenever and wherever your doctors need it;
- Easy DH Form 680 retrieval— required for schools, camps, and child care centers;
- All of the child’s shot records on a confidential and secure site;
- Alerts to healthcare providers when immunizations may be due or overdue;
- Prevention of unnecessary duplicate immunizations; and
- Healthcare providers with current recommendations and information on new vaccines.⁴

The Form DH 680, Florida Certification of Immunization, must be used to document receipt of immunizations required for entry and attendance in Florida schools, childcare facilities, and family daycare homes.⁵ A Form DH 680, certified with electronic signature, may be printed by enrolled health care providers and is also accessible to any school, licensed childcare facility, or daycare center enrolled in Florida SHOTS. Parents can also access their child's certified Form DH 680 with a personal identification number (PIN) issued by their child's health care provider.⁶

Adoption

A judgment of adoption, whether entered by a court of this state, another state, or of any other place, has the following effect:

- It relieves the birth parents of the adopted person, except a birth parent who is a petitioner or who is married to a petitioner, of all parental rights and responsibilities.
- It terminates all legal relationships between the adopted person and the adopted person’s relatives, including the birth parents, except a birth parent who is a petitioner or who is married to a petitioner, so that the adopted person thereafter is a stranger to his or her former relatives for all purposes, including the interpretation or construction of documents, statutes, and instruments, whether executed before or after entry of the adoption judgment, that do not expressly include the adopted person by name or by some designation not based on a parent and child or blood relationship, except that rights of inheritance shall be as provided in the Florida Probate Code.

² Department of Health (DOH), *Florida SHOTS*, available at <https://www.flshotsusers.com/> (last visited March 19, 2021).

³ The DOH, Florida SHOTS, *Frequently Asked Questions*, available at <https://flshotsusers.com/resources/frequently-asked-questions> (last visited March 20, 2021).

⁴ The DOH, Florida SHOTS, *Parents and Guardians*, available at <https://flshotsusers.com/parents-guardians> (last visited March 19, 2021).

⁵ Section 1003.22, F.S., provides requirements relating to immunizations required for admittance to schools. The section also provides a number of exceptions including those for religious reasons. A delay is also allowed for children who are experiencing homelessness and children who are known to the department.

⁶ The DOH, Programs and Services, *Parents: Documenting Immunizations*, available at <http://www.floridahealth.gov/programs-and-services/immunization/children-and-adolescents/documenting-immunizations/index.html> (last visited March 19, 2021).

- Except for rights of inheritance, it creates the relationship between the adopted person and the petitioner and all relatives of the petitioner that would have existed if the adopted person were a blood descendant of the petitioner born within wedlock. This relationship shall be created for all purposes, including applicability of statutes, documents, and instruments, whether executed before or after entry of the adoption judgment, that do not expressly exclude an adopted person from their operation or effect.⁷

Current law provides information related to medical information and records for children who are being adopted:

- The department must provide a family social and medical history form to an adoption entity that intends to place a child for adoption.⁸
- At the time that an adoption entity is responsible for selecting prospective adoptive parents for a born or unborn child whose parents are seeking to place the child for adoption or whose rights were terminated pursuant to ch. 39, F.S., the adoption entity must provide the prospective adoptive parents with information concerning the background of the child to the extent such information is disclosed to the adoption entity by the parents, legal custodian, or the department, including:
 - A family social and medical history form completed pursuant to s. 63.162(6), F.S.
 - The biological mother's medical records documenting her prenatal care and the birth and delivery of the child.
 - A complete set of the child's medical records documenting all medical treatment and care since the child's birth and before placement.
 - All mental health, psychological, and psychiatric records, reports, and evaluations concerning the child before placement.⁹

Current law related to the adoption of children from the child welfare system does not directly address medical records or information.¹⁰

III. Effect of Proposed Changes:

The bill amends ss. 63.082, 63.085, 63.093, F.S., relating to family social and medical history, disclosure by the adoption entity, and adoption of children from the child welfare system, respectively, to make a number of changes related to medical records of children available for adoption. The department, adoption entities, and community-based care lead agencies or their subcontracted agencies, will be required to provide written notification to prospective adoptive parents that a child's immunization records will be removed from the Florida Shots database when the child is adopted. The adoptive parent is to also be provided with written information related to the necessity for the parent to retain the complete set of the child's medical records that are provided to the parent.

⁷ Section 63.172(1), F.S.

⁸ Section 63.082(3)(a), F.S. Further, forms containing at least the same information as the forms promulgated by the department must be attached to the petition to terminate parental rights pending adoption and must contain biological and sociological information or information as to the family medical history regarding the minor and the parents.

⁹ Section 63.085(2)(1)1.-4., F.S.

¹⁰ Section 63.093, F.S..

The bill also requires the DOH to provide a complete set of the child's medical records to the adopting parents within 15 days after receipt of a judgment of adoption from the clerk of the court. The bill also prohibits the department from disposing of such records until 16 business days after the judgment of adoption is entered.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill is anticipated to have no fiscal impact on the private sector, but would result in an added convenience for adoptive parents.

C. Government Sector Impact:

The bill is anticipated to have no fiscal impact on state government.

VI. Technical Deficiencies:

Florida SHOTS is the official name of the database. The bill refers to it as Florida Shots.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends ss. 63.082, 63.085, 63.093, 63.142 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



674814

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Children, Families, and Elder Affairs (Rouson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Based on recommendations in the Third Interim Report of the 20th Statewide Grand Jury, submitted December 10, 2020, regarding the state's mental health system, it is the intent of the Legislature to establish a commission to examine the state's current policies and procedures for providing mental health and substance abuse services and to make recommendations



674814

11 to improve and facilitate the delivery of mental health and
12 substance abuse services throughout this state.

13 Section 2. Section 394.9086, Florida Statutes, is created
14 to read:

15 394.9086 Commission on Mental Health and Substance Abuse.-

16 (1) CREATION.-The Commission on Mental Health and Substance
17 Abuse, a commission as defined in s. 20.03(10), is created
18 within the Department of Children and Families. Except as
19 otherwise provided in this section, the commission shall operate
20 in a manner consistent with s. 20.052.

21 (2) PURPOSES.-The purposes of the commission are to examine
22 the current methods of providing mental health and substance
23 abuse services in this state and to improve the effectiveness of
24 current practices, procedures, programs, and initiatives in
25 providing such services; identify any barriers or deficiencies
26 in the delivery of such services; and recommend changes to
27 existing laws, rules, and policies necessary to implement the
28 commission's recommendations.

29 (3) MEMBERSHIP; TERM LIMITS; MEETINGS.-

30 (a) The commission shall be composed of 15 members as
31 follows:

32 1. The Secretary of Children and Families or his or her
33 designee.

34 2. The Secretary of the Agency for Health Care
35 Administration or his or her designee.

36 3. A family member of a consumer of publicly funded mental
37 health, appointed by the President of the Senate.

38 4. A representative of the Louis de la Parte Florida Mental
39 Health Institute within the University of South Florida,



674814

- 40 appointed by the President of the Senate.
- 41 5. A representative of a school district, appointed by the
42 President of the Senate.
- 43 6. A representative of a county utilizing state-funded
44 mental health and substance abuse services, appointed by the
45 President of the Senate.
- 46 7. A representative of a treatment facility, as defined in
47 s. 394.455, appointed by the Speaker of the House of
48 Representatives.
- 49 8. A representative of a managing entity, as defined in s.
50 394.9082(2), appointed by the Speaker of the House of
51 Representatives.
- 52 9. A representative of a community-based substance abuse
53 services provider, appointed by the Speaker of the House of
54 Representatives.
- 55 10. A psychiatrist licensed under chapter 458 or chapter
56 459 practicing within the mental health delivery system,
57 appointed by the Speaker of the House of Representatives.
- 58 11. A psychologist licensed under chapter 490 practicing
59 within the mental health delivery system, appointed by the
60 Governor.
- 61 12. A mental health professional licensed under chapter
62 491, appointed by the Governor.
- 63 13. An emergency room physician, appointed by the Governor.
- 64 14. A representative from the field of law enforcement,
65 appointed by the Governor.
- 66 15. A representative of mental health courts, appointed by
67 the Governor.
- 68 (b) The Governor shall appoint the chair from the members



674814

69 of the commission. Appointments to the commission must be made
70 by September 1, 2021. Members shall be appointed to serve 3-year
71 terms at the pleasure of the officer who appointed the member. A
72 vacancy on the commission shall be filled in the same manner as
73 the original appointment.

74 (c) The commission shall convene no later than September 1,
75 2021. The commission shall meet at least quarterly or upon the
76 call of the chair. The commission may hold its meetings via
77 teleconference or other electronic means.

78 (4) DUTIES.—

79 (a) The duties of the Commission on Mental Health and
80 Substance Abuse include the following:

81 1. Conducting a review and evaluation of the management and
82 functioning of the existing publicly supported mental health and
83 substance abuse systems and services in the Department of
84 Children and Families, the Agency for Health Care
85 Administration, and all other departments that administer mental
86 health and substance abuse services. Such review must include,
87 at a minimum, a review of current goals and objectives, current
88 planning, services strategies, coordination management,
89 purchasing, contracting, financing, local government funding
90 responsibility, and accountability mechanisms.

91 2. Addressing the unique needs of persons with a history of
92 substance abuse or with a comorbid psychiatric disorder.

93 3. Addressing access to, financing of, and scope of
94 responsibility in the delivery of emergency behavioral health
95 care services.

96 4. Addressing the quality and effectiveness of current
97 mental health and substance abuse services delivery systems,



674814

98 professional staffing and clinical structure of services, and
99 roles and responsibilities of public and private providers, such
100 as community mental health centers; community-based substance
101 abuse agencies; hospitals, including emergency services
102 departments; law enforcement agencies; and the judicial system.

103 5. Addressing priority population groups for publicly
104 funded mental health and substance abuse services, identifying
105 the comprehensive mental health and substance abuse services
106 delivery systems, mental health and substance abuse needs
107 assessment and planning activities, and local government funding
108 responsibilities for mental health and substance abuse services.

109 6. Reviewing the implementation of chapter 2020-107, Laws
110 of Florida.

111 7. Identifying any gaps in the provision of mental health
112 and substance use disorder services.

113 8. Providing recommendations on how behavioral health
114 managing entities may fulfill their purpose of promoting service
115 continuity.

116 9. Submitting recommendations to the Governor, the
117 President of the Senate, and the Speaker of the House of
118 Representatives regarding the mission and objectives of state-
119 supported mental health and substance abuse services and the
120 planning, management, staffing, financing, contracting,
121 coordination, and accountability mechanisms that will best
122 foster the recommended mission and objectives.

123 10. Recommending a permanent, agency-level entity to manage
124 mental health, substance abuse, and related services statewide.

125 (b) The commission may call upon appropriate departments
126 and agencies of state government for such professional



674814

127 assistance as may be needed in the discharge of its duties, and
128 such departments and agencies shall provide such assistance in a
129 timely manner.

130 (5) REPORTS.—By September 1, 2022, and each year
131 thereafter, the commission shall submit its report to the
132 Governor, the President of the Senate, and the Speaker of the
133 House of Representatives containing its findings and
134 recommendations on how to best provide and facilitate mental
135 health and substance abuse services in this state.

136 (6) This section is repealed September 1, 2026, unless
137 reviewed and saved from repeal through reenactment by the
138 Legislature.

139 Section 3. This act shall take effect upon becoming a law.

140
141 ===== T I T L E A M E N D M E N T =====

142 And the title is amended as follows:

143 Delete everything before the enacting clause
144 and insert:

145 A bill to be entitled
146 An act relating to the Commission on Mental Health and
147 Substance Abuse; providing legislative intent;
148 creating s. 394.9086, F.S.; creating the Commission on
149 Mental Health and Substance Abuse within the
150 Department of Children and Families; providing the
151 purpose of the commission; providing for membership,
152 term limits, meetings, and duties of the commission;
153 requiring certain agencies to provide assistance to
154 the commission in a timely manner; requiring the
155 commission to submit a report to the Governor and



674814

156 | Legislature by a specified date, and annually
157 | thereafter; providing for future review and repeal
158 | unless saved by the Legislature through reenactment;
159 | providing an effective date.

By Senator Rouson

19-00679A-21

20211844__

1 A bill to be entitled
2 An act relating to the Mental Health and Substance
3 Abuse Disorder Services Commission; creating s.
4 394.4575, F.S.; creating the Mental Health and
5 Substance Abuse Disorder Services Commission within
6 the Department of Children and Families; providing the
7 purpose of the commission; requiring the commission to
8 convene by a specified date; specifying the
9 composition of the commission; providing the duties
10 and authority of the commission; requiring certain
11 agencies to provide assistance to the commission in a
12 timely manner; requiring the commission to submit an
13 initial report to the Governor and the Legislature by
14 a specified date; providing for the expiration of the
15 commission; providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Section 394.4575, Florida Statutes, is created
20 to read:

21 394.4575 Mental Health and Substance Abuse Disorder
22 Services Commission.—

23 (1) The Mental Health and Substance Abuse Disorder Services
24 Commission, a commission as defined in s. 20.03(10), is created
25 within the Department of Children and Families for the purpose
26 of examining the provision of mental health and substance abuse
27 disorder services in this state. Except as otherwise provided in
28 this section, the commission shall operate in a manner
29 consistent with s. 20.052.

19-00679A-21

20211844__

30 (2) (a) The commission shall convene no later than October
31 1, 2021, and shall be composed of 15 members appointed by the
32 Governor and confirmed by the Senate. The Governor shall appoint
33 the chair from among the members of the commission. The
34 Secretary of Children and Families and the Secretary of Health
35 Care Administration shall serve as ex officio, nonvoting members
36 of the commission. Appointed members must include:

37 1. A representative of the Florida Association of Managing
38 Entities.

39 2. A representative of the Florida Sheriffs Association.

40 3. A representative of the Florida Association of Counties.

41 4. A representative of the Florida Hospital Association.

42 5. A representative of the Florida Association of District
43 School Superintendents.

44 6. A representative of the Florida Behavioral Health
45 Association.

46 7. A representative of the Florida Coalition for Children.

47 8. A representative of the Florida Assisted Living
48 Association.

49 9. A representative of the American Civil Liberties Union.

50 10. A representative of the Florida Association of Healthy
51 Start Coalitions.

52 11. A representative of the Florida Housing Coalition.

53 12. A representative of the JJDP Advisory Group.

54 13. A representative of mental health courts.

55 14. A representative of public defenders.

56 15. A consumer representative.

57 (b) Each member shall be appointed to a 4-year term.

58 However, for the purpose of achieving staggered terms, of the

19-00679A-21

20211844__

59 initial appointments, eight members shall be appointed to 2-year
60 terms and seven members shall be appointed to 4-year terms.

61 (3) The commission may meet as often as it deems necessary
62 to fulfill the duties prescribed in this section.

63 (4) The commission shall investigate the current system of
64 care in the provision of mental health and substance abuse
65 disorders in this state and develop recommendations for system
66 enhancements. At a minimum, the commission shall:

67 (a) Review the status of the provision of mental health and
68 substance abuse disorder services in this state and provide
69 recommendations to the Governor and the Legislature.

70 (b) Review the status of the provision of services to
71 individuals who have both a mental illness and a substance abuse
72 disorder, and provide recommendations to the Governor and the
73 Legislature.

74 (c) Review the implementation of chapter 2020-107, Laws of
75 Florida, and provide recommendations to the Governor and the
76 Legislature.

77 (d) Identify any gaps in the provision of mental health and
78 substance abuse disorder services.

79 (e) Provide recommendations on how behavioral health
80 managing entities may fulfill their purpose of promoting service
81 continuity.

82 (5) The commission may call upon appropriate agencies of
83 state government for professional assistance as needed in the
84 discharge of its duties, and such agencies shall provide their
85 assistance in a timely manner.

86 (6) Notwithstanding any other law, the commission may
87 request and shall be provided with access to any information or

19-00679A-21

20211844__

88 records, including exempt or confidential and exempt information
89 or records, which pertain to the provision of mental health or
90 substance abuse disorder services and which are necessary for
91 the commission to carry out its duties. Information or records
92 obtained by the commission which are otherwise exempt or
93 confidential and exempt retain their exempt or confidential and
94 exempt status, and the commission may not disclose any such
95 information or records.

96 (7) The commission shall submit an initial report on its
97 findings and recommendations to the Governor, the President of
98 the Senate, and the Speaker of the House of Representatives by
99 July 1, 2023, and may issue reports annually thereafter.

100 (8) This section expires October 2, 2026.

101 Section 2. This act shall take effect upon becoming a law.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1844

INTRODUCER: Senator Rouson

SUBJECT: Mental Health and Substance Abuse Disorder Services Commission

DATE: March 22, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	Pre-meeting
2.			AHS	
3.			AP	

I. Summary:

SB 1844 creates the Mental Health and Substance Abuse Disorder Services Commission (Commission) within the Department of Children and Families (the DCF). The bill directs the Commission to review and evaluate the behavioral health care system in Florida for quality and effectiveness.

The Commission must be comprised of 15 members representing numerous stakeholders and providers of behavioral health services throughout the state. The bill directs the agency heads of the DCF and the Agency for Health Care Administration (AHCA) to serve as ex-officio, nonvoting members. Members are to serve 4-year terms, with eight members serving initial 2-year terms and the remaining seven serving 4-year terms for the purpose of achieving staggered terms.

Under the bill, the Commission must:

- Review the status of the provision of mental health and substance abuse disorder services in this state and provide recommendations to the Governor and the Legislature.
- Review the status of service provision to individuals who have both a mental illness and a substance abuse disorder and provide recommendations to the Governor and the Legislature;
- Review the implementation of HB 945 (2020) and provide recommendations to the Governor and the Legislature;
- Identify any existing gaps in the provision of behavioral health services; and
- Provide recommendations on how behavioral health managing entities may fulfill their purpose of promoting service continuity.

The Commission may request assistance as needed from state agencies, and may examine confidential and exempt records and information needed to carry out its duties, though such information and records must retain its confidential and exempt status and may not be publicly disclosed.

The bill requires the Commission to report on its findings, make recommendations for improvement, and recommend an agency-level entity to manage behavioral health services statewide. The Commission must submit an initial report on its findings and recommendations by July 1, 2023, and then annually thereafter as it deems necessary. The Commission expires on October 2, 2026.

The bill will have a negative fiscal impact on state government due to the Commission being housed within the DCF. See Section V. Fiscal Impact Statement.

The bill is effective upon becoming a law.

II. Present Situation:

Mental Health and Mental Illness

Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community. The primary indicators used to evaluate an individual's mental health are:

- Emotional well-being, which is described as perceived life satisfaction, happiness, cheerfulness, peacefulness;
- Psychological well-being, which includes self-acceptance, personal growth including openness to new experiences, optimism, hopefulness, purpose in life, control of one's environment, spirituality, self-direction, and positive relationships; and
- Social well-being, which is described as social acceptance, beliefs in the potential of people and society as a whole, personal self-worth and usefulness to society, and sense of community.¹

Mental illness encompasses all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning. Thus, mental health refers to an individual's mental state of well-being whereas mental illness signifies an alteration of that well-being.²

Mental illness affects millions of people in the United States each year. Approximately one in five adults live with a mental illness and an estimated 49.5% of adolescents aged 13-18 have a mental disorder.³ Suicide is the tenth overall leading cause of death in the nation and the second

¹ See the World Health Organization, *Mental Health: Strengthening Our Response*, available at <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response>; the Association for Mental Health and Wellness, *What is Mental Health?*, available at <http://mhaweek.org/what-is-mental-health/> (all sites last visited March 15, 2021).

² *Id.*

³ National Institute on Mental Health (NIMH), *Mental Illness*, available at <https://www.nimh.nih.gov/health/statistics/mental-illness.shtml>; The NIMH, *Mental Illness – Prevalence of Any Mental Disorder Among Adolescents*, available at https://www.nimh.nih.gov/health/statistics/mental-illness.shtml#part_155771 (all sites last visited March 15, 2021).

leading cause of death among individuals between the ages of 10 and 24.⁴ In 2019, 3,427 lives were lost to suicide in Florida.⁵

Substance Abuse

Substance abuse is the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs. Substance use disorder (SUD) is determined based on specified criteria included in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).⁶ According to the DSM-5, a diagnosis of SUD is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.⁷ SUD occurs when an individual chronically uses alcohol or drugs, resulting in significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.⁸ Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.⁹ Imaging studies of brains belonging to persons with SUD reveal physical changes in areas of the brain critical to judgment, decision making, learning and memory, and behavior control.¹⁰

In 2018, approximately 20.3 million people aged 12 or older had a SUD related to corresponding use of alcohol or illicit drugs within the previous year, including 14.8 million people diagnosed with alcohol use disorder and 8.1 million people diagnosed with drug use disorder.¹¹ The most common substance abuse disorders in the United States are from the use of alcohol, tobacco, cannabis, opioids, hallucinogens, and stimulants.¹²

Managing Entities (ME)

The DCF administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults who are otherwise unable to obtain these services. SAMH programs include a range of prevention, acute

⁴ National Institute on Mental Health, *Suicide*, available at <https://www.nimh.nih.gov/health/statistics/suicide.shtml> (last visited March 15, 2021).

⁵ The Department of Children and Families (The DCF), *Suicide Prevention Coordinating Council 2020 Annual Report*, p. 7. (January 1, 2021) (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁶ The World Health Organization, *Mental Health and Substance Abuse*, available at <https://www.who.int/westernpacific/about/how-we-work/programmes/mental-health-and-substance-abuse>; the National Institute on Drug Abuse (NIDA), *The Science of Drug Use and Addiction: The Basics*, available at <https://www.drugabuse.gov/publications/media-guide/science-drug-use-addiction-basics> (all sites last visited March 15, 2021).

⁷ The National Association of Addiction Treatment Providers, *Substance Use Disorder*, available at <https://www.naatp.org/resources/clinical/substance-use-disorder> (last visited February 8, 2021).

⁸ The SAMSHA, *Substance Use Disorders*, <http://www.samhsa.gov/disorders/substance-use> (last visited March 15, 2021).

⁹ The NIDA, *Drugs, Brains, and Behavior: The Science of Addiction*, available at <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction> (last visited March 15, 2021).

¹⁰ *Id.*

¹¹ The Substance Abuse and Mental Health Services Administration (The SAMHSA), *Key substance use and mental health indicators in the United States: Results from the 2018 National Survey on Drug Use and Health*, p. 2, available at <https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHNationalFindingsReport2018/NSDUHNationalFindingsReport2018.pdf> (last visited March 15, 2021).

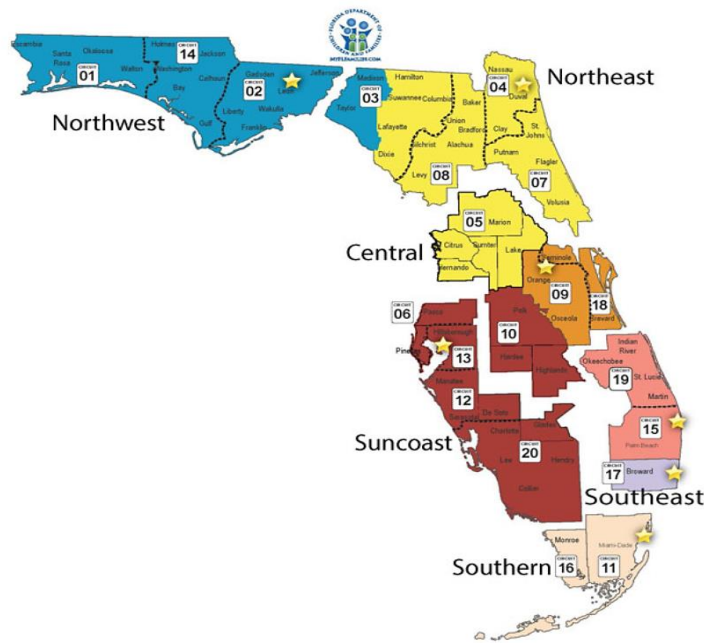
¹² The Rural Health Information Hub, *Defining Substance Abuse and Substance Use Disorders*, available at <https://www.ruralhealthinfo.org/toolkits/substance-abuse/1/definition> (last visited March 15, 2021).

interventions (e.g. crisis stabilization), residential treatment, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.¹³

In 2001, the Legislature authorized the DCF to implement behavioral health managing entities (ME) as the management structure for the delivery of local mental health and substance abuse services.¹⁴ The implementation of the ME system initially began on a pilot basis and, in 2008, the Legislature authorized DCF to implement MEs statewide.¹⁵ Full implementation of the statewide ME system occurred in 2013 and all geographic regions are now served by a managing entity.¹⁶

The DCF contracts with seven MEs as shown in the map below and summarized as follows:

- Big Bend Community Based Care (blue).
- Lutheran Services Florida (yellow).
- Central Florida Cares Health System (orange).
- Central Florida Behavioral Health Network, Inc. (red).
- Southeast Florida Behavioral Health (pink).
- Broward Behavioral Health Network, Inc. (purple).
- South Florida Behavioral Health Network, Inc. (beige).¹⁷



¹³ See chs. 394 and 397, F.S.

¹⁴ Chapter 2001-191, Laws of Fla.

¹⁵ Chapter 2008-243, Laws of Fla.

¹⁶ Florida Tax Watch, *Analysis of Florida’s Behavioral Health Managing Entity Models*, p. 4 (March 2015) available at <https://floridatxwatch.org/Research/Full-Library/ArtMID/34407/ArticleID/15758/Analysis-of-Floridas-Behavioral-Health-Managing-Entities-Model> (last visited March 11, 2021).

¹⁷ The DCF, *Managing Entities*, <https://www.myflfamilies.com/service-programs/samh/managing-entities/> (last visited March 11, 2021).

The MEs in turn contract with local service providers for the delivery of mental health and substance abuse services.¹⁸ In Fiscal Year 2018-2019, the network service providers under contract with the MEs served 339,093 individuals.¹⁹

Coordinated System of Care

MEs are required to promote the development and implementation of a coordinated system of care.²⁰ A coordinated system of care means a full array of behavioral and related services in a region or community offered by all service providers, participating either under contract with a ME or by another method of community partnership or mutual agreement.²¹ A community or region provides a coordinated system of care for those suffering from mental illness or substance abuse disorder through a no-wrong-door model, to the extent allowed by available resources. If funding is provided by the Legislature, the DCF may award system improvement grants to MEs.²² MEs must submit detailed plans to enhance crisis services based on the no-wrong-door model or to meet specific needs identified in the DCF's assessment of behavioral health services in this state.²³ The DCF must use performance-based contracts to award grants.²⁴ There are several essential elements that make up a coordinated system of care, including all of the following:

- Community interventions.
- Case management.
- Care coordination.
- Outpatient services.
- Residential services.
- Hospital inpatient care.
- Aftercare and post-discharge services.
- Medication assisted treatment and medication management.
- Recovery support.²⁵

A coordinated system of care must include, but is not limited to, the following array of services:

- Prevention services.
- Home-based services.
- School-based services.
- Family therapy.
- Family support.
- Respite services.

¹⁸ Managing entities create and manage provider networks by contracting with service providers for the delivery of substance abuse and mental health services.

¹⁹ The DCF, *Substance Abuse and Mental Health Triennial Plan Update for Fiscal Year*, (Dec. 6, 2019) available at <https://www.myflfamilies.com/service-programs/samh/publications/docs/SAMH%20Services%20Plan%202018%20Update.pdf> (last visited Feb. 16, 2021).

²⁰ Section 394.9082(5)(d), F.S.

²¹ Section 394.4573(1)(c), F.S.

²² Section 394.4573(3), F.S. The Legislature has not funded system improvement grants.

²³ *Id.*

²⁴ *Id.*

²⁵ Section 394.4573(2), F.S.

- Outpatient treatment.
- Crisis stabilization.
- Therapeutic foster care.
- Residential treatment.
- Inpatient hospitalization.
- Case management.
- Services for victims of sex offenses.
- Transitional services.
- Trauma-informed services for children who have suffered sexual exploitation.²⁶

Current law requires the DCF to define the priority populations which would benefit from receiving care coordination, including considerations when defining such population.²⁷

Considerations include the number and duration of involuntary admissions, the degree of involvement with the criminal justice system, the risk to public safety posed by the individual, the utilization of a treatment facility by the individual, the degree of utilization of behavioral health services, and whether the individual is a parent or caregiver who is involved with the child welfare system.

Chapter 2020-107, Laws of Florida (HB 945)

On June 27, 2020, the Governor signed House Bill 945 (2020) (HB 945) into law.²⁸ HB 945 addressed the availability and coordination of children's behavioral health services.²⁹ It required managing entities to facilitate the creation of plans that promote the development and effective implementation in local areas of a coordinated behavioral health system of care.³⁰ These systems must integrate services provided through Florida's various child-serving systems and other systems for which children and adolescents would qualify.³¹ Plans must be completed by January 1, 2022, and implemented by January 1, 2023.³²

The bill included crisis response services provided through mobile response teams in the array of services available to children and adolescents who are members of certain target populations and specifies the elements of these services.³³ The Louis de la Parte Florida Mental Health Institute was required to develop, in consultation with specified entities, a model response protocol for schools to use mobile response teams.³⁴ It required the DCF and AHCA to identify children and adolescents who are the highest utilizers of crisis stabilization services, collaboratively take action to meet the behavioral needs of such children, and jointly submit a quarterly report to the Legislature during the following two fiscal years.³⁵ The bill also required the DCF and AHCA to

²⁶ Section 394.495(4), F.S.

²⁷ Section 394.9082(3)(c), F.S.

²⁸ Chapter 2020-107, L.O.F.

²⁹ *Id.*

³⁰ Chapter 2020-107, s. 3, L.O.F. (creating s. 394.4955(2)(b), F.S.).

³¹ Chapter 2020-107, s. 3, L.O.F. (creating s. 394.4955(1), F.S.).

³² Chapter 2020-107, s. 3, L.O.F. (creating s. 394.4955(3), F.S.).

³³ Chapter 2020-107, s. 2, L.O.F. (creating s. 394.4955(4)(q), F.S.).

³⁴ Chapter 2020-107, s. 10, L.O.F. (creating s. 1004.44(4), F.S.).

³⁵ Chapter 2020-107, s. 1, L.O.F. (creating s. 394.493(4), F.S.).

assess the quality of care provided in crisis stabilization units to children and adolescents who are high utilizers of such services.³⁶

Commission under Section 20.052, F.S.

“Commission,” unless otherwise required by the Florida Constitution, is a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and exercising limited quasi-legislative or quasi-judicial powers, or both.³⁷

Section 20.052, F.S., provides that each advisory body, commission, board of trustees, or any other collegial body created by specific statutory enactment as an adjunct to an executive agency must be established, evaluated, or maintained in accordance with certain requirements.³⁸ The private citizen members of an advisory body that is adjunct to an executive agency must be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer.³⁹ Unless an exemption is otherwise specifically provided by law, all meetings of an advisory body are public meetings under s. 286.011, F.S.⁴⁰ Members of a commission, unless expressly provided otherwise by specific statutory enactment, serve without additional compensation or honorarium, and are authorized to receive only per diem and reimbursement for travel expenses as provided in s. 112.061, F.S.⁴¹

The Marjory Stoneman Douglas High School Public Safety Commission

The incident of mass violence at Marjory Stoneman Douglas High School in Parkland, Florida was preceded by multiple, repeated interactions between the shooter and law enforcement agencies, social services agencies, and schools, over many years. This history was characterized by a lack of communication and coordination, preventing these many entities from understanding the whole problem and taking action to prevent the mass violence incident.

In response to this problem, the Legislature created the Marjory Stoneman Douglas High School Public Safety Commission (MSD Commission) within the Florida Department of Law Enforcement (FDLE).⁴² The MSD Commission is composed of 16 voting members and four nonvoting members.⁴³ The Governor appoints five voting members to the MSD Commission, including the chair; and the President of the Senate and the Speaker of the House of Representatives each appoint five voting members to the MSD Commission. The Commissioner of the FDLE serves as a member of the MSD Commission. The Secretary of the DCF, the Secretary of the Department of Juvenile Justice, the Secretary of AHCA, and the Commissioner of Education serve as ex officio, non-voting members of the MSD Commission.

³⁶ *Id.*

³⁷ Section 20.03(10), F.S.

³⁸ Section 20.052(1), F.S.

³⁹ Section 20.052(5)(a), F.S.

⁴⁰ Section 20.052(5)(c), F.S.

⁴¹ Section 20.052(4)(d), F.S.

⁴² Ch. 2018-3, L.O.F.

⁴³ All members of the Commission must serve without compensation, but will be reimbursed for their per diem and travel expenses pursuant to s. 112.061, F.S.

The MSD Commission was tasked with investigating system failures in the Marjory Stoneman Douglas High School shooting and to develop recommendations for system improvements. Regarding children’s behavioral health, the MSD Commission stated “serious consideration should be given to how children transition from child services into adult behavioral services, and Florida needs a better safety net for high-risk children.”⁴⁴ The MSD Commission found that Florida’s mental health system, specifically the Baker Act system, needs better discharge planning, master case management, and care coordination, and that no adequate or effective system exists for tracking or flagging high recidivist Baker Acts.⁴⁵

The Commission recommended:

- The Legislature should require school districts to engage community health providers that receive state funding to participate in the coordination of student treatment plans;
- Programs such as Community Action Treatment teams should be enhanced and expanded, where necessary, to provide better continuity of behavioral health services to close the gap when high-risk children transition into adulthood; and
- The Legislature should require DCF, DJJ and AHCA to develop an alert system to identify those individuals who are repeatedly Baker Acted. The responsible entity must develop a course of action to address why the person is repeatedly Baker Acted.⁴⁶

Statewide Grand Jury

Florida law provides the Governor with the ability to petition the Florida Supreme Court to impanel a statewide grand jury when doing so is deemed to be in the public interest.⁴⁷ The Governor's petition must state the general crimes or wrongs to be inquired into and that those crimes or wrongs are of a multi-circuit nature.⁴⁸ The Supreme Court may order the impaneling of a statewide grand jury, in accordance with the petition, for a term of 12 calendar months.⁴⁹ Upon petition by a majority of the statewide grand jury or by the legal adviser to the statewide grand jury, the Supreme Court, by order, may extend the term of the statewide grand jury for a period of up to 6 months.⁵⁰

The Twentieth Statewide Grand Jury

The Governor petitioned for the creation of a statewide grand jury (Grand Jury) to investigate:

- Whether refusal or failure to follow the mandates of school-related safety laws, such as the Marjory Stoneman Douglas Public Safety Act, results in unnecessary and avoidable risks to students across the state;
- Whether public entities committed – and continue to commit – fraud and deceit by accepting state funds conditioned on implementation of certain safety measures while knowingly failing to act;

⁴⁴ Marjory Stoneman Douglas High School Public Safety Commission, *Report Submitted to the Governor, Speaker of the House of Representatives, and Senate President* at p. 150, (November 1, 2019) available at <http://www.fdle.state.fl.us/MSDHS/msd-Report-2-Public-Version.pdf> (last visited March 16, 2021)

⁴⁵ *Id.* at p. 141.

⁴⁶ *Id.* at pp. 151-152.

⁴⁷ Section 905.33(1), F.S.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

- Whether school officials committed – and continue to commit – fraud and deceit by mismanaging, failing to use, and diverting funds from multi-million dollar bonds specifically solicited for school safety initiatives; and
- Whether school officials violated – and continue to violate – state law by systematically underreporting incidents of criminal activity to the Department of Education.⁵¹

Third Interim Report of the Twentieth Statewide Grand Jury

The third interim report of the Grand Jury specifically addressed, among other things, current issues and deficiencies related to the provision of behavioral health services in the state.⁵² The Grand Jury, in part, reported that the state’s behavioral health system suffers from “deficiencies in funding, leadership and services related to mental health care” which “tend to turn up everywhere like bad pennies.”⁵³ “This grand jury has received a great deal of evidence and testimony regarding financial deficiencies, conflicts between various agencies over information sharing and privacy, inadequate or inefficient provision of services and a number of other serious problems,” the report said.⁵⁴ “To put it bluntly, our mental health care ‘system’ — if one can even call it that — is a mess, and we have formulated a spate of recommendations for straightforward improvement and further study in this critical area.”⁵⁵

The report goes on to state, “While a comprehensive examination of this system would lie within our jurisdiction, it would take more time than we have at our disposal considering the other items the governor has also placed in our mandate. For this reason, it is the opinion of this grand jury that the Florida Legislature should appoint a commission to specifically examine the provision of mental health services in the state of Florida.”⁵⁶ The Grand Jury recommended that membership of the proposed commission include “experienced insiders who understand the internal mechanics of existing bureaucracies, and innovative outsiders with new ideas about how to improve – and where necessary, dismantle – said bureaucracies.”⁵⁷ The Grand Jury also specifically recommended examining how to best provide and facilitate services in “dual diagnosis” cases (those which involve both mental illness and substance use disorder).⁵⁸ Finally, the Grand Jury recommended the commission be charged with “structuring and staffing a permanent, agency-level entity to manage mental health, behavioral health, and substance abuse and addiction services throughout the State of Florida.”⁵⁹

⁵¹ The Supreme Court of Florida, *Petition for Order to Impanel a Statewide Grand Jury*, p. 2-3, February 13, 2019, available at https://efactssc-public.flcourts.org/casedocuments/2019/240/2019-240_petition_72393_e83.pdf (last visited March 21, 2021).

⁵² See The Supreme Court of Florida, *Third Interim Report of the Twentieth Statewide Grand Jury*, p. 16-24, December 10, 2020, available at [http://myfloridalegal.com/webfiles.nsf/WF/CPAL-BW6T2Q/\\$file/3rd+Interim+Report.pdf](http://myfloridalegal.com/webfiles.nsf/WF/CPAL-BW6T2Q/$file/3rd+Interim+Report.pdf) (last visited March 21, 2021) (hereinafter cited as “The Third Report”).

⁵³ The Third Report at p. 16.

⁵⁴ *Id.* at p. 2.

⁵⁵ *Id.*

⁵⁶ *Id.* at pp. 21-22.

⁵⁷ *Id.* at p. 23.

⁵⁸ *Id.*

⁵⁹ *Id.*

III. Effect of Proposed Changes:

The bill creates s. 394.4575, F.S., creating the Mental Health and Substance Abuse Disorder Services Commission (Commission) within the DCF. The stated purpose of the Commission is to “examining the provision of mental and health and substance abuse services” in Florida. The bill requires the Commission to operate consistent with the guidelines of s. 20.052, F.S.

The bill requires the Commission to hold its first meeting by October 1, 2021, to be comprised of 15 members, and it directs the Governor to appoint a Commission chair from among the 15 members. The Secretary of the DCF and the Secretary of AHCA are to serve as ex-officio, nonvoting members in addition to the 15 voting members. The 15 appointed members must include the following:

- A representative of the Florida Association of Managing Entities;
- A representative of the Florida Sheriffs Association;
- A representative of the Florida Association of Counties;
- A representative of the Florida Hospital Association;
- A representative of the Florida Association of District School Superintendents;
- A representative of the Florida Behavioral Health Association;
- A representative of the Florida Coalition for Children;
- A representative of the Florida Assisted Living Association;
- A representative of the American Civil Liberties Union;
- A representative of the Florida Association of Healthy Start Coalitions;
- A representative of the Florida Housing Coalition;
- A representative of the JJDP Advisory Group;
- A representative of mental health courts;
- A representative of public defenders; and
- A consumer representative.

The bill specifies that members must serve 4-year terms, however eight members will initially be appointed to 2-year terms and the other seven will be appointed to 2-year terms, for the purpose of achieving staggered terms.

The bill allows the Commission to meet as often as it deems necessary to achieve its purpose. It requires the Commission investigate the state’s current system for providing substance abuse and mental health services, and propose recommendations to improve the system. The bill requires the Commission to perform the following specific duties:

- Review the status of the provision of mental health and substance abuse disorder services in Florida and provide recommendations to the Governor and the Legislature.
- Review the status of the provision of services to individuals who have a co-occurring mental illness and substance use disorder, and provide recommendations to the Governor and the Legislature.
- Review the implementation of chapter 2020-107, Laws of Florida, and provide recommendations to the Governor and the Legislature.
- Identify any gaps in the provision of mental health and substance abuse disorder services.
- Provide recommendations on how behavioral health managing entities may fulfill their purpose of promoting service continuity.

The bill permits the Commission to request assistance as needed from state agencies and requires such agencies to provide assistance in a timely manner.

The bill allows the Commission to request access to any information or records which relate to the provision of mental health and substance abuse services that are needed for the Commission to carry out its duties. This includes confidential and exempt records, which retain their confidential and exempt status and may not be disclosed by any members of the Commission.

The bill requires the Commission to submit an initial report containing findings and recommendations to the Governor and the Legislature by July 1, 2023, and permits the Commission to submit subsequent reports annually. Under the bill, the Commission expires on October 2, 2026.

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will have a negative fiscal impact on state government as the Commission is housed within the DCF. The DCF will incur costs related to the establishment and operation of the Commission. Additionally, Commission members may be owed per diem and travel reimbursement as directed by s. 20.052, F.S. The amount of the fiscal impact is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 394.4575 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.



179092

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Children, Families, and Elder Affairs (Farmer) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (13) of section 916.106, Florida
Statutes, is amended to read:

916.106 Definitions.—

(13) "Intellectual disability" means significantly
subaverage general intellectual functioning existing
concurrently with deficits in adaptive behavior which manifests



179092

11 before the age of 18, or significantly deficient adaptive
12 functioning resulting from a traumatic brain injury, which can
13 reasonably be expected to continue indefinitely. For the
14 purposes of this definition, the term:

15 (a) "Adaptive behavior" means the effectiveness or degree
16 with which an individual meets the standards of personal
17 independence and social responsibility expected of his or her
18 age, cultural group, and community.

19 (b) "Significantly deficient in adaptive functioning" means
20 the extreme limitation of one, or marked limitation of two, of
21 the following areas of mental functioning:

- 22 1. Understand, remember, or apply information;
23 2. Interact with others;
24 3. Concentrate, persist, or maintain pace; or
25 4. Adapt or manage oneself.

26 (c) "Significantly subaverage general intellectual
27 functioning" means performance that is two or more standard
28 deviations from the mean score on a standardized intelligence
29 test specified in the rules of the agency.

30 (d) "Traumatic brain injury" means a disruption in the
31 normal function of the brain which can be caused by a bump,
32 blow, or jolt to the head or a penetrating head injury ~~has the~~
33 ~~same meaning as in s. 393.063.~~

34 Section 2. Section 916.303, Florida Statutes, is amended to
35 read:

36 916.303 Determination of incompetency; dismissal of
37 charges.—

38 (4) If the charges are dismissed and the defendant has been
39 found incompetent to proceed due to an intellectual disability



179092

40 caused by a traumatic brain injury, the agency must assist the
41 defendant with application to the long-term managed care program
42 described in ss. 409.978-409.985.

43 Section 3. This act shall take effect July 1, 2021.

44 ===== T I T L E A M E N D M E N T =====

45 And the title is amended as follows:

46 Delete everything before the enacting clause
47 and insert:

48 A bill to be entitled

49 An act relating to defendants with a traumatic brain
50 injury; revising the definition of the term
51 "intellectual disability" as it relates to defendants
52 found incompetent to proceed; adding the terms
53 "significantly deficient in adaptive functioning" and
54 "traumatic brain injury" to the current definition of
55 "intellectual disability"; requiring the Agency for
56 Persons with Disabilities to assist certain defendants
57 found incompetent to proceed with application to the
58 long-term care managed care program; providing an
59 effective date.

By Senator Farmer

34-00776-21

20211854__

1 A bill to be entitled
2 An act relating to defendants with a traumatic brain
3 injury; creating s. 916.181, F.S.; defining the term
4 "traumatic brain injury"; requiring the Agency for
5 Persons with Disabilities, along with the Department
6 of Children and Families, to establish and implement
7 within each judicial circuit a diversion program for
8 defendants who are found to have a traumatic brain
9 injury; specifying circumstances under which a
10 defendant is incompetent to proceed due to a traumatic
11 brain injury; providing for the required evaluation of
12 such defendants by mental health experts; authorizing
13 a court to commit such defendants to a traumatic brain
14 injury diversion program or to appoint additional
15 experts under certain circumstances; authorizing a
16 court to require a hearing with testimony before
17 committing a defendant to a traumatic brain injury
18 diversion program; requiring that a defendant who is
19 found incompetent to proceed due to traumatic brain
20 injury be sent to a traumatic brain injury diversion
21 program and receive mandated treatment; requiring a
22 state attorney to dismiss the charges against a
23 defendant who successfully completes the diversion
24 program; requiring the department to assist such
25 defendants with transitioning into a certain long-term
26 care partnership program; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
29

34-00776-21

20211854__

30 Section 1. Section 916.181, Florida Statutes, is created to
31 read:

32 916.181 Traumatic brain injury diversion program.-

33 (1) As used in this section, the term "traumatic brain
34 injury" means a disruption in the normal function of the brain
35 which can be caused by a bump, blow, or jolt to the head or a
36 penetrating head injury.

37 (2) The agency, along with the department, shall establish
38 and implement within each judicial circuit in this state a
39 diversion program for defendants who have a traumatic brain
40 injury and are thus incompetent to proceed.

41 (3) A defendant is incompetent to proceed within the
42 meaning of this chapter if due to a traumatic brain injury the
43 defendant does not have sufficient present ability to consult
44 with her or his lawyer with a reasonable degree of rational
45 understanding or if the defendant has no rational or factual
46 understanding of the proceedings against her or him.

47 (4) Mental health experts appointed pursuant to s. 916.115
48 shall first determine whether the defendant has a traumatic
49 brain injury and, if so, consider the factors related to the
50 issue of whether the defendant meets the criteria for
51 incompetence to proceed as described in subsection (3). A
52 defendant must be evaluated by no fewer than two experts before
53 the court commits the defendant to a traumatic brain injury
54 diversion program, except if one expert finds that the defendant
55 is incompetent to proceed due to a traumatic brain injury and
56 the parties stipulate to that finding, the court may commit the
57 defendant to a diversion program under this section or the court
58 may appoint no more than two additional experts to evaluate the

34-00776-21

20211854__

59 defendant. Notwithstanding any stipulation by the state and the
60 defendant, the court may require a hearing with testimony from
61 the expert or experts before ordering the commitment of a
62 defendant to a traumatic brain injury diversion program.

63 (5) A defendant who is found incompetent to proceed due to
64 a traumatic brain injury shall be sent to a traumatic brain
65 injury diversion program, which must be an in-patient civil
66 facility, and receive mandated treatment based on her or his
67 evaluation. Upon the defendant's successful completion of the
68 mandated traumatic brain injury diversion program, the state
69 attorney's office shall dismiss the charges against the
70 defendant.

71 (6) The department shall assist the defendant with
72 transitioning into a long-term care partnership program under
73 chapter 409.

74 Section 2. This act shall take effect July 1, 2021.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1854

INTRODUCER: Senator Farmer

SUBJECT: Defendants with a Traumatic Brain Injury

DATE: March 22, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	Pre-meeting
2.			CJ	
3.			AP	

I. Summary:

SB 1854 directs the Agency for Persons with Disabilities (the APD) and the Department of Children and Families (the DCF) to create a diversion program for criminal defendants deemed incompetent to proceed due to a traumatic brain injury (TBI). The bill provides a definition for TBI and requires a TBI diversion program to be implemented within each judicial circuit in the state.

The bill directs court-appointed mental health experts to determine if a defendant has a TBI, and if so, whether they meet certain criteria for being deemed incompetent to proceed. The bill allows the court to require a hearing with expert testimony prior to committing a defendant to a TBI diversion program.

The bill specifies that defendants found incompetent to proceed due to a TBI must be committed to inpatient civil facilities and undergo evaluation-based treatment. The state attorney's office is required to dismiss charges against a defendant who successfully completes a TBI diversion program. The bill also requires the DCF to assist defendants with transitioning into long-term care partnership programs.

The bill may have an indeterminate, negative fiscal impact on the APD and the DCF due to a potential increase in the number of individuals committed to state-operated inpatient civil commitment facilities. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Traumatic Brain Injury

A TBI is caused by a bump, blow or jolt to the head or a penetrating head injury that disrupts the normal function of the brain.¹ TBIs vary in terms of severity; mild TBI may cause headaches, fatigue, lethargy, dizziness, and lightheadedness,² while more serious TBI can result in the same signs and symptoms as mild TBI, as well as repeated nausea or vomiting, a persistent or worsening headache, seizures, numbness or weakness in the hands and feet, and loss of coordination.³ Regardless of the severity of the TBI, it can have adverse effects on all aspects of social functioning, including employment, social relationships, independent living, functional status, and leisure activities.⁴

TBI and the Criminal Justice System

Approximately 25-87% of incarcerated inmates reported sustaining at least one TBI, compared to 8% of the general population.⁵ This discrepancy between populations suggests that individuals with TBIs are more susceptible to socially unacceptable behaviors, leading to an increase in the frequency of criminal behavior among such individuals.⁶ Research suggests that because individuals with frontal lobe injury are shown to have difficulty altering future behavior based on past consequences, sentencing that emphasizes punishment will be less successful than sentencing that involves teaching alternative coping strategies.⁷

Pre-trial Intervention in Criminal Cases

Pretrial intervention is available to defendants who are charged with a misdemeanor or third degree felony as a first offense or who have previously committed one nonviolent misdemeanor.⁸

Before a case may be transferred to another county, the following is required:

- Approval from the administrator of the pretrial intervention program, a victim, the state attorney, and the judge who presided at the initial first appearance of the defendant;
- Voluntary and written agreement from the defendant; and
- Knowing and intelligent waiver of speedy trial rights from the defendant during the term of diversion.⁹

¹ The Centers for Disease Control and Prevention, *Basic Information about Traumatic Brain Injury and Concussion*, available at <http://www.cdc.gov/traumaticbraininjury/basics.html> (last visited March 19, 2021).

² Erin Bagalman, *Traumatic Brain Injury Among Veterans*, Congressional Research Service, Jan. 4, 2013, at p. 3, available at http://www.ncsl.org/documents/statefed/health/TBI_Vets2013.pdf (last visited March 19, 2021).

³ *Id.*

⁴ *Id.*

⁵ Maria E. St. Pierre, Rick Parente, *Not Guilty By Reason of Brain Injury: Perception of Guilty and Sentencing*, Applied Psychology in Criminal Justice, 2018, at p. 1, available at http://dev.cjcenter.org/files/apcj/St%20Pierre%20-%20Not%20Guilty.pdf_1532553960.pdf (last visited March 18, 2021).

⁶ *Id.*

⁷ *Id.*

⁸ Section 948.08(1), F.S.

⁹ Section 948.08 (2), F.S.

While a defendant is in the program, criminal charges remain pending; if the defendant fails to successfully complete the program, the program administrator may recommend further supervision or the state attorney may resume prosecution of the case.¹⁰ The court may not appoint the public defender to represent an indigent offender released to the pretrial intervention program unless the offender's release is revoked and the offender is subject to imprisonment if convicted.¹¹ If the defendant successfully completes the program, the program administrator may recommend that charges be dismissed without prejudice.¹²

The purpose of pretrial intervention is to offer eligible defendants a sentencing alternative in the form of counseling, education, supervision, and medical and psychological treatment as appropriate.¹³

State Forensic System -- Mental Health Treatment for Criminal Defendants

Chapter 916, F.S., governs the state forensic system, a network of state facilities and community services for persons with mental health issues involved with the criminal justice system. The forensic system serves defendants deemed incompetent to proceed or not guilty by reason of insanity. A defendant is deemed incompetent to proceed if he or she does not have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding or if the defendant lacks both a rational and factual understanding of the proceedings against him or her.¹⁴

If a defendant is suspected of being incompetent, the court, defense counsel, or the State may file a motion to have the defendant's cognitive state assessed.¹⁵ If the motion is granted, court-appointed experts will evaluate the defendant's cognitive state. The defendant's competency is then determined by the judge in a subsequent hearing.¹⁶ If the defendant is found to be competent, the criminal proceeding resumes.¹⁷ If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.¹⁸

When determining competency to proceed, an expert must consider and include in the report the defendant's capacity to:

- Appreciate the charges or allegations against the defendant.
- Appreciate the range and nature of possible penalties.
- Understand the adversarial nature of the legal process.
- Disclose to counsel facts pertinent to the proceedings.
- Manifest appropriate courtroom behavior.
- Testify relevantly.

¹⁰ Section 948.08(3) and (4), F.S.

¹¹ *Id.*

¹² Section 948.08(5), F.S. If a case is dismissed without prejudice, the case can be refiled at a later time.

¹³ Section 948.08(1), F.S.

¹⁴ Section 916.12(1), F.S.

¹⁵ Rule 3.210, Fla.R.Crim.P.

¹⁶ *Id.*

¹⁷ Rule 3.212, Fla.R.Crim.P.

¹⁸ *Id.*

- Any other factor deemed relevant by the expert.¹⁹

If an expert finds a defendant incompetent to proceed they must include the following in the report:

- The mental illness causing incompetency.
- Explanation of each possible treatment option in the order of recommendation by the expert.
- Availability of acceptable treatment and whether treatment is available in the community.
- The likelihood the defendant will attain competency under the recommended treatment and the probable duration of treatment to restore competency.²⁰

Defendants may be adjudicated not guilty by reason of insanity pursuant to s. 916.15, F.S. The DCF must admit a defendant adjudicated not guilty by reason of insanity who is committed to the department²¹ to an appropriate facility or program for treatment and must retain and treat the defendant.²²

Offenders who are charged with a felony and deemed incompetent to proceed and offenders adjudicated not guilty by reason of insanity may be involuntarily committed to state civil²³ and forensic²⁴ treatment facilities by the circuit court,^{25, 26} or in lieu of such commitment, may be released on conditional release by the circuit court if the person is not serving a prison sentence.²⁷

Mental Health Treatment Facilities

The DCF runs three mental health treatment facilities: the Florida State Hospital (FSH); the Northeast Florida State Hospital (NEFSH) and the North Florida Evaluation and Treatment Center (NFETC).²⁸

¹⁹ Section 916.12(2), F.S.

²⁰ Section 916.12(4), F.S.

²¹ The court may also order outpatient treatment at any other appropriate facility or service or discharge the defendant. Rule 3.217, Fla.R.Crim.P.

²² Section 916.15(3), F.S.

²³ Section 916.106(4), F.S. A “civil facility” is defined as “a mental health facility established within the DCF or by contract with the DCF, to serve individuals committed pursuant to chapter 394, F.S., and defendants pursuant to chapter 916, F.S., who do not require the security provided in a forensic facility; or an intermediate care facility for the developmentally disabled, a foster care facility, a group home facility, or a supported living setting designated by the Agency for Persons with Disabilities (APD) to serve defendants who do not require the security provided in a forensic facility.”

²⁴ Section 916.106(10), F.S. A “forensic facility” is defined as “a separate and secure facility established within the DCF or APD to service forensic clients. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed pursuant to chapter 916, F.S., from non-forensic residents.”

²⁵ Section 916.106(5), F.S. “Court” is defined to mean the circuit court.

²⁶ Sections 916.13, 916.15, and 916.302, F.S.

²⁷ Sections 916.17(1), F.S.

²⁸ The DCF, *State Mental Health Treatment Facilities*, available at <https://www.myflfamilies.com/service-programs/mental-health/state-mental-health-treatment-facilities.shtml> (last visited March 19, 2021).

The FSH, located in Chattahoochee, Florida, is a state psychiatric hospital that provides civil and forensic services.²⁹ Forensic services for persons who are charged with a felony and have been found to be incompetent to proceed with their trial due to mental illness, or who have been acquitted of a felony by reason of insanity are governed by ss. 916.111 - 916.185, F.S.

The hospital's civil services are comprised of the following three units comprising a total of 490 beds:

- Civil Admissions evaluates and provides psychiatric services primarily for newly admitted acutely ill male and female civil residents between the ages of 18 and 64;
- Civil Transition Program serves civil residents and individuals previously in a forensic setting who no longer need that level of security and with court approval, may reside in a less restrictive civil environment; and
- Specialty Care Program serves a diverse population of individuals requiring mental health treatment and services, including civil and forensic step downs.³⁰

The hospital's forensic services section evaluates and treats persons with felony charges who have been adjudicated incompetent to stand trial or not guilty by reason of insanity. Forensic services is comprised of the following two units;

- Forensic Admission is a maximum security facility that assesses new admissions, provides short-term treatment and competency restoration for defendants found incompetent to stand trial, and behavior stabilization for persons committed as not guilty by reason of insanity; and
- Forensic Central provides longer-term treatment and serves a seriously and persistently mentally ill population who are incompetent to proceed or not guilty by reason of insanity.³¹

The NEFSH, located in Macclenny, Florida, is a state psychiatric hospital that provides civil services.³² The facility operates 633 beds and is the largest state-owned provider of psychiatric care and treatment to civilly committed individuals in Florida. Referrals are based upon community and regional priorities for admission.³³

The NFETC, located in Gainesville, Florida, is an evaluation and treatment center for people with mental illnesses who are involved in the criminal justice system.³⁴ The center has 193 beds open for the evaluation and treatment of residents who have major mental disorders. These residents are either incompetent to proceed to trial or have been judged to be not guilty by reason of insanity.³⁵

²⁹ The DCF, *Florida State Hospital Services and Programs*, available at <https://www.myflfamilies.com/service-programs/mental-health/fsh/services-programs.shtml> (last visited March 19, 2021).

³⁰ *Id.*

³¹ *Id.*

³² The DCF, *State Mental Health Treatment Facilities North Florida Evaluation and Treatment Center, About the Center*, available at <http://www.myflfamilies.com/service-programs/mental-health/nefsh/about.shtml> (last visited March 19, 2021).

³³ *Id.*

³⁴ See <https://www.myflfamilies.com/service-programs/mental-health/nfetc/about.shtml> (last visited March 19, 2021).

³⁵ *Id.*

The APD operates the Sunland Center in Marianna, the Developmental Disabilities Defendant Program (DDDP) in Chattahoochee, and the Tacachale facility in Gainesville.³⁶ The DDDP is a 146 bed, co-ed, secure facility, located on the grounds of FSH in Chattahoochee, Florida.³⁷ DDDP is Florida's only admission facility for individuals charged with a felony crime and found to be incompetent to proceed to trial based on a developmental or intellectual disability.³⁸

III. Effect of Proposed Changes:

The bill creates s. 916.181, F.S., defining the term "traumatic brain injury" to mean "a disruption in the normal function of the brain which can be caused by a bump, blow, or jolt to the head or a penetrating head injury."

The bill directs the APD, along with the DCF, to develop a diversion program for criminal defendants with a TBI who are incompetent to proceed to trial. The diversion program must be implemented in each of the state's twenty judicial circuits.

The bill specifies that a defendant is considered incompetent to proceed if, due to a TBI, the defendant:

- Lacks sufficient present ability to consult with their attorney with a reasonable degree of rational understanding, or;
- Lacks a rational or factual understanding of the charges they face.

Under the bill, at least two mental health experts, appointed pursuant to s. 916.115, F.S., must determine whether a defendant has a TBI and, if so, whether they meet the aforementioned criteria for being deemed incompetent to proceed. The bill requires a defendant to be evaluated by a minimum of two court-appointed experts prior to commitment to a TBI diversion program. In instances where one expert deems a defendant incompetent to proceed and all parties stipulate to the finding of incompetence, the bill allows the court to either commit the defendant or, alternatively, appoint up to two additional experts to perform an evaluation. The bill allows the court to require a hearing with testimony from the experts prior to ordering commitment.

The bill specifies that defendants found incompetent to proceed due to a TBI must be committed to inpatient civil facilities and undergo evaluation-based treatment. The state attorney's office is required to dismiss charges against a defendant who successfully completes a TBI diversion program.

The bill also requires the DCF to assist defendants with transitioning into long-term care partnership programs under ch. 409.

The bill is effective July 1, 2021.

³⁶ The APD, *About Sunland Center at Marianna*, available at <http://apd.myflorida.com/sunland/about.htm> (last visited March 19, 2021).

³⁷ *Id.*

³⁸ *Id.*

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a negative fiscal impact on state-operated inpatient commitment treatment facilities who will be required to accept defendants deemed incompetent to proceed due to a TBI. The number of defendants and the cost to inpatient facilities of establishing and operating a TBI diversion program are both unknown, and as such the fiscal impact of the bill on these facilities is indeterminate.

The bill may also have a negative fiscal impact on the APD and the DCF by virtue of the requirement that the agencies establish and implement TBI diversion programs in each judicial circuit. The specific role of each agency in establishing and implementing such programs is not defined in the bill, and as such the fiscal impact to each agency is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill directs the APD and the DCF to establish and implement a TBI diversion program in each judicial circuit, however the bill is silent on the specific duties of each agency in doing so.

VIII. Statutes Affected:

This bill creates section 916.181 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.



163466

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/16/2021	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Book) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present subsections (9) through (87) of section 39.01, Florida Statutes, are redesignated as subsections (10) through (88), respectively, a new subsection (9) is added to that section, and present subsections (10) and (37) are amended, to read:

39.01 Definitions.—When used in this chapter, unless the



163466

11 context otherwise requires:

12 (9) "Attorney for the child" means an attorney providing
13 direct representation to the child, which may include the
14 appointment of the Office of Child Representation, an attorney
15 provided by an entity contracted through the Office of Child
16 Representation to provide direct representation, any privately
17 retained counsel or pro bono counsel, or any other attorney who
18 represents the child under this chapter.

19 (11)~~(10)~~ "Caregiver" means the parent, legal custodian,
20 permanent guardian, adult household member, or other person
21 responsible for a child's welfare as defined in subsection (55)
22 ~~(54)~~.

23 (38)~~(37)~~ "Institutional child abuse or neglect" means
24 situations of known or suspected child abuse or neglect in which
25 the person allegedly perpetrating the child abuse or neglect is
26 an employee of a public or private school, public or private day
27 care center, residential home, institution, facility, or agency
28 or any other person at such institution responsible for the
29 child's welfare as defined in subsection (55) ~~(54)~~.

30 Section 2. Subsection (13) is added to that section, to
31 read:

32 39.013 Procedures and jurisdiction; right to counsel.-

33 (13) The court shall appoint an attorney for the child
34 pursuant to s. 39.831.

35 Section 3. Present subsections (6) through (9) are
36 redesignated as subsections (5) through (8), respectively, and
37 subsections (4) and (5) of section 39.01305, Florida Statutes,
38 are amended to read:

39 39.01305 Appointment of an attorney for a dependent child



163466

40 with certain special needs.-

41 (4) An attorney for the child appointed under this section
42 shall be made in accordance with s. 39.831. ~~(a) Before a court~~
43 ~~may appoint an attorney, who may be compensated pursuant to this~~
44 ~~section, the court must request a recommendation from the~~
45 ~~Statewide Guardian Ad Litem Office for an attorney who is~~
46 ~~willing to represent a child without additional compensation. If~~
47 ~~such an attorney is available within 15 days after the court's~~
48 ~~request, the court must appoint that attorney. However, the~~
49 ~~court may appoint a compensated attorney within the 15-day~~
50 ~~period if the Statewide Guardian Ad Litem Office informs the~~
51 ~~court that it will not be able to recommend an attorney within~~
52 ~~that time period.~~

53 ~~(b) After an attorney is appointed, the appointment~~
54 ~~continues in effect until the attorney is allowed to withdraw or~~
55 ~~is discharged by the court or until the case is dismissed. An~~
56 ~~attorney who is appointed under this section to represent the~~
57 ~~child shall provide the complete range of legal services, from~~
58 ~~the removal from home or from the initial appointment through~~
59 ~~all available appellate proceedings. With the permission of the~~
60 ~~court, the attorney for the dependent child may arrange for~~
61 ~~supplemental or separate counsel to represent the child in~~
62 ~~appellate proceedings. A court order appointing an attorney~~
63 ~~under this section must be in writing.~~

64 ~~(5) Unless the attorney has agreed to provide pro bono~~
65 ~~services, an appointed attorney or organization must be~~
66 ~~adequately compensated. All appointed attorneys and~~
67 ~~organizations, including pro bono attorneys, must be provided~~
68 ~~with access to funding for expert witnesses, depositions, and~~



163466

69 ~~other due process costs of litigation. Payment of attorney fees~~
70 ~~and case-related due process costs are subject to appropriations~~
71 ~~and review by the Justice Administrative Commission for~~
72 ~~reasonableness. The Justice Administrative Commission shall~~
73 ~~contract with attorneys appointed by the court. Attorney fees~~
74 ~~may not exceed \$1,000 per child per year.~~

75 Section 3. Part XI of chapter 39, Florida Statutes,
76 entitled "GUARDIANS AD LITEM AND GUARDIAN ADVOCATES," is renamed
77 "GUARDIANS AD LITEM, GUARDIAN ADVOCATES, AND ATTORNEY FOR THE
78 CHILD."

79 Section 4. Subsection (3) is added to section 39.820,
80 Florida Statutes, to read:

81 39.820 Definitions.—As used in this chapter, the term:

82 (3) "Related adoption proceeding" means an adoption
83 proceeding under chapter 63 which arises from dependency
84 proceedings under this chapter.

85 Section 5. Section 39.822, Florida Statutes, is amended to
86 read:

87 39.822 Appointment of guardian ad litem for abused,
88 abandoned, or neglected child.—

89 (1)(a) Before July 1, 2022, a guardian ad litem must shall
90 be appointed by the court at the earliest possible time to
91 represent a the child in any child abuse, abandonment, or
92 neglect judicial proceeding, whether civil or criminal.

93 (b) On or after July 1, 2022, a guardian ad litem must be
94 appointed by the court at the earliest possible time to
95 represent a child under the following circumstances:

96 1. The child is younger than 10 years of age and is the
97 subject of a dependency proceeding under this chapter or a



163466

98 related adoption proceeding;

99 2. The child is the subject of a dependency proceeding
100 under this chapter or a related adoption proceeding and a
101 criminal proceeding;

102 3. The child is the subject of a termination of parental
103 rights proceeding under part X; or

104 4. The child is a dependent child as described in s.
105 39.01305(3).

106 (2) On or after July 1, 2022, the court shall discharge the
107 guardian ad litem program, if appointed, within 60 days after
108 such child reaches 10 years of age unless:

109 (a) The child meets a criterion specified in subparagraph
110 (1)(b)2., 3., or 4.; or

111 (b) The child expresses that he or she wishes to remain
112 with the guardian ad litem and the court determines that the
113 expression is voluntary and knowing and that the child is of an
114 appropriate age and maturity to make such expression.

115 (3) Upon request by a child who is subject to a dependency
116 proceeding under this chapter or a related adoption proceeding,
117 who is 10 years of age or older, and who has a guardian ad litem
118 assigned, or upon any party presenting evidence that there is
119 reasonable cause to suspect the assigned guardian ad litem has a
120 conflict of interest as defined in s. 39.8296(2)(b)9., the court
121 may:

122 (a) Order that a new guardian ad litem be assigned; or

123 (b) Discharge the child's current guardian ad litem and
124 appoint an attorney for the child if one is not appointed.

125 (4) Any person participating in a civil or criminal
126 judicial proceeding resulting from such appointment shall be



163466

127 presumed prima facie to be acting in good faith and in so doing
128 shall be immune from any liability, civil or criminal, that
129 otherwise might be incurred or imposed.

130 (5)~~(2)~~ In those cases in which the parents are financially
131 able, the parent or parents of the child shall reimburse the
132 court, in part or in whole, for the cost of provision of
133 guardian ad litem services. Reimbursement to the individual
134 providing guardian ad litem services may ~~shall~~ not be contingent
135 upon successful collection by the court from the parent or
136 parents.

137 (6)~~(3)~~ Upon presentation by a guardian ad litem of a court
138 order appointing the guardian ad litem:

139 (a) An agency, as defined in chapter 119, shall allow the
140 guardian ad litem to inspect and copy records related to the
141 best interests of the child who is the subject of the
142 appointment, including, but not limited to, records made
143 confidential or exempt from s. 119.07(1) or s. 24(a), Art. I of
144 the State Constitution. The guardian ad litem shall maintain the
145 confidential or exempt status of any records shared by an agency
146 under this paragraph.

147 (b) A person or organization, other than an agency under
148 paragraph (a), shall allow the guardian ad litem to inspect and
149 copy any records related to the best interests of the child who
150 is the subject of the appointment, including, but not limited
151 to, confidential records.

152
153 For the purposes of this subsection, the term "records related
154 to the best interests of the child" includes, but is not limited
155 to, medical, mental health, substance abuse, child care,



163466

156 education, law enforcement, court, social services, and
157 financial records.

158 (7)~~(4)~~ The guardian ad litem or the program representative
159 shall review all disposition recommendations and changes in
160 placements, and must be present at all critical stages of the
161 dependency proceeding or submit a written report of
162 recommendations to the court. Written reports must be filed with
163 the court and served on all parties whose whereabouts are known
164 at least 72 hours before ~~prior to~~ the hearing.

165 Section 6. Subsection (2) of section 39.8296, Florida
166 Statutes, is amended to read:

167 39.8296 Statewide Guardian Ad Litem Office; legislative
168 findings and intent; creation; appointment of executive
169 director; duties of office.—

170 (2) STATEWIDE GUARDIAN AD LITEM OFFICE.—There is created a
171 Statewide Guardian Ad Litem Office within the Justice
172 Administrative Commission. The Justice Administrative Commission
173 shall provide administrative support and service to the office
174 to the extent requested by the executive director within the
175 available resources of the commission. The Statewide Guardian Ad
176 Litem Office is not subject to control, supervision, or
177 direction by the Justice Administrative Commission in the
178 performance of its duties, but the employees of the office are
179 governed by the classification plan and salary and benefits plan
180 approved by the Justice Administrative Commission.

181 (a) The head of the Statewide Guardian Ad Litem Office is
182 the executive director, who shall be appointed by the Governor
183 from a list of a minimum of three eligible applicants submitted
184 by the Child Well-Being a-Guardian-Ad-Litem Qualifications



163466

185 Committee. The Child Well-Being Guardian Ad Litem Qualifications
186 Committee shall be composed of five persons, two persons
187 appointed by the Governor, two persons appointed by the Chief
188 Justice of the Supreme Court, and one person appointed by the
189 Statewide Guardian Ad Litem Association. The committee shall
190 provide for statewide advertisement and the receiving of
191 applications for the position of executive director. The
192 Governor shall appoint an executive director from among the
193 recommendations, or the Governor may reject the nominations and
194 request the submission of new nominees. The executive director
195 must have knowledge in dependency law and knowledge of social
196 service delivery systems available to meet the needs of children
197 who are abused, neglected, or abandoned. The executive director
198 shall serve on a full-time basis and shall personally, or
199 through representatives of the office, carry out the purposes
200 and functions of the Statewide Guardian Ad Litem Office in
201 accordance with state and federal law. The executive director
202 shall report to the Governor. The executive director shall serve
203 a 3-year term, subject to removal for cause by the Governor. Any
204 person appointed to serve as the executive director may be
205 reappointed ~~permitted~~ to serve more than one term in accordance
206 with the process provided for in this paragraph. Every second or
207 subsequent appointment shall be for a term of 3 years.

208 (b) The Statewide Guardian Ad Litem Office shall, within
209 available resources, have oversight responsibilities for and
210 provide technical assistance to all guardian ad litem and
211 attorney ad litem programs located within the judicial circuits.

212 1. The office shall identify the resources required to
213 implement methods of collecting, reporting, and tracking



163466

214 reliable and consistent case data.

215 2. The office shall review the current guardian ad litem
216 programs in Florida and other states.

217 3. The office, in consultation with local guardian ad litem
218 offices, shall develop statewide performance measures and
219 standards.

220 4. The office shall develop a guardian ad litem training
221 program, which shall include, but is not limited to, training on
222 the recognition of and responses to head trauma and brain injury
223 in a child under 6 years of age. The office shall establish a
224 curriculum committee to develop the training program specified
225 in this subparagraph. The curriculum committee shall include,
226 but not be limited to, dependency judges, directors of circuit
227 guardian ad litem programs, active certified guardians ad litem,
228 a mental health professional who specializes in the treatment of
229 children, a member of a child advocacy group, a representative
230 of a domestic violence advocacy group, an individual with a
231 degree in social work, and a social worker experienced in
232 working with victims and perpetrators of child abuse.

233 5. The office shall review the various methods of funding
234 guardian ad litem programs, maximize the use of those funding
235 sources to the extent possible, and review the kinds of services
236 being provided by circuit guardian ad litem programs.

237 6. The office shall determine the feasibility or
238 desirability of new concepts of organization, administration,
239 financing, or service delivery designed to preserve the civil
240 and constitutional rights and fulfill other needs of dependent
241 children.

242 7. In an effort to promote normalcy and establish trust



163466

243 between a court-appointed volunteer guardian ad litem and a
244 child alleged to be abused, abandoned, or neglected under this
245 chapter, a guardian ad litem may transport a child. However, a
246 guardian ad litem volunteer may not be required or directed by
247 the program or a court to transport a child.

248 8. The office shall submit to the Governor, the President
249 of the Senate, the Speaker of the House of Representatives, and
250 the Chief Justice of the Supreme Court an interim report
251 describing the progress of the office in meeting the goals as
252 described in this section. The office shall submit to the
253 Governor, the President of the Senate, the Speaker of the House
254 of Representatives, and the Chief Justice of the Supreme Court a
255 proposed plan including alternatives for meeting the state's
256 guardian ad litem and attorney ad litem needs. This plan may
257 include recommendations for less than the entire state, may
258 include a phase-in system, and shall include estimates of the
259 cost of each of the alternatives. Each year the office shall
260 provide a status report and provide further recommendations to
261 address the need for guardian ad litem services and related
262 issues.

263 9. The office shall develop guidelines to identify any
264 possible conflicts of interest of a guardian ad litem when he or
265 she is being considered for assignment to a child's case. The
266 office must not assign a guardian ad litem for whom a conflict
267 of interest has been identified to a child's case. For purposes
268 of this subparagraph, the term "conflicts of interest" means the
269 guardian ad litem:

270 a. Has a personal relationship that could influence a
271 recommendation regarding a child whom he or she is serving as a



163466

272 guardian ad litem;

273 b. Is in a position to derive a personal benefit from his
274 or her role as a guardian ad litem; or

275 c. Has a particular factor or circumstance, including
276 personal bias or prejudice against a protected class of the
277 child or the child's family, that prevents or substantially
278 impairs his or her ability to fairly and fully discharge the
279 duties of the guardian ad litem.

280 (c) The Statewide Guardian Ad Litem Office shall identify
281 any guardian ad litem who is experiencing an issue with his or
282 her physical or mental health or who appears to present a danger
283 to any child to whom the guardian ad litem is assigned. As soon
284 as possible after identification, the office must remove such
285 guardian ad litem from all assigned cases, terminate his or her
286 volunteer services with the Guardian Ad Litem Program, and
287 disclose such action to the appropriate circuit court.

288 Section 7. Section 39.83, Florida Statutes, is created to
289 read:

290 39.83 Statewide Office of Child Representation;
291 qualifications, appointment, and duties of executive director
292 and attorney for the child.—

293 (1) STATEWIDE OFFICE OF CHILD REPRESENTATION.—

294 (a) There is created a Statewide Office of Child
295 Representation within the Justice Administrative Commission. The
296 Justice Administrative Commission shall provide administrative
297 support and services to the statewide office as directed by the
298 executive director within the available resources of the
299 commission. The statewide office is not subject to control,
300 supervision, or direction by the Justice Administrative



163466

301 Commission in the performance of its duties, but the employees
302 of the office are governed by the classification plan and salary
303 and benefits plan approved by the Justice Administrative
304 Commission.

305 (b) The head of the Statewide Office of Child
306 Representation is the executive director who must be a member of
307 The Florida Bar in good standing for at least 5 years and have
308 knowledge of dependency law and the social service delivery
309 systems available to meet the needs of children who are abused,
310 neglected, or abandoned. The executive director shall be
311 appointed in accordance with the process, and serve in
312 accordance with the terms and requirements, provided in s.
313 39.8296(2) (a) for the head of the Statewide Guardian Ad Litem
314 Office. The appointment for the initial executive director must
315 be completed by January 1, 2022.

316 (c) The Statewide Office of Child Representation, within
317 available resources of the Justice Administrative Commission, is
318 responsible for oversight of, and for providing technical
319 assistance to, all offices of child representation in this
320 state. The statewide office:

321 1. Shall identify the resources required to implement
322 methods of collecting, reporting, and tracking reliable and
323 consistent case data;

324 2. Shall review and collect information relating to offices
325 of child representation and other models of attorney
326 representation of children in other states;

327 3. In consultation with the regional offices of child
328 representation established under subsection (2), shall develop
329 statewide performance measures and standards;



163466

330 4. Shall develop a training program for each attorney for
331 the child. To that end, the statewide office shall establish a
332 curriculum committee composed of members including, but not
333 limited to, a dependency judge, a director of circuit guardian
334 ad litem programs, an active certified guardian ad litem, a
335 mental health professional who specializes in the treatment of
336 children, a member of a child advocacy group, a representative
337 of a domestic violence advocacy group, an individual with at
338 least a Master of Social Work degree, and a social worker
339 experienced in working with victims and perpetrators of child
340 abuse;

341 5. Shall develop protocols that must be implemented to
342 assist children who are represented by the Statewide Office of
343 Child Representation, regional offices, or its contracted local
344 agencies in meeting eligibility requirements to receive all
345 available federal funding. This subparagraph may not be
346 construed to mean that the protocols may interfere with zealous
347 and effective representation of the children;

348 6. Shall review the various methods of funding the regional
349 offices, maximize the use of those funding sources to the extent
350 possible, and review the kinds of services being provided by the
351 regional offices;

352 7. Shall determine the feasibility or desirability of new
353 concepts of organization, administration, financing, or service
354 delivery designed to preserve the civil and constitutional
355 rights of, and fulfill other needs of, dependent children 10
356 years of age and older;

357 8. Shall submit to the Governor, the President of the
358 Senate, the Speaker of the House of Representatives, and the



163466

359 Chief Justice of the Supreme Court:

360 a. An interim report describing the progress of the
361 statewide office in meeting the responsibilities described in
362 this paragraph.

363 b. A proposed plan that includes alternatives for meeting
364 the representation needs of children in this state. The plan may
365 include recommendations for implementation in only a portion of
366 this state or phased-in statewide implementation and must
367 include an estimate of the cost of each such alternative.

368 c. An annual status report that includes any additional
369 recommendations for addressing the representation needs of
370 children in this state and related issues.

371 (d) The department or community-based care lead agency
372 shall take any steps necessary to obtain all available federal
373 funding and maintain compliance with eligibility requirements.

374 (e) The office may contract with a local nonprofit agency
375 to provide direct attorney representation to a child if the
376 office determines that the contract is the most efficient method
377 to satisfy its statutory duties and if federal funding has been
378 approved for this purpose. The office must ensure that
379 reimbursement of any Title IV-E funds is properly documented.

380 (2) REGIONAL OFFICES OF CHILD REPRESENTATION.—

381 (a) An office of child representation is created within the
382 area served by each of the five district courts of appeal. The
383 offices shall commence fulfilling their statutory purpose and
384 duties on July 1, 2022.

385 (b) Each office of child representation is assigned to the
386 Justice Administrative Commission for administrative purposes.
387 The commission shall provide administrative support and service



163466

388 to the offices within the available resources of the commission.
389 The offices are not subject to control, supervision, or
390 direction by the commission in the performance of their duties,
391 but the employees of the offices are governed by the
392 classification plan and the salary and benefits plan for the
393 commission.

394 (3) CHILD REPRESENTATION COUNSEL; DUTIES.—The child
395 representation counsel shall serve on a full-time basis and may
396 not engage in the private practice of law while holding office.
397 Each assistant child representation counsel shall give priority
398 and preference to his or her duties as assistant child
399 representation counsel and may not otherwise engage in the
400 practice of dependency law. However, a part-time child
401 representation counsel may practice dependency law for private
402 payment so long as the representation does not result in a legal
403 or ethical conflict of interest with a case in which the office
404 of child representation is providing representation.

405 Section 8. Section 39.831, Florida Statutes, is created to
406 read:

407 39.831 Attorney for the child.—

408 (1) APPOINTMENT.—

409 (a) Attorney for the child:

410 1. Shall be appointed by the court as provided in s.
411 39.01305(3);

412 2. Shall be appointed by the court for any child who
413 reaches 10 years of age or older on or after July 1, 2022, and
414 who is the subject of a dependency proceeding under this chapter
415 or a related adoption proceeding; or

416 3. May be appointed at the court's discretion upon a



163466

417 finding that circumstances exist which require the appointment.

418 (b) The court shall appoint the Statewide Office of Child
419 Representation unless the child is otherwise represented by
420 counsel.

421 (c) Unless the attorney has agreed to provide pro bono
422 services, an appointed attorney or organization must be
423 adequately compensated. All appointed attorneys and
424 organizations, including pro bono attorneys, must be provided
425 with access to funding for expert witnesses, depositions, and
426 other due process costs of litigation. Payment of attorney fees
427 and case-related due process costs are subject to appropriations
428 and review by the Justice Administrative Commission for
429 reasonableness. The Justice Administrative Commission shall
430 contract with attorneys appointed by the court. Attorney fees
431 may not exceed \$1,000 per child per year.

432 (d) In cases in which one or both parents are financially
433 able, the parent or parents, as applicable, of the child shall
434 reimburse the court, in whole or in part, for the cost of
435 services provided under this section; however, reimbursement for
436 services provided by the attorney for the child may not be
437 contingent upon successful collection by the court of
438 reimbursement from the parent or parents.

439 (e) Once an attorney for the child is appointed, the
440 appointment continues in effect until the attorney for the child
441 is allowed to withdraw or is discharged by the court or until
442 the case is dismissed. An attorney for the child who is
443 appointed under this section to represent a child shall provide
444 all required legal services from the time of the child's removal
445 from home or of the attorney for the child's initial appointment



163466

446 through all appellate proceedings. With the permission of the
447 court, the appointed attorney for the child may arrange for
448 supplemental or separate counsel to represent the child in
449 appellate proceedings. A court order appointing an attorney for
450 the child under this section must be in writing.

451 (2) ACCESS TO RECORDS.—Upon presentation of a court order
452 appointing an attorney for the child:

453 (a) An agency as defined in chapter 119 must allow the
454 attorney for the child to inspect and copy records related to
455 the child who is the subject of the appointment, including, but
456 not limited to, records made confidential or exempt from s.
457 119.07(1) or s. 24(a), Art. I of the State Constitution. The
458 attorney for the child shall maintain the confidential or exempt
459 status of any records shared by an agency under this paragraph.

460 (b) A person or an organization, other than an agency under
461 paragraph (a), must allow the attorney for the child to inspect
462 and copy any records related to the child who is the subject of
463 the appointment, including, but not limited to, confidential
464 records.

465
466 For the purposes of this subsection, the term “records”
467 includes, but is not limited to, medical, mental health,
468 substance abuse, child care, education, law enforcement, court,
469 social services, and financial records.

470 (3) COURT HEARINGS.—The attorney for the child shall review
471 all disposition recommendations and changes in placements and
472 file all appropriate motions on behalf of the child at least 72
473 hours before the hearing.

474 (4) PROCEDURES.—The department shall develop procedures to



163466

475 request that a court appoint an attorney for the child.

476 (5) RULEMAKING.—The department may adopt rules to implement
477 this section.

478 Section 9. Subsection (1) of section 28.345, Florida
479 Statutes, is amended to read:

480 28.345 State access to records; exemption from court-
481 related fees and charges.—

482 (1) Notwithstanding any other provision of law, the clerk
483 of the circuit court shall, upon request, provide access to
484 public records without charge to the state attorney, public
485 defender, guardian ad litem, public guardian, ~~attorney ad litem,~~
486 criminal conflict and civil regional counsel, court-appointed
487 attorney for the child, ~~and private court-appointed counsel paid~~
488 ~~by the state~~, and to authorized staff acting on their behalf.
489 The clerk of court may provide the requested public record in an
490 electronic format in lieu of a paper format if the requesting
491 entity is capable of accessing such public record
492 electronically.

493 Section 10. Paragraph (j) of subsection (3) and paragraph
494 (a) of subsection (10) of section 39.001, Florida Statutes, are
495 amended to read:

496 39.001 Purposes and intent; personnel standards and
497 screening.—

498 (3) GENERAL PROTECTIONS FOR CHILDREN.—It is a purpose of
499 the Legislature that the children of this state be provided with
500 the following protections:

501 (j) The ability to contact their guardian ad litem or
502 attorney for the child ~~attorney ad litem~~, if appointed, by
503 having that individual's name entered on all orders of the



163466

504 court.

505 (10) PLAN FOR COMPREHENSIVE APPROACH.—

506 (a) The office shall develop a state plan for the promotion
507 of adoption, support of adoptive families, and prevention of
508 abuse, abandonment, and neglect of children. The Department of
509 Children and Families, the Department of Corrections, the
510 Department of Education, the Department of Health, the
511 Department of Juvenile Justice, the Department of Law
512 Enforcement, and the Agency for Persons with Disabilities shall
513 participate and fully cooperate in the development of the state
514 plan at both the state and local levels. Furthermore,
515 appropriate local agencies and organizations shall be provided
516 an opportunity to participate in the development of the state
517 plan at the local level. Appropriate local groups and
518 organizations shall include, but not be limited to, community
519 mental health centers; guardian ad litem programs for children
520 under the circuit court; child representation counsel regional
521 offices; the school boards of the local school districts; the
522 Florida local advocacy councils; community-based care lead
523 agencies; private or public organizations or programs with
524 recognized expertise in working with child abuse prevention
525 programs for children and families; private or public
526 organizations or programs with recognized expertise in working
527 with children who are sexually abused, physically abused,
528 emotionally abused, abandoned, or neglected and with expertise
529 in working with the families of such children; private or public
530 programs or organizations with expertise in maternal and infant
531 health care; multidisciplinary Child Protection Teams; child day
532 care centers; law enforcement agencies; and the circuit courts,



163466

533 when guardian ad litem programs and attorney for the child are
534 not available in the local area. The state plan to be provided
535 to the Legislature and the Governor shall include, as a minimum,
536 the information required of the various groups in paragraph (b).

537 Section 11. Subsections (2) and (4) of 39.00145, Florida
538 Statutes, are amended to read:

539 39.00145 Records concerning children.-

540 (2) Notwithstanding any other provision of this chapter,
541 all records in a child's case record must be made available for
542 inspection, upon request, to the child who is the subject of the
543 case record and to the child's caregiver, guardian ad litem, or
544 attorney for the child ~~attorney~~.

545 (a) A complete and accurate copy of any record in a child's
546 case record must be provided, upon request and at no cost, to
547 the child who is the subject of the case record and to the
548 child's caregiver, guardian ad litem, or attorney.

549 (b) The department shall release the information in a
550 manner and setting that are appropriate to the age and maturity
551 of the child and the nature of the information being released,
552 which may include the release of information in a therapeutic
553 setting, if appropriate. This paragraph does not deny the child
554 access to his or her records.

555 (c) If a child or the child's caregiver, guardian ad litem,
556 or attorney for the child ~~attorney~~ requests access to the
557 child's case record, any person or entity that fails to provide
558 any record in the case record under assertion of a claim of
559 exemption from the public records requirements of chapter 119,
560 or fails to provide access within a reasonable time, is subject
561 to sanctions and penalties under s. 119.10.



163466

562 (d) For the purposes of this subsection, the term
563 "caregiver" is limited to parents, legal custodians, permanent
564 guardians, or foster parents; employees of a residential home,
565 institution, facility, or agency at which the child resides; and
566 other individuals legally responsible for a child's welfare in a
567 residential setting.

568 (4) Notwithstanding any other provision of law, all state
569 and local agencies and programs that provide services to
570 children or that are responsible for a child's safety, including
571 the Department of Juvenile Justice, the Department of Health,
572 the Agency for Health Care Administration, the Agency for
573 Persons with Disabilities, the Department of Education, the
574 Department of Revenue, the school districts, the Statewide
575 Guardian Ad Litem Office, the Statewide Office of Child
576 Representation, and any provider contracting with such agencies,
577 may share with each other confidential records or information
578 that are confidential or exempt from disclosure under chapter
579 119 if the records or information are reasonably necessary to
580 ensure access to appropriate services for the child, including
581 child support enforcement services, or for the safety of the
582 child. However:

583 (a) Records or information made confidential by federal law
584 may not be shared.

585 (b) This subsection does not apply to information
586 concerning clients and records of certified domestic violence
587 centers, which are confidential under s. 39.908 and privileged
588 under s. 90.5036.

589 Section 12. Subsections (3) and (4) of section 39.0132,
590 Florida Statutes, are amended to read:



163466

591 39.0132 Oaths, records, and confidential information.—

592 (3) The clerk shall keep all court records required by this
593 chapter separate from other records of the circuit court. All
594 court records required by this chapter shall not be open to
595 inspection by the public. All records shall be inspected only
596 upon order of the court by persons deemed by the court to have a
597 proper interest therein, except that, subject to the provisions
598 of s. 63.162, a child, ~~and~~ the parents of the child and their
599 attorneys, guardian ad litem, attorney for the child, law
600 enforcement agencies, and the department and its designees shall
601 always have the right to inspect and copy any official record
602 pertaining to the child. The Justice Administrative Commission
603 may inspect court dockets required by this chapter as necessary
604 to audit compensation of court-appointed attorneys. If the
605 docket is insufficient for purposes of the audit, the commission
606 may petition the court for additional documentation as necessary
607 and appropriate. The court may permit authorized representatives
608 of recognized organizations compiling statistics for proper
609 purposes to inspect and make abstracts from official records,
610 under whatever conditions upon their use and disposition the
611 court may deem proper, and may punish by contempt proceedings
612 any violation of those conditions.

613 (4) (a) 1. All information obtained pursuant to this part in
614 the discharge of official duty by any judge, employee of the
615 court, authorized agent of the department, correctional
616 probation officer, or law enforcement agent is confidential and
617 exempt from s. 119.07(1) and may not be disclosed to anyone
618 other than the authorized personnel of the court, the department
619 and its designees, correctional probation officers, law



163466

620 enforcement agents, guardian ad litem, attorney for the child,
621 and others entitled under this chapter to receive that
622 information, except upon order of the court.

623 2.a. The following information held by a guardian ad litem
624 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
625 I of the State Constitution:

626 (I) Medical, mental health, substance abuse, child care,
627 education, law enforcement, court, social services, and
628 financial records.

629 (II) Any other information maintained by a guardian ad
630 litem which is identified as confidential information under this
631 chapter.

632 b. Such confidential and exempt information may not be
633 disclosed to anyone other than the authorized personnel of the
634 court, the department and its designees, correctional probation
635 officers, law enforcement agents, guardians ad litem, and others
636 entitled under this chapter to receive that information, except
637 upon order of the court.

638 (b) The department shall disclose to the school
639 superintendent the presence of any child in the care and custody
640 or under the jurisdiction or supervision of the department who
641 has a known history of criminal sexual behavior with other
642 juveniles; is an alleged juvenile sex offender, as defined in s.
643 39.01; or has pled guilty or nolo contendere to, or has been
644 found to have committed, a violation of chapter 794, chapter
645 796, chapter 800, s. 827.071, or s. 847.0133, regardless of
646 adjudication. Any employee of a district school board who
647 knowingly and willfully discloses such information to an
648 unauthorized person commits a misdemeanor of the second degree,



163466

649 punishable as provided in s. 775.082 or s. 775.083.

650 Section 13. Paragraphs (a) and (b) of subsection (4) of
651 section 39.0139, Florida Statutes, are amended to read:

652 39.0139 Visitation or other contact; restrictions.—

653 (4) HEARINGS.—A person who meets any of the criteria set
654 forth in paragraph (3) (a) who seeks to begin or resume contact
655 with the child victim shall have the right to an evidentiary
656 hearing to determine whether contact is appropriate.

657 (a) Before ~~Prior to~~ the hearing, the court shall appoint an
658 attorney for the child ~~an attorney ad litem~~ or a guardian ad
659 litem, as appropriate, for the child if one has not already been
660 appointed. Any attorney for the child ~~attorney ad litem~~ or
661 guardian ad litem appointed shall have special training in the
662 dynamics of child sexual abuse.

663 (b) At the hearing, the court may receive and rely upon any
664 relevant and material evidence submitted to the extent of its
665 probative value, including written and oral reports or
666 recommendations from the Child Protection Team, the child's
667 therapist, or the child's guardian ad litem, ~~or the child's~~
668 ~~attorney ad litem,~~ even if these reports, recommendations, and
669 evidence may not be admissible under the rules of evidence.

670 Section 14. Paragraphs (k) and (t) of subsection (2) of
671 section 39.202, Florida Statutes, are amended to read:

672 39.202 Confidentiality of reports and records in cases of
673 child abuse or neglect.—

674 (2) Except as provided in subsection (4), access to such
675 records, excluding the name of, or other identifying information
676 with respect to, the reporter which shall be released only as
677 provided in subsection (5), shall be granted only to the



163466

678 following persons, officials, and agencies:

679 (k) Any appropriate official of a Florida advocacy council
680 investigating a report of known or suspected child abuse,
681 abandonment, or neglect; the Auditor General or the Office of
682 Program Policy Analysis and Government Accountability for the
683 purpose of conducting audits or examinations pursuant to law; or
684 the child's guardian ad litem or attorney for the child ~~for the~~
685 ~~child.~~

686 (t) Persons with whom the department is seeking to place
687 the child or to whom placement has been granted, including
688 foster parents for whom an approved home study has been
689 conducted, the designee of a licensed child-caring agency as
690 defined in s. 39.01(42) ~~s. 39.01(41)~~, an approved relative or
691 nonrelative with whom a child is placed pursuant to s. 39.402,
692 preadoptive parents for whom a favorable preliminary adoptive
693 home study has been conducted, adoptive parents, or an adoption
694 entity acting on behalf of preadoptive or adoptive parents.

695 Section 15. Subsection (1) of section 39.302, Florida
696 Statutes, is amended to read:

697 39.302 Protective investigations of institutional child
698 abuse, abandonment, or neglect.—

699 (1) The department shall conduct a child protective
700 investigation of each report of institutional child abuse,
701 abandonment, or neglect. Upon receipt of a report that alleges
702 that an employee or agent of the department, or any other entity
703 or person covered by s. 39.01(38) or (55) ~~s. 39.01(37) or (54)~~,
704 acting in an official capacity, has committed an act of child
705 abuse, abandonment, or neglect, the department shall initiate a
706 child protective investigation within the timeframe established



163466

707 under s. 39.201(5) and notify the appropriate state attorney,
708 law enforcement agency, and licensing agency, which shall
709 immediately conduct a joint investigation, unless independent
710 investigations are more feasible. When conducting investigations
711 or having face-to-face interviews with the child, investigation
712 visits shall be unannounced unless it is determined by the
713 department or its agent that unannounced visits threaten the
714 safety of the child. If a facility is exempt from licensing, the
715 department shall inform the owner or operator of the facility of
716 the report. Each agency conducting a joint investigation is
717 entitled to full access to the information gathered by the
718 department in the course of the investigation. A protective
719 investigation must include an interview with the child's parent
720 or legal guardian. The department shall make a full written
721 report to the state attorney within 3 working days after making
722 the oral report. A criminal investigation shall be coordinated,
723 whenever possible, with the child protective investigation of
724 the department. Any interested person who has information
725 regarding the offenses described in this subsection may forward
726 a statement to the state attorney as to whether prosecution is
727 warranted and appropriate. Within 15 days after the completion
728 of the investigation, the state attorney shall report the
729 findings to the department and shall include in the report a
730 determination of whether or not prosecution is justified and
731 appropriate in view of the circumstances of the specific case.

732 Section 16. Paragraph (c) of subsection (8) and paragraph
733 (a) of subsection (14) of section 39.402, Florida Statutes, are
734 amended to read:

735 39.402 Placement in a shelter.—



163466

736 (8)
737 (c) At the shelter hearing, the court shall:
738 1. Appoint a guardian ad litem to represent the best
739 interest of the child or an attorney for the child to provide
740 direct representation as provided in part XI, unless the court
741 finds that such representation is unnecessary;
742 2. Inform the parents or legal custodians of their right to
743 counsel to represent them at the shelter hearing and at each
744 subsequent hearing or proceeding, and the right of the parents
745 to appointed counsel, pursuant to the procedures set forth in s.
746 39.013;
747 3. Give the parents or legal custodians an opportunity to
748 be heard and to present evidence; and
749 4. Inquire of those present at the shelter hearing as to
750 the identity and location of the legal father. In determining
751 who the legal father of the child may be, the court shall
752 inquire under oath of those present at the shelter hearing
753 whether they have any of the following information:
754 a. Whether the mother of the child was married at the
755 probable time of conception of the child or at the time of birth
756 of the child.
757 b. Whether the mother was cohabiting with a male at the
758 probable time of conception of the child.
759 c. Whether the mother has received payments or promises of
760 support with respect to the child or because of her pregnancy
761 from a man who claims to be the father.
762 d. Whether the mother has named any man as the father on
763 the birth certificate of the child or in connection with
764 applying for or receiving public assistance.



163466

765 e. Whether any man has acknowledged or claimed paternity of
766 the child in a jurisdiction in which the mother resided at the
767 time of or since conception of the child or in which the child
768 has resided or resides.

769 f. Whether a man is named on the birth certificate of the
770 child pursuant to s. 382.013(2).

771 g. Whether a man has been determined by a court order to be
772 the father of the child.

773 h. Whether a man has been determined to be the father of
774 the child by the Department of Revenue as provided in s.
775 409.256.

776 (14) The time limitations in this section do not include:

777 (a) Periods of delay resulting from a continuance granted
778 at the request or with the consent of the attorney for the child
779 or the child's counsel or the child's guardian ad litem, if one
780 has been appointed by the court, or, if the child is of
781 sufficient capacity to express reasonable consent, at the
782 request or with the consent of the attorney for the child
783 ~~child's attorney~~ or the child's guardian ad litem, ~~if one has~~
784 ~~been appointed by the court,~~ and the child.

785 Section 17. Paragraphs (e) and (f) of subsection (3) and
786 subsection (6) of section 39.407, Florida Statutes, are amended
787 to read:

788 39.407 Medical, psychiatric, and psychological examination
789 and treatment of child; physical, mental, or substance abuse
790 examination of person with or requesting child custody.—

791 (3)

792 (e)1. If the child's prescribing physician or psychiatric
793 nurse, as defined in s. 394.455, certifies in the signed medical



163466

794 report required in paragraph (c) that delay in providing a
795 prescribed psychotropic medication would more likely than not
796 cause significant harm to the child, the medication may be
797 provided in advance of the issuance of a court order. In such
798 event, the medical report must provide the specific reasons why
799 the child may experience significant harm and the nature and the
800 extent of the potential harm. The department must submit a
801 motion seeking continuation of the medication and the
802 physician's or psychiatric nurse's medical report to the court,
803 the child's guardian ad litem or the attorney for the child, and
804 all other parties within 3 working days after the department
805 commences providing the medication to the child. The department
806 shall seek the order at the next regularly scheduled court
807 hearing required under this chapter, or within 30 days after the
808 date of the prescription, whichever occurs sooner. If any party
809 objects to the department's motion, the court shall hold a
810 hearing within 7 days.

811 2. Psychotropic medications may be administered in advance
812 of a court order in hospitals, crisis stabilization units, and
813 in statewide inpatient psychiatric programs. Within 3 working
814 days after the medication is begun, the department must seek
815 court authorization as described in paragraph (c).

816 (f)1. The department shall fully inform the court of the
817 child's medical and behavioral status as part of the social
818 services report prepared for each judicial review hearing held
819 for a child for whom psychotropic medication has been prescribed
820 or provided under this subsection. As a part of the information
821 provided to the court, the department shall furnish copies of
822 all pertinent medical records concerning the child which have



163466

823 been generated since the previous hearing. On its own motion or
824 on good cause shown by any party, including any guardian ad
825 litem, or the child attorney, or attorney ad litem who has been
826 ~~appointed to represent the child or the child's interests,~~ the
827 court may review the status more frequently than required in
828 this subsection.

829 2. The court may, in the best interests of the child, order
830 the department to obtain a medical opinion addressing whether
831 the continued use of the medication under the circumstances is
832 safe and medically appropriate.

833 (6) Children who are in the legal custody of the department
834 may be placed by the department, without prior approval of the
835 court, in a residential treatment center licensed under s.
836 394.875 or a hospital licensed under chapter 395 for residential
837 mental health treatment only pursuant to this section or may be
838 placed by the court in accordance with an order of involuntary
839 examination or involuntary placement entered pursuant to s.
840 394.463 or s. 394.467. All children placed in a residential
841 treatment program under this subsection must be appointed ~~have~~ a
842 guardian ad litem and an attorney for the child ~~appointed~~.

843 (a) As used in this subsection, the term:

844 1. "Residential treatment" means placement for observation,
845 diagnosis, or treatment of an emotional disturbance in a
846 residential treatment center licensed under s. 394.875 or a
847 hospital licensed under chapter 395.

848 2. "Least restrictive alternative" means the treatment and
849 conditions of treatment that, separately and in combination, are
850 no more intrusive or restrictive of freedom than reasonably
851 necessary to achieve a substantial therapeutic benefit or to



163466

852 protect the child or adolescent or others from physical injury.

853 3. "Suitable for residential treatment" or "suitability"
854 means a determination concerning a child or adolescent with an
855 emotional disturbance as defined in s. 394.492(5) or a serious
856 emotional disturbance as defined in s. 394.492(6) that each of
857 the following criteria is met:

858 a. The child requires residential treatment.

859 b. The child is in need of a residential treatment program
860 and is expected to benefit from mental health treatment.

861 c. An appropriate, less restrictive alternative to
862 residential treatment is unavailable.

863 (b) Whenever the department believes that a child in its
864 legal custody is emotionally disturbed and may need residential
865 treatment, an examination and suitability assessment must be
866 conducted by a qualified evaluator who is appointed by the
867 Agency for Health Care Administration. This suitability
868 assessment must be completed before the placement of the child
869 in a residential treatment center for emotionally disturbed
870 children and adolescents or a hospital. The qualified evaluator
871 must be a psychiatrist or a psychologist licensed in Florida who
872 has at least 3 years of experience in the diagnosis and
873 treatment of serious emotional disturbances in children and
874 adolescents and who has no actual or perceived conflict of
875 interest with any inpatient facility or residential treatment
876 center or program.

877 (c) Before a child is admitted under this subsection, the
878 child shall be assessed for suitability for residential
879 treatment by a qualified evaluator who has conducted a personal
880 examination and assessment of the child and has made written



163466

881 findings that:

882 1. The child appears to have an emotional disturbance
883 serious enough to require residential treatment and is
884 reasonably likely to benefit from the treatment.

885 2. The child has been provided with a clinically
886 appropriate explanation of the nature and purpose of the
887 treatment.

888 3. All available modalities of treatment less restrictive
889 than residential treatment have been considered, and a less
890 restrictive alternative that would offer comparable benefits to
891 the child is unavailable.

892
893 A copy of the written findings of the evaluation and suitability
894 assessment must be provided to the department, to the guardian
895 ad litem and attorney for the child, and, if the child is a
896 member of a Medicaid managed care plan, to the plan that is
897 financially responsible for the child's care in residential
898 treatment, all of whom must be provided with the opportunity to
899 discuss the findings with the evaluator.

900 (d) Immediately upon placing a child in a residential
901 treatment program under this section, the department must notify
902 the guardian ad litem, the attorney for the child, and the court
903 having jurisdiction over the child and must provide the guardian
904 ad litem, the attorney for the child, and the court with a copy
905 of the assessment by the qualified evaluator.

906 (e) Within 10 days after the admission of a child to a
907 residential treatment program, the director of the residential
908 treatment program or the director's designee must ensure that an
909 individualized plan of treatment has been prepared by the



163466

910 program and has been explained to the child, to the department,
911 ~~and~~ to the guardian ad litem, and to the attorney for the child,
912 and submitted to the department. The child must be involved in
913 the preparation of the plan to the maximum feasible extent
914 consistent with his or her ability to understand and
915 participate, and the guardian ad litem, the attorney for the
916 child, and the child's foster parents must be involved to the
917 maximum extent consistent with the child's treatment needs. The
918 plan must include a preliminary plan for residential treatment
919 and aftercare upon completion of residential treatment. The plan
920 must include specific behavioral and emotional goals against
921 which the success of the residential treatment may be measured.
922 A copy of the plan must be provided to the child, to the
923 guardian ad litem, to the attorney for the child, and to the
924 department.

925 (f) Within 30 days after admission, the residential
926 treatment program must review the appropriateness and
927 suitability of the child's placement in the program. The
928 residential treatment program must determine whether the child
929 is receiving benefit toward the treatment goals and whether the
930 child could be treated in a less restrictive treatment program.
931 The residential treatment program shall prepare a written report
932 of its findings and submit the report to the guardian ad litem,
933 to the attorney for the child, and to the department. The
934 department must submit the report to the court. The report must
935 include a discharge plan for the child. The residential
936 treatment program must continue to evaluate the child's
937 treatment progress every 30 days thereafter and must include its
938 findings in a written report submitted to the department. The



163466

939 department may not reimburse a facility until the facility has
940 submitted every written report that is due.

941 (g)1. The department must submit, at the beginning of each
942 month, to the court having jurisdiction over the child, a
943 written report regarding the child's progress toward achieving
944 the goals specified in the individualized plan of treatment.

945 2. The court must conduct a hearing to review the status of
946 the child's residential treatment plan no later than 60 days
947 after the child's admission to the residential treatment
948 program. An independent review of the child's progress toward
949 achieving the goals and objectives of the treatment plan must be
950 completed by a qualified evaluator and submitted to the court
951 before its 60-day review.

952 3. For any child in residential treatment at the time a
953 judicial review is held pursuant to s. 39.701, the child's
954 continued placement in residential treatment must be a subject
955 of the judicial review.

956 4. If at any time the court determines that the child is
957 not suitable for continued residential treatment, the court
958 shall order the department to place the child in the least
959 restrictive setting that is best suited to meet his or her
960 needs.

961 (h) After the initial 60-day review, the court must conduct
962 a review of the child's residential treatment plan every 90
963 days.

964 (i) The department must adopt rules for implementing
965 timeframes for the completion of suitability assessments by
966 qualified evaluators and a procedure that includes timeframes
967 for completing the 60-day independent review by the qualified



163466

968 evaluators of the child's progress toward achieving the goals
969 and objectives of the treatment plan which review must be
970 submitted to the court. The Agency for Health Care
971 Administration must adopt rules for the registration of
972 qualified evaluators, the procedure for selecting the evaluators
973 to conduct the reviews required under this section, and a
974 reasonable, cost-efficient fee schedule for qualified
975 evaluators.

976 Section 18. Subsections (20) and (21) of section 39.4085,
977 Florida Statutes, are amended to read:

978 39.4085 Legislative findings and declaration of intent for
979 goals for dependent children.—The Legislature finds and declares
980 that the design and delivery of child welfare services should be
981 directed by the principle that the health and safety of children
982 should be of paramount concern and, therefore, establishes the
983 following goals for children in shelter or foster care:

984 (20) To have a guardian ad litem appointed to represent,
985 within reason, their best interests; and, as appropriate, have
986 an attorney for the child ~~and, where appropriate, an attorney ad~~
987 ~~litem~~ appointed to represent their legal interests. ~~;~~ The
988 guardian ad litem and attorney for the child ~~attorney ad litem~~
989 shall have immediate and unlimited access to the children they
990 represent.

991 (21) To have all their records available for review by
992 their guardian ad litem or attorney for the child, as
993 applicable, ~~and attorney ad litem~~ if they deem such review
994 necessary.

995
996 The provisions of this section establish goals and not rights.



163466

997 Nothing in this section shall be interpreted as requiring the
998 delivery of any particular service or level of service in excess
999 of existing appropriations. No person shall have a cause of
1000 action against the state or any of its subdivisions, agencies,
1001 contractors, subcontractors, or agents, based upon the adoption
1002 of or failure to provide adequate funding for the achievement of
1003 these goals by the Legislature. Nothing herein shall require the
1004 expenditure of funds to meet the goals established herein except
1005 funds specifically appropriated for such purpose.

1006 Section 19. Subsections (8), (12), (13), (14), and (17) of
1007 section 39.502, Florida Statutes, are amended to read:

1008 39.502 Notice, process, and service.—

1009 (8) It is not necessary to the validity of a proceeding
1010 covered by this part that the parents be present if their
1011 identity or residence is unknown after a diligent search has
1012 been made, but in this event the petitioner shall file an
1013 affidavit of diligent search prepared by the person who made the
1014 search and inquiry, and the court may appoint a guardian ad
1015 litem for the child or an attorney for the child, as
1016 appropriate.

1017 (12) All process and orders issued by the court shall be
1018 served or executed as other process and orders of the circuit
1019 court and, in addition, may be served or executed by authorized
1020 agents of the department or the guardian ad litem or attorney
1021 for the child, as applicable.

1022 (13) Subpoenas may be served within the state by any person
1023 over 18 years of age who is not a party to the proceeding and,
1024 in addition, may be served by authorized agents of the
1025 department or the guardian ad litem or attorney for the child,



163466

1026 as applicable.

1027 (14) No fee shall be paid for service of any process or
1028 other papers by an agent of the department or the guardian ad
1029 litem or attorney for the child, as applicable. If any process,
1030 orders, or any other papers are served or executed by any
1031 sheriff, the sheriff's fees shall be paid by the county.

1032 (17) The parent or legal custodian of the child, the
1033 attorney for the department, the guardian ad litem or attorney
1034 for the child, as applicable, the foster or preadoptive parents,
1035 and all other parties and participants shall be given reasonable
1036 notice of all proceedings and hearings provided for under this
1037 part. All foster or preadoptive parents must be provided with at
1038 least 72 hours' notice, verbally or in writing, of all
1039 proceedings or hearings relating to children in their care or
1040 children they are seeking to adopt to ensure the ability to
1041 provide input to the court.

1042 Section 20. Paragraphs (c) and (e) of subsection (1) of
1043 section 39.521, Florida Statutes, are amended to read:

1044 39.521 Disposition hearings; powers of disposition.—

1045 (1) A disposition hearing shall be conducted by the court,
1046 if the court finds that the facts alleged in the petition for
1047 dependency were proven in the adjudicatory hearing, or if the
1048 parents or legal custodians have consented to the finding of
1049 dependency or admitted the allegations in the petition, have
1050 failed to appear for the arraignment hearing after proper
1051 notice, or have not been located despite a diligent search
1052 having been conducted.

1053 (c) When any child is adjudicated by a court to be
1054 dependent, the court having jurisdiction of the child has the



163466

1055 power by order to:

1056 1. Require the parent and, when appropriate, the legal
1057 guardian or the child to participate in treatment and services
1058 identified as necessary. The court may require the person who
1059 has custody or who is requesting custody of the child to submit
1060 to a mental health or substance abuse disorder assessment or
1061 evaluation. The order may be made only upon good cause shown and
1062 pursuant to notice and procedural requirements provided under
1063 the Florida Rules of Juvenile Procedure. The mental health
1064 assessment or evaluation must be administered by a qualified
1065 professional as defined in s. 39.01, and the substance abuse
1066 assessment or evaluation must be administered by a qualified
1067 professional as defined in s. 397.311. The court may also
1068 require such person to participate in and comply with treatment
1069 and services identified as necessary, including, when
1070 appropriate and available, participation in and compliance with
1071 a mental health court program established under chapter 394 or a
1072 treatment-based drug court program established under s. 397.334.
1073 Adjudication of a child as dependent based upon evidence of harm
1074 as defined in s. 39.01(36)(g) ~~s. 39.01(35)(g)~~ demonstrates good
1075 cause, and the court shall require the parent whose actions
1076 caused the harm to submit to a substance abuse disorder
1077 assessment or evaluation and to participate and comply with
1078 treatment and services identified in the assessment or
1079 evaluation as being necessary. In addition to supervision by the
1080 department, the court, including the mental health court program
1081 or the treatment-based drug court program, may oversee the
1082 progress and compliance with treatment by a person who has
1083 custody or is requesting custody of the child. The court may



163466

1084 impose appropriate available sanctions for noncompliance upon a
1085 person who has custody or is requesting custody of the child or
1086 make a finding of noncompliance for consideration in determining
1087 whether an alternative placement of the child is in the child's
1088 best interests. Any order entered under this subparagraph may be
1089 made only upon good cause shown. This subparagraph does not
1090 authorize placement of a child with a person seeking custody of
1091 the child, other than the child's parent or legal custodian, who
1092 requires mental health or substance abuse disorder treatment.

1093 2. Require, if the court deems necessary, the parties to
1094 participate in dependency mediation.

1095 3. Require placement of the child either under the
1096 protective supervision of an authorized agent of the department
1097 in the home of one or both of the child's parents or in the home
1098 of a relative of the child or another adult approved by the
1099 court, or in the custody of the department. Protective
1100 supervision continues until the court terminates it or until the
1101 child reaches the age of 18, whichever date is first. Protective
1102 supervision shall be terminated by the court whenever the court
1103 determines that permanency has been achieved for the child,
1104 whether with a parent, another relative, or a legal custodian,
1105 and that protective supervision is no longer needed. The
1106 termination of supervision may be with or without retaining
1107 jurisdiction, at the court's discretion, and shall in either
1108 case be considered a permanency option for the child. The order
1109 terminating supervision by the department must set forth the
1110 powers of the custodian of the child and include the powers
1111 ordinarily granted to a guardian of the person of a minor unless
1112 otherwise specified. Upon the court's termination of supervision



163466

1113 by the department, further judicial reviews are not required if
1114 permanency has been established for the child.

1115 4. Determine whether the child has a strong attachment to
1116 the prospective permanent guardian and whether such guardian has
1117 a strong commitment to permanently caring for the child.

1118 (e) The court shall, in its written order of disposition,
1119 include all of the following:

1120 1. The placement or custody of the child.

1121 2. Special conditions of placement and visitation.

1122 3. Evaluation, counseling, treatment activities, and other
1123 actions to be taken by the parties, if ordered.

1124 4. The persons or entities responsible for supervising or
1125 monitoring services to the child and parent.

1126 5. Continuation or discharge of the guardian ad litem or
1127 attorney for the child if appointed, as appropriate.

1128 6. The date, time, and location of the next scheduled
1129 review hearing, which must occur within the earlier of:

1130 a. Ninety days after the disposition hearing;

1131 b. Ninety days after the court accepts the case plan;

1132 c. Six months after the date of the last review hearing; or

1133 d. Six months after the date of the child's removal from
1134 his or her home, if no review hearing has been held since the
1135 child's removal from the home.

1136 7. If the child is in an out-of-home placement, child
1137 support to be paid by the parents, or the guardian of the
1138 child's estate if possessed of assets which under law may be
1139 disbursed for the care, support, and maintenance of the child.

1140 The court may exercise jurisdiction over all child support
1141 matters, shall adjudicate the financial obligation, including



163466

1142 health insurance, of the child's parents or guardian, and shall
1143 enforce the financial obligation as provided in chapter 61. The
1144 state's child support enforcement agency shall enforce child
1145 support orders under this section in the same manner as child
1146 support orders under chapter 61. Placement of the child shall
1147 not be contingent upon issuance of a support order.

1148 8.a. If the court does not commit the child to the
1149 temporary legal custody of an adult relative, legal custodian,
1150 or other adult approved by the court, the disposition order must
1151 include the reasons for such a decision and shall include a
1152 determination as to whether diligent efforts were made by the
1153 department to locate an adult relative, legal custodian, or
1154 other adult willing to care for the child in order to present
1155 that placement option to the court instead of placement with the
1156 department.

1157 b. If no suitable relative is found and the child is placed
1158 with the department or a legal custodian or other adult approved
1159 by the court, both the department and the court shall consider
1160 transferring temporary legal custody to an adult relative
1161 approved by the court at a later date, but neither the
1162 department nor the court is obligated to so place the child if
1163 it is in the child's best interest to remain in the current
1164 placement.

1165
1166 For the purposes of this section, "diligent efforts to locate an
1167 adult relative" means a search similar to the diligent search
1168 for a parent, but without the continuing obligation to search
1169 after an initial adequate search is completed.

1170 9. Other requirements necessary to protect the health,



163466

1171 safety, and well-being of the child, to preserve the stability
1172 of the child's child care, early education program, or any other
1173 educational placement, and to promote family preservation or
1174 reunification whenever possible.

1175 Section 21. Paragraph (a) of subsection (2) of section
1176 39.523, Florida Statutes, is amended to read:

1177 39.523 Placement in out-of-home care.-

1178 (2) ASSESSMENT AND PLACEMENT.-When any child is removed
1179 from a home and placed into out-of-home care, a comprehensive
1180 placement assessment process shall be completed to determine the
1181 level of care needed by the child and match the child with the
1182 most appropriate placement.

1183 (a) The community-based care lead agency or subcontracted
1184 agency with the responsibility for assessment and placement must
1185 coordinate a multidisciplinary team staffing with any available
1186 individual currently involved with the child, including, but not
1187 limited to, a representative from the department and the case
1188 manager for the child; a therapist, ~~attorney ad litem~~, a
1189 guardian ad litem, an attorney for the child, teachers, coaches,
1190 and Children's Medical Services; and other community providers
1191 of services to the child or stakeholders as applicable. The team
1192 may also include clergy, relatives, and fictive kin if
1193 appropriate. Team participants must gather data and information
1194 on the child which is known at the time including, but not
1195 limited to:

- 1196 1. Mental, medical, behavioral health, and medication
1197 history;
- 1198 2. Community ties and school placement;
- 1199 3. Current placement decisions relating to any siblings;



163466

1200 4. Alleged type of abuse or neglect including sexual abuse
1201 and trafficking history; and

1202 5. The child's age, maturity, strengths, hobbies or
1203 activities, and the child's preference for placement.

1204 Section 22. Paragraph (a) of subsection (1) of section
1205 39.6011, Florida Statutes, is amended to read:

1206 39.6011 Case plan development.—

1207 (1) The department shall prepare a draft of the case plan
1208 for each child receiving services under this chapter. A parent
1209 of a child may not be threatened or coerced with the loss of
1210 custody or parental rights for failing to admit in the case plan
1211 of abusing, neglecting, or abandoning a child. Participating in
1212 the development of a case plan is not an admission to any
1213 allegation of abuse, abandonment, or neglect, and it is not a
1214 consent to a finding of dependency or termination of parental
1215 rights. The case plan shall be developed subject to the
1216 following requirements:

1217 (a) The case plan must be developed in a face-to-face
1218 conference with the parent of the child, any court-appointed
1219 guardian ad litem or attorney for the child, and, if
1220 appropriate, the child and the temporary custodian of the child.

1221 Section 23. Paragraph (c) of subsection (1) of section
1222 39.6012, Florida Statutes, is amended to read:

1223 39.6012 Case plan tasks; services.—

1224 (1) The services to be provided to the parent and the tasks
1225 that must be completed are subject to the following:

1226 (c) If there is evidence of harm as defined in s.
1227 39.01(36)(g) ~~s. 39.01(35)(g)~~, the case plan must include as a
1228 required task for the parent whose actions caused the harm that



163466

1229 the parent submit to a substance abuse disorder assessment or
1230 evaluation and participate and comply with treatment and
1231 services identified in the assessment or evaluation as being
1232 necessary.

1233 Section 24. Subsection (8) of section 39.6251, Florida
1234 Statutes, is amended to read:

1235 39.6251 Continuing care for young adults.—

1236 (8) During the time that a young adult is in care, the
1237 court shall maintain jurisdiction to ensure that the department
1238 and the lead agencies are providing services and coordinate
1239 with, and maintain oversight of, other agencies involved in
1240 implementing the young adult's case plan, individual education
1241 plan, and transition plan. The court shall review the status of
1242 the young adult at least every 6 months and hold a permanency
1243 review hearing at least annually. If the young adult is
1244 appointed a guardian under chapter 744 or a guardian advocate
1245 under s. 393.12, at the permanency review hearing the court
1246 shall review the necessity of continuing the guardianship and
1247 whether restoration of guardianship proceedings are needed when
1248 the young adult reaches 22 years of age. The court may appoint
1249 an attorney for the child ~~a guardian ad litem~~ or continue the
1250 appointment of a guardian ad litem or an attorney for the child,
1251 as applicable, with the young adult's consent. The young adult
1252 or any other party to the dependency case may request an
1253 additional hearing or review.

1254 Section 25. Paragraph (b) of subsection (1) and paragraph
1255 (b) of subsection (2) of section 39.701, Florida Statutes, are
1256 amended to read:

1257 39.701 Judicial review.—



163466

1258 (1) GENERAL PROVISIONS.—

1259 (b)1. The court shall retain jurisdiction over a child
1260 returned to his or her parents for a minimum period of 6 months
1261 following the reunification, but, at that time, based on a
1262 report of the social service agency and the guardian ad litem or
1263 attorney for the child, if one has been appointed, and any other
1264 relevant factors, the court shall make a determination as to
1265 whether supervision by the department and the court's
1266 jurisdiction shall continue or be terminated.

1267 2. Notwithstanding subparagraph 1., the court must retain
1268 jurisdiction over a child if the child is placed in the home
1269 with a parent or caregiver with an in-home safety plan and such
1270 safety plan remains necessary for the child to reside safely in
1271 the home.

1272 (2) REVIEW HEARINGS FOR CHILDREN YOUNGER THAN 18 YEARS OF
1273 AGE.—

1274 (b) *Submission and distribution of reports.*—

1275 1. A copy of the social service agency's written report and
1276 the written report of the guardian ad litem, and a report of the
1277 attorney for the child, if he or she has prepared one, must be
1278 served on all parties whose whereabouts are known; to the foster
1279 parents or legal custodians; and to the citizen review panel, at
1280 least 72 hours before the judicial review hearing or citizen
1281 review panel hearing. The requirement for providing parents with
1282 a copy of the written report does not apply to those parents who
1283 have voluntarily surrendered their child for adoption or who
1284 have had their parental rights to the child terminated.

1285 2. In a case in which the child has been permanently placed
1286 with the social service agency, the agency shall furnish to the



163466

1287 court a written report concerning the progress being made to
1288 place the child for adoption. If the child cannot be placed for
1289 adoption, a report on the progress made by the child towards
1290 alternative permanency goals or placements, including, but not
1291 limited to, guardianship, long-term custody, long-term licensed
1292 custody, or independent living, must be submitted to the court.
1293 The report must be submitted to the court at least 72 hours
1294 before each scheduled judicial review.

1295 3. In addition to or in lieu of any written statement
1296 provided to the court, the foster parent or legal custodian, or
1297 any preadoptive parent, shall be given the opportunity to
1298 address the court with any information relevant to the best
1299 interests of the child at any judicial review hearing.

1300 Section 26. Paragraph (g) of subsection (5) of section
1301 39.702, Florida Statutes, is amended to read:

1302 39.702 Citizen review panels.—

1303 (5) The independent not-for-profit agency authorized to
1304 administer each citizen review panel shall:

1305 (g) Establish policies to ensure adequate communication
1306 with the parent, the foster parent or legal custodian, the
1307 guardian ad litem or attorney for the child, and any other
1308 person deemed appropriate.

1309 Section 27. Paragraph (a) of subsection (3) and subsections
1310 (5), (6), and (7) of section 39.801, Florida Statutes, are
1311 amended to read:

1312 39.801 Procedures and jurisdiction; notice; service of
1313 process.—

1314 (3) Before the court may terminate parental rights, in
1315 addition to the other requirements set forth in this part, the



163466

1316 following requirements must be met:

1317 (a) Notice of the date, time, and place of the advisory
1318 hearing for the petition to terminate parental rights and a copy
1319 of the petition must be personally served upon the following
1320 persons, specifically notifying them that a petition has been
1321 filed:

1322 1. The parents of the child.

1323 2. The legal custodians of the child.

1324 3. If the parents who would be entitled to notice are dead
1325 or unknown, a living relative of the child, unless upon diligent
1326 search and inquiry no such relative can be found.

1327 4. Any person who has physical custody of the child.

1328 5. Any grandparent entitled to priority for adoption under
1329 s. 63.0425.

1330 6. Any prospective parent who has been identified under s.
1331 39.503 or s. 39.803, unless a court order has been entered
1332 pursuant to s. 39.503(4) or (9) or s. 39.803(4) or (9) which
1333 indicates no further notice is required. Except as otherwise
1334 provided in this section, if there is not a legal father, notice
1335 of the petition for termination of parental rights must be
1336 provided to any known prospective father who is identified under
1337 oath before the court or who is identified by a diligent search
1338 of the Florida Putative Father Registry. Service of the notice
1339 of the petition for termination of parental rights is not
1340 required if the prospective father executes an affidavit of
1341 nonpaternity or a consent to termination of his parental rights
1342 which is accepted by the court after notice and opportunity to
1343 be heard by all parties to address the best interests of the
1344 child in accepting such affidavit.



163466

1345 7. The guardian ad litem for the child or the
1346 representative of the guardian ad litem program, if the program
1347 has been appointed.

1348 8. The attorney for the child, if appointed.

1349

1350 The document containing the notice to respond or appear must
1351 contain, in type at least as large as the type in the balance of
1352 the document, the following or substantially similar language:

1353 "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING
1354 CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF
1355 THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND
1356 TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE
1357 CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS
1358 NOTICE."

1359 (5) All process and orders issued by the court must be
1360 served or executed as other process and orders of the circuit
1361 court and, in addition, may be served or executed by authorized
1362 agents of the department, or the guardian ad litem, or the
1363 attorney for the child.

1364 (6) Subpoenas may be served within the state by any person
1365 over 18 years of age who is not a party to the proceeding and,
1366 in addition, may be served or executed by authorized agents of
1367 the department, or of the guardian ad litem, or of the attorney
1368 for the child.

1369 (7) A fee may not be paid for service of any process or
1370 other papers by an agent of the department, or the guardian ad
1371 litem, or the attorney for the child. If any process, orders, or
1372 other papers are served or executed by any sheriff, the
1373 sheriff's fees must be paid by the county.



163466

1374 Section 28. Subsection (1) of section 39.802, Florida
1375 Statutes, is amended to read:

1376 39.802 Petition for termination of parental rights; filing;
1377 elements.—

1378 (1) All proceedings seeking an adjudication to terminate
1379 parental rights pursuant to this chapter must be initiated by
1380 the filing of an original petition by the department, the
1381 guardian ad litem, the attorney for the child, or any other
1382 person who has knowledge of the facts alleged or is informed of
1383 them and believes that they are true.

1384 Section 29. Subsection (2) of section 39.808, Florida
1385 Statutes, is amended to read:

1386 39.808 Advisory hearing; pretrial status conference.—

1387 (2) At the hearing the court shall inform the parties of
1388 their rights under s. 39.807, shall appoint counsel for the
1389 parties in accordance with legal requirements, and shall appoint
1390 a guardian ad litem or an attorney for the child as provided for
1391 in s. 39.831 to represent the interests of the child if one has
1392 not already been appointed.

1393 Section 30. Subsection (11) of section 39.810, Florida
1394 Statutes, is amended to read:

1395 39.810 Manifest best interests of the child.—In a hearing
1396 on a petition for termination of parental rights, the court
1397 shall consider the manifest best interests of the child. This
1398 consideration shall not include a comparison between the
1399 attributes of the parents and those of any persons providing a
1400 present or potential placement for the child. For the purpose of
1401 determining the manifest best interests of the child, the court
1402 shall consider and evaluate all relevant factors, including, but



163466

1403 not limited to:

1404 (11) The recommendations for the child provided by the
1405 child's guardian ad litem ~~or legal representative.~~

1406 Section 31. Subsection (9) of section 39.811, Florida
1407 Statutes, is amended to read:

1408 39.811 Powers of disposition; order of disposition.—

1409 (9) After termination of parental rights, the court shall
1410 retain jurisdiction over any child for whom custody is given to
1411 a social service agency until the child is adopted. The court
1412 shall review the status of the child's placement and the
1413 progress being made toward permanent adoptive placement. As part
1414 of this continuing jurisdiction, for good cause shown by the
1415 attorney for the child or guardian ad litem for the child, the
1416 court may review the appropriateness of the adoptive placement
1417 of the child.

1418 Section 32. Subsection (4) of section 39.812, Florida
1419 Statutes, is amended to read:

1420 39.812 Postdisposition relief; petition for adoption.—

1421 (4) The court shall retain jurisdiction over any child
1422 placed in the custody of the department until the child is
1423 adopted. After custody of a child for subsequent adoption has
1424 been given to the department, the court has jurisdiction for the
1425 purpose of reviewing the status of the child and the progress
1426 being made toward permanent adoptive placement. As part of this
1427 continuing jurisdiction, for good cause shown by the attorney
1428 for the child or guardian ad litem for the child, the court may
1429 review the appropriateness of the adoptive placement of the
1430 child. When a licensed foster parent or court-ordered custodian
1431 has applied to adopt a child who has resided with the foster



163466

1432 parent or custodian for at least 6 months and who has previously
1433 been permanently committed to the legal custody of the
1434 department and the department does not grant the application to
1435 adopt, the department may not, in the absence of a prior court
1436 order authorizing it to do so, remove the child from the foster
1437 home or custodian, except when:

1438 (a) There is probable cause to believe that the child is at
1439 imminent risk of abuse or neglect;

1440 (b) Thirty days have expired following written notice to
1441 the foster parent or custodian of the denial of the application
1442 to adopt, within which period no formal challenge of the
1443 department's decision has been filed; or

1444 (c) The foster parent or custodian agrees to the child's
1445 removal.

1446 Section 33. Subsections (5), (6), and (7) of section 43.16,
1447 Florida Statutes, are amended to read:

1448 43.16 Justice Administrative Commission; membership, powers
1449 and duties.—

1450 (5) The duties of the commission shall include, but not be
1451 limited to, the following:

1452 (a) The maintenance of a central state office for
1453 administrative services and assistance when possible to and on
1454 behalf of the state attorneys and public defenders of Florida,
1455 the capital collateral regional counsel of Florida, the criminal
1456 conflict and civil regional counsel, ~~and~~ the Guardian Ad Litem
1457 Program, and the Statewide Office of Child Representation.

1458 (b) Each state attorney, public defender, ~~and~~ criminal
1459 conflict and civil regional counsel, and the Guardian Ad Litem
1460 Program, and the Statewide Office of Child Representation shall



163466

1461 continue to prepare necessary budgets, vouchers that represent
1462 valid claims for reimbursement by the state for authorized
1463 expenses, and other things incidental to the proper
1464 administrative operation of the office, such as revenue
1465 transmittals to the Chief Financial Officer and automated
1466 systems plans, but will forward such items to the commission for
1467 recording and submission to the proper state officer. However,
1468 when requested by a state attorney, a public defender, a
1469 criminal conflict and civil regional counsel, ~~or~~ the Guardian Ad
1470 Litem Program, or the Statewide Office of Child Representation,
1471 the commission will either assist in the preparation of budget
1472 requests, voucher schedules, and other forms and reports or
1473 accomplish the entire project involved.

1474 (6) The commission, each state attorney, each public
1475 defender, the criminal conflict and civil regional counsel, the
1476 capital collateral regional counsel, ~~and~~ the Guardian Ad Litem
1477 Program, and the Statewide Office of Child Representation shall
1478 establish and maintain internal controls designed to:

1479 (a) Prevent and detect fraud, waste, and abuse as defined
1480 in s. 11.45(1).

1481 (b) Promote and encourage compliance with applicable laws,
1482 rules, contracts, grant agreements, and best practices.

1483 (c) Support economical and efficient operations.

1484 (d) Ensure reliability of financial records and reports.

1485 (e) Safeguard assets.

1486 (7) The provisions contained in this section shall be
1487 supplemental to those of chapter 27, relating to state
1488 attorneys, public defenders, criminal conflict and civil
1489 regional counsel, and capital collateral regional counsel; to



1490 those of chapter 39, relating to the Guardian Ad Litem Program
1491 and the Statewide Office of Child Representation; or to other
1492 laws pertaining hereto.

1493 Section 34. Paragraph (a) of subsection (2) of section
1494 63.085, Florida Statutes, are amended to read:

1495 63.085 Disclosure by adoption entity.—

1496 (2) DISCLOSURE TO ADOPTIVE PARENTS.—

1497 (a) At the time that an adoption entity is responsible for
1498 selecting prospective adoptive parents for a born or unborn
1499 child whose parents are seeking to place the child for adoption
1500 or whose rights were terminated pursuant to chapter 39, the
1501 adoption entity must provide the prospective adoptive parents
1502 with information concerning the background of the child to the
1503 extent such information is disclosed to the adoption entity by
1504 the parents, legal custodian, or the department. This subsection
1505 applies only if the adoption entity identifies the prospective
1506 adoptive parents and supervises the placement of the child in
1507 the prospective adoptive parents' home. If any information
1508 cannot be disclosed because the records custodian failed or
1509 refused to produce the background information, the adoption
1510 entity has a duty to provide the information if it becomes
1511 available. An individual or entity contacted by an adoption
1512 entity to obtain the background information must release the
1513 requested information to the adoption entity without the
1514 necessity of a subpoena or a court order. In all cases, the
1515 prospective adoptive parents must receive all available
1516 information by the date of the final hearing on the petition for
1517 adoption. The information to be disclosed includes:

1518 1. A family social and medical history form completed



163466

1519 pursuant to s. 63.162(6).

1520 2. The biological mother's medical records documenting her
1521 prenatal care and the birth and delivery of the child.

1522 3. A complete set of the child's medical records
1523 documenting all medical treatment and care since the child's
1524 birth and before placement.

1525 4. All mental health, psychological, and psychiatric
1526 records, reports, and evaluations concerning the child before
1527 placement.

1528 5. The child's educational records, including all records
1529 concerning any special education needs of the child before
1530 placement.

1531 6. Records documenting all incidents that required the
1532 department to provide services to the child, including all
1533 orders of adjudication of dependency or termination of parental
1534 rights issued pursuant to chapter 39, any case plans drafted to
1535 address the child's needs, all protective services
1536 investigations identifying the child as a victim, and all
1537 guardian ad litem reports or attorney for the child reports
1538 filed with the court concerning the child.

1539 7. Written information concerning the availability of
1540 adoption subsidies for the child, if applicable.

1541 Section 35. Subsection (4) of section 322.09, Florida
1542 Statutes, is amended to read:

1543 322.09 Application of minors; responsibility for negligence
1544 or misconduct of minor.—

1545 (4) Notwithstanding subsections (1) and (2), if a caregiver
1546 of a minor who is under the age of 18 years and is in out-of-
1547 home care as defined in s. 39.01(56) ~~s. 39.01(55)~~, an authorized



163466

1548 representative of a residential group home at which such a minor
1549 resides, the caseworker at the agency at which the state has
1550 placed the minor, or a guardian ad litem specifically authorized
1551 by the minor's caregiver to sign for a learner's driver license
1552 signs the minor's application for a learner's driver license,
1553 that caregiver, group home representative, caseworker, or
1554 guardian ad litem does not assume any obligation or become
1555 liable for any damages caused by the negligence or willful
1556 misconduct of the minor by reason of having signed the
1557 application. Before signing the application, the caseworker,
1558 authorized group home representative, or guardian ad litem shall
1559 notify the caregiver or other responsible party of his or her
1560 intent to sign and verify the application.

1561 Section 36. Paragraph (p) of subsection (4) of section
1562 394.495, Florida Statutes, is amended to read:

1563 394.495 Child and adolescent mental health system of care;
1564 programs and services.—

1565 (4) The array of services may include, but is not limited
1566 to:

1567 (p) Trauma-informed services for children who have suffered
1568 sexual exploitation as defined in s. 39.01(78)(g) ~~s.~~
1569 ~~39.01(77)(g)~~.

1570 Section 37. Section 627.746, Florida Statutes, is amended
1571 to read:

1572 627.746 Coverage for minors who have a learner's driver
1573 license; additional premium prohibited.—An insurer that issues
1574 an insurance policy on a private passenger motor vehicle to a
1575 named insured who is a caregiver of a minor who is under the age
1576 of 18 years and is in out-of-home care as defined in s.



163466

1577 39.01(56) ~~s. 39.01(55)~~ may not charge an additional premium for
1578 coverage of the minor while the minor is operating the insured
1579 vehicle, for the period of time that the minor has a learner's
1580 driver license, until such time as the minor obtains a driver
1581 license.

1582 Section 38. Paragraph (c) of subsection (1) of section
1583 934.255, Florida Statutes, is amended to read:

1584 934.255 Subpoenas in investigations of sexual offenses.—

1585 (1) As used in this section, the term:

1586 (c) "Sexual abuse of a child" means a criminal offense
1587 based on any conduct described in s. 39.01(78) ~~s. 39.01(77)~~.

1588 Section 39. Subsection (5) of section 960.065, Florida
1589 Statutes, is amended to read:

1590 960.065 Eligibility for awards.—

1591 (5) A person is not ineligible for an award pursuant to
1592 paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that
1593 person is a victim of sexual exploitation of a child as defined
1594 in s. 39.01(78)(g) ~~s. 39.01(77)(g)~~.

1595 Section 40. This act shall take effect July 1, 2021.

1596 ===== T I T L E A M E N D M E N T =====

1597 And the title is amended as follows:

1598 Delete everything before the enacting clause
1599 and insert:

1600 A bill to be entitled
1601 An act relating to child welfare; amending s. 39.01,
1602 F.S.; defining the term "attorney for the child";
1603 amending s. 39.013, F.S.; conforming provisions to
1604 changes made by the act; amending s. 39.01305, F.S.;
1605 conforming provisions to changes made by the act;



163466

1606 renaming part XI of ch. 39, F.S., as "Guardians ad
1607 litem, guardian advocates, and attorney for the
1608 child"; amending s. 39.820, F.S.; defining the term
1609 "related adoption proceeding"; amending s. 39.822,
1610 F.S.; conforming provisions to changes made by the
1611 act; specifying circumstances under which a court is
1612 required, on or after a specified date, to appoint a
1613 guardian ad litem; requiring the court to appoint an
1614 attorney for the child to represent a child and to
1615 discharge the guardian ad litem under specified
1616 circumstances; authorizing the court to order that a
1617 new guardian ad litem be assigned for a child or
1618 discharge a guardian ad litem and appoint an attorney
1619 for the child under specified circumstances; amending
1620 s. 39.8296, F.S.; renaming the Guardian Ad Litem
1621 Qualifications Committee as the Child Well-Being
1622 Qualifications Committee; specifying that the
1623 executive director of the Statewide Guardian Ad Litem
1624 Office may be reappointed; clarifying that second and
1625 subsequent appointments made for the executive
1626 director of the office are for 3 years; requiring the
1627 office to develop guidelines to identify conflicts of
1628 interest of guardians ad litem and prohibit the office
1629 from assigning such guardian; defining the term
1630 "conflicts of interest"; requiring the office to
1631 identify guardians ad litem who are experiencing
1632 health issues or who present a danger to the child to
1633 whom the guardian ad litem is assigned; requiring the
1634 office to remove such guardians from assigned cases,



163466

1635 terminate their volunteer services, and disclose such
1636 actions to the circuit court; creating s. 39.83, F.S.;
1637 creating the Statewide Office of Child Representation
1638 within the Justice Administration Commission;
1639 requiring the commission to provide administrative
1640 support and services to the statewide office;
1641 providing that the statewide office is not subject to
1642 control, supervision, or direction by the commission;
1643 providing that employees of the statewide office are
1644 governed by the classification plan and salary and
1645 benefits plan approved by the commission; providing
1646 that the head of the statewide office is the executive
1647 director; providing the process for appointment;
1648 requiring that the initial executive director be
1649 appointed by a specified date; providing
1650 responsibilities of the office; authorizing the office
1651 to contract with local nonprofit agencies under
1652 certain conditions; creating a regional office of
1653 child representation within the boundaries of each of
1654 the five district courts of appeal; requiring such
1655 offices to commence fulfilling their purpose and
1656 duties on a specified date; requiring the commission
1657 to provide administrative support to the regional
1658 offices; providing that the offices are not subject to
1659 control, supervision, or direction by the commission;
1660 providing that employees of the offices are governed
1661 by the classification plan and salary and benefits
1662 plan for the commission; prescribing qualifications
1663 for an attorney for the child; providing certain



163466

1664 prohibitions; creating s. 39.831, F.S.; specifying
1665 when the court is authorized or required to appoint an
1666 attorney for the child; requiring an attorney for the
1667 child to be compensated and have access to funding for
1668 expenses with specified conditions; providing
1669 conditions under which a parent is required to
1670 reimburse the court for the cost of the attorney;
1671 providing for appellate representation; requiring
1672 agencies, persons, and organizations to allow an
1673 attorney for the child to inspect and copy certain
1674 records; defining the term "records"; providing
1675 requirements for an attorney for the child relating to
1676 hearings; requiring the Department of Children and
1677 Families to develop procedures to request that a court
1678 appoint an attorney for the child; authorizing the
1679 department to adopt rules; amending ss. 28.345,
1680 39.001, 39.00145, 39.0132, 39.0139, 39.202, 39.302,
1681 39.402, 39.407, 39.4085, 39.502, 39.521, 39.523,
1682 39.6011, 39.6012, 39.6251, 39.701, 39.702, 39.801,
1683 39.802, 39.808, 39.810, 39.811, 39.812, 43.16, 63.085,
1684 322.09, 394.495, 627.746, 934.255, and 960.065, F.S.;
1685 conforming cross-references and provisions to changes
1686 made by the act; providing an effective date.



134864

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Children, Families, and Elder Affairs (Book)
recommended the following:

1 **Senate Amendment to Amendment (163466) (with title**
2 **amendment)**

3
4 Delete lines 93 - 444
5 and insert:

6 (b) On or after July 1, 2022, a guardian ad litem:
7 1. Must be appointed by the court at the earliest possible
8 time to represent a child under the following circumstances:
9 a. The child is younger than 10 years of age and is the
10 subject of a dependency proceeding under this chapter or a



134864

11 related adoption proceeding;

12 b. The child is the subject of a dependency proceeding
13 under this chapter or a related adoption proceeding and the
14 subject of a criminal proceeding;

15 c. The child is the subject of a termination of parental
16 rights proceeding under part X; or

17 d. The child is a dependent child as described in s.
18 39.01305(3).

19 2. May be appointed at the court's discretion upon a
20 finding that circumstances exist which require the appointment.

21 (2) On or after July 1, 2022, the court shall discharge the
22 guardian ad litem program, if appointed, within 60 days after
23 such child reaches 10 years of age unless:

24 (a) The child meets a criterion specified in sub-
25 subparagraph (1)(b)1.b., c., or d., or (1)(b)2. and the court
26 orders the guardian ad litem to remain on the case; or

27 (b) The child expresses that he or she wishes to remain
28 with the guardian ad litem and the court determines that the
29 expression is voluntary and knowing.

30 (3) Upon request by a child who is subject to a dependency
31 proceeding under this chapter or a related adoption proceeding,
32 who is 10 years of age or older, and who has a guardian ad litem
33 assigned, or upon any party presenting evidence that there is
34 reasonable cause to suspect the assigned guardian ad litem has a
35 conflict of interest as defined in s. 39.8296(2)(b)9., the court
36 may:

37 (a) Order that a new guardian ad litem be assigned; or

38 (b) Unless otherwise provided by law, discharge the child's
39 current guardian ad litem and appoint an attorney for the child



134864

40 if one is not appointed.

41 (4) Any person participating in a civil or criminal
42 judicial proceeding resulting from such appointment shall be
43 presumed prima facie to be acting in good faith and in so doing
44 shall be immune from any liability, civil or criminal, that
45 otherwise might be incurred or imposed.

46 (5)~~(2)~~ In those cases in which the parents are financially
47 able, the parent or parents of the child shall reimburse the
48 court, in part or in whole, for the cost of provision of
49 guardian ad litem services. Reimbursement to the individual
50 providing guardian ad litem services may ~~shall~~ not be contingent
51 upon successful collection by the court from the parent or
52 parents.

53 (6)~~(3)~~ Upon presentation by a guardian ad litem of a court
54 order appointing the guardian ad litem:

55 (a) An agency, as defined in chapter 119, shall allow the
56 guardian ad litem to inspect and copy records related to the
57 best interests of the child who is the subject of the
58 appointment, including, but not limited to, records made
59 confidential or exempt from s. 119.07(1) or s. 24(a), Art. I of
60 the State Constitution. The guardian ad litem shall maintain the
61 confidential or exempt status of any records shared by an agency
62 under this paragraph.

63 (b) A person or organization, other than an agency under
64 paragraph (a), shall allow the guardian ad litem to inspect and
65 copy any records related to the best interests of the child who
66 is the subject of the appointment, including, but not limited
67 to, confidential records.

68



134864

69 For the purposes of this subsection, the term "records related
70 to the best interests of the child" includes, but is not limited
71 to, medical, mental health, substance abuse, child care,
72 education, law enforcement, court, social services, and
73 financial records.

74 (7)~~(4)~~ The guardian ad litem or the program representative
75 shall review all disposition recommendations and changes in
76 placements, and must be present at all critical stages of the
77 dependency proceeding or submit a written report of
78 recommendations to the court. Written reports must be filed with
79 the court and served on all parties whose whereabouts are known
80 at least 72 hours before ~~prior to~~ the hearing.

81 Section 6. Subsection (2) of section 39.8296, Florida
82 Statutes, is amended to read:

83 39.8296 Statewide Guardian Ad Litem Office; legislative
84 findings and intent; creation; appointment of executive
85 director; duties of office.—

86 (2) STATEWIDE GUARDIAN AD LITEM OFFICE.—There is created a
87 Statewide Guardian Ad Litem Office within the Justice
88 Administrative Commission. The Justice Administrative Commission
89 shall provide administrative support and service to the office
90 to the extent requested by the executive director within the
91 available resources of the commission. The Statewide Guardian Ad
92 Litem Office is not subject to control, supervision, or
93 direction by the Justice Administrative Commission in the
94 performance of its duties, but the employees of the office are
95 governed by the classification plan and salary and benefits plan
96 approved by the Justice Administrative Commission.

97 (a) The head of the Statewide Guardian Ad Litem Office is



134864

98 the executive director, who shall be appointed by the Governor
99 from a list of a minimum of three eligible applicants submitted
100 by the Child Well-Being a Guardian Ad Litem Qualifications
101 Committee. The Child Well-Being Guardian Ad Litem Qualifications
102 Committee shall be composed of five persons, two persons
103 appointed by the Governor, two persons appointed by the Chief
104 Justice of the Supreme Court, and one person appointed by the
105 Statewide Guardian Ad Litem Association. The committee shall
106 provide for statewide advertisement and the receiving of
107 applications for the position of executive director. The
108 Governor shall appoint an executive director from among the
109 recommendations, or the Governor may reject the nominations and
110 request the submission of new nominees. The executive director
111 must have knowledge in dependency law and knowledge of social
112 service delivery systems available to meet the needs of children
113 who are abused, neglected, or abandoned. The executive director
114 shall serve on a full-time basis and shall personally, or
115 through representatives of the office, carry out the purposes
116 and functions of the Statewide Guardian Ad Litem Office in
117 accordance with state and federal law. The executive director
118 shall report to the Governor. The executive director shall serve
119 a 3-year term, subject to removal for cause by the Governor. Any
120 person appointed to serve as the executive director may be
121 reappointed ~~permitted~~ to serve more than one term in accordance
122 with the process provided for in this paragraph. Every second or
123 subsequent appointment shall be for a term of 3 years.

124 (b) The Statewide Guardian Ad Litem Office shall, within
125 available resources, have oversight responsibilities for and
126 provide technical assistance to all guardian ad litem and



134864

127 attorney ad litem programs located within the judicial circuits.

128 1. The office shall identify the resources required to
129 implement methods of collecting, reporting, and tracking
130 reliable and consistent case data.

131 2. The office shall review the current guardian ad litem
132 programs in Florida and other states.

133 3. The office, in consultation with local guardian ad litem
134 offices, shall develop statewide performance measures and
135 standards.

136 4. The office shall develop a guardian ad litem training
137 program, which shall include, but is not limited to, training on
138 the recognition of and responses to head trauma and brain injury
139 in a child under 6 years of age. The office shall establish a
140 curriculum committee to develop the training program specified
141 in this subparagraph. The curriculum committee shall include,
142 but not be limited to, dependency judges, directors of circuit
143 guardian ad litem programs, active certified guardians ad litem,
144 a mental health professional who specializes in the treatment of
145 children, a member of a child advocacy group, a representative
146 of a domestic violence advocacy group, an individual with a
147 degree in social work, and a social worker experienced in
148 working with victims and perpetrators of child abuse.

149 5. The office shall review the various methods of funding
150 guardian ad litem programs, maximize the use of those funding
151 sources to the extent possible, and review the kinds of services
152 being provided by circuit guardian ad litem programs.

153 6. The office shall determine the feasibility or
154 desirability of new concepts of organization, administration,
155 financing, or service delivery designed to preserve the civil



156 and constitutional rights and fulfill other needs of dependent
157 children.

158 7. In an effort to promote normalcy and establish trust
159 between a court-appointed volunteer guardian ad litem and a
160 child alleged to be abused, abandoned, or neglected under this
161 chapter, a guardian ad litem may transport a child. However, a
162 guardian ad litem volunteer may not be required or directed by
163 the program or a court to transport a child.

164 8. The office shall submit to the Governor, the President
165 of the Senate, the Speaker of the House of Representatives, and
166 the Chief Justice of the Supreme Court an interim report
167 describing the progress of the office in meeting the goals as
168 described in this section. The office shall submit to the
169 Governor, the President of the Senate, the Speaker of the House
170 of Representatives, and the Chief Justice of the Supreme Court a
171 proposed plan including alternatives for meeting the state's
172 guardian ad litem and attorney ad litem needs. This plan may
173 include recommendations for less than the entire state, may
174 include a phase-in system, and shall include estimates of the
175 cost of each of the alternatives. Each year the office shall
176 provide a status report and provide further recommendations to
177 address the need for guardian ad litem services and related
178 issues.

179 9. The office shall develop guidelines to identify any
180 possible conflicts of interest of a guardian ad litem when he or
181 she is being considered for assignment to a child's case. The
182 office must not assign a guardian ad litem for whom a conflict
183 of interest has been identified to a child's case. For purposes
184 of this subparagraph, the term "conflicts of interest" means the



134864

185 guardian ad litem:

186 a. Has a personal relationship that could influence a
187 recommendation regarding a child whom he or she is serving as a
188 guardian ad litem;

189 b. Is in a position to derive a personal benefit from his
190 or her role as a guardian ad litem; or

191 c. Has a particular factor or circumstance, including
192 personal bias or prejudice against a protected class of the
193 child or the child's family, that prevents or substantially
194 impairs his or her ability to fairly and fully discharge the
195 duties of the guardian ad litem.

196 (c) The Statewide Guardian Ad Litem Office shall identify
197 any guardian ad litem who is experiencing an issue with his or
198 her physical or mental health or who appears to present a danger
199 to any child to whom the guardian ad litem is assigned. As soon
200 as possible after identification, the office must remove such
201 guardian ad litem from all assigned cases, terminate his or her
202 volunteer services with the Guardian Ad Litem Program, and
203 disclose such action to the appropriate circuit court.

204 Section 7. Section 39.83, Florida Statutes, is created to
205 read:

206 39.83 Statewide Office of Child Representation;
207 qualifications, appointment, and duties of executive director
208 and attorney for the child.-

209 (1) STATEWIDE OFFICE OF CHILD REPRESENTATION.-

210 (a) There is created a Statewide Office of Child
211 Representation within the Justice Administrative Commission. The
212 Justice Administrative Commission shall provide administrative
213 support and services to the statewide office as directed by the



134864

214 executive director within the available resources of the
215 commission. The statewide office is not subject to control,
216 supervision, or direction by the Justice Administrative
217 Commission in the performance of its duties, but the employees
218 of the office are governed by the classification plan and salary
219 and benefits plan approved by the Justice Administrative
220 Commission.

221 (b) The head of the Statewide Office of Child
222 Representation is the executive director who must be a member of
223 The Florida Bar in good standing for at least 5 years and have
224 knowledge of dependency law and the social service delivery
225 systems available to meet the needs of children who are abused,
226 neglected, or abandoned. The executive director shall be
227 appointed in accordance with the process, and serve in
228 accordance with the terms and requirements, provided in s.
229 39.8296(2) (a) for the head of the Statewide Guardian Ad Litem
230 Office. The appointment for the initial executive director must
231 be completed by January 1, 2022.

232 (c) The Statewide Office of Child Representation, within
233 available resources of the Justice Administrative Commission, is
234 responsible for oversight of, and for providing technical
235 assistance to, all offices of child representation in this
236 state. The statewide office:

237 1. Shall identify the resources required to implement
238 methods of collecting, reporting, and tracking reliable and
239 consistent case data;

240 2. Shall review and collect information relating to offices
241 of child representation and other models of attorney
242 representation of children in other states;



134864

243 3. In consultation with the regional offices of child
244 representation established under subsection (2), shall develop
245 statewide performance measures and standards;

246 4. Shall develop a training program for each attorney for
247 the child. To that end, the statewide office shall establish a
248 curriculum committee composed of members including, but not
249 limited to, a dependency judge, a director of circuit guardian
250 ad litem programs, an active certified guardian ad litem, a
251 mental health professional who specializes in the treatment of
252 children, a member of a child advocacy group, a representative
253 of a domestic violence advocacy group, an individual with at
254 least a Master of Social Work degree, and a social worker
255 experienced in working with victims and perpetrators of child
256 abuse;

257 5. Shall develop protocols that must be implemented to
258 assist children who are represented by the Statewide Office of
259 Child Representation, regional offices, or its contracted local
260 agencies in meeting eligibility requirements to receive all
261 available federal funding. This subparagraph may not be
262 construed to mean that the protocols may interfere with zealous
263 and effective representation of the children;

264 6. Shall review the various methods of funding the regional
265 offices, maximize the use of those funding sources to the extent
266 possible, and review the kinds of services being provided by the
267 regional offices;

268 7. Shall determine the feasibility or desirability of new
269 concepts of organization, administration, financing, or service
270 delivery designed to preserve the civil and constitutional
271 rights of, and fulfill other needs of, dependent children 10



134864

272 years of age and older;

273 8. Shall establish standards and protocols for
274 representation of children with diminished capacity;

275 9. Shall submit to the Governor, the President of the
276 Senate, the Speaker of the House of Representatives, and the
277 Chief Justice of the Supreme Court:

278 a. An interim report describing the progress of the
279 statewide office in meeting the responsibilities described in
280 this paragraph.

281 b. A proposed plan that includes alternatives for meeting
282 the representation needs of children in this state. The plan may
283 include recommendations for implementation in only a portion of
284 this state or phased-in statewide implementation and must
285 include an estimate of the cost of each such alternative.

286 c. An annual status report that includes any additional
287 recommendations for addressing the representation needs of
288 children in this state and related issues.

289 (d) The department or community-based care lead agency
290 shall take any steps necessary to obtain all available federal
291 funding and maintain compliance with eligibility requirements.

292 (e) The office may contract with a local nonprofit agency
293 to provide direct attorney representation to a child if the
294 office determines that the contract is the most efficient method
295 to satisfy its statutory duties and if federal funding has been
296 approved for this purpose. The office must ensure that
297 reimbursement of any Title IV-E funds is properly documented.

298 (2) REGIONAL OFFICES OF CHILD REPRESENTATION.—

299 (a) An office of child representation is created within the
300 area served by each of the five district courts of appeal. The



134864

301 offices shall commence fulfilling their statutory purpose and
302 duties on July 1, 2022.

303 (b) Each regional office of child representation is
304 assigned to the Justice Administrative Commission for
305 administrative purposes. The commission shall provide
306 administrative support and service to the offices within the
307 available resources of the commission. The offices are not
308 subject to control, supervision, or direction by the commission
309 in the performance of their duties, but the employees of the
310 offices are governed by the classification plan and the salary
311 and benefits plan approved by the commission.

312 (3) CHILD REPRESENTATION COUNSEL; DUTIES.—The child
313 representation counsel shall serve on a full-time basis and may
314 not engage in the private practice of law while holding office.
315 Each assistant child representation counsel shall give priority
316 and preference to his or her duties as assistant child
317 representation counsel and may not otherwise engage in the
318 practice of dependency law. However, a part-time child
319 representation counsel may practice dependency law for private
320 payment so long as the representation does not result in a legal
321 or ethical conflict of interest with a case in which the office
322 of child representation is providing representation.

323 Section 8. Section 39.831, Florida Statutes, is created to
324 read:

325 39.831 Attorney for the child.—

326 (1) APPOINTMENT.—

327 (a) Attorney for the child:

328 1. Shall be appointed by the court as provided in s.
329 39.01305(3);



134864

330 2. Shall be appointed by the court for any child who
331 reaches 10 years of age or older on or after July 1, 2022, and
332 who is the subject of a dependency proceeding under this chapter
333 or a related adoption proceeding; or

334 3. May be appointed at the court's discretion upon a
335 finding that circumstances exist which require the appointment.

336 (b) The court shall appoint the Statewide Office of Child
337 Representation unless the child is otherwise represented by
338 counsel.

339 (c) If, at any time during the representation of two or
340 more children in a dependency or related adoption proceeding, a
341 child representation counsel determines that the interests of
342 those clients are so adverse or hostile that they cannot all be
343 counseled by child representation counsel or his or her staff
344 because of a conflict of interest, the child representation
345 counsel shall file a motion to withdraw and move the court to
346 appoint other counsel. Child representation counsel shall not
347 automatically determine the appointment to represent siblings is
348 a conflict of interest. If requested by the Justice
349 Administrative Commission, the child representation counsel
350 shall submit a copy of the motion to the Justice Administrative
351 Commission at the time it is filed with the court. The court
352 shall review and may inquire or conduct a hearing into the
353 adequacy of the child representation counsel's submissions
354 regarding a conflict of interest without requiring the
355 disclosure of any confidential communications. The court shall
356 deny the motion to withdraw if the court finds the grounds for
357 withdraw are insufficient or the asserted conflict is not
358 prejudicial to the client. If the court grants the motion to



134864

359 withdraw, the court shall appoint one or more private attorneys
360 to represent the person in accordance with the requirements and
361 process provided for in s. 27.40. The clerk of court shall
362 inform the child representation counsel and the commission when
363 the court appoints private counsel.

364 (d) Unless the attorney has agreed to provide pro bono
365 services, an appointed attorney or organization must be
366 adequately compensated as provided in s. 27.5305. All appointed
367 attorneys and organizations, including pro bono attorneys, must
368 be provided with access to funding for expert witnesses,
369 depositions, and other due process costs of litigation. Payment
370 of attorney fees and case-related due process costs are subject
371 to appropriations and review by the Justice Administrative
372 Commission for reasonableness. The Justice Administrative
373 Commission shall contract with attorneys appointed by the court.
374 Attorney fees may not exceed \$1,000 per child per year.

375 (e) In cases in which one or both parents are financially
376 able, the parent or parents, as applicable, of the child shall
377 reimburse the court, in whole or in part, for the cost of
378 services provided under this section; however, reimbursement for
379 services provided by the attorney for the child may not be
380 contingent upon successful collection by the court of
381 reimbursement from the parent or parents.

382 (f) An attorney for the child appointed pursuant to this
383 section shall represent the child only in the dependency
384 proceeding or related adoption proceeding. Once an attorney for
385 the child is appointed, the appointment continues in effect
386 until the attorney for the child is allowed to withdraw or is
387 discharged by the court or until the case is dismissed. An



134864

388 attorney for the child who is appointed under this section to
389 represent a child shall provide all required legal services in
390 the dependency proceeding or related adoption proceeding from
391 the time of the child's removal

392

393 ===== T I T L E A M E N D M E N T =====

394 And the title is amended as follows:

395 Delete lines 1666 - 1671

396 and insert:

397 attorney for the child; requiring the court to appoint
398 the Statewide Office of Child Representation;
399 providing for the appointment of private counsel when
400 the office has a conflict of interest; requiring an
401 attorney for the child to be compensated and have
402 access to funding for expenses with specified
403 conditions; providing conditions under which a parent
404 is required to reimburse the court for the cost of the
405 attorney; providing for the scope of representation
406 for court-appointed counsel; requiring

By Senator Book

32-01535B-21

20211920__

1 A bill to be entitled
2 An act relating to child welfare; amending s. 39.01,
3 F.S.; defining the term "attorney for the child";
4 amending s. 39.013, F.S.; conforming provisions to
5 changes made by the act; renaming part XI of ch. 39,
6 F.S., as "Guardians ad litem, guardian advocates, and
7 attorney for the child"; amending s. 39.820, F.S.;
8 defining the term "related adoption proceeding";
9 amending s. 39.822, F.S.; conforming provisions to
10 changes made by the act; specifying circumstances
11 under which a court is required, on or after a
12 specified date, to appoint a guardian ad litem;
13 requiring the court to appoint an attorney for the
14 child to represent a child and to discharge the
15 guardian ad litem under specified circumstances;
16 authorizing the court to order that a new guardian ad
17 litem be assigned for a child or discharge a guardian
18 ad litem and appoint an attorney for the child under
19 specified circumstances; amending s. 39.8296, F.S.;
20 renaming the Guardian Ad Litem Qualifications
21 Committee as the Child Well-Being Qualifications
22 Committee; specifying that the executive director of
23 the Statewide Guardian Ad Litem Office may be
24 reappointed; clarifying that second and subsequent
25 appointments made for the executive director of the
26 office are for 3 years; requiring the office to
27 develop guidelines to identify conflicts of interest
28 of guardians ad litem; defining the term "conflicts of
29 interest"; requiring the office to identify guardians

32-01535B-21

20211920__

30 ad litem who are experiencing health issues or who
31 present a danger to the child to whom the guardian ad
32 litem is assigned; requiring the office to remove such
33 guardians from assigned cases, terminate their
34 volunteer services, and disclose such actions to the
35 circuit court; creating s. 39.83, F.S.; creating the
36 Statewide Office of Child Representation within the
37 Justice Administration Commission; requiring the
38 commission to provide administrative support and
39 services to the statewide office; providing that the
40 statewide office is not subject to control,
41 supervision, or direction by the commission; providing
42 that employees of the statewide office are governed by
43 the classification plan and salary and benefits plan
44 approved by the commission; providing that the head of
45 the statewide office is the executive director;
46 providing the process for appointment; requiring that
47 the initial executive director be appointed by a
48 specified date; providing responsibilities of the
49 office; authorizing the office to contract with local
50 nonprofit agencies under certain conditions; creating
51 a regional office of child representation within the
52 boundaries of each of the five district courts of
53 appeal; requiring such offices to commence fulfilling
54 their purpose and duties on a specified date;
55 requiring the commission to provide administrative
56 support to the regional offices; providing that the
57 offices are not subject to control, supervision, or
58 direction by the commission; providing that employees

32-01535B-21

20211920__

59 of the offices are governed by the classification plan
60 and salary and benefits plan for the commission;
61 prescribing qualifications for an attorney for the
62 child; providing certain prohibitions; creating s.
63 39.831, F.S.; specifying when the court is authorized
64 or required to appoint an attorney for the child;
65 providing conditions under which a parent is required
66 to reimburse the court for the cost of the attorney;
67 providing for appellate representation; requiring
68 agencies, persons, and organizations to allow an
69 attorney for the child to inspect and copy certain
70 records; defining the term "records"; providing
71 requirements for an attorney for the child relating to
72 hearings; requiring the Department of Children and
73 Families to develop procedures to request that a court
74 appoint an attorney for the child; authorizing the
75 department to adopt rules; amending ss. 28.345,
76 39.001, 39.00145, 39.0132, 39.0139, 39.202, 39.302,
77 39.402, 39.407, 39.4085, 39.502, 39.521, 39.523,
78 39.6011, 39.6012, 39.6251, 39.701, 39.702, 39.801,
79 39.802, 39.808, 39.810, 39.811, 39.812, 39.815, 43.16,
80 63.082, 63.085, 322.09, 394.495, 627.746, 934.255, and
81 960.065, F.S.; conforming cross-references and
82 provisions to changes made by the act; providing an
83 effective date.

84
85 Be It Enacted by the Legislature of the State of Florida:

86
87 Section 1. Present subsections (9) through (87) of section

32-01535B-21

20211920__

88 39.01, Florida Statutes, are redesignated as subsections (10)
89 through (88), respectively, a new subsection (9) is added to
90 that section, and present subsections (10) and (37) are amended,
91 to read:

92 39.01 Definitions.—When used in this chapter, unless the
93 context otherwise requires:

94 (9) "Attorney for the child" means an attorney providing
95 direct representation to the child, which may include the
96 appointment of the Office of Child Representation, an attorney
97 provided by an entity contracted through the Office of Child
98 Representation to provide direct representation, any privately
99 retained counsel or pro bono counsel, or any other attorney who
100 represents the child under this chapter.

101 (11)~~(10)~~ "Caregiver" means the parent, legal custodian,
102 permanent guardian, adult household member, or other person
103 responsible for a child's welfare as defined in subsection (55)
104 ~~(54)~~.

105 (38)~~(37)~~ "Institutional child abuse or neglect" means
106 situations of known or suspected child abuse or neglect in which
107 the person allegedly perpetrating the child abuse or neglect is
108 an employee of a public or private school, public or private day
109 care center, residential home, institution, facility, or agency
110 or any other person at such institution responsible for the
111 child's welfare as defined in subsection (55) ~~(54)~~.

112 Section 2. Subsection (11) of section 39.013, Florida
113 Statutes, is amended, and subsection (13) is added to that
114 section, to read:

115 39.013 Procedures and jurisdiction; right to counsel.—

116 (11) The court shall encourage the Statewide Guardian Ad

32-01535B-21

20211920__

117 Litem Office or the Statewide Office of Child Representation, as
118 applicable, to provide greater representation to those children
119 who are within 1 year of transferring out of foster care.

120 (13) An attorney for the child shall be appointed pursuant
121 to s. 39.831.

122 Section 3. Part XI of chapter 39, Florida Statutes,
123 entitled "GUARDIANS AD LITEM AND GUARDIAN ADVOCATES," is renamed
124 "GUARDIANS AD LITEM, GUARDIAN ADVOCATES, AND ATTORNEY FOR THE
125 CHILD."

126 Section 4. Subsection (3) is added to section 39.820,
127 Florida Statutes, to read:

128 39.820 Definitions.—As used in this chapter, the term:

129 (3) "Related adoption proceeding" means an adoption
130 proceeding under chapter 63 which arises from dependency
131 proceedings under this chapter.

132 Section 5. Section 39.822, Florida Statutes, is amended to
133 read:

134 39.822 Appointment of guardian ad litem for abused,
135 abandoned, or neglected child.—

136 (1)(a) Before July 1, 2022, a guardian ad litem ~~must~~ shall
137 be appointed by the court at the earliest possible time to
138 represent a ~~the~~ child in any child abuse, abandonment, or
139 neglect judicial proceeding, whether civil or criminal.

140 (b) On or after July 1, 2022, a guardian ad litem must be
141 appointed by the court at the earliest possible time to
142 represent a child under the following circumstances:

143 1. The child is younger than 10 years of age and is the
144 subject of a dependency proceeding under this chapter or a
145 related adoption proceeding;

32-01535B-21

20211920__

146 2. The child is the subject of a dependency proceeding
147 under this chapter or a related adoption proceeding and a
148 criminal proceeding;

149 3. The child is the subject of a termination of parental
150 rights proceeding under part X; or

151 4. The child is a dependent child as described in s.
152 39.01305(3).

153 (2) On or after July 1, 2022, the court shall discharge the
154 guardian ad litem program, if appointed, within 60 days after
155 such child reaches 10 years of age unless:

156 (a) The child meets a criterion specified in subparagraph
157 (1)(b)2., 3., or 4.; or

158 (b) The child expresses that he or she wishes to remain
159 with the guardian ad litem and the court determines that the
160 expression is voluntary and knowing and that the child is of an
161 appropriate age and maturity to make such expression.

162 (3) Upon request by a child who is subject to a dependency
163 proceeding under this chapter or a related adoption proceeding,
164 who is 10 years of age or older, and who has a guardian ad litem
165 assigned, or upon any party presenting evidence that there is
166 reasonable cause to suspect the assigned guardian ad litem has a
167 conflict of interest as defined in s. 39.8296(2)(b)9., the court
168 may:

169 (a) Order that a new guardian ad litem be assigned; or

170 (b) Discharge the child's current guardian ad litem and
171 appoint an attorney for the child.

172 (4) Any person participating in a civil or criminal
173 judicial proceeding resulting from such appointment shall be
174 presumed prima facie to be acting in good faith and in so doing

32-01535B-21

20211920__

175 shall be immune from any liability, civil or criminal, that
176 otherwise might be incurred or imposed.

177 (5)~~(2)~~ In those cases in which the parents are financially
178 able, the parent or parents of the child shall reimburse the
179 court, in part or in whole, for the cost of provision of
180 guardian ad litem services. Reimbursement to the individual
181 providing guardian ad litem services may ~~shall~~ not be contingent
182 upon successful collection by the court from the parent or
183 parents.

184 (6)~~(3)~~ Upon presentation by a guardian ad litem of a court
185 order appointing the guardian ad litem:

186 (a) An agency, as defined in chapter 119, shall allow the
187 guardian ad litem to inspect and copy records related to the
188 best interests of the child who is the subject of the
189 appointment, including, but not limited to, records made
190 confidential or exempt from s. 119.07(1) or s. 24(a), Art. I of
191 the State Constitution. The guardian ad litem shall maintain the
192 confidential or exempt status of any records shared by an agency
193 under this paragraph.

194 (b) A person or organization, other than an agency under
195 paragraph (a), shall allow the guardian ad litem to inspect and
196 copy any records related to the best interests of the child who
197 is the subject of the appointment, including, but not limited
198 to, confidential records.

199
200 For the purposes of this subsection, the term "records related
201 to the best interests of the child" includes, but is not limited
202 to, medical, mental health, substance abuse, child care,
203 education, law enforcement, court, social services, and

32-01535B-21

20211920__

204 financial records.

205 ~~(7)~~~~(4)~~ The guardian ad litem or the program representative
206 shall review all disposition recommendations and changes in
207 placements, and must be present at all critical stages of the
208 dependency proceeding or submit a written report of
209 recommendations to the court. Written reports must be filed with
210 the court and served on all parties whose whereabouts are known
211 at least 72 hours before ~~prior to~~ the hearing.

212 Section 6. Subsection (2) of section 39.8296, Florida
213 Statutes, is amended to read:

214 39.8296 Statewide Guardian Ad Litem Office; legislative
215 findings and intent; creation; appointment of executive
216 director; duties of office.—

217 (2) STATEWIDE GUARDIAN AD LITEM OFFICE.—There is created a
218 Statewide Guardian Ad Litem Office within the Justice
219 Administrative Commission. The Justice Administrative Commission
220 shall provide administrative support and service to the office
221 to the extent requested by the executive director within the
222 available resources of the commission. The Statewide Guardian Ad
223 Litem Office is not subject to control, supervision, or
224 direction by the Justice Administrative Commission in the
225 performance of its duties, but the employees of the office are
226 governed by the classification plan and salary and benefits plan
227 approved by the Justice Administrative Commission.

228 (a) The head of the Statewide Guardian Ad Litem Office is
229 the executive director, who shall be appointed by the Governor
230 from a list of a minimum of three eligible applicants submitted
231 by the Child Well-Being ~~a Guardian Ad Litem~~ Qualifications
232 Committee. The Child Well-Being ~~Guardian Ad Litem~~ Qualifications

32-01535B-21

20211920__

233 Committee shall be composed of five persons, two persons
234 appointed by the Governor, two persons appointed by the Chief
235 Justice of the Supreme Court, and one person appointed by the
236 Statewide Guardian Ad Litem Association. The committee shall
237 provide for statewide advertisement and the receiving of
238 applications for the position of executive director. The
239 Governor shall appoint an executive director from among the
240 recommendations, or the Governor may reject the nominations and
241 request the submission of new nominees. The executive director
242 must have knowledge in dependency law and knowledge of social
243 service delivery systems available to meet the needs of children
244 who are abused, neglected, or abandoned. The executive director
245 shall serve on a full-time basis and shall personally, or
246 through representatives of the office, carry out the purposes
247 and functions of the Statewide Guardian Ad Litem Office in
248 accordance with state and federal law. The executive director
249 shall report to the Governor. The executive director shall serve
250 a 3-year term, subject to removal for cause by the Governor. Any
251 person appointed to serve as the executive director may be
252 reappointed ~~permitted~~ to serve more than one term in accordance
253 with the process provided for in this paragraph. Every second or
254 subsequent appointment shall be for a term of 3 years.

255 (b) The Statewide Guardian Ad Litem Office shall, within
256 available resources, have oversight responsibilities for and
257 provide technical assistance to all guardian ad litem and
258 attorney ad litem programs located within the judicial circuits.

259 1. The office shall identify the resources required to
260 implement methods of collecting, reporting, and tracking
261 reliable and consistent case data.

32-01535B-21

20211920__

262 2. The office shall review the current guardian ad litem
263 programs in Florida and other states.

264 3. The office, in consultation with local guardian ad litem
265 offices, shall develop statewide performance measures and
266 standards.

267 4. The office shall develop a guardian ad litem training
268 program, which shall include, but is not limited to, training on
269 the recognition of and responses to head trauma and brain injury
270 in a child under 6 years of age. The office shall establish a
271 curriculum committee to develop the training program specified
272 in this subparagraph. The curriculum committee shall include,
273 but not be limited to, dependency judges, directors of circuit
274 guardian ad litem programs, active certified guardians ad litem,
275 a mental health professional who specializes in the treatment of
276 children, a member of a child advocacy group, a representative
277 of a domestic violence advocacy group, an individual with a
278 degree in social work, and a social worker experienced in
279 working with victims and perpetrators of child abuse.

280 5. The office shall review the various methods of funding
281 guardian ad litem programs, maximize the use of those funding
282 sources to the extent possible, and review the kinds of services
283 being provided by circuit guardian ad litem programs.

284 6. The office shall determine the feasibility or
285 desirability of new concepts of organization, administration,
286 financing, or service delivery designed to preserve the civil
287 and constitutional rights and fulfill other needs of dependent
288 children.

289 7. In an effort to promote normalcy and establish trust
290 between a court-appointed volunteer guardian ad litem and a

32-01535B-21

20211920__

291 child alleged to be abused, abandoned, or neglected under this
292 chapter, a guardian ad litem may transport a child. However, a
293 guardian ad litem volunteer may not be required or directed by
294 the program or a court to transport a child.

295 8. The office shall submit to the Governor, the President
296 of the Senate, the Speaker of the House of Representatives, and
297 the Chief Justice of the Supreme Court an interim report
298 describing the progress of the office in meeting the goals as
299 described in this section. The office shall submit to the
300 Governor, the President of the Senate, the Speaker of the House
301 of Representatives, and the Chief Justice of the Supreme Court a
302 proposed plan including alternatives for meeting the state's
303 guardian ad litem and attorney ad litem needs. This plan may
304 include recommendations for less than the entire state, may
305 include a phase-in system, and shall include estimates of the
306 cost of each of the alternatives. Each year the office shall
307 provide a status report and provide further recommendations to
308 address the need for guardian ad litem services and related
309 issues.

310 9. The office shall develop guidelines to identify any
311 possible conflicts of interest of a guardian ad litem when he or
312 she is being considered for assignment to a child's case. For
313 purposes of this subparagraph, the term "conflicts of interest"
314 means the guardian ad litem:

315 a. Has a personal relationship that could influence a
316 recommendation regarding a child whom he or she is serving as a
317 guardian ad litem;

318 b. Is in a position to derive a personal benefit from his
319 or her role as a guardian ad litem; or

32-01535B-21

20211920__

320 c. Has a particular factor or circumstance, including
321 personal bias or prejudice against a protected class of the
322 child or the child's family, that prevents or substantially
323 impairs his or her ability to fairly and fully discharge the
324 duties of the guardian ad litem.

325 (c) The Statewide Guardian Ad Litem Office shall identify
326 any guardian ad litem who is experiencing an issue with his or
327 her physical or mental health or who appears to present a danger
328 to any child to whom the guardian ad litem is assigned. As soon
329 as possible after identification, the office must remove such
330 guardian ad litem from all assigned cases, terminate his or her
331 volunteer services with the Guardian Ad Litem Program, and
332 disclose such action to the appropriate circuit court.

333 Section 7. Section 39.83, Florida Statutes, is created to
334 read:

335 39.83 Statewide Office of Child Representation;
336 qualifications, appointment, and duties of executive director
337 and attorney for the child.-

338 (1) STATEWIDE OFFICE OF CHILD REPRESENTATION.-

339 (a) There is created a Statewide Office of Child
340 Representation within the Justice Administrative Commission. The
341 Justice Administrative Commission shall provide administrative
342 support and services to the statewide office as directed by the
343 executive director within the available resources of the
344 commission. The statewide office is not subject to control,
345 supervision, or direction by the Justice Administrative
346 Commission in the performance of its duties, but the employees
347 of the office are governed by the classification plan and salary
348 and benefits plan approved by the Justice Administrative

32-01535B-21

20211920__

349 Commission.

350 (b) The head of the Statewide Office of Child
351 Representation is the executive director who must be a member of
352 The Florida Bar in good standing for at least 5 years and have
353 knowledge of dependency law and the social service delivery
354 systems available to meet the needs of children who are abused,
355 neglected, or abandoned. The executive director shall be
356 appointed in accordance with the process, and serve in
357 accordance with the terms and requirements, provided in s.
358 39.8296(2) (a) for the head of the Statewide Guardian Ad Litem
359 Office. The appointment for the initial executive director must
360 be completed by January 1, 2022.

361 (c) The Statewide Office of Child Representation, within
362 available resources of the Justice Administrative Commission, is
363 responsible for oversight of, and for providing technical
364 assistance to, all offices of child representation in this
365 state. The statewide office:

366 1. Shall identify the resources required to implement
367 methods of collecting, reporting, and tracking reliable and
368 consistent case data;

369 2. Shall review and collect information relating to current
370 guardian ad litem programs for children 10 years of age and
371 older in this state and other states and information relating to
372 offices of child representation in other states;

373 3. In consultation with the regional offices of child
374 representation established under subsection (2), shall develop
375 statewide performance measures and standards;

376 4. Shall develop a training program for each attorney for
377 the child. To that end, the statewide office shall establish a

32-01535B-21

20211920__

378 curriculum committee composed of members including, but not
379 limited to, a dependency judge, directors of circuit guardian ad
380 litem programs, active certified guardians ad litem, a mental
381 health professional who specializes in the treatment of
382 children, a member of a child advocacy group, a representative
383 of a domestic violence advocacy group, an individual with at
384 least a Master of Social Work degree, and a social worker
385 experienced in working with victims and perpetrators of child
386 abuse;

387 5. Shall develop protocols that must be implemented to
388 assist children who are represented by the Statewide Office of
389 Child Representation, regional offices, or its contracted local
390 agencies in meeting eligibility requirements to receive all
391 available federal funding. This subparagraph may not be
392 construed to mean that the protocols may interfere with zealous
393 and effective representation of the children;

394 6. Shall review the various methods of funding the regional
395 offices, maximize the use of those funding sources to the extent
396 possible, and review the kinds of services being provided by the
397 regional offices;

398 7. Shall determine the feasibility or desirability of new
399 concepts of organization, administration, financing, or service
400 delivery designed to preserve the civil and constitutional
401 rights of, and fulfill other needs of, dependent children 10
402 years of age and older;

403 8. Shall submit to the Governor, the President of the
404 Senate, the Speaker of the House of Representatives, and the
405 Chief Justice of the Supreme Court:

406 a. An interim report describing the progress of the

32-01535B-21

20211920__

407 statewide office in meeting the responsibilities described in
408 this paragraph.

409 b. A proposed plan that includes alternatives for meeting
410 the representation needs of children in this state. The plan may
411 include recommendations for implementation in only a portion of
412 this state or phased-in statewide implementation and must
413 include an estimate of the cost of each such alternative.

414 c. An annual status report that includes any additional
415 recommendations for addressing the representation needs of
416 children in this state and related issues.

417 (d) The department or community-based care lead agency
418 shall take any steps necessary to obtain all available federal
419 funding and maintain compliance with eligibility requirements.

420 (e) The office may contract with a local nonprofit agency
421 to provide direct attorney representation to a child if the
422 office determines that the contract is the most efficient method
423 to satisfy its statutory duties and if federal funding has been
424 approved for this purpose. The office must ensure that
425 reimbursement of any Title IV-E funds is properly documented.

426 (2) REGIONAL OFFICES OF CHILD REPRESENTATION.—

427 (a) An office of child representation is created within the
428 area served by each of the five district courts of appeal. The
429 offices shall commence fulfilling their statutory purpose and
430 duties on July 1, 2022.

431 (b) Each office of child representation is assigned to the
432 Justice Administrative Commission for administrative purposes.
433 The commission shall provide administrative support and service
434 to the offices within the available resources of the commission.
435 The offices are not subject to control, supervision, or

32-01535B-21

20211920__

436 direction by the commission in the performance of their duties,
437 but the employees of the offices are governed by the
438 classification plan and the salary and benefits plan for the
439 commission.

440 (3) CHILD REPRESENTATION COUNSEL; DUTIES.—The attorney for
441 the child shall serve on a full-time basis and may not engage in
442 the private practice of law while holding office. Each assistant
443 attorney for the child shall give priority and preference to his
444 or her duties as assistant child representation counsel and may
445 not otherwise engage in the practice of dependency law. However,
446 a part-time assistant attorney for the child may practice
447 dependency law for private payment so long as the representation
448 does not result in a legal or ethical conflict of interest with
449 a case in which the office of child representation is providing
450 representation.

451 Section 8. Section 39.831, Florida Statutes, is created to
452 read:

453 39.831 Attorney for the child.—

454 (1) APPOINTMENT.—

455 (a) Attorney for the child:

456 1. Shall be appointed by the court as provided in s.
457 39.01305(3);

458 2. Shall be appointed by the court for any child who
459 reaches 10 years of age or older on or after July 1, 2022, and
460 who is the subject of a dependency proceeding under this chapter
461 or a related adoption proceeding; or

462 3. May be appointed at the court's discretion upon a
463 finding that circumstances exist which require the appointment.

464 (b) The court shall appoint the Statewide Office of Child

32-01535B-21

20211920__

465 Representation unless the child is otherwise represented by
466 counsel.

467 (c) In cases in which one or both parents are financially
468 able, the parent or parents, as applicable, of the child shall
469 reimburse the court, in whole or in part, for the cost of
470 services provided under this section; however, reimbursement for
471 services provided by the attorney for the child may not be
472 contingent upon successful collection by the court of
473 reimbursement from the parent or parents.

474 (d) Once an attorney for the child is appointed, the
475 appointment continues in effect until the attorney for the child
476 is allowed to withdraw or is discharged by the court or until
477 the case is dismissed. An attorney for the child who is
478 appointed under this section to represent a child shall provide
479 all required legal services from the time of the child's removal
480 from home or of the attorney for the child's initial appointment
481 through all appellate proceedings. With the permission of the
482 court, the appointed attorney for the child may arrange for
483 supplemental or separate counsel to represent the child in
484 appellate proceedings. A court order appointing an attorney for
485 the child under this section must be in writing.

486 (2) ACCESS TO RECORDS.—Upon presentation by an attorney for
487 the child of a court order appointing the Statewide Office of
488 Child Representation:

489 (a) An agency as defined in chapter 119 must allow the
490 attorney for the child to inspect and copy records related to
491 the child who is the subject of the appointment, including, but
492 not limited to, records made confidential or exempt from s.
493 119.07(1) or s. 24(a), Art. I of the State Constitution. The

32-01535B-21

20211920__

494 attorney for the child shall maintain the confidential or exempt
495 status of any records shared by an agency under this paragraph.

496 (b) A person or an organization, other than an agency under
497 paragraph (a), must allow the attorney for the child to inspect
498 and copy any records related to the child who is the subject of
499 the appointment, including, but not limited to, confidential
500 records.

501
502 For the purposes of this subsection, the term "records"
503 includes, but is not limited to, medical, mental health,
504 substance abuse, child care, education, law enforcement, court,
505 social services, and financial records.

506 (3) COURT HEARINGS.—The attorney for the child shall review
507 all disposition recommendations and changes in placements and
508 file all appropriate motions on behalf of the child at least 72
509 hours before the hearing.

510 (4) PROCEDURES.—The department shall develop procedures to
511 request that a court appoint an attorney for the child.

512 (5) RULEMAKING.—The department may adopt rules to implement
513 this section.

514 Section 9. Subsection (1) of section 28.345, Florida
515 Statutes, is amended to read:

516 28.345 State access to records; exemption from court-
517 related fees and charges.—

518 (1) Notwithstanding any other provision of law, the clerk
519 of the circuit court shall, upon request, provide access to
520 public records without charge to the state attorney, public
521 defender, guardian ad litem, public guardian, attorney ad litem,
522 criminal conflict and civil regional counsel, court-appointed

32-01535B-21

20211920__

523 attorney for the child, and private court-appointed counsel paid
524 by the state, and to authorized staff acting on their behalf.
525 The clerk of court may provide the requested public record in an
526 electronic format in lieu of a paper format if the requesting
527 entity is capable of accessing such public record
528 electronically.

529 Section 10. Paragraph (j) of subsection (3) and paragraph
530 (a) of subsection (10) of section 39.001, Florida Statutes, are
531 amended to read:

532 39.001 Purposes and intent; personnel standards and
533 screening.—

534 (3) GENERAL PROTECTIONS FOR CHILDREN.—It is a purpose of
535 the Legislature that the children of this state be provided with
536 the following protections:

537 (j) The ability to contact their guardian ad litem or
538 attorney for the child ~~attorney ad litem~~, if appointed, by
539 having that individual's name entered on all orders of the
540 court.

541 (10) PLAN FOR COMPREHENSIVE APPROACH.—

542 (a) The office shall develop a state plan for the promotion
543 of adoption, support of adoptive families, and prevention of
544 abuse, abandonment, and neglect of children. The Department of
545 Children and Families, the Department of Corrections, the
546 Department of Education, the Department of Health, the
547 Department of Juvenile Justice, the Department of Law
548 Enforcement, and the Agency for Persons with Disabilities shall
549 participate and fully cooperate in the development of the state
550 plan at both the state and local levels. Furthermore,
551 appropriate local agencies and organizations shall be provided

32-01535B-21

20211920__

552 an opportunity to participate in the development of the state
553 plan at the local level. Appropriate local groups and
554 organizations shall include, but not be limited to, community
555 mental health centers; guardian ad litem programs for children
556 under the circuit court; child representation counsel regional
557 offices; the school boards of the local school districts; the
558 Florida local advocacy councils; community-based care lead
559 agencies; private or public organizations or programs with
560 recognized expertise in working with child abuse prevention
561 programs for children and families; private or public
562 organizations or programs with recognized expertise in working
563 with children who are sexually abused, physically abused,
564 emotionally abused, abandoned, or neglected and with expertise
565 in working with the families of such children; private or public
566 programs or organizations with expertise in maternal and infant
567 health care; multidisciplinary Child Protection Teams; child day
568 care centers; law enforcement agencies; and the circuit courts,
569 when guardian ad litem programs and attorney for the child are
570 not available in the local area. The state plan to be provided
571 to the Legislature and the Governor shall include, as a minimum,
572 the information required of the various groups in paragraph (b).

573 Section 11. Subsections (2) and (4) of 39.00145, Florida
574 Statutes, are amended to read:

575 39.00145 Records concerning children.—

576 (2) Notwithstanding any other provision of this chapter,
577 all records in a child's case record must be made available for
578 inspection, upon request, to the child who is the subject of the
579 case record and to the child's caregiver, guardian ad litem, or
580 attorney for the child ~~attorney~~.

32-01535B-21

20211920__

581 (a) A complete and accurate copy of any record in a child's
582 case record must be provided, upon request and at no cost, to
583 the child who is the subject of the case record and to the
584 child's caregiver, guardian ad litem, or attorney.

585 (b) The department shall release the information in a
586 manner and setting that are appropriate to the age and maturity
587 of the child and the nature of the information being released,
588 which may include the release of information in a therapeutic
589 setting, if appropriate. This paragraph does not deny the child
590 access to his or her records.

591 (c) If a child or the child's caregiver, guardian ad litem,
592 or attorney for the child ~~attorney~~ requests access to the
593 child's case record, any person or entity that fails to provide
594 any record in the case record under assertion of a claim of
595 exemption from the public records requirements of chapter 119,
596 or fails to provide access within a reasonable time, is subject
597 to sanctions and penalties under s. 119.10.

598 (d) For the purposes of this subsection, the term
599 "caregiver" is limited to parents, legal custodians, permanent
600 guardians, or foster parents; employees of a residential home,
601 institution, facility, or agency at which the child resides; and
602 other individuals legally responsible for a child's welfare in a
603 residential setting.

604 (4) Notwithstanding any other provision of law, all state
605 and local agencies and programs that provide services to
606 children or that are responsible for a child's safety, including
607 the Department of Juvenile Justice, the Department of Health,
608 the Agency for Health Care Administration, the Agency for
609 Persons with Disabilities, the Department of Education, the

32-01535B-21

20211920__

610 Department of Revenue, the school districts, the Statewide
611 Guardian Ad Litem Office, the Statewide Office of Child
612 Representation, and any provider contracting with such agencies,
613 may share with each other confidential records or information
614 that are confidential or exempt from disclosure under chapter
615 119 if the records or information are reasonably necessary to
616 ensure access to appropriate services for the child, including
617 child support enforcement services, or for the safety of the
618 child. However:

619 (a) Records or information made confidential by federal law
620 may not be shared.

621 (b) This subsection does not apply to information
622 concerning clients and records of certified domestic violence
623 centers, which are confidential under s. 39.908 and privileged
624 under s. 90.5036.

625 Section 12. Subsections (3) and (4) of section 39.0132,
626 Florida Statutes, are amended to read:

627 39.0132 Oaths, records, and confidential information.—

628 (3) The clerk shall keep all court records required by this
629 chapter separate from other records of the circuit court. All
630 court records required by this chapter shall not be open to
631 inspection by the public. All records shall be inspected only
632 upon order of the court by persons deemed by the court to have a
633 proper interest therein, except that, subject to the provisions
634 of s. 63.162, a child, ~~and~~ the parents of the child and their
635 attorneys, guardian ad litem, attorney for the child, law
636 enforcement agencies, and the department and its designees shall
637 always have the right to inspect and copy any official record
638 pertaining to the child. The Justice Administrative Commission

32-01535B-21

20211920__

639 may inspect court dockets required by this chapter as necessary
640 to audit compensation of court-appointed attorneys. If the
641 docket is insufficient for purposes of the audit, the commission
642 may petition the court for additional documentation as necessary
643 and appropriate. The court may permit authorized representatives
644 of recognized organizations compiling statistics for proper
645 purposes to inspect and make abstracts from official records,
646 under whatever conditions upon their use and disposition the
647 court may deem proper, and may punish by contempt proceedings
648 any violation of those conditions.

649 (4) (a) 1. All information obtained pursuant to this part in
650 the discharge of official duty by any judge, employee of the
651 court, authorized agent of the department, correctional
652 probation officer, or law enforcement agent is confidential and
653 exempt from s. 119.07(1) and may not be disclosed to anyone
654 other than the authorized personnel of the court, the department
655 and its designees, correctional probation officers, law
656 enforcement agents, guardian ad litem, attorney for the child,
657 and others entitled under this chapter to receive that
658 information, except upon order of the court.

659 2.a. The following information held by a guardian ad litem
660 or attorney for the child is confidential and exempt from s.
661 119.07(1) and s. 24(a), Art. I of the State Constitution:

662 (I) Medical, mental health, substance abuse, child care,
663 education, law enforcement, court, social services, and
664 financial records.

665 (II) Any other information maintained by a guardian ad
666 litem or attorney for the child which is identified as
667 confidential information under this chapter.

32-01535B-21

20211920__

668 b. Such confidential and exempt information may not be
669 disclosed to anyone other than the authorized personnel of the
670 court, the department and its designees, correctional probation
671 officers, law enforcement agents, guardians ad litem, and others
672 entitled under this chapter to receive that information, except
673 upon order of the court.

674 (b) The department shall disclose to the school
675 superintendent the presence of any child in the care and custody
676 or under the jurisdiction or supervision of the department who
677 has a known history of criminal sexual behavior with other
678 juveniles; is an alleged juvenile sex offender, as defined in s.
679 39.01; or has pled guilty or nolo contendere to, or has been
680 found to have committed, a violation of chapter 794, chapter
681 796, chapter 800, s. 827.071, or s. 847.0133, regardless of
682 adjudication. Any employee of a district school board who
683 knowingly and willfully discloses such information to an
684 unauthorized person commits a misdemeanor of the second degree,
685 punishable as provided in s. 775.082 or s. 775.083.

686 Section 13. Paragraphs (a) and (b) of subsection (4) of
687 section 39.0139, Florida Statutes, are amended to read:

688 39.0139 Visitation or other contact; restrictions.—

689 (4) HEARINGS.—A person who meets any of the criteria set
690 forth in paragraph (3) (a) who seeks to begin or resume contact
691 with the child victim shall have the right to an evidentiary
692 hearing to determine whether contact is appropriate.

693 (a) Before ~~Prior to~~ the hearing, the court shall appoint an
694 attorney for the child ~~an attorney ad litem~~ or a guardian ad
695 litem, as appropriate, for the child if one has not already been
696 appointed. Any attorney for the child ~~attorney ad litem~~ or

32-01535B-21

20211920__

697 guardian ad litem appointed shall have special training in the
698 dynamics of child sexual abuse.

699 (b) At the hearing, the court may receive and rely upon any
700 relevant and material evidence submitted to the extent of its
701 probative value, including written and oral reports or
702 recommendations from the Child Protection Team, the child's
703 therapist, and the child's guardian ad litem, ~~or the child's~~
704 ~~attorney ad litem~~, even if these reports, recommendations, and
705 evidence may not be admissible under the rules of evidence.

706 Section 14. Paragraphs (k) and (t) of subsection (2) of
707 section 39.202, Florida Statutes, are amended to read:

708 39.202 Confidentiality of reports and records in cases of
709 child abuse or neglect.—

710 (2) Except as provided in subsection (4), access to such
711 records, excluding the name of, or other identifying information
712 with respect to, the reporter which shall be released only as
713 provided in subsection (5), shall be granted only to the
714 following persons, officials, and agencies:

715 (k) Any appropriate official of a Florida advocacy council
716 investigating a report of known or suspected child abuse,
717 abandonment, or neglect; the Auditor General or the Office of
718 Program Policy Analysis and Government Accountability for the
719 purpose of conducting audits or examinations pursuant to law; or
720 the child's guardian ad litem or attorney for the child ~~for the~~
721 ~~child~~.

722 (t) Persons with whom the department is seeking to place
723 the child or to whom placement has been granted, including
724 foster parents for whom an approved home study has been
725 conducted, the designee of a licensed child-caring agency as

32-01535B-21

20211920__

726 defined in s. 39.01(42) ~~s. 39.01(41)~~, an approved relative or
727 nonrelative with whom a child is placed pursuant to s. 39.402,
728 preadoptive parents for whom a favorable preliminary adoptive
729 home study has been conducted, adoptive parents, or an adoption
730 entity acting on behalf of preadoptive or adoptive parents.

731 Section 15. Subsection (1) of section 39.302, Florida
732 Statutes, is amended to read:

733 39.302 Protective investigations of institutional child
734 abuse, abandonment, or neglect.—

735 (1) The department shall conduct a child protective
736 investigation of each report of institutional child abuse,
737 abandonment, or neglect. Upon receipt of a report that alleges
738 that an employee or agent of the department, or any other entity
739 or person covered by s. 39.01(38) or (55) ~~s. 39.01(37) or (54)~~,
740 acting in an official capacity, has committed an act of child
741 abuse, abandonment, or neglect, the department shall initiate a
742 child protective investigation within the timeframe established
743 under s. 39.201(5) and notify the appropriate state attorney,
744 law enforcement agency, and licensing agency, which shall
745 immediately conduct a joint investigation, unless independent
746 investigations are more feasible. When conducting investigations
747 or having face-to-face interviews with the child, investigation
748 visits shall be unannounced unless it is determined by the
749 department or its agent that unannounced visits threaten the
750 safety of the child. If a facility is exempt from licensing, the
751 department shall inform the owner or operator of the facility of
752 the report. Each agency conducting a joint investigation is
753 entitled to full access to the information gathered by the
754 department in the course of the investigation. A protective

32-01535B-21

20211920__

755 investigation must include an interview with the child's parent
756 or legal guardian. The department shall make a full written
757 report to the state attorney within 3 working days after making
758 the oral report. A criminal investigation shall be coordinated,
759 whenever possible, with the child protective investigation of
760 the department. Any interested person who has information
761 regarding the offenses described in this subsection may forward
762 a statement to the state attorney as to whether prosecution is
763 warranted and appropriate. Within 15 days after the completion
764 of the investigation, the state attorney shall report the
765 findings to the department and shall include in the report a
766 determination of whether or not prosecution is justified and
767 appropriate in view of the circumstances of the specific case.

768 Section 16. Paragraph (c) of subsection (8) and paragraph
769 (a) of subsection (14) of section 39.402, Florida Statutes, are
770 amended to read:

771 39.402 Placement in a shelter.—

772 (8)

773 (c) At the shelter hearing, the court shall:

774 1. Appoint a guardian ad litem to represent the best
775 interest of the child or an attorney for the child to provide
776 direct representation as provided in part XI, unless the court
777 finds that such representation is unnecessary;

778 2. Inform the parents or legal custodians of their right to
779 counsel to represent them at the shelter hearing and at each
780 subsequent hearing or proceeding, and the right of the parents
781 to appointed counsel, pursuant to the procedures set forth in s.
782 39.013;

783 3. Give the parents or legal custodians an opportunity to

32-01535B-21

20211920__

784 be heard and to present evidence; and

785 4. Inquire of those present at the shelter hearing as to
786 the identity and location of the legal father. In determining
787 who the legal father of the child may be, the court shall
788 inquire under oath of those present at the shelter hearing
789 whether they have any of the following information:

790 a. Whether the mother of the child was married at the
791 probable time of conception of the child or at the time of birth
792 of the child.

793 b. Whether the mother was cohabiting with a male at the
794 probable time of conception of the child.

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

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

801 e. Whether any man has acknowledged or claimed paternity of
802 the child in a jurisdiction in which the mother resided at the
803 time of or since conception of the child or in which the child
804 has resided or resides.

805 f. Whether a man is named on the birth certificate of the
806 child pursuant to s. 382.013(2).

807 g. Whether a man has been determined by a court order to be
808 the father of the child.

809 h. Whether a man has been determined to be the father of
810 the child by the Department of Revenue as provided in s.
811 409.256.

812 (14) The time limitations in this section do not include:

32-01535B-21

20211920__

813 (a) Periods of delay resulting from a continuance granted
814 at the request or with the consent of the attorney for the child
815 or the child's counsel ~~or the child's~~ guardian ad litem, if one
816 has been appointed by the court, or, if the child is of
817 sufficient capacity to express reasonable consent, at the
818 request or with the consent of the attorney for the child
819 ~~child's attorney~~ or the child's guardian ad litem, ~~if one has~~
820 ~~been appointed by the court,~~ and the child.

821 Section 17. Paragraphs (e) and (f) of subsection (3) and
822 subsection (6) of section 39.407, Florida Statutes, are amended
823 to read:

824 39.407 Medical, psychiatric, and psychological examination
825 and treatment of child; physical, mental, or substance abuse
826 examination of person with or requesting child custody.—

827 (3)

828 (e)1. If the child's prescribing physician or psychiatric
829 nurse, as defined in s. 394.455, certifies in the signed medical
830 report required in paragraph (c) that delay in providing a
831 prescribed psychotropic medication would more likely than not
832 cause significant harm to the child, the medication may be
833 provided in advance of the issuance of a court order. In such
834 event, the medical report must provide the specific reasons why
835 the child may experience significant harm and the nature and the
836 extent of the potential harm. The department must submit a
837 motion seeking continuation of the medication and the
838 physician's or psychiatric nurse's medical report to the court,
839 the child's guardian ad litem or attorney for the child, and all
840 other parties within 3 working days after the department
841 commences providing the medication to the child. The department

32-01535B-21

20211920__

842 shall seek the order at the next regularly scheduled court
843 hearing required under this chapter, or within 30 days after the
844 date of the prescription, whichever occurs sooner. If any party
845 objects to the department's motion, the court shall hold a
846 hearing within 7 days.

847 2. Psychotropic medications may be administered in advance
848 of a court order in hospitals, crisis stabilization units, and
849 in statewide inpatient psychiatric programs. Within 3 working
850 days after the medication is begun, the department must seek
851 court authorization as described in paragraph (c).

852 (f)1. The department shall fully inform the court of the
853 child's medical and behavioral status as part of the social
854 services report prepared for each judicial review hearing held
855 for a child for whom psychotropic medication has been prescribed
856 or provided under this subsection. As a part of the information
857 provided to the court, the department shall furnish copies of
858 all pertinent medical records concerning the child which have
859 been generated since the previous hearing. On its own motion or
860 on good cause shown by any party, including any guardian ad
861 litem, or attorney for the child ~~attorney, or attorney ad litem~~
862 who has been appointed to represent the child or the child's
863 interests, the court may review the status more frequently than
864 required in this subsection.

865 2. The court may, in the best interests of the child, order
866 the department to obtain a medical opinion addressing whether
867 the continued use of the medication under the circumstances is
868 safe and medically appropriate.

869 (6) Children who are in the legal custody of the department
870 may be placed by the department, without prior approval of the

32-01535B-21

20211920__

871 court, in a residential treatment center licensed under s.
872 394.875 or a hospital licensed under chapter 395 for residential
873 mental health treatment only pursuant to this section or may be
874 placed by the court in accordance with an order of involuntary
875 examination or involuntary placement entered pursuant to s.
876 394.463 or s. 394.467. All children placed in a residential
877 treatment program under this subsection must be appointed ~~have~~ a
878 guardian ad litem and an attorney for the child ~~appointed~~.

879 (a) As used in this subsection, the term:

880 1. "Residential treatment" means placement for observation,
881 diagnosis, or treatment of an emotional disturbance in a
882 residential treatment center licensed under s. 394.875 or a
883 hospital licensed under chapter 395.

884 2. "Least restrictive alternative" means the treatment and
885 conditions of treatment that, separately and in combination, are
886 no more intrusive or restrictive of freedom than reasonably
887 necessary to achieve a substantial therapeutic benefit or to
888 protect the child or adolescent or others from physical injury.

889 3. "Suitable for residential treatment" or "suitability"
890 means a determination concerning a child or adolescent with an
891 emotional disturbance as defined in s. 394.492(5) or a serious
892 emotional disturbance as defined in s. 394.492(6) that each of
893 the following criteria is met:

894 a. The child requires residential treatment.

895 b. The child is in need of a residential treatment program
896 and is expected to benefit from mental health treatment.

897 c. An appropriate, less restrictive alternative to
898 residential treatment is unavailable.

899 (b) Whenever the department believes that a child in its

32-01535B-21

20211920__

900 legal custody is emotionally disturbed and may need residential
901 treatment, an examination and suitability assessment must be
902 conducted by a qualified evaluator who is appointed by the
903 Agency for Health Care Administration. This suitability
904 assessment must be completed before the placement of the child
905 in a residential treatment center for emotionally disturbed
906 children and adolescents or a hospital. The qualified evaluator
907 must be a psychiatrist or a psychologist licensed in Florida who
908 has at least 3 years of experience in the diagnosis and
909 treatment of serious emotional disturbances in children and
910 adolescents and who has no actual or perceived conflict of
911 interest with any inpatient facility or residential treatment
912 center or program.

913 (c) Before a child is admitted under this subsection, the
914 child shall be assessed for suitability for residential
915 treatment by a qualified evaluator who has conducted a personal
916 examination and assessment of the child and has made written
917 findings that:

918 1. The child appears to have an emotional disturbance
919 serious enough to require residential treatment and is
920 reasonably likely to benefit from the treatment.

921 2. The child has been provided with a clinically
922 appropriate explanation of the nature and purpose of the
923 treatment.

924 3. All available modalities of treatment less restrictive
925 than residential treatment have been considered, and a less
926 restrictive alternative that would offer comparable benefits to
927 the child is unavailable.

928

32-01535B-21

20211920__

929 A copy of the written findings of the evaluation and suitability
930 assessment must be provided to the department, to the guardian
931 ad litem and attorney for the child, and, if the child is a
932 member of a Medicaid managed care plan, to the plan that is
933 financially responsible for the child's care in residential
934 treatment, all of whom must be provided with the opportunity to
935 discuss the findings with the evaluator.

936 (d) Immediately upon placing a child in a residential
937 treatment program under this section, the department must notify
938 the guardian ad litem, the attorney for the child, and the court
939 having jurisdiction over the child and must provide the guardian
940 ad litem, the attorney for the child, and the court with a copy
941 of the assessment by the qualified evaluator.

942 (e) Within 10 days after the admission of a child to a
943 residential treatment program, the director of the residential
944 treatment program or the director's designee must ensure that an
945 individualized plan of treatment has been prepared by the
946 program and has been explained to the child, to the department,
947 ~~and~~ to the guardian ad litem, and to the attorney for the child,
948 and submitted to the department. The child must be involved in
949 the preparation of the plan to the maximum feasible extent
950 consistent with his or her ability to understand and
951 participate, and the guardian ad litem, the attorney for the
952 child, and the child's foster parents must be involved to the
953 maximum extent consistent with the child's treatment needs. The
954 plan must include a preliminary plan for residential treatment
955 and aftercare upon completion of residential treatment. The plan
956 must include specific behavioral and emotional goals against
957 which the success of the residential treatment may be measured.

32-01535B-21

20211920__

958 A copy of the plan must be provided to the child, to the
959 guardian ad litem, to the attorney for the child, and to the
960 department.

961 (f) Within 30 days after admission, the residential
962 treatment program must review the appropriateness and
963 suitability of the child's placement in the program. The
964 residential treatment program must determine whether the child
965 is receiving benefit toward the treatment goals and whether the
966 child could be treated in a less restrictive treatment program.
967 The residential treatment program shall prepare a written report
968 of its findings and submit the report to the guardian ad litem,
969 to the attorney for the child, and to the department. The
970 department must submit the report to the court. The report must
971 include a discharge plan for the child. The residential
972 treatment program must continue to evaluate the child's
973 treatment progress every 30 days thereafter and must include its
974 findings in a written report submitted to the department. The
975 department may not reimburse a facility until the facility has
976 submitted every written report that is due.

977 (g)1. The department must submit, at the beginning of each
978 month, to the court having jurisdiction over the child, a
979 written report regarding the child's progress toward achieving
980 the goals specified in the individualized plan of treatment.

981 2. The court must conduct a hearing to review the status of
982 the child's residential treatment plan no later than 60 days
983 after the child's admission to the residential treatment
984 program. An independent review of the child's progress toward
985 achieving the goals and objectives of the treatment plan must be
986 completed by a qualified evaluator and submitted to the court

32-01535B-21

20211920__

987 before its 60-day review.

988 3. For any child in residential treatment at the time a
989 judicial review is held pursuant to s. 39.701, the child's
990 continued placement in residential treatment must be a subject
991 of the judicial review.

992 4. If at any time the court determines that the child is
993 not suitable for continued residential treatment, the court
994 shall order the department to place the child in the least
995 restrictive setting that is best suited to meet his or her
996 needs.

997 (h) After the initial 60-day review, the court must conduct
998 a review of the child's residential treatment plan every 90
999 days.

1000 (i) The department must adopt rules for implementing
1001 timeframes for the completion of suitability assessments by
1002 qualified evaluators and a procedure that includes timeframes
1003 for completing the 60-day independent review by the qualified
1004 evaluators of the child's progress toward achieving the goals
1005 and objectives of the treatment plan which review must be
1006 submitted to the court. The Agency for Health Care
1007 Administration must adopt rules for the registration of
1008 qualified evaluators, the procedure for selecting the evaluators
1009 to conduct the reviews required under this section, and a
1010 reasonable, cost-efficient fee schedule for qualified
1011 evaluators.

1012 Section 18. Subsections (20) and (21) of section 39.4085,
1013 Florida Statutes, are amended to read:

1014 39.4085 Legislative findings and declaration of intent for
1015 goals for dependent children.—The Legislature finds and declares

32-01535B-21

20211920__

1016 that the design and delivery of child welfare services should be
1017 directed by the principle that the health and safety of children
1018 should be of paramount concern and, therefore, establishes the
1019 following goals for children in shelter or foster care:

1020 (20) To have a guardian ad litem appointed to represent,
1021 within reason, their best interests; and, as appropriate, have
1022 an attorney for the child ~~and, where appropriate, an attorney ad~~
1023 ~~litem~~ appointed to represent their legal interests.† The
1024 guardian ad litem and attorney for the child ~~attorney ad litem~~
1025 shall have immediate and unlimited access to the children they
1026 represent.

1027 (21) To have all their records available for review by
1028 their guardian ad litem or attorney for the child, as
1029 applicable, ~~and attorney ad litem~~ if they deem such review
1030 necessary.

1031
1032 The provisions of this section establish goals and not rights.
1033 Nothing in this section shall be interpreted as requiring the
1034 delivery of any particular service or level of service in excess
1035 of existing appropriations. No person shall have a cause of
1036 action against the state or any of its subdivisions, agencies,
1037 contractors, subcontractors, or agents, based upon the adoption
1038 of or failure to provide adequate funding for the achievement of
1039 these goals by the Legislature. Nothing herein shall require the
1040 expenditure of funds to meet the goals established herein except
1041 funds specifically appropriated for such purpose.

1042 Section 19. Subsections (8), (12), (13), (14), and (17) of
1043 section 39.502, Florida Statutes, are amended to read:

1044 39.502 Notice, process, and service.—

32-01535B-21

20211920__

1045 (8) It is not necessary to the validity of a proceeding
1046 covered by this part that the parents be present if their
1047 identity or residence is unknown after a diligent search has
1048 been made, but in this event the petitioner shall file an
1049 affidavit of diligent search prepared by the person who made the
1050 search and inquiry, and the court may appoint a guardian ad
1051 litem for the child or an attorney for the child, as
1052 appropriate.

1053 (12) All process and orders issued by the court shall be
1054 served or executed as other process and orders of the circuit
1055 court and, in addition, may be served or executed by authorized
1056 agents of the department or the guardian ad litem or attorney
1057 for the child, as applicable.

1058 (13) Subpoenas may be served within the state by any person
1059 over 18 years of age who is not a party to the proceeding and,
1060 in addition, may be served by authorized agents of the
1061 department or the guardian ad litem or attorney for the child,
1062 as applicable.

1063 (14) No fee shall be paid for service of any process or
1064 other papers by an agent of the department or the guardian ad
1065 litem or attorney for the child, as applicable. If any process,
1066 orders, or any other papers are served or executed by any
1067 sheriff, the sheriff's fees shall be paid by the county.

1068 (17) The parent or legal custodian of the child, the
1069 attorney for the department, the guardian ad litem or attorney
1070 for the child, as applicable, the foster or preadoptive parents,
1071 and all other parties and participants shall be given reasonable
1072 notice of all proceedings and hearings provided for under this
1073 part. All foster or preadoptive parents must be provided with at

32-01535B-21

20211920__

1074 least 72 hours' notice, verbally or in writing, of all
1075 proceedings or hearings relating to children in their care or
1076 children they are seeking to adopt to ensure the ability to
1077 provide input to the court.

1078 Section 20. Paragraphs (c) and (e) of subsection (1) of
1079 section 39.521, Florida Statutes, are amended to read:

1080 39.521 Disposition hearings; powers of disposition.—

1081 (1) A disposition hearing shall be conducted by the court,
1082 if the court finds that the facts alleged in the petition for
1083 dependency were proven in the adjudicatory hearing, or if the
1084 parents or legal custodians have consented to the finding of
1085 dependency or admitted the allegations in the petition, have
1086 failed to appear for the arraignment hearing after proper
1087 notice, or have not been located despite a diligent search
1088 having been conducted.

1089 (c) When any child is adjudicated by a court to be
1090 dependent, the court having jurisdiction of the child has the
1091 power by order to:

1092 1. Require the parent and, when appropriate, the legal
1093 guardian or the child to participate in treatment and services
1094 identified as necessary. The court may require the person who
1095 has custody or who is requesting custody of the child to submit
1096 to a mental health or substance abuse disorder assessment or
1097 evaluation. The order may be made only upon good cause shown and
1098 pursuant to notice and procedural requirements provided under
1099 the Florida Rules of Juvenile Procedure. The mental health
1100 assessment or evaluation must be administered by a qualified
1101 professional as defined in s. 39.01, and the substance abuse
1102 assessment or evaluation must be administered by a qualified

32-01535B-21

20211920__

1103 professional as defined in s. 397.311. The court may also
1104 require such person to participate in and comply with treatment
1105 and services identified as necessary, including, when
1106 appropriate and available, participation in and compliance with
1107 a mental health court program established under chapter 394 or a
1108 treatment-based drug court program established under s. 397.334.
1109 Adjudication of a child as dependent based upon evidence of harm
1110 as defined in s. 39.01(36)(g) ~~s. 39.01(35)(g)~~ demonstrates good
1111 cause, and the court shall require the parent whose actions
1112 caused the harm to submit to a substance abuse disorder
1113 assessment or evaluation and to participate and comply with
1114 treatment and services identified in the assessment or
1115 evaluation as being necessary. In addition to supervision by the
1116 department, the court, including the mental health court program
1117 or the treatment-based drug court program, may oversee the
1118 progress and compliance with treatment by a person who has
1119 custody or is requesting custody of the child. The court may
1120 impose appropriate available sanctions for noncompliance upon a
1121 person who has custody or is requesting custody of the child or
1122 make a finding of noncompliance for consideration in determining
1123 whether an alternative placement of the child is in the child's
1124 best interests. Any order entered under this subparagraph may be
1125 made only upon good cause shown. This subparagraph does not
1126 authorize placement of a child with a person seeking custody of
1127 the child, other than the child's parent or legal custodian, who
1128 requires mental health or substance abuse disorder treatment.

1129 2. Require, if the court deems necessary, the parties to
1130 participate in dependency mediation.

1131 3. Require placement of the child either under the

32-01535B-21

20211920__

1132 protective supervision of an authorized agent of the department
1133 in the home of one or both of the child's parents or in the home
1134 of a relative of the child or another adult approved by the
1135 court, or in the custody of the department. Protective
1136 supervision continues until the court terminates it or until the
1137 child reaches the age of 18, whichever date is first. Protective
1138 supervision shall be terminated by the court whenever the court
1139 determines that permanency has been achieved for the child,
1140 whether with a parent, another relative, or a legal custodian,
1141 and that protective supervision is no longer needed. The
1142 termination of supervision may be with or without retaining
1143 jurisdiction, at the court's discretion, and shall in either
1144 case be considered a permanency option for the child. The order
1145 terminating supervision by the department must set forth the
1146 powers of the custodian of the child and include the powers
1147 ordinarily granted to a guardian of the person of a minor unless
1148 otherwise specified. Upon the court's termination of supervision
1149 by the department, further judicial reviews are not required if
1150 permanency has been established for the child.

1151 4. Determine whether the child has a strong attachment to
1152 the prospective permanent guardian and whether such guardian has
1153 a strong commitment to permanently caring for the child.

1154 (e) The court shall, in its written order of disposition,
1155 include all of the following:

- 1156 1. The placement or custody of the child.
- 1157 2. Special conditions of placement and visitation.
- 1158 3. Evaluation, counseling, treatment activities, and other
1159 actions to be taken by the parties, if ordered.
- 1160 4. The persons or entities responsible for supervising or

32-01535B-21

20211920__

1161 monitoring services to the child and parent.

1162 5. Continuation or discharge of the guardian ad litem or
1163 attorney for the child if appointed, as appropriate.

1164 6. The date, time, and location of the next scheduled
1165 review hearing, which must occur within the earlier of:

- 1166 a. Ninety days after the disposition hearing;
1167 b. Ninety days after the court accepts the case plan;
1168 c. Six months after the date of the last review hearing; or
1169 d. Six months after the date of the child's removal from
1170 his or her home, if no review hearing has been held since the
1171 child's removal from the home.

1172 7. If the child is in an out-of-home placement, child
1173 support to be paid by the parents, or the guardian of the
1174 child's estate if possessed of assets which under law may be
1175 disbursed for the care, support, and maintenance of the child.
1176 The court may exercise jurisdiction over all child support
1177 matters, shall adjudicate the financial obligation, including
1178 health insurance, of the child's parents or guardian, and shall
1179 enforce the financial obligation as provided in chapter 61. The
1180 state's child support enforcement agency shall enforce child
1181 support orders under this section in the same manner as child
1182 support orders under chapter 61. Placement of the child shall
1183 not be contingent upon issuance of a support order.

1184 8.a. If the court does not commit the child to the
1185 temporary legal custody of an adult relative, legal custodian,
1186 or other adult approved by the court, the disposition order must
1187 include the reasons for such a decision and shall include a
1188 determination as to whether diligent efforts were made by the
1189 department to locate an adult relative, legal custodian, or

32-01535B-21

20211920__

1190 other adult willing to care for the child in order to present
1191 that placement option to the court instead of placement with the
1192 department.

1193 b. If no suitable relative is found and the child is placed
1194 with the department or a legal custodian or other adult approved
1195 by the court, both the department and the court shall consider
1196 transferring temporary legal custody to an adult relative
1197 approved by the court at a later date, but neither the
1198 department nor the court is obligated to so place the child if
1199 it is in the child's best interest to remain in the current
1200 placement.

1201
1202 For the purposes of this section, "diligent efforts to locate an
1203 adult relative" means a search similar to the diligent search
1204 for a parent, but without the continuing obligation to search
1205 after an initial adequate search is completed.

1206 9. Other requirements necessary to protect the health,
1207 safety, and well-being of the child, to preserve the stability
1208 of the child's child care, early education program, or any other
1209 educational placement, and to promote family preservation or
1210 reunification whenever possible.

1211 Section 21. Paragraph (a) of subsection (2) of section
1212 39.523, Florida Statutes, is amended to read:

1213 39.523 Placement in out-of-home care.—

1214 (2) ASSESSMENT AND PLACEMENT.—When any child is removed
1215 from a home and placed into out-of-home care, a comprehensive
1216 placement assessment process shall be completed to determine the
1217 level of care needed by the child and match the child with the
1218 most appropriate placement.

32-01535B-21

20211920__

1219 (a) The community-based care lead agency or subcontracted
1220 agency with the responsibility for assessment and placement must
1221 coordinate a multidisciplinary team staffing with any available
1222 individual currently involved with the child, including, but not
1223 limited to, a representative from the department and the case
1224 manager for the child; a therapist, ~~attorney ad litem~~, a
1225 guardian ad litem, an attorney for the child, teachers, coaches,
1226 and Children's Medical Services; and other community providers
1227 of services to the child or stakeholders as applicable. The team
1228 may also include clergy, relatives, and fictive kin if
1229 appropriate. Team participants must gather data and information
1230 on the child which is known at the time including, but not
1231 limited to:

- 1232 1. Mental, medical, behavioral health, and medication
1233 history;
- 1234 2. Community ties and school placement;
- 1235 3. Current placement decisions relating to any siblings;
- 1236 4. Alleged type of abuse or neglect including sexual abuse
1237 and trafficking history; and
- 1238 5. The child's age, maturity, strengths, hobbies or
1239 activities, and the child's preference for placement.

1240 Section 22. Paragraph (a) of subsection (1) of section
1241 39.6011, Florida Statutes, is amended to read:

1242 39.6011 Case plan development.—

1243 (1) The department shall prepare a draft of the case plan
1244 for each child receiving services under this chapter. A parent
1245 of a child may not be threatened or coerced with the loss of
1246 custody or parental rights for failing to admit in the case plan
1247 of abusing, neglecting, or abandoning a child. Participating in

32-01535B-21

20211920__

1248 the development of a case plan is not an admission to any
1249 allegation of abuse, abandonment, or neglect, and it is not a
1250 consent to a finding of dependency or termination of parental
1251 rights. The case plan shall be developed subject to the
1252 following requirements:

1253 (a) The case plan must be developed in a face-to-face
1254 conference with the parent of the child, any court-appointed
1255 guardian ad litem or attorney for the child, and, if
1256 appropriate, the child and the temporary custodian of the child.

1257 Section 23. Paragraph (c) of subsection (1) of section
1258 39.6012, Florida Statutes, is amended to read:

1259 39.6012 Case plan tasks; services.—

1260 (1) The services to be provided to the parent and the tasks
1261 that must be completed are subject to the following:

1262 (c) If there is evidence of harm as defined in s.
1263 39.01(36)(g) ~~s. 39.01(35)(g)~~, the case plan must include as a
1264 required task for the parent whose actions caused the harm that
1265 the parent submit to a substance abuse disorder assessment or
1266 evaluation and participate and comply with treatment and
1267 services identified in the assessment or evaluation as being
1268 necessary.

1269 Section 24. Subsection (8) of section 39.6251, Florida
1270 Statutes, is amended to read:

1271 39.6251 Continuing care for young adults.—

1272 (8) During the time that a young adult is in care, the
1273 court shall maintain jurisdiction to ensure that the department
1274 and the lead agencies are providing services and coordinate
1275 with, and maintain oversight of, other agencies involved in
1276 implementing the young adult's case plan, individual education

32-01535B-21

20211920__

1277 plan, and transition plan. The court shall review the status of
1278 the young adult at least every 6 months and hold a permanency
1279 review hearing at least annually. If the young adult is
1280 appointed a guardian under chapter 744 or a guardian advocate
1281 under s. 393.12, at the permanency review hearing the court
1282 shall review the necessity of continuing the guardianship and
1283 whether restoration of guardianship proceedings are needed when
1284 the young adult reaches 22 years of age. The court may appoint
1285 an attorney for the child ~~a guardian ad litem~~ or continue the
1286 appointment of a guardian ad litem or an attorney for the child,
1287 as applicable, with the young adult's consent. The young adult
1288 or any other party to the dependency case may request an
1289 additional hearing or review.

1290 Section 25. Paragraph (b) of subsection (1) and paragraph
1291 (b) of subsection (2) of section 39.701, Florida Statutes, are
1292 amended to read:

1293 39.701 Judicial review.—

1294 (1) GENERAL PROVISIONS.—

1295 (b)1. The court shall retain jurisdiction over a child
1296 returned to his or her parents for a minimum period of 6 months
1297 following the reunification, but, at that time, based on a
1298 report of the social service agency and the guardian ad litem or
1299 attorney for the child, if one has been appointed, and any other
1300 relevant factors, the court shall make a determination as to
1301 whether supervision by the department and the court's
1302 jurisdiction shall continue or be terminated.

1303 2. Notwithstanding subparagraph 1., the court must retain
1304 jurisdiction over a child if the child is placed in the home
1305 with a parent or caregiver with an in-home safety plan and such

32-01535B-21

20211920__

1306 safety plan remains necessary for the child to reside safely in
1307 the home.

1308 (2) REVIEW HEARINGS FOR CHILDREN YOUNGER THAN 18 YEARS OF
1309 AGE.—

1310 (b) *Submission and distribution of reports.*—

1311 1. A copy of the social service agency's written report and
1312 the written report of the guardian ad litem or attorney for the
1313 child must be served on all parties whose whereabouts are known;
1314 to the foster parents or legal custodians; and to the citizen
1315 review panel, at least 72 hours before the judicial review
1316 hearing or citizen review panel hearing. The requirement for
1317 providing parents with a copy of the written report does not
1318 apply to those parents who have voluntarily surrendered their
1319 child for adoption or who have had their parental rights to the
1320 child terminated.

1321 2. In a case in which the child has been permanently placed
1322 with the social service agency, the agency shall furnish to the
1323 court a written report concerning the progress being made to
1324 place the child for adoption. If the child cannot be placed for
1325 adoption, a report on the progress made by the child towards
1326 alternative permanency goals or placements, including, but not
1327 limited to, guardianship, long-term custody, long-term licensed
1328 custody, or independent living, must be submitted to the court.
1329 The report must be submitted to the court at least 72 hours
1330 before each scheduled judicial review.

1331 3. In addition to or in lieu of any written statement
1332 provided to the court, the foster parent or legal custodian, or
1333 any preadoptive parent, shall be given the opportunity to
1334 address the court with any information relevant to the best

32-01535B-21

20211920__

1335 interests of the child at any judicial review hearing.

1336 Section 26. Paragraph (g) of subsection (5) of section
1337 39.702, Florida Statutes, is amended to read:

1338 39.702 Citizen review panels.—

1339 (5) The independent not-for-profit agency authorized to
1340 administer each citizen review panel shall:

1341 (g) Establish policies to ensure adequate communication
1342 with the parent, the foster parent or legal custodian, the
1343 guardian ad litem or attorney for the child, and any other
1344 person deemed appropriate.

1345 Section 27. Paragraph (a) of subsection (3) and subsections
1346 (5), (6), and (7) of section 39.801, Florida Statutes, are
1347 amended to read:

1348 39.801 Procedures and jurisdiction; notice; service of
1349 process.—

1350 (3) Before the court may terminate parental rights, in
1351 addition to the other requirements set forth in this part, the
1352 following requirements must be met:

1353 (a) Notice of the date, time, and place of the advisory
1354 hearing for the petition to terminate parental rights and a copy
1355 of the petition must be personally served upon the following
1356 persons, specifically notifying them that a petition has been
1357 filed:

1358 1. The parents of the child.

1359 2. The legal custodians of the child.

1360 3. If the parents who would be entitled to notice are dead
1361 or unknown, a living relative of the child, unless upon diligent
1362 search and inquiry no such relative can be found.

1363 4. Any person who has physical custody of the child.

32-01535B-21

20211920__

1364 5. Any grandparent entitled to priority for adoption under
1365 s. 63.0425.

1366 6. Any prospective parent who has been identified under s.
1367 39.503 or s. 39.803, unless a court order has been entered
1368 pursuant to s. 39.503(4) or (9) or s. 39.803(4) or (9) which
1369 indicates no further notice is required. Except as otherwise
1370 provided in this section, if there is not a legal father, notice
1371 of the petition for termination of parental rights must be
1372 provided to any known prospective father who is identified under
1373 oath before the court or who is identified by a diligent search
1374 of the Florida Putative Father Registry. Service of the notice
1375 of the petition for termination of parental rights is not
1376 required if the prospective father executes an affidavit of
1377 nonpaternity or a consent to termination of his parental rights
1378 which is accepted by the court after notice and opportunity to
1379 be heard by all parties to address the best interests of the
1380 child in accepting such affidavit.

1381 7. The guardian ad litem for the child or the
1382 representative of the guardian ad litem program, if the program
1383 has been appointed.

1384 8. The attorney for the child, if appointed.

1385
1386 The document containing the notice to respond or appear must
1387 contain, in type at least as large as the type in the balance of
1388 the document, the following or substantially similar language:
1389 "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING
1390 CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF
1391 THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND
1392 TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE

32-01535B-21

20211920__

1393 CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS
1394 NOTICE.”

1395 (5) All process and orders issued by the court must be
1396 served or executed as other process and orders of the circuit
1397 court and, in addition, may be served or executed by authorized
1398 agents of the department, or the guardian ad litem, or the
1399 attorney for the child.

1400 (6) Subpoenas may be served within the state by any person
1401 over 18 years of age who is not a party to the proceeding and,
1402 in addition, may be served or executed by authorized agents of
1403 the department, or of the guardian ad litem, or of the attorney
1404 for the child.

1405 (7) A fee may not be paid for service of any process or
1406 other papers by an agent of the department, or the guardian ad
1407 litem, or the attorney for the child. If any process, orders, or
1408 other papers are served or executed by any sheriff, the
1409 sheriff's fees must be paid by the county.

1410 Section 28. Subsection (1) of section 39.802, Florida
1411 Statutes, is amended to read:

1412 39.802 Petition for termination of parental rights; filing;
1413 elements.—

1414 (1) All proceedings seeking an adjudication to terminate
1415 parental rights pursuant to this chapter must be initiated by
1416 the filing of an original petition by the department, the
1417 guardian ad litem, the attorney for the child, or any other
1418 person who has knowledge of the facts alleged or is informed of
1419 them and believes that they are true.

1420 Section 29. Subsection (2) of section 39.808, Florida
1421 Statutes, is amended to read:

32-01535B-21

20211920__

1422 39.808 Advisory hearing; pretrial status conference.—

1423 (2) At the hearing the court shall inform the parties of
1424 their rights under s. 39.807, shall appoint counsel for the
1425 parties in accordance with legal requirements, and shall appoint
1426 a guardian ad litem or an attorney for the child as provided for
1427 in s. 39.831 to represent the interests of the child if one has
1428 not already been appointed.

1429 Section 30. Subsection (11) of section 39.810, Florida
1430 Statutes, is amended to read:

1431 39.810 Manifest best interests of the child.—In a hearing
1432 on a petition for termination of parental rights, the court
1433 shall consider the manifest best interests of the child. This
1434 consideration shall not include a comparison between the
1435 attributes of the parents and those of any persons providing a
1436 present or potential placement for the child. For the purpose of
1437 determining the manifest best interests of the child, the court
1438 shall consider and evaluate all relevant factors, including, but
1439 not limited to:

1440 (11) The recommendations for the child provided by the
1441 child's guardian ad litem ~~or legal representative~~.

1442 Section 31. Subsection (9) of section 39.811, Florida
1443 Statutes, is amended to read:

1444 39.811 Powers of disposition; order of disposition.—

1445 (9) After termination of parental rights, the court shall
1446 retain jurisdiction over any child for whom custody is given to
1447 a social service agency until the child is adopted. The court
1448 shall review the status of the child's placement and the
1449 progress being made toward permanent adoptive placement. As part
1450 of this continuing jurisdiction, for good cause shown by the

32-01535B-21

20211920__

1451 attorney for the child or guardian ad litem for the child, the
1452 court may review the appropriateness of the adoptive placement
1453 of the child.

1454 Section 32. Subsection (4) of section 39.812, Florida
1455 Statutes, is amended to read:

1456 39.812 Postdisposition relief; petition for adoption.—

1457 (4) The court shall retain jurisdiction over any child
1458 placed in the custody of the department until the child is
1459 adopted. After custody of a child for subsequent adoption has
1460 been given to the department, the court has jurisdiction for the
1461 purpose of reviewing the status of the child and the progress
1462 being made toward permanent adoptive placement. As part of this
1463 continuing jurisdiction, for good cause shown by the attorney
1464 for the child or guardian ad litem for the child, the court may
1465 review the appropriateness of the adoptive placement of the
1466 child. When a licensed foster parent or court-ordered custodian
1467 has applied to adopt a child who has resided with the foster
1468 parent or custodian for at least 6 months and who has previously
1469 been permanently committed to the legal custody of the
1470 department and the department does not grant the application to
1471 adopt, the department may not, in the absence of a prior court
1472 order authorizing it to do so, remove the child from the foster
1473 home or custodian, except when:

1474 (a) There is probable cause to believe that the child is at
1475 imminent risk of abuse or neglect;

1476 (b) Thirty days have expired following written notice to
1477 the foster parent or custodian of the denial of the application
1478 to adopt, within which period no formal challenge of the
1479 department's decision has been filed; or

32-01535B-21

20211920__

1480 (c) The foster parent or custodian agrees to the child's
1481 removal.

1482 Section 33. Subsection (1) of section 39.815, Florida
1483 Statutes, is amended to read:

1484 39.815 Appeal.—

1485 (1) Any child, any parent, or guardian ad litem of any
1486 child, attorney for the child, any other party to the proceeding
1487 who is affected by an order of the court, or the department may
1488 appeal to the appropriate district court of appeal within the
1489 time and in the manner prescribed by the Florida Rules of
1490 Appellate Procedure. The district court of appeal shall give an
1491 appeal from an order terminating parental rights priority in
1492 docketing and shall render a decision on the appeal as
1493 expeditiously as possible. Appointed counsel shall be
1494 compensated as provided in s. 27.5304(6).

1495 Section 34. Subsections (5), (6), and (7) of section 43.16,
1496 Florida Statutes, are amended to read:

1497 43.16 Justice Administrative Commission; membership, powers
1498 and duties.—

1499 (5) The duties of the commission shall include, but not be
1500 limited to, the following:

1501 (a) The maintenance of a central state office for
1502 administrative services and assistance when possible to and on
1503 behalf of the state attorneys and public defenders of Florida,
1504 the capital collateral regional counsel of Florida, the criminal
1505 conflict and civil regional counsel, ~~and~~ the Guardian Ad Litem
1506 Program, and the Statewide Office of Child Representation.

1507 (b) Each state attorney, public defender, ~~and~~ criminal
1508 conflict and civil regional counsel, ~~and~~ the Guardian Ad Litem

32-01535B-21

20211920__

1509 Program, and the Statewide Office of Child Representation shall
1510 continue to prepare necessary budgets, vouchers that represent
1511 valid claims for reimbursement by the state for authorized
1512 expenses, and other things incidental to the proper
1513 administrative operation of the office, such as revenue
1514 transmittals to the Chief Financial Officer and automated
1515 systems plans, but will forward such items to the commission for
1516 recording and submission to the proper state officer. However,
1517 when requested by a state attorney, a public defender, a
1518 criminal conflict and civil regional counsel, ~~or~~ the Guardian Ad
1519 Litem Program, or the Statewide Office of Child Representation,
1520 the commission will either assist in the preparation of budget
1521 requests, voucher schedules, and other forms and reports or
1522 accomplish the entire project involved.

1523 (6) The commission, each state attorney, each public
1524 defender, the criminal conflict and civil regional counsel, the
1525 capital collateral regional counsel, ~~and~~ the Guardian Ad Litem
1526 Program, and the Statewide Office of Child Representation shall
1527 establish and maintain internal controls designed to:

1528 (a) Prevent and detect fraud, waste, and abuse as defined
1529 in s. 11.45(1).

1530 (b) Promote and encourage compliance with applicable laws,
1531 rules, contracts, grant agreements, and best practices.

1532 (c) Support economical and efficient operations.

1533 (d) Ensure reliability of financial records and reports.

1534 (e) Safeguard assets.

1535 (7) The provisions contained in this section shall be
1536 supplemental to those of chapter 27, relating to state
1537 attorneys, public defenders, criminal conflict and civil

32-01535B-21

20211920__

1538 regional counsel, and capital collateral regional counsel; to
1539 those of chapter 39, relating to the Guardian Ad Litem Program
1540 and the Statewide Office of Child Representation; or to other
1541 laws pertaining hereto.

1542 Section 35. Paragraph (c) of subsection (1) of section
1543 63.082, Florida Statutes, is amended to read:

1544 63.082 Execution of consent to adoption or affidavit of
1545 nonpaternity; family social and medical history; revocation of
1546 consent.—

1547 (1)

1548 (c) A consent or an affidavit of nonpaternity executed by a
1549 minor parent who is 14 years of age or younger must be witnessed
1550 by a parent, legal guardian, or court-appointed guardian ad
1551 litem or court-appointed attorney for the child.

1552 Section 36. Subsection (1) and paragraph (a) of subsection
1553 (2) of section 63.085, Florida Statutes, are amended to read:

1554 63.085 Disclosure by adoption entity.—

1555 (1) DISCLOSURE REQUIRED TO PARENTS AND PROSPECTIVE ADOPTIVE
1556 PARENTS.—Within 14 days after a person seeking to adopt a minor
1557 or a person seeking to place a minor for adoption contacts an
1558 adoption entity in person or provides the adoption entity with a
1559 mailing address, the entity must provide a written disclosure
1560 statement to that person if the entity agrees or continues to
1561 work with the person. The adoption entity shall also provide the
1562 written disclosure to the parent who did not initiate contact
1563 with the adoption entity within 14 days after that parent is
1564 identified and located. For purposes of providing the written
1565 disclosure, a person is considered to be seeking to place a
1566 minor for adoption if that person has sought information or

32-01535B-21

20211920__

1567 advice from the adoption entity regarding the option of adoptive
1568 placement. The written disclosure statement must be in
1569 substantially the following form:

1570

1571

ADOPTION DISCLOSURE

1572

1573

THE STATE OF FLORIDA REQUIRES THAT THIS FORM BE
1574 PROVIDED TO ALL PERSONS CONSIDERING ADOPTING A MINOR
1575 OR SEEKING TO PLACE A MINOR FOR ADOPTION, TO ADVISE
1576 THEM OF THE FOLLOWING FACTS REGARDING ADOPTION UNDER
1577 FLORIDA LAW:

1578

1579

1. The name, address, and telephone number of the
1580 adoption entity providing this disclosure is:

1581

Name:.....

1582

Address:.....

1583

Telephone Number:.....

1584

1585

2. The adoption entity does not provide legal
1586 representation or advice to parents or anyone signing
1587 a consent for adoption or affidavit of nonpaternity,
1588 and parents have the right to consult with an attorney
1589 of their own choosing to advise them.

1590

3. With the exception of an adoption by a
1591 stepparent or relative, a child cannot be placed into
1592 a prospective adoptive home unless the prospective
1593 adoptive parents have received a favorable preliminary
1594 home study, including criminal and child abuse
1595 clearances.

32-01535B-21

20211920__

1596 4. A valid consent for adoption may not be signed
1597 by the birth mother until 48 hours after the birth of
1598 the child, or the day the birth mother is notified, in
1599 writing, that she is fit for discharge from the
1600 licensed hospital or birth center. Any man may sign a
1601 valid consent for adoption at any time after the birth
1602 of the child.

1603 5. A consent for adoption signed before the child
1604 attains the age of 6 months is binding and irrevocable
1605 from the moment it is signed unless it can be proven
1606 in court that the consent was obtained by fraud or
1607 duress. A consent for adoption signed after the child
1608 attains the age of 6 months is valid from the moment
1609 it is signed; however, it may be revoked up to 3
1610 business days after it was signed.

1611 6. A consent for adoption is not valid if the
1612 signature of the person who signed the consent was
1613 obtained by fraud or duress.

1614 7. An unmarried biological father must act
1615 immediately in order to protect his parental rights.
1616 Section 63.062, Florida Statutes, prescribes that any
1617 father seeking to establish his right to consent to
1618 the adoption of his child must file a claim of
1619 paternity with the Florida Putative Father Registry
1620 maintained by the Office of Vital Statistics of the
1621 Department of Health by the date a petition to
1622 terminate parental rights is filed with the court, or
1623 within 30 days after receiving service of a Notice of
1624 Intended Adoption Plan. If he receives a Notice of

32-01535B-21

20211920__

1625 Intended Adoption Plan, he must file a claim of
1626 paternity with the Florida Putative Father Registry,
1627 file a parenting plan with the court, and provide
1628 financial support to the mother or child within 30
1629 days following service. An unmarried biological
1630 father's failure to timely respond to a Notice of
1631 Intended Adoption Plan constitutes an irrevocable
1632 legal waiver of any and all rights that the father may
1633 have to the child. A claim of paternity registration
1634 form for the Florida Putative Father Registry may be
1635 obtained from any local office of the Department of
1636 Health, Office of Vital Statistics, the Department of
1637 Children and Families, the Internet websites for these
1638 agencies, and the offices of the clerks of the Florida
1639 circuit courts. The claim of paternity form must be
1640 submitted to the Office of Vital Statistics,
1641 Attention: Adoption Unit, P.O. Box 210, Jacksonville,
1642 FL 32231.

1643 8. There are alternatives to adoption, including
1644 foster care, relative care, and parenting the child.
1645 There may be services and sources of financial
1646 assistance in the community available to parents if
1647 they choose to parent the child.

1648 9. A parent has the right to have a witness of
1649 his or her choice, who is unconnected with the
1650 adoption entity or the adoptive parents, to be present
1651 and witness the signing of the consent or affidavit of
1652 nonpaternity.

1653 10. A parent 14 years of age or younger must have

32-01535B-21

20211920__

1654 a parent, legal guardian, or court-appointed guardian
1655 ad litem or court-appointed attorney for the child to
1656 assist and advise the parent as to the adoption plan
1657 and to witness consent.

1658 11. A parent has a right to receive supportive
1659 counseling from a counselor, social worker, physician,
1660 clergy, or attorney.

1661 12. The payment of living or medical expenses by
1662 the prospective adoptive parents before the birth of
1663 the child does not, in any way, obligate the parent to
1664 sign the consent for adoption.

1665

1666 (2) DISCLOSURE TO ADOPTIVE PARENTS.—

1667 (a) At the time that an adoption entity is responsible for
1668 selecting prospective adoptive parents for a born or unborn
1669 child whose parents are seeking to place the child for adoption
1670 or whose rights were terminated pursuant to chapter 39, the
1671 adoption entity must provide the prospective adoptive parents
1672 with information concerning the background of the child to the
1673 extent such information is disclosed to the adoption entity by
1674 the parents, legal custodian, or the department. This subsection
1675 applies only if the adoption entity identifies the prospective
1676 adoptive parents and supervises the placement of the child in
1677 the prospective adoptive parents' home. If any information
1678 cannot be disclosed because the records custodian failed or
1679 refused to produce the background information, the adoption
1680 entity has a duty to provide the information if it becomes
1681 available. An individual or entity contacted by an adoption
1682 entity to obtain the background information must release the

32-01535B-21

20211920__

1683 requested information to the adoption entity without the
1684 necessity of a subpoena or a court order. In all cases, the
1685 prospective adoptive parents must receive all available
1686 information by the date of the final hearing on the petition for
1687 adoption. The information to be disclosed includes:

1688 1. A family social and medical history form completed
1689 pursuant to s. 63.162(6).

1690 2. The biological mother's medical records documenting her
1691 prenatal care and the birth and delivery of the child.

1692 3. A complete set of the child's medical records
1693 documenting all medical treatment and care since the child's
1694 birth and before placement.

1695 4. All mental health, psychological, and psychiatric
1696 records, reports, and evaluations concerning the child before
1697 placement.

1698 5. The child's educational records, including all records
1699 concerning any special education needs of the child before
1700 placement.

1701 6. Records documenting all incidents that required the
1702 department to provide services to the child, including all
1703 orders of adjudication of dependency or termination of parental
1704 rights issued pursuant to chapter 39, any case plans drafted to
1705 address the child's needs, all protective services
1706 investigations identifying the child as a victim, and all
1707 guardian ad litem reports or attorney for the child reports
1708 filed with the court concerning the child.

1709 7. Written information concerning the availability of
1710 adoption subsidies for the child, if applicable.

1711 Section 37. Subsection (4) of section 322.09, Florida

32-01535B-21

20211920__

1712 Statutes, is amended to read:

1713 322.09 Application of minors; responsibility for negligence
1714 or misconduct of minor.—

1715 (4) Notwithstanding subsections (1) and (2), if a caregiver
1716 of a minor who is under the age of 18 years and is in out-of-
1717 home care as defined in s. 39.01(56) ~~s. 39.01(55)~~, an authorized
1718 representative of a residential group home at which such a minor
1719 resides, the caseworker at the agency at which the state has
1720 placed the minor, or a guardian ad litem specifically authorized
1721 by the minor's caregiver to sign for a learner's driver license
1722 signs the minor's application for a learner's driver license,
1723 that caregiver, group home representative, caseworker, or
1724 guardian ad litem does not assume any obligation or become
1725 liable for any damages caused by the negligence or willful
1726 misconduct of the minor by reason of having signed the
1727 application. Before signing the application, the caseworker,
1728 authorized group home representative, or guardian ad litem shall
1729 notify the caregiver or other responsible party of his or her
1730 intent to sign and verify the application.

1731 Section 38. Paragraph (p) of subsection (4) of section
1732 394.495, Florida Statutes, is amended to read:

1733 394.495 Child and adolescent mental health system of care;
1734 programs and services.—

1735 (4) The array of services may include, but is not limited
1736 to:

1737 (p) Trauma-informed services for children who have suffered
1738 sexual exploitation as defined in s. 39.01(78)(g) ~~s.~~
1739 ~~39.01(77)(g)~~.

1740 Section 39. Section 627.746, Florida Statutes, is amended

32-01535B-21

20211920__

1741 to read:

1742 627.746 Coverage for minors who have a learner's driver
1743 license; additional premium prohibited.—An insurer that issues
1744 an insurance policy on a private passenger motor vehicle to a
1745 named insured who is a caregiver of a minor who is under the age
1746 of 18 years and is in out-of-home care as defined in s.
1747 39.01(56) ~~s. 39.01(55)~~ may not charge an additional premium for
1748 coverage of the minor while the minor is operating the insured
1749 vehicle, for the period of time that the minor has a learner's
1750 driver license, until such time as the minor obtains a driver
1751 license.

1752 Section 40. Paragraph (c) of subsection (1) of section
1753 934.255, Florida Statutes, is amended to read:

1754 934.255 Subpoenas in investigations of sexual offenses.—

1755 (1) As used in this section, the term:

1756 (c) "Sexual abuse of a child" means a criminal offense
1757 based on any conduct described in s. 39.01(78) ~~s. 39.01(77)~~.

1758 Section 41. Subsection (5) of section 960.065, Florida
1759 Statutes, is amended to read:

1760 960.065 Eligibility for awards.—

1761 (5) A person is not ineligible for an award pursuant to
1762 paragraph (2) (a), paragraph (2) (b), or paragraph (2) (c) if that
1763 person is a victim of sexual exploitation of a child as defined
1764 in s. 39.01(78) (g) ~~s. 39.01(77) (g)~~.

1765 Section 42. This act shall take effect July 1, 2021.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1920

INTRODUCER: Senator Book

SUBJECT: Child Welfare

DATE: March 15, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Cox</u>	<u>CF</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1920 creates the Statewide Office of Child Representation (OCR) and makes a number of changes to various provisions related to guardians ad litem (GAL) under ch. 39, F.S., and regarding attorney representation for the child.

The bill provides that on or after July 1, 2022, a GAL must be appointed in specified circumstances including a dependency proceeding or “related adoption proceeding” as defined in s. 39.820, F.S. The guardian ad litem program (GALP) must be discharged within 60 days after a child reaches 10 years old except in limited cases.

The bill defines a “conflict of interest” with respect to GAL volunteers and requires the GALP to develop guidelines to identify when there is reasonable cause to suspect an assigned GAL has a conflict of interest. The bill also requires the court to order that a new GAL be assigned or appoint an attorney for the child when such circumstances exist. Further, the GALP must identify any GAL who is experiencing a physical or mental health issue or who appears to present a danger to any child, and remove him or her from all assigned cases and terminate his or her volunteer services.

The GAL Qualifications Committee is redesignated as the Child Well-Being Qualifications Committee. The bill provides that the executive director of the GALP may be reappointed to serve more than one term and the reappointment process must be made in accordance with the initial appointment process.

The OCR is established within the Justice Administrative Commission and is structured with requirements substantially similar to current law relating to the GALP. Regional Offices are created within the area serviced by each of the five district court of appeals. Child Representation Counsel (CRC) must comply with proscribed duties. The bill provides specified duties for the OCR and the Department of Children and Families (DCF) is required to take any necessary steps

to obtain federal funding for the OCR. The OCR may contract with a local nonprofit agency to provide direct representation for the child.

Section 39.831, F.S., is created to make provisions regarding when an “attorney for the child,” as defined in the bill, must or may be appointed. The bill sets out several other provisions regarding an attorney for the child, including when the OCR must be appointed, when the attorney for the child may withdraw or be discharged, his or her access to records, and requirement to file all appropriate motions at least 72 hours before a court hearing.

Several sections are amended to conform cross-referencing and provisions to changes made by the act.

The bill will likely result in an indeterminate positive impact on state expenditures. The GALP reports an indeterminate fiscal impact of the bill as it is unknown how many children will meet the criteria under s. 39.822(1)(b), F.S. Further, the JAC states that the bill will likely have a substantial fiscal impact on the JAC through an increased workload. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Current law requires any person who knows or suspects that a child has been abused, abandoned, or neglected to report such knowledge or suspicion to the Florida central abuse hotline (hotline).¹ A child protective investigation begins if the hotline determines the allegations meet the statutory definition of abuse,² abandonment,³ or neglect.⁴ A child protective investigator investigates the situation either immediately, or within 24 hours after the report is received, depending on the nature of the allegation.⁵

¹ Section 39.201(a), F.S.

² Section 39.01(2), F.S. The term “abuse” means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired. Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

³ Section 39.01(1), F.S. The term “abandoned” or “abandonment” 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, while being able, has made no significant contribution to the child’s care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.

⁴ Sections 39.01(50) and 39.201(2)(a), F.S. “Neglect” occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child’s physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering necessary services.

⁵ Section 39.201(5), F.S.

After conducting an investigation, if the child protective investigator determines that the child is in need of protection and supervision that necessitates removal, the investigator may initiate formal proceedings to remove the child from his or her home. When the Department of Children and Families (DCF) removes a child from the home, a series of dependency court proceedings must occur before a child may be adjudicated dependent.⁶ The dependency court process is summarized in the table below.

The Dependency Court Process

Dependency Proceeding	Description of Process	Controlling Statute
Removal	A child protective investigation determines the child’s home is unsafe, and the child is removed.	s. 39.401, F.S.
Shelter Hearing	A shelter hearing occurs within 24 hours after removal. The judge determines whether to keep the child out-of-home.	s. 39.401, F.S.
Petition for Dependency	A petition for dependency occurs within 21 days of the shelter hearing. This petition seeks to find the child dependent.	s. 39.501, F.S.
Arraignment Hearing and Shelter Review	An arraignment and shelter review occurs within 28 days of the shelter hearing. This allows the parent to admit, deny, or consent to the allegations within the petition for dependency and allows the court to review any shelter placement.	s. 39.506, F.S.
Adjudicatory Trial	An adjudicatory trial is held within 30 days of arraignment. The judge determines whether a child is dependent during trial.	s. 39.507, F.S.
Disposition Hearing	If the child is found dependent, disposition occurs within 15 days of arraignment or 30 days of adjudication. The judge reviews the case plan and placement of the child. The judge orders the case plan for the family and the appropriate placement of the child.	s. 39.506, F.S. s. 39.521, F.S.
Postdisposition hearing	The court may change temporary placement at a postdisposition hearing any time after disposition but before the child is residing in the permanent placement approved at a permanency hearing.	s. 39.522, F.S.
Judicial Review Hearings	The court must review the case plan and placement every 6 months, or upon motion of a party.	s. 39.701, F.S.
Petition for Termination of Parental Rights	Once the child has been out-of-home for 12 months, if DCF determines that reunification is no longer a viable goal, and other requirements are met, a petition for termination of parental rights is filed.	s. 39.802, F.S. s. 39.8055, F.S. s. 39.806, F.S. s. 39.810, F.S.

⁶ See s. 39.01(15), F.S., for the definition of “child who is found to be dependent”.

Advisory Hearing	This hearing is set as soon as possible after all parties have been served with the petition for termination of parental rights. The hearing allows the parent to admit, deny, or consent to the allegations within the petition for termination of parental rights.	s. 39.808, F.S.
Adjudicatory Hearing	An adjudicatory trial shall be set within 45 days after the advisory hearing. The judge determines whether to terminate parental rights to the child at this trial.	s. 39.809, F.S.

Attorney Representation in Dependency Cases

An attorney must comply with the Florida Rules of Professional Conduct promulgated by the Florida Bar. An attorney must zealously advocate for his or her client and must abide by a client's decision on how to proceed in a matter.⁷ This means the client has authority to decide the purpose and scope of the attorney's representation, within the limits imposed by law and the attorney's professional obligations, including for instance whether to settle a matter.⁸ An attorney has an obligation to communicate with his or her client about such decisions,⁹ and should try to reach a mutually agreeable resolution with his or her client if a disagreement arises on how to proceed.¹⁰

Attorney Duties and Conflicts of Interest

Attorneys are required to adhere to specified duties within the Rules of Professional Conduct. For instance, an attorney has duties of loyalty and confidentiality to his client.¹¹ An attorney must be competent to represent his or her client, and must act with reasonable diligence and promptness in representing a client.¹²

The Rules of Professional Conduct also contain provisions regarding how an attorney must handle circumstances in which conflict of interest exists.¹³ This includes, in part, when an attorney has a conflict with a current¹⁴ or former client¹⁵ as well as prohibited transactions.¹⁶ An attorney must not represent a client whose interests are directly adverse to another client, or there is a substantial risk that representation of the client would materially limit the attorney's representation of another client, a former client or personal interest of the lawyer, except when the client waives the conflict in specified circumstances.¹⁷ This means an attorney must not represent opposing parties in litigation.¹⁸ Further, an attorney generally may not use information to the disadvantage of a client without informed consent, unless otherwise permitted in the rules.¹⁹

⁷ Rules Regulating the Fla. Bar 4-1.2.

⁸ *Id.*

⁹ Rules Regulating the Fla. Bar 4-1.2 and 4-1.4(a)(1).

¹⁰ Rules Regulating the Fla. Bar 4-1.2.

¹¹ Rules Regulating the Fla. Bar 4-1.6 and 4-1.7.

¹² Rules Regulating the Fla. Bar 4-1.1 and 4-1.3.

¹³ *See* Rules Regulating the Fla. Bar 4-1.7 to 4-1.11.

¹⁴ Rules Regulating the Fla. Bar 4-1.7

¹⁵ Rules Regulating the Fla. Bar 4-1.9.

¹⁶ Rules Regulating the Fla. Bar 4-1.8.

¹⁷ Rules Regulating the Fla. Bar 4-1.7(a).

¹⁸ Rules Regulating the Fla. Bar 4-1.7.

¹⁹ Rules Regulating the Fla. Bar 4-1.8(b).

An attorney must not represent a client if his or her representation will result in a violation of the Rules of Professional Conduct or law, or the attorney's physical or mental condition materially impairs his or her ability to represent the client.²⁰ In such instances, the attorney must not commence representation or must withdraw as counsel if specified conditions are met.²¹

Attorney for the DCF

The DCF must be represented by counsel in dependency and termination of parental rights proceedings.²² The DCF, through its counsel, must make recommendations to the court and may present evidence including testimony from its own employees or employees of its agents, subcontractors, or other community providers.²³ The DCF may enter into a contract for the provision of children legal services, and all counsel included those contracted must adopt the child welfare practice model as proscribed by the DCF.²⁴

Except when legal representation is contracted out, the State of Florida is represented by Children Legal Services through the DCF.²⁵ The DCF is required to contract with the state attorney in the sixth judicial circuit for children legal services.²⁶ The DCF contracts with the Florida Attorney General's Office to provide children legal services in Hillsborough and Broward counties.²⁷

Attorney for the parents

Parents have the right to be represented by counsel in dependency proceedings, and they must be informed of this right at each stage of the dependency proceedings.²⁸ The court must appoint counsel to represent parents who are indigent.²⁹ The Office of Criminal Conflict and Civil Regional Counsel (OCCCRC) has primary responsibility for representing parents in proceedings under ch. 39, F.S.³⁰ If OCCCRC has a conflict of interest in representing a parent or parents, private counsel who must be selected from a registry is appointed on a rotating basis.³¹ The private attorneys contract with the JAC under specified terms to provide such services.³²

Attorney for the child (Sections 1-2 and 8)

Attorney representation of children

²⁰ Rules Regulating the Fla. Bar 4-1.16(a), F.S.

²¹ Rules Regulating the Fla. Bar 4-1.16(a) and (b), F.S.

²² Section 39.013(12), F.S.

²³ *Id.*

²⁴ Section 409.996(18), F.S.

²⁵ The DCF, *Children Legal Services Overview*, available at <https://www.myflfamilies.com/service-programs/childrens-legal-services/overview.shtml> (last visited March 15, 2021).

²⁶ Section 409.996(18)(a), F.S.

²⁷ The Office of Attorney General State of Florida, *Children's Legal Services Bureau*, available at <http://myfloridalegal.com/pages.nsf/Main/27E91605D4750EBF85256CCB006E66D3> (last visited March 15, 2021).

²⁸ Section 39.013(1), F.S.

²⁹ Section 39.013(9)(a), F.S.

³⁰ Section 27.511(6)(a), F.S.

³¹ Section 27.40(2) and (3), F.S.

³² Section 27.40(3) and (5), F.S.

An attorney should, as far as reasonably practical, maintain a normal attorney-client relationship when a client’s ability to make an adequately informed decision is impaired, such as in representation of a minor child.³³ An attorney may seek the appointment of a guardian if he or she reasonably believes the client is not able to adequately act in his or her own interest.³⁴ The Rules of Professional Conduct acknowledge that the law recognizes intermediate degrees of competence, and explicitly provides that children ages 10 or 12 are regarded as having opinions which are entitled to be considered in respect of legal proceedings concerning their custody.³⁵

Child Representation Models

Child representation in dependency proceedings varies but in most instances is based on what is in the child’s best interest, direct representation, or a hybrid approach.³⁶ A summary of the different models and how they operate is set out in the table below.³⁷

Exhibit 3
States’ Models of Representation for Children in Dependency Proceedings Fall Into Six Categories

Representation Model	Number of States That Use Model	Description
Age Dependent	4	Children in these states receive different types of representation depending on their age. In these states, older children receive a client-directed attorney, and younger children receive a GAL.
Best Interest (attorney or professional)	20	Children in these states always receive a GAL who is required to be either an attorney or a professional (e.g., professional GAL or mental health counselor). These states may also allow for the appointment of a client-directed attorney at the discretion of the judge or in certain circumstances.
Best Interest (lay volunteer)	12	Children in these states always receive a GAL, who is not required to be an attorney. These states may also allow for the appointment of a client-directed attorney at the discretion of the judge or in certain circumstances.
Client-Directed Attorney	7	Children in these states always receive a client-directed attorney. These states may also allow for the appointment of a separate GAL or CASA at the discretion of the judge or in certain circumstances.
Hybrid	6	Children in these states always receive both a client-directed attorney and a GAL.
Multidisciplinary Team	2	Children in these states are represented by a GAL team, made up of a volunteer, a staff advocate, and an attorney.

Source: OPPAGA analysis of state statutes and court rules.

Office of Child Representation (Section 7)

Florida law does not currently provide for an OCR. Colorado and Travis County, Texas, however, do have offices of child representation. The Colorado Office of Child’s Representative (COCR) is a state agency that was established in 2000 to provide representation to children.³⁸ The COCR represent children in several types of cases, including:

³³ Rules Regulating the Fla. Bar 4-1.14.

³⁴ *Id.*

³⁵ *Id.*

³⁶ The Office of Program Policy Analysis and Government Accountability (OPPAGA), *OPPAGA Review of Florida’s Guardian ad Litem Program, Presentation to the Senate Committee on Children, Families, and Elder Affairs*, p. 9, January 26, 2021, available at <https://oppaga.fl.gov/Documents/Presentations/GAL%20Presentation%201-26-21.pdf> (last visited March 15, 2021) (hereinafter cited as “OPPAGA Presentation”).

³⁷ OPPAGA, *OPPAGA Review of Florida’s Guardian ad Litem Program*, p. 5 and 34, December 2020 (on file with the Committee on Children, Families, and Elder Affairs) (hereinafter cited as “The OPPAGA Memo”).

³⁸ The COCR, *What We Do*, available at <https://coloradochildrep.org/about-ocr/> (last visited March 15, 2021).

- Dependency and Neglect;
- Juvenile Delinquency;
- Domestic Relations; and
- Adoption, Truancy, Probation, Mental Health, and Paternity.³⁹

All COCR attorneys are trained on the law, social science research, child development, mental health and education issues, and best practices in court proceedings.⁴⁰ A Colorado court must appoint a GAL in dependency and neglect cases to represent the child’s best interest, and must appoint an OCR attorney to act as the child’s counsel when the child faces contempt citations or the court has determined that the child holds his or her own patient-therapist privilege.^{41, 42} The COCR is responsible for overseeing both roles as a GAL and as counsel for the children, if applicable.⁴³ When COCR is appointed as counsel for the child, the attorney has a traditional attorney-client role in which he or she represents the child’s wishes in court proceedings.⁴⁴

In Colorado, a GAL is a COCR attorney who is appointed to represent the best interest of the child which means that the COCR attorney does not advocate for the child’s express wishes in a traditional attorney-client role.⁴⁵ Instead, the GAL must advocate for the child’s health, safety, and well-being, and his or her advocacy must align with the interests and needs of the child.⁴⁶ The GAL has specified requirements that must be met, including attend all court hearings and conduct an independent investigation which must continue throughout the duration of the case.⁴⁷

The Travis County, Texas Office of Children Representation (TOCR), however, provides legal representation to children who are the subject of dependency cases only.⁴⁸ The TOCR counsel act in a traditional attorney-client role and represent children’s legal interests.⁴⁹

Representation under current Florida law

Section 39.01305, F.S., provides that an attorney must be appointed to represent a dependent child⁵⁰ who has the following special needs:

- Resides in or is being considered for placement in a skilled nursing home;
- Is prescribed psychotropic medication but does not agree to take it;

³⁹ *Id.*

⁴⁰ The COCR, *Case Types Covered by OCR Attorneys*, available at <https://coloradochildrep.org/about-ocr/ocr-cases/> (last visited March 15, 2021).

⁴¹ *L.A.N. et al. v. L.M.B.*, 11 SC 529 (Jan. 22, 2013) (finding that a GAL holds a child’s psychotherapist-patient privilege when: (1) the child is too young or incompetent to hold the privilege; (2) the child’s interests are adverse to those of his or her parent(s); and (3) section 19-3-311, C.R.S. (2012) does not abrogate the privilege).

⁴² The COCR, *Dependency & Neglect Cases*, available at <https://coloradochildrep.org/about-ocr/ocr-cases/dependency-and-neglect/> (last visited March 15, 2021) (hereinafter cited as “D&N Cases”).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ D&N Cases.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Travis County, Tx Gov, *The Office of Child Representation*, available at <https://www.traviscountytexas.gov/criminal-justice/child-representation> (last visited March 15, 2021) (hereinafter cited as “TOCR website”).

⁴⁹ *Id.*

⁵⁰ Section 39.01305(2), F.S., defines “dependent child” as a child who is subject to any proceeding under ch. 39, F.S. The term does not require that a child be adjudicated dependent for purposes of this section.

- Has a diagnosis of a developmental disability;⁵¹
- Is being placed or is being considered for placement in a residential treatment center; or
- Is a victim of human trafficking.⁵²

A court is not restricted to appointing an attorney to represent a child for the reasons listed above.⁵³

The court must request a recommendation from the GALP for an attorney who is willing to represent a child without additional compensation before a court may appoint one under s. 39.01305(4)(a), F.S. If the GAL recommends an attorney who is available within 15 days from the date of the court's request, the court must appoint that attorney.⁵⁴ The court may appoint an attorney who will receive additional compensation within 15 days if the GALP notifies the court that it will not be able to make a recommendation within the specified time.⁵⁵

An attorney who is appointed to represent a child continues to be appointed until the attorney is allowed to withdraw or is discharged by the court or until the case is dismissed.⁵⁶ An attorney who is appointed must provide a range of legal services including from removal or appointment through any appellate proceedings.⁵⁷ The appointment must be in writing and the attorney must be adequately compensated unless he or she was agreed to provide pro bono services.⁵⁸ The Justice Administrative Commission must contract with attorneys appointed by the court and their fees may not exceed \$1,000 per child per year.⁵⁹

There are several local legal aid society or other nonprofit organizations that offer free legal representation to children in dependency cases.⁶⁰ At least some of these organizations receive government funding.⁶¹ For instance, the Legal Aid Society of Palm Beach County receives public grants, such as the U.S. Department of Justice under the Violence against Women Act, and private grants, such as William and Helen Thomas Charitable Foundation.⁶² Legal Aid

⁵¹ Section 393.063(12), F.S., defines “developmental disability” as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely. *See* s. 393.063, F.S., for other definitions related to developmental disability.

⁵² Section 787.06(2)(d), F.S., defines “human trafficking” as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.

⁵³ Section 39.01305(8), F.S.

⁵⁴ Section 39.01305(4)(a), F.S.

⁵⁵ *Id.*

⁵⁶ Section 39.01305(4)(b), F.S.

⁵⁷ *Id.*

⁵⁸ Section 39.01305(4)(b) and (5), F.S.

⁵⁹ Section 39.01305(5), F.S.

⁶⁰ *See* Legal Aid Service of Broward County, *What We Do, Areas of Legal Service*, available at <https://www.browardlegalaid.org/what-we-do/areas-of-legal-service/>; Dade Legal Aid, *Main, Free Legal Help*, available at <http://www.dadelegalaid.org/>; Legal Aid Service of Collier County, *Services Offered*, available at <http://www.collierlegalaid.org/services-offered/>; Bay Area Legal Services, *Family & Children*, available at <https://bals.org/help/family-children/>; and Legal Aid Society of Palm Beach County, *Legal Help, Children*, available at <https://legalaidpbc.org/children/> (all sites last visited March 15, 2021).

⁶¹ *See* Legal Aid Service of Broward County, *Children & Education*, available at <https://www.browardlegalaid.org/what-we-do/areas-of-legal-service/children-education/> (last visited March 15, 2021).

⁶² Legal Aid Society of Palm Beach County, *Funding*, available at <https://legalaidpbc.org/funding/> (last visited March 15, 2021).

Service of Broward County, however, receives funding from the Children’s Services Council of Broward County (CSCBC).⁶³ In many instances, these organizations rely on donations and pro bono attorneys who donate their services to provide representation to children who are the subject of a dependency case.⁶⁴

Guardian ad Litem (Sections 3-6)

Appointment and Discharge

Federal and Florida law provide that a guardian ad litem must be appointed to represent the child in every case.⁶⁵ The Child Abuse Prevention and Treatment Act makes the approval of grants contingent on a eligible state plans which must include provisions and procedures to appoint a guardian ad litem in every case.⁶⁶ The GAL must be appointed to:

- Obtain first-hand knowledge of the child’s situation and needs; and
- Make recommendations to the court regarding the best interest of the child.⁶⁷

Under Florida law, a court must appoint a GAL at the earliest possible time to represent the child in a dependency proceeding.⁶⁸ The GALP publishes monthly representation reports which summarize, in part, the number of reported dependent children, the GALPs appointments in those cases, and the number of certified volunteer GALs.⁶⁹ The December 2020 Representation Report details the following statistics:

- The Office of State Courts Administrator reports there are 31,288 children who are the subject of a dependency case.⁷⁰
- The GALP reports that 22,960 children are appointed to the program, and there are 11,116 certified case volunteers including pro bono attorneys.⁷¹
- The GALP reports 98 newly certified case volunteers in its December 2020 report.⁷²

In some cases, the GALP may discharge from a case when a child’s permanency goal has been established and the child is in a stable placement.⁷³ A summary of the reasons the GALP has

⁶³ See Legal Aid Service of Broward County, *Children & Education*, available at <https://www.browardlegalaid.org/what-we-do/areas-of-legal-service/children-education/> (last visited March 15, 2021). The CSCBC is an independent taxing authority created by voters in 2000 and reauthorized in 2014, and its purpose is to provide advocacy and resources to children of Broward County. The CSCBC, *About Us*, available at <https://www.cscbroward.org/about> (last visited March 15, 2021).

⁶⁴ See Legal Aid Service of Broward County, *Get Involved with Legal Aid*, available at <https://www.browardlegalaid.org/get-involved/>; Dade Legal Aid, *Pro Bono Enrollment (Attorney)*, available at <http://www.dadelegalaid.org/psb-enrollment-form-attorneys/>; Dade Legal Aid, *Donations through The Miami Foundation*, available at <http://www.dadelegalaid.org/donations-through-the-miami-foundation/>; Bay Area Legal Services, *Justice Works! The Campaign for Bay Area Legal Services*, available at <https://bals.org/support>; and Bay Area Legal Services, *Volunteer Lawyers Program*, available at <https://bals.org/volunteer> (all sites last visited March 15, 2021).

⁶⁵ 42 U.S.C. 67 §5106a.(b)(2)(xiii); Section 39.822(1), F.S.

⁶⁶ 42 U.S.C. 67 §5106a.(b)(2)(xiii).

⁶⁷ *Id.*

⁶⁸ Section 39.822(1), F.S.

⁶⁹ See the GAL for Children, *Florida Guardian ad Litem Program, Monthly Representation Report: December 2020*, available at <https://guardianadlitem.org/wp-content/uploads/2021/01/Representation-Report-December-2020.pdf> (last visited March 15, 2021) (hereinafter cited as “December 2020 Representation Report”).

⁷⁰ *Id.*

⁷¹ December 2020 Representation Report.

⁷² *Id.*

⁷³ The OPPAGA Memo at p. 15.

been discharged from dependency cases from 2016 to 2020 by Fiscal Year is summarized in the table below.⁷⁴

Exhibit 6

Closure Reasons Reported by GAL Program Remained Stable From Fiscal Year 2016-17 Through the First Half of Fiscal Year 2019-20¹

GAL Program Closure Reason for GAL Program Closures	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20 ¹	Four-Year Total
Reunification	29%	31%	29%	31%	30%
Adoption	18%	18%	20%	19%	19%
Permanency Goal Established ²	18%	19%	23%	22%	21%
Permanent Guardianship	17%	15%	13%	12%	15%
Other ³	9%	9%	6%	6%	8%
Insufficient Program Resources ⁴	5%	4%	4%	4%	5%
Aged Out of Care	3%	4%	4%	4%	4%
Total	100%	100%	100%	100%	100%

¹To control for differences between GAL Program closures and DCF discharges, we limited the Fiscal Year 2019-20 data to the first six months (July 1, 2019–December 31, 2019).

²Closure reasons of APPLA are included here.

³Other includes children who ran away, were transferred to or placed in another circuit, and cases that were either consolidated or bifurcated by the courts.

⁴This includes cases to which the GAL Program was appointed where the program was either unable to staff the case at all or had to discharge from a case before it concluded. Closure reasons of APPLA are included here.

Source: OPPAGA analysis of Florida Guardian ad Litem Program data representing 80% of GAL children with a closed case.

Role of the GALP and GAL

“Guardian ad litem” is defined as the Statewide Guardian Ad Litem Office, which includes circuit guardian ad litem programs, a duly certified volunteer, a staff member, a staff attorney, a contract attorney, pro bono attorney working on behalf of a guardian ad litem; court-appointed attorney; or responsible adult who is appointed by the court to represent the best interest of a child in a proceeding as provided by law including ch. 39, F.S., until discharged by the court.⁷⁵

The GALP reports that it represents the children who are alleged to be abused, abandoned, or neglected and are subject to the dependency court’s jurisdiction.⁷⁶ The Florida Supreme Court has recognized that a guardian ad litem is appointed to serve as the child’s representative in court to present what is in the child’s best interest.⁷⁷ The GALP reports that the adult representing the child’s best interest will ordinarily be represented by counsel in the judicial proceedings, and suggests such attorney owes a duty of care to both the guardian ad litem and the child with whom the guardian is appointed to represent.⁷⁸ The GALP acknowledges that there is no attorney-client relationship between the GALP attorney and the child, and suggests that independent legal representation is provided through the GAL.⁷⁹

⁷⁴ *Id.* at p. 16.

⁷⁵ Section 39.820(1), F.S.

⁷⁶ The GALP, *Agency Analysis for SB 1920*, p. 15, March 14, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as “The GALP Analysis”).

⁷⁷ *D.H. v. Adept Cmty. Servs.*, 271 So. 3d 870, 879 (Fla. 2018) (citing *C.M. v Dep’t of Children & Family Servs.*, 854 So.2d 777, 779 (Fla. 4th DCA 2003)).

⁷⁸ The GALP Analysis at p. 3 [citing *Op. Att’y Gen. Fla. 96-94* (1996)].

⁷⁹ *Id.* at p. 4.

The GAL or GALP representative must review all disposition recommendations or changes in placements, and must be present at all critical stages of the proceeding or submit a written report, which must be filed and served on all parties whose whereabouts are known at least 72 hours prior to the hearing.⁸⁰

Performance Advocacy Snapshot (PASS) summarizes the individual GAL circuit program performance and GAL influence on child welfare outcomes by circuit.⁸¹ The December 2020 PASS report states that a GAL has been appointed to 73.4% of children who are the subject of dependency proceedings, with some exceptions.⁸² It also reports 67.5% active certified volunteers statewide.⁸³ Children achieving permanency within 12 months of entering care totals 18% and 40.6% of adoptions occur within 24 months according to the PASS report.⁸⁴

Activities of GAL

The GALP reports that GAL are involved in a number of activities related to the child, including, in part:

- Attending school events;
- Guiding children through changes of placement;
- Creating community awareness about children who are abused, abandoned, or neglected;
- Being a safe and stable adult in the child's life; or
- Reporting quality information to judges.⁸⁵

Conflicts of Interest

Under current law, there is no statutory provision under ch. 39, F.S., which requires the GALP to identify any conflict of interest a GAL may have. The GALP Standards of Operation, however, provide that the GALP “shall not accept appointment to a case where the Program has an impermissible conflict of interest and shall seek discharge if an impermissible conflict of interest arises after appointment. An impermissible conflict of interest between the GAL Program and a child or children will be found if the GAL Program has a duty, or the appearance of a duty, to another that may prevent the GAL Program from being fully able to represent the child to whom the Program is appointed. If an individual GAL Volunteer or staff member has a conflict, this may be resolved by assigning another individual from the Program in the discretion of the Circuit Director.”⁸⁶ Standard 7.D. further states that GALs have an obligation to notify the GAL Program Attorney if they are aware of a possible conflict of interest, which could include prior involvement with individuals involved in the case, any personal reasons that may not allow them to provide best interests advocacy for a child, and situations when the GALP is appointed to represent multiple related children whose interests conflict with one another.

Further, Standard 7.D. states that an impermissible conflict will not be found simply because the

⁸⁰ Section 39.822(4), F.S.

⁸¹ See The GALP, *Statewide Guardian ad Litem Program – Performance Advocacy Snapshot (PASS)*, December 2020, available at <https://guardianadlitem.org/wp-content/uploads/2021/01/Performance-Advocacy-SnapShot-December-2020-Revised.pdf> (last visited March 15, 2021) (hereinafter cited as “December 2020 PASS”).

⁸² *Id.*

⁸³ December 2020 PASS.

⁸⁴ *Id.*

⁸⁵ The GALP Analysis at p. 4.

⁸⁶ *Id.* at p. 9-10 (citing GAL’s Standard 7.D.).

GAL is advocating in good faith for the child’s best interests and the child conveys a position that may be opposed to the position taken by the GAL.⁸⁷

The GAL’s Standards of Operation 3, Code of Conduct, prohibit GALs from practicing, condoning, facilitating, or participating in any form of discrimination, including in part, discrimination based on race, color, gender, sexual orientation, sexual identity, age, religion, or ethnicity.⁸⁸ Finally, the GALP reports that the Standards of Operation prohibit a GAL from receiving a fee for their services as a GAL or accepting a gift for personal benefit.⁸⁹

GAL Executive Director Appointment and Reappointment

The GALP’s executive director is appointed by the Governor from a list of at least three nominees of eligible applicants selected by the Guardian Ad Litem Qualifications Committee (GALQC).⁹⁰ The executive director must meet minimum qualifications, serve a term of 3 years, and has specified duties.⁹¹ The executive director is permitted to serve more than one term, but current law is unclear on whether any additional terms are subject to the appointment process.

Funding

GAL Funding

The OPPAGA reports that state funding for the GALP has increased by 21% over the past five years from \$43.6 million in Fiscal Year 2015-16 to \$52.9 million in Fiscal Year 2019-20.⁹² Other sources of funding have also increased over the increased over the past five years from \$4.6 million in Calendar Year (CY) 2015 to \$9.7 million in CY 2019.⁹³ With this increase, the number of staff increased, the number of volunteers remained stable, and the number of children served has decreased from 40,032 in Fiscal Year (FY) 2016-17 to 36,506 in FY 2019-20.⁹⁴

Family First Prevention Services Act

The Bipartisan Budget Act of 2018 (HR 1892) was signed into law on February 9, 2018 which included the Family First Prevention Services Act (FFPSA). The legislation aims at providing financial assistance with a focus on prevention services and reducing funds to residential group care.⁹⁵ It also has the potential to dramatically change child welfare systems by expanding the way in which Title IV-E funding may be spent.⁹⁶ The FFPSA requirements include:

⁸⁷ The GALP, *Standards of Operation*, Revised April 2020, p. 18, available at <https://guardianadlitem.org/wp-content/uploads/2020/05/GAL-Standards-Rev.-4.30.2020-FINAL.pdf> (last visited March 15, 2021) (hereinafter cited as “GALP SOP 2020”).

⁸⁸ *Id.* at p. 10.

⁸⁹ The GALP Analysis at p. 10.

⁹⁰ Section 39.8296(2)(a), F.S.

⁹¹ *Id.*

⁹² OPPAGA Presentation at p. 7.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ The DCF, *The Florida Center for Child Welfare FFPSA Updates*, available at <http://centerforchildwelfare.fmhi.usf.edu/FFPSA.shtml> (last visited March 15, 2021).

⁹⁶ National Conference of State Legislatures, *Family First Prevention Services Act Update*, available at <https://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx>. (last visited March 15, 2021).

- Option to use funds for up to 12 months for evidence-based services, such as substance abuse treatment;
- Eligible candidates include children who can remain safely in the home with the provision of services, children in foster care who are parents, or parents or caregivers who require services to prevent a child's entry into foster care; and
- States must prepare a prevention plan for the child to safely remain at home with services; and
- Services must be trauma-informed and pre-approved on the Health and Human Services website.⁹⁷

Title IV-E funds previously were restricted to being used for the costs of eligible children's foster care maintenance; administrative expenses to manage the foster care program; training for specified persons; and kinship guardianship assistance. Title IV-E federal funding is now available for direct legal representation and advocacy for eligible children in foster care and their parents.⁹⁸ As the GALP attorney does not have a direct attorney-client relationship with the child⁹⁹ and directly represent the children in Florida dependency proceedings, it is unclear whether the GALP is eligible for Title IV-E funding under the new federal standards. However, the GALP has not begun to be reimbursed for legal representation and advocacy under the FFPSA standards.

III. Effect of Proposed Changes:

Office of Child Representation (Section 7)

The bill establishes a new Office of Child Representation (OCR) to provide direct legal representation to specified children during dependency proceedings. Similar to the GALP, the bill creates the OCR within the JAC which provides administrative support and services but does not control, supervise, or direct the OCR in the performance of its duties. However, employees are governed by plans, including salary and benefits, approved by the JAC.

The bill provides for an executive director to be appointed to the OCR with the same appointment process, term, and requirements as the executive of the GALP provided for in s. 39.8296(2)(a), F.S. The OCR executive director must be a member of The Florida Bar in good standing for at least 5 years and have knowledge of dependency law and social service delivery systems to meet the needs of children who are abused, abandoned and neglected. The bill requires the appointment of the initial executive director to be completed by January 1, 2022.

The OCR, within the resources of the JAC, must provide oversight and technical assistance, in part, as follows:

- Identify the resources required to implement methods of collecting, reporting, and tracking case data;

⁹⁷ The DCF, *Family First Prevention Services Act*, p. 26, August 28, 2020, available at http://centerforchildwelfare.fmhi.usf.edu/kb/prevplans/FFPSA-StatewideWebinar8_28_2020.pdf (last visited March 15, 2021).

⁹⁸ U.S. Department of Health and Human Services, Administration for Children and Families, *High Quality Memo*, p. 10-11, January 14, 2021, available at https://www.courts.ca.gov/documents/ffdrp_acf2021_high_quality_memo.pdf (last visited March 15, 2021).

⁹⁹ The GALP SOP 2020, p. 7.

- Review and collect information relating to current GALP for children who are 10 years of age or older in Florida and other states, and information relating to offices of child representation in other states;
- Develop statewide performance measures and standards in collaboration with the regional offices of OCR;
- Develop a training program for each attorney for the child, and create a curriculum committee composed of specified professionals¹⁰⁰ for such purpose;
- Develop protocols that must be implemented to assist children in meeting eligibility requirements to receive all federal funding;¹⁰¹
- Review methods of funding, maximum the use of those funds, and review the kinds of services being provided by the regional offices;
- Determine the feasibility or desirability of new concepts regarding the operation and scope of services provided by the OCR; and
- Submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court, including:
 - An interim report describing the progress of the statewide office in meeting the responsibilities described in this paragraph.
 - A proposed plan that includes alternatives for meeting the representation needs of children in this state. The plan may include recommendations for implementation in only a portion of this state or phased-in statewide implementation and must include an estimate of the cost of each such alternative.
 - An annual status report that includes any additional recommendations for addressing the representation needs of children in this state and related issues.

The DCF or community-based care lead agency must take any steps necessary to obtain and maintain eligible federal funding. The bill provides that OCR may contract with local nonprofit agencies to provide direct representation to a child if it is the most efficient method to satisfy its duties and if federal funding has been approved for reimbursement.

The bill provides for regional offices to be established within each of the five district court of appeals which must commence fulfilling their purpose and duties on July 1, 2022. Each regional office is also assigned to the JAC for it to provide administrative support and services within available resources. Like the statewide office, the regional offices are not subject to control, supervision, or direction by the JAC, but are governed by plans such as salary and benefits.

Finally, the child representation counsel (CRC) who is the head of the regional offices must serve on a full-time basis and may not engage in private practice. Assistant child representation counsel (ACRC) must give priority to his or her duties in that position but part-time ACRC may practice dependency law provided the representation does not result in a legal or ethical conflict of interest with a case that OCR is providing representation.

¹⁰⁰ Members must include, but not limited to, a dependency judge, directors of circuit guardian ad litem programs, active certified guardians ad litem, a mental health professional who specializes in the treatment of children, a member of a child advocacy group, a representative of a domestic violence advocacy group, an individual with at least a Master of Social Work degree, and a social worker experienced in working with victims and perpetrators of child abuse.

¹⁰¹ This may not be construed to mean that the protocols may interfere with zealous and effective representation of the children.

Attorney for the Child (Sections 1-2 and 8)

Section 39.013(13), F.S. is amended to provide that an attorney for the child must be appointed pursuant to s. 39.831, F.S. The bill defines “attorney for the child” as an attorney providing direct representation to the child, which may include the appointment of the Office of the Child Representation, an attorney provided by an entity contracted through the Office of the Child Representation to provide direct representation, any privately retained counsel or pro bono counsel, or any other attorney who represents the child under ch. 39, F.S.

The bill creates s. 39.831, F.S., which provides that an attorney for the child:

- Must be appointed when the child has special needs as provided in s. 39.01305(3), F.S.;
- Must be appointed for any child who reaches 10 years of age or older after July 1, 2022, who is subject to a dependency proceeding or related adoption proceeding; and
- May be appointed upon a finding by the court that circumstances exist which necessitate the appointment.

The appointment continues in effect until the attorney is allowed to withdraw, the attorney is discharged by the court, or the case is dismissed. The attorney for the child must provide all legal services required from the time the child is removed or the initial appointment through appellate proceedings. With court permission, the attorney for the child may arrange for supplemental or separate counsel to represent the child in appellate proceedings. An order appointing an attorney for the child must be in writing.

The court must appoint the OCR unless the child is otherwise represented. Similar to the GALP, parents who are financially able must reimburse the court for the costs of the OCR representation, but reimbursement for the attorney’s services may not be contingent upon successful collection by the court of reimbursement from the parent.

Upon presentation of a court order by an attorney for the child, an agency, person, or organization must allow the attorney to inspect and copy records related to the child who is the subject of the appointment, including records that are made confidential. An agency must also allow an attorney for the child to inspect and copy records that are exempt from s. 119.07(1), F.S., or s. 24(a), Art. I of the Florida Constitution, but he or she must maintain the confidential or exempt¹⁰² status of any records shared.

The attorney for the child must review all disposition recommendations and changes in placement and file any appropriate motions at least 72 hours in advance of the hearing. The DCF must develop procedures to request that a court appoint an attorney for the child, and may adopt rules to implement the section.

¹⁰² When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991). Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

Guardian ad Litem (Section 3 to 6)

Part XI is retitled to state “GUARDIAN AD LITEM, GUARDIAN ADVOCATES, AND ATTORNEY FOR THE CHILD.”

The bill provides that a GAL will continue to be appointed as proscribed under current law before July 1, 2022. On or after that date:

- The GAL must be appointed at the earliest possible time to represent a child who is:
 - Younger than 10 years old and subject of a dependency proceeding or related adoption proceeding;
 - The subject of a dependency proceeding or related adoption proceeding and a criminal proceeding;
 - The subject of a termination of parental rights proceeding under Part X; or
 - A dependent child as described in s. 39.01305(3), F.S.¹⁰³
- The court must discharge the GALP within 60 days after the child reaches 10 years old except if:
 - The child meets one of the last three criteria for appointing a GAL summarized above; or
 - The child knowingly and voluntarily expresses a wish to have the guardian remain appointed, and the court makes such findings and determines the child is of an appropriate age and maturity to make such an expression.

The bill defines “related adoption proceeding” as an adoption proceeding under ch. 63, F.S., which arises from dependency proceedings under ch. 39, F.S.¹⁰⁴

The GALP must develop guidelines to identify any possible conflicts of interest of a GAL when he or she is being considered for assignment to a child’s case. “Conflict of interest” is defined as a GAL who:

- Has a personal relationship that could influence a recommendation regarding a child whom he or she is serving as a GAL;
- Is in a position to derive a personal benefit from his or her role as a GAL; or
- Has a personal factor or circumstance, including a bias or prejudice, which impairs the GALs ability to fully and fairly discharge his or her duties.

The bill permits the court to order that a new GAL be assigned or that the GAL be discharged and an attorney for the child be appointed upon:

- Consent of a child who is the subject of a dependency proceeding or related adoption proceeding and who is 10 years of age or older; or
- Any party presenting evidence that there is reasonable cause to suspect the assigned GAL has a conflict of interest.

¹⁰³ See below for further discussion on this section.

¹⁰⁴ In Florida, a parent may place their child for adoption with a private adoption agency, even if the child is under jurisdiction of the court and in out-of-home care as long as no final judgment of termination of parental rights has been entered. This means that birth parents can choose a private adoption placement if their parental rights are still be intact. This process is commonly referred to as an intervention and results in a private adoption entity intervening into the DCF case and handling the adoption according to the wishes of the biological parent. Section 63.082, F.S. *See also* Adoption Choice of Florida, *What is an adoption intervention?*, available at <https://www.adoptionchoicesofflorida.com/blog/2019/november/what-is-an-adoption-intervention/> (last visited March 15, 2021).

The bill also requires the GALP to identify any GAL who is experiencing any physical or mental health issues or who appears to present a danger to any child, remove such GAL from all assigned cases, and terminate his or her voluntary services with the GALP. This action must be disclosed to the court.

The GAL Qualifications Committee who nominates at least three eligible applicants for the executive director position of the GALP to the Governor is renamed to Child Well-Being Qualifications Committee. The bill provides that the executive director may be reappointed to serve more than one term pursuant to the appointment process. Every term is for a 3 year period.

Conforming Sections (Sections 9-40)

The bill amends ss. 39.00145, 39.0139, 39.402, 39.407, 39.4085, and 39.523, F.S., in part, to change the term “attorney ad litem” or other term used to refer to an attorney appointed to represent a child to the term “attorney for the child.”

The bill also amends ss. 28.345, 39.001, 39.00145, 39.0132, 39.0139, 39.202, 39.302, 39.402, 39.407, 39.502, 39.521, 39.6011, 39.6012, 39.6251, 39.701, 39.702, 39.801, 39.802, 39.808, 39.810, 39.811, 39.812, 39.815, 43.16, 63.082, 63.085, 322.09, 394.495, 627.746, 934.255, and 960.065 to update reference to the attorney for the child as counsel for a party that is applicable to these sections as contemplated in the provisions in this bill.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The creation of the OCR within the JAC could create responsibilities for counties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill permits the attorney for the child to file a termination of parental rights petition would could raise constitutional issues with respect to the fundamental rights of parents.¹⁰⁵

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extend a parent is financially able, he or she would have to reimburse the cost of the attorney for the child pursuant to s. 39.831(1)(c), F.S.

C. Government Sector Impact:

Counties will be required to provide facilities, communications, and security to the new regional counsel. The amount of this cost is not known.

The GALP reports an indeterminate fiscal impact of the bill as it is unknown how many children will meet the criteria under s. 39.822(1)(b), F.S.¹⁰⁶ Of the 35,160 children in out-of-home care or receiving in-home services as of February 28, 2021, 23,444 children were under 10 years old and 11,714 children were 10 years of age or older.¹⁰⁷ Further, the number of GALs appointed to represent children will vary depending on how many termination of parental rights petitions are filed, how many children have special needs, and whether the children have pending delinquency proceedings.

The GALP did not offer an opinion on the potential fiscal impact of the provision for the creation of OCR.¹⁰⁸

The JAC states that the bill will likely have a substantial fiscal impact on the JAC through an increased workload to serve the new Statewide OCR and the five Regional Offices of Child Representation.¹⁰⁹ The JAC reports that the additional support and services required will necessitate an indeterminate number of employees and additional resources to provide the necessary services in areas such as accounting, budget, financial services, human resources, operations, online support, and information technology as well as associated executive services.¹¹⁰

¹⁰⁵ The GALP Analysis at p. 14.

¹⁰⁶ *Id.* at p. 15.

¹⁰⁷ *Id.*

¹⁰⁸ The GALP Analysis at p. 15.

¹⁰⁹ The JAC, *2021 Legislative Session Bill Analysis for SB 1920*, March 12, 2021, p. 6 (on file with the Committee on Children, Families, and Elder Affairs).

¹¹⁰ *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 28.345, 39.001, 39.00145, 39.01, 39.013, 39.0132, 39.0139, 39.202, 39.302, 39.402, 39.407, 39.4085, 39.502, 39.521, 39.523, 39.6011, 39.6012, 39.6251, 39.701, 39.702, 39.801, 39.802, 39.808, 39.810, 39.811, 39.812, 39.815, 39.820, 39.822, 39.8296, 43.16, 63.082, 63.085, 322.09, 394.495, 627.746, 934.255, and 960.065 of the Florida Statutes.

This bill creates sections 39.83 and 39.831 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.