

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1290

SPONSOR: Committee on Children and Families and Senator Campbell

SUBJECT: Office of Counsel for Children

DATE: April 14, 2001                      REVISED: 4/17/01                      \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable/CS</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/1 amendment</u>
3.	_____	_____	<u>AHS</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

CS/SB 1290 creates an Office of Counsel for Children as a pilot program in the Department of Children and Family Services' tenth district to provide legal representation to children in proceedings under ch. 39, F.S. The Office of Counsel for Children (office) is to be placed for budget purposes only in the Department of Legal Affairs. The court is required to appoint the office to represent the legal interests of all children who are placed in out-of-home care at the shelter hearing. The bill prescribes the knowledge and training requirements for the staff attorneys and identifies the duties of the office. The Office of Counsel for Children is substituted for the Department of Children and Family Services as the party responsible for moving the case through the dependency proceedings.

The bill expands the parties who can request continuances while limiting the circumstances and number of continuances that can be requested. The required 15-day hearing to review shelter placement and the statutory specifications for the case plan are removed.

This bill substantially amends sections 39.013, 39.402, 39.506, 39.601 and 39.602, Florida Statutes.

**II. Present Situation:**

**Representation of Children**

*Guardian Ad Litem*

Section 39.822, F.S., stipulates that a guardian ad litem be appointed by the court to represent a child in any child abuse, neglect or abandonment judicial proceeding. Such appointment is to

occur at the earliest possible time and applies to either civil or criminal proceedings. A guardian ad litem is charged with representing the best interests of a child in a proceeding under ch. 39, F.S., or in any other judicial proceedings. The law specifies that the guardian ad litem can be one of the following:

- < a certified guardian ad litem program;
- < a duly certified volunteer;
- < a staff attorney;
- < a contract attorney or a certified pro bono attorney working on behalf of the guardian ad litem or program;
- < staff members of a program office;
- < a court-appointed attorney; or
- < a responsible adult.

The guardian ad litem or program representative is required to review all disposition recommendations and changes in placements and must be present at all critical stages of the dependency proceedings. Alternatively, a written report of recommendations can be submitted to the court, at least 72 hours prior to the hearing.

#### *Attorney ad Litem Pilot Program*

A 3 year pilot Attorney Ad Litem Program was established by the 2000 Legislature in the Ninth Judicial Circuit, Orange and Osceola counties, to provide legal representation for children who are maintained in out-of-home care by court order pursuant to s. 39.402, F.S.<sup>1</sup> Section 39.4086, F.S., charges the Office of State Courts Administrator with establishing the pilot program. The Ninth Judicial Circuit is authorized to contract with a private or public entity for the program, and to provide administrative oversight and supervision.

The court may appoint an attorney ad litem at any time following the shelter hearing, if the court finds that such representation is necessary. Upon such appointment the Department of Children and Family Services (DCFS) is directed to provide information and records concerning the child to the program administrator. Representation of the attorney's ad litem is limited to ch. 39, F.S. proceedings. Section 39.4086(2)(f), F.S., stipulates that the attorney ad litem represent the child's wishes, as long as the child's wishes are consistent with the safety and well-being of the child. The attorney ad litem is required to fulfill the same duties of advocacy, loyalty, confidentiality and competent representation for the child as is due to an adult client. A guardian ad litem is required to be appointed to all children for whom an attorney ad litem has been appointed to represent their best interest. A total of \$1.8 million was appropriated for both the attorney ad litem program and the guardian ad litem program as part of this pilot initiative, which is in the early stages of implementation.

An evaluation of the establishment, operation and impact of the pilot program in meeting the legal needs of dependent children is to be conducted by the Office of State Courts Administrator. This evaluation is to include a comparison of the children in the Ninth Judicial Circuit who received an attorney ad litem with those who did not. A report on the findings of the evaluation

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<sup>1</sup> Ch. 2000-139, L.O.F.

is required to be submitted to the Governor and Legislature by October 1, 2001 and October 1, 2002. A final report on the evaluation, including the feasibility of a statewide attorney ad litem program and recommendations for establishing, locating and operating a statewide program is required to be submitted by October 1, 2003.

*Department of Children and Family Services*

Prior to 1989, the then Department of Health and Rehabilitative Services was generally not represented by legal counsel in dependency proceedings. Instead, caseworkers presented the DCFS's position to the court. The exception to this practice was in termination of parental rights proceedings, at which time the DCFS usually contracted with private counsel to provide representation. In May 1989, the Florida Supreme Court ruled that the department was engaging in the unauthorized practice of law.<sup>2</sup> In its ruling, the court provided that adequate legal representation on behalf of the department was required at every stage of the dependency proceedings pursuant to (what was then) Part III of ch. 39, F.S., and that an attorney's presence was required in all court proceedings.

The Child Welfare Legal Services Operating Procedures (No. 175-15) delineates the responsibilities of the DCFS's child welfare attorneys and program staff in cases and proceedings governed by ch. 39, F.S. Child welfare attorneys include DCFS employed attorneys, and in specified areas, the Office of the Attorney General or the State Attorney who represent the DCFS under contract. Generally, the child welfare attorney is responsible for all matters related to obtaining constructive service in dependency cases involving the DCFS, pursuant to ch. 39, F.S. The specific responsibilities identified in the procedures include such functions as determining if probable cause and legal sufficiency to remove the child from the home exists, filing petitions for the hearings required in the process such as the shelter hearing and judicial reviews, presenting information to the court such as the assessment findings and resulting actions at the arraignment or 30 day shelter review hearing, and representing the DCFS in any other dependency-related judicial matters involving the case through disposition.

The child welfare legal attorneys represent the DCFS and its responsibilities relative to the dependency process of ch. 39, F.S. As such, DCFS attorneys have been responsible for moving the children's cases through the system. The DCFS maintains that the U.S. Supreme Court has ruled that the protection and welfare of the child is an authority and power that rests with the state.<sup>3</sup> The *Guidelines for Public Policy and State Legislation Governing Permanence for Children (Guideline)*, from the U.S. Department of Health and Human Services, distinguishes between legal representation of the parent, child and child welfare agency. With the difficult decisions of how to best protect children, the *Guideline* pointed to the judges' need to make fully informed decisions. The recommendations of the *Guideline* is, therefore, that *each* of these parties have good legal representation. An identified component of the role of an agency attorney is representing the agency and its professional recommendations and positions.

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<sup>2</sup> *In re Advisory Opinion HRS NonLawyer Counselor*, 547 So.2d 909 (Fla. 1989).

<sup>3</sup> *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L.Ed.2d 599 (1982).

### *Parents' Right to Counsel*

Section 39.013, F.S., requires that all parents of children involved in dependency proceedings be informed of their right to counsel at each stage of the proceedings, and that parents be appointed counsel when they are unable to afford counsel. This law requires that the court determine whether waivers of counsel by parents are knowing and intelligent and must make its findings on this issue of writing. It also requires that once counsel has been appointed or has entered an appearance, the attorney continues to represent the parent throughout the proceedings. If the attorney-client relationship is discontinued, the court must advise the parent of the right to have new counsel retained or appointed for the remainder of the proceedings.

Section 39.0134, F.S., includes provisions relating to compensation. If counsel is entitled to receive compensation for representation in accordance with a court appointment in a dependency proceeding pursuant to ch. 39, F.S., the compensation is established by each county. Section 39.0134(2), F.S., specifies that compensation must not exceed \$1,000 at the trial level and \$2,500 at the appellate level for representation pursuant to court appointment in a termination of parental rights proceeding.

### *Interests of the Child*

The *Guidelines for Public Policy and State Legislation Governing Permanence for Children* was developed for the Children's Bureau of the Administration on Children, Youth and Families as a technical assistance document to help states review their own laws and develop statutes and policies that reflect the best practices of child welfare today. The *Guideline* points out that the role of the child's attorney is unique in this country's legal system and is not well defined in law. The child client being represented by the attorney may or may not be competent to make any or all decisions. There is little guidance regarding the role of the attorney in representing children as compared to the better developed laws and ethical obligations governing attorneys representing adults.

As a result, the appropriate role that an attorney should assume when representing a child has received considerable debate and discussion. A core issue is the extent to which the attorney should take direction from the child client. At one end of the spectrum is the representation of a child's "*expressed interest*" which generally entails advocating for the child's articulated position, as is the standard in representing adults. Representing the child's "*best interest*," on the other hand, is usually considered to be advocating for what the attorney thinks is in the child's best interest, even if contrary to the child's view and wishes. The American Bar Association Standards of Practice for Lawyers Representing a Child in Abuse and Neglect Cases (ABA Standards) contemplate representation of the child's *expressed interest*, in all cases except those children with exceptional problems such as children with limited language development, mental retardation, or serious mental illness. The expert workgroup that developed the *Guideline* could not reach a consensus on this issue and offered two policy options to state legislatures, client directed and substituted judgment, both presenting variations of expressed and best interests representation.

Representation of a child's *legal interests* is described in the *Guideline* as advocating for the interests of the child as set out in legislation, case law, standards of attorney conduct and

applicable policy. The *Guideline* differentiates advocating for a child's *legal interests* from imposing an attorney's views of the child's interests unguided by any outside authority. Examples of what representing the child's *legal interests* could entail, based on the Utah model, includes timely progress of litigation, receipt of appropriate foster care services for children in out-of-home care, parental access to rehabilitation services, and regular visitation if reunification is a case plan goal.

In Florida, the rules that govern the role of an attorney are the Rules of Professional Conduct of the Florida Rules of Court. These rules recognize and respond to the various functions an attorney performs and prescribes terms for resolving conflicting responsibilities in representing his or her client. Provisions of the rules of particular relevance to the different approaches being debated in representing children are as follows:

- Rule 4-1.2. (a) Lawyer to abide by Client's Decision. This rule requires a lawyer to abide by a client's decisions concerning the objectives of representation, subject to identified limitations, and to consult with the client as to the means by which they are pursued.
- Rule 4-1.6. (a) Consent Required to Reveal Information. This rule prohibits a lawyer from revealing information relating to representation of a client unless the client consents to such disclosure. Exceptions to this prohibition are provided.

Chapter 90, F.S., the Evidence Code, provides for privileged communication between attorneys and their clients and the admissibility of evidence as it relates to privileged matter. Specifically, s. 90.502, F.S., provides for communication between a lawyer and client to be privileged and a client's privilege to refuse to disclose the content of confidential communication. Circumstances under which both of these privileges can be applied are provided. Sections 90.507, 90.508, and 90.510, F.S., set forth provisions for the admissibility or inadmissibility of the privileged matter in court.

Discussions surrounding the need for legal counsel to represent the interests of children in the dependency process have focused, in part, on the ability of the DCFS to move children into permanency within the prescribed time frames, the provision of needed services to achieve the goals for the child and the safety of the children while under DCFS care and supervision. While the DCFS is achieving its goals in a number of its performance standards that measure the outcomes desired for children in the dependency process, there are a number of measures for which the DCFS is not achieving its goals. One of the most important measures relative to the prescribed time frames is the average foster care length of stay of children that the program plans on returning home. The Office of Program Policy Analysis and Government Accountability (OPPAGA) reported in its Child Protection Program Justification Review that this average length of stay was 20.2 months in June 2000, which exceeded the federal standard of 18 months. The most current DCFS Situation Report for October-December 2000 reflects a current statewide average length of stay for all children in foster care of 36.2 months. The OPPAGA review also reports that the percentage of children safe from reabuse while in foster care for the 1999-2000 fiscal year was 91.9 percent and below the state standard of 97 percent. The Situation Report provided by the DCFS shows that for the third quarter of 1999-2000 through the first quarter of 2000-2001 the statewide average of children who were safe from abuse and neglect while receiving DCFS services was 98.1 percent with a statewide trend for the 2000-2001 fiscal year thus far of 93 percent.

**Time Frames for the Dependency Proceedings Under Ch. 39, F.S.**

The federal Adoption and Safe Families Act requires DCFS to establish court-approved permanency goals for each child within the first 12 months a child is in the DCFS’s custody. The DCFS must determine for the court’s approval if the child should be returned to the parent, continued in foster care for a specified period, placed for adoption or continued in foster care on a permanent or long-term basis because of the child’s special needs or circumstances. Section 39.001(1)(h), F.S., identifies one of the purposes of ch. 39, F.S., as “to ensure that permanent placement with the biological and adoptive family is achieved as soon as possible for every child in foster care and that no child remains in foster care longer than 1 year.”

Chapter 39, F.S., has established the following timeframes to guide the court’s involvement in the child safety and permanency process.

Shelter Hearing	Within 24 hours of removal of the child from home
Petition Filed Seeking Adjudication that Child is Dependent	Within 21 days of shelter hearing
Arraignment Hearing Held	Within 28 days of Shelter Hearing
Hearing to Review Shelter Placement	Every 15 days after arraignment hearing until child is released
Adjudicatory Trial	No later than 30 days after arraignment
Case Plan must be filed (if not filed earlier)	Within 60 days of the removal of the child
Disposition Hearing and Case Plan Acceptance	30 days after Adjudicatory hearing
Judicial Review	90 days after the disposition hearing, but no later than 6 months after the child is removed from the home
Judicial Review for Permanency	No later than 12 months after the date the child was placed in foster care, unless there is an extraordinary situation.

Sections 39.013(10) and 39.402(14), F.S., permit delays to the above time requirements of the chapter and the shelter hearing provisions respectively as a result of continuances granted. Continuances may be granted at the request of the child, the child’s counsel or the child’s guardian ad litem, the parent or legal custodian. Continuances may also be requested by the attorney for the DCFS or the petitioner due to the unavailability of evidence material and to allow the attorney for the DCFS or petitioner time to prepare. One problem raised by observers of the dependency process is that while time frames have been established to provide for a child’s permanency within 12 months, continuances lengthen that process well beyond the statutory time frames.

**Case Plans**

Section 471 of Title IV-E of the Social Security Act (42 U.S.C. 671) requires the development of a case plan as defined in section 475 (42 U.S.C. 675). Sections 39.601 and 39.602, F.S., set forth Florida’s requirements for a case plan that must be developed for every child receiving

services pursuant to ch. 39, F.S. The requirements for the case plan as delineated in each of these provisions is outlined below:

Florida Requirements for Case Plan	Federal Requirements for Case Plan
<i>s. 39.601(1)</i>	
Developed in conference with parent	Not Addressed
Written simply and in principal language	“
Describes planned face-to-face meetings between parents and department	“
Subject to change	“
<i>s. 39.601(2)</i>	
Reasonable, accurate and in compliance with other court orders	“
Description of problem being addressed by department’s intervention	“
Description of tasks for parents and services, including type, frequency, location and person accountable for service	“
Measurable objectives	“
<i>s. 39.601(3)</i>	
Description of permanency goal and type of placement. Plans for adoptive placement may be made concurrently with efforts to return child safely home	“
Description of type of home or institution child is to be placed	Description of type of home or institution child is to be placed
Description of financial support obligation to the child	Not Addressed
Description of visitation rights and obligations of parents	“
Discussion of the safety and appropriateness of the placement, that it is least restrictive and most family-like.	Discussion of safety and appropriateness of the placement
Role of the foster parents or legal custodians in development of services	Not Addressed
Description of efforts to maintain stability of child’s educational placement	“
Discussion of department’s plans to carry out the judicial determination of the court	Description of how the agency responsible for the child plans to carry out the voluntary placement agreement or judicial determination.
Description of plan for assuring that services will be provided to improve the conditions of the home and facilitate the safe return of the child to the home or permanent placement	A plan for assuring that the child receives safe and proper care and that services are provided to improve the conditions, facilitate the safe return of the child to the home or permanent placement.
Description of plan assuring that service will	Discussion of the appropriateness of the

be provided to address the needs of the child while in out-of-home placement	services provided to the child
Written notice to parents that failure to substantially comply with case plan may result in termination of parental rights	Not Addressed
For a child whose permanency plan is adoption or placement in another permanent home, documentation of the steps being taken to find to an adoptive family or other permanent living arrangement, to place the child in a planned permanent living arrangement and finalize the adoption, legal guardianship or long term custodial relationship.	For a child whose permanency plan is adoption or placement in another permanent home, documentation of the steps being taken to find an adoptive home or other permanent living arrangement, to place the child in a planned permanent living arrangement and finalize the adoption or legal guardianship.
<i>s. 39.602 (Case Plans when Parents do not participate)</i>	
Specific services to be provided, the goals, plans for the child, and time for accomplishing the goals of the plan and permanence for the child	Not Addressed
<i>Other</i>	
Not Addressed	Include the child’s health and educational records
“	Where appropriate, for a child over 16 years, a description of the services that will help prepare for the transition from foster care to independent living.

The case plan is the document which drives the actions that will achieve permanency for the child. An accurate determination of needs and goals for the child, as well as appropriated identification of services to achieve these goals, is important to the success of this process and the case plan which articulates this process and the course of action. However, questions have been raised regarding the value and impact of the detailed prescription of the content of the case plans contained in the Florida law. In particular, these questions have focused on the extent to which the level of prescriptiveness contributes to unnecessary paperwork and prevents the individualization of the case plan to each child.

**III. Effect of Proposed Changes:**

CS/SB 1290 creates an Office of Counsel for Children as a pilot program to provide legal representation to children in the proceedings of ch. 39, F.S. It expands the parties who can request continuances while limiting the circumstances and number of continuances that can be requested. The required 15-day hearing to review shelter placement and statutory specifications for the case plan are removed.

**Section 1.** Creates an Office of Counsel for Children as a pilot program to provide legal representation to children in the judicial proceedings of ch. 39, F.S. The intent of the Legislature



expressed in the bill is that children who are placed in out-of-home placements receive representation of their legal interests which promotes the efficient use of judicial resources, advances the timely resolution of dependency litigation, and ensures prompt response to the health, safety and welfare of the children. The Office of Counsel for Children is to be established in the tenth district of the Department of Children and Family Services, which is Broward County. The geographic region proposed for the office is contiguous with the Seventeenth Judicial Circuit. An administrative counsel is to be appointed by the Governor for a 3-year term and will be responsible for administration of the office. The administrative counsel must have a minimum of 5 years experience in the area of child advocacy, child welfare or juvenile law and must be and have been in good standing with the Florida Bar for the preceding 5 years. Knowledge and training requirements for staff attorneys are prescribed and include the needs of children, families and foster families as it pertains to child abuse, neglect or abandonment and programs and materials for ch. 39, F.S.

The Office of Counsel for Children is placed in the Department of Legal Affairs. However, the placement is for budget purposes only. The office will prepare its budget and will not be under the control, supervision or direction of the Department of Legal Affairs.

The bill requires the court to appoint the Office of Counsel for Children to represent a child who, at the shelter hearing, pursuant to s. 39.402, F.S., is continued in out-of-home care. The court is to include in its order that the office substitute as the petitioner for the child. The representation of the office is limited to the proceedings under ch. 39, F.S., and any associated appeals. The Department of Children and Family Services is directed to provide information and records concerning the child to the office which at a minimum must include, the name, location and placement of the child; department contact information; and copies of all notices sent to the parent or legal guardian of the child. Once the office receives an appointment, a staff attorney is assigned to represent the child and is to continue to represent the child until the court discharges the office because permanency has been achieved or the court determines the child no longer requires representation. The bill specifically provides that representation by the Office of Counsel for Children does not eliminate the need for appointment of a Guardian Ad Litem.

The Office of Counsel for Children is charged with representing the *legal interests* of children in all ch. 39, F.S. proceedings and related appeals. *Legal interests* is not specifically defined in the bill; however, the intent language identifies aspects considered to be legal interests, including compliance with the objective criteria and procedures established by law, the expeditious resolution of dependency proceedings so that the child can remain or return home or be placed in a safe, nurturing, and permanent environment, and the use of least restrictive or detrimental alternatives. Simultaneously, there is a directive for the counsel to fulfill the same duties of advocacy, loyalty, confidentiality and competent representation as is required to be provided to an adult client under the Rules of Professional Responsibility.

Duties of the office in representing the children as set forth in the bill are as follows: conducting independent investigations of the child and family circumstances; monitoring the efforts of the DCFS to explore placement options, to pursue alternatives to removal of the child, and in developing and providing the services of the case plan; ensuring that pertinent evidence is timely provided to the court by reviewing of all relevant records, conducting interviews, and meeting with the child, if appropriate, to understand the child's desires and concerns and monitor the

safety of the placement; attending all judicial proceedings and filing necessary petitions and other judicial actions; keeping the child informed of the judicial proceedings, outcomes and services to be provided; participating in mediation and negotiating settlements; and monitoring all actions that affect the child's health, safety and welfare, including the development and implementation of the case plan, compliance with court orders, the parents' receipt and follow through with court ordered services and the impact of the services, and any violations of court orders or changes in circumstances necessitating a review of the case.

The bill provides the same privilege to the records of the Office of Counsel for Children that are provided by Florida Statute to legal representation in state law. At a minimum, these privileges would include the applicable provisions of ch. 90, F.S., the Evidence Code. The requirements of s. 39.001(2), F.S., for DCFS contracts are also imposed on the office and its employees, which include level two employment screening pursuant to ch. 435, F.S., the exclusion of certain volunteers from employment screening, and the granting of exemptions from disqualifications from employment with children provided by s. 435.07, F.S.

The office is directed to develop measurable performance outcomes relative to the impact of the legal representation on child safety, improvements in provision of appropriate services, compliance with statutory time standards, and associated reductions in the length of stay of children in state care. A report on these performance measures is to be submitted annually to the Governor and Legislature.

The bill requires that an evaluation of the Office of Counsel for Children pilot program be conducted by the Office of State Courts Administrator with a preliminary report to be submitted to the Legislature by October 1, 2003 and a final report due October 1, 2004. The final report must include the evaluation of the pilot program, the findings as to the feasibility of a statewide program, and recommendations, if any, for locating, establishing and operating a statewide program. An expiration of June 30, 2005 is provided for the office unless specifically continued by the Legislature.

The bill substitutes the Office of Counsel for Children for the DCFS as the party responsible for moving the case through the dependency process once the office has been appointed by the court to represent the case. This provision shifts the primary party responsible for making application to the court for the necessary judicial actions for the ch. 39, F.S., dependency process. The specific legal functions of the DCFS that would be shifted to the Office of Counsel for Children are not defined.

**Section 2.** Amends the conditions under which the time frames of ch. 39, F.S. and the shelter placement and hearing, pursuant to ss. 39.013(10) and 39.402(14), F.S., can be delayed to provide that any party, in lieu of the attorney for the DCFS and the petitioner, can request a continuance due to evidence not being available. This broadening of the entity permitted to request continuances will allow the parents' attorneys to request such continuances to obtain evidence material for their clients. The Office of Counsel for Children would be permitted to request continuances as the petitioner or child's counsel under existing law or as the requesting party under the modified provisions of the bill. The necessity of adhering to the time frames and limiting extensions to the extent required to preserve the rights of the child is added. Requesting

a continuance or extension of the time limitations in advance of the circumstances creating the delay is prohibited.

The bill limits the number of days for which continuances or extensions may be granted to 60 days within any 12 month period. Extraordinary circumstances necessary to preserve the constitutional rights of a party are recognized as exceptions to this limitation. The provisions of this section, while expanding the parties who can request continuances, should limit the circumstances under which continuances can be granted and limit the total number of days that can be granted.

Further, this section eliminates the requirement that a shelter hearing be held every 15 days to review the shelter placement. In its place is the ability for the court to require a shelter hearing at any time, if necessary.

**Section 3.** Eliminates most of the specific content requirements for the case plan as provided in ss. 39.601 and 39.602, F.S. In lieu of the detailed content requirements, the DCFS is directed to adopt rules governing the content and format of the case plans which must, at a minimum, comply with the requirements of Title IV-E of the Social Security Act, 42 U.S.C. 671 and 675. Referring to the chart comparing Florida requirements and federal requirements for case plans, the specific content requirements eliminated are those within ss. 39.601(2), 39.601(3) and 39.602, F.S.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

The bill provides additional employment and appointment opportunities for private sector attorneys.

### C. Government Sector Impact:

The Department of Children and Family Services and Office of State Courts Administrator both provided fiscal impact estimates for the Office of Counsel for Children based on the experience of the Attorney Ad Litem to date of \$2,358,067. Based on the initial costs estimates for the Attorney Ad Litem program, \$310,000 will provide legal representation to 150 children, which averages to \$2,066 per child. For the period of January through December 2000, the Office of State Courts Administrator's Summary Reporting System data indicates that in Broward County, 1,141 dependency petitions were filed. (1,141 multiplied by \$2,066 totaling \$2,358,067)

A major consideration in determining the fiscal impact is whether the extent to which the Office of Counsel for Children will assume the DCFS's legal functions. If both the Office and DCFS's current scope of legal services co-exist, the full level of projected costs would likely be required. If the Office assumes legal functions of the DCFS, the fiscal impact may be reduced. However, there are issues surrounding the ability of the Office to qualify for the federal funding. The analysis of the Department of Children and Families states:

Moreover, Chapter 45 Code of Federal Regulations (CFR) 1355.25, Principles of Child and Family Services, states that services are to be provided to the family as a whole. While the best interest of the child is of paramount concern, the entire family must be the focus of the services provided under Title IV-E and Part I of Title IV-B. The bill, as written, only provides legal counsel and protection to the child. Therefore, the Department would most likely need to retain its ongoing legal operations in full regardless of the sponsor's intent. This scenario would require that the Office replicate the Department's current legal staff with its associated costs.

The DCFS notes additional concerns related to funding:

The most recent federal policy announcement related to the allowable administrative costs for foster care programs under Title IV-E of the Social Security Act states that allowable costs are limited to "those costs related to preparation of reports to the court and participation in court proceedings by State or local title IV-E agency personnel." If the Office of Counsel for Children does not function as the state or as a Title IV-E agency, the costs incurred by the Office of the Counsel for Children would be ineligible for Title IV-E funding.

Finally, the departmental bill analysis notes:

If the bill were amended to require the Office of Counsel for Children to represent the interests of the state and the family as a whole, and if the Office of Counsel for Children, under contract with the Department, performed according to all federal laws and regulations, then federal funding may be available.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Regarding legal representation, there are three major policy questions that CS/SB 1290 poses before the legislature.

- What form or forms of legal representation is desired for children in the ch. 39, F.S. dependency process?
- What role should the Department of Children and Family Services' legal representation have in the dependency process?
- What party should be responsible for moving the children's cases through the ch. 39, F.S. dependency process?

**VIII. Amendments:**

Amendment #1 by Governmental Oversight and Productivity Committee:  
Eliminates intent language and eliminates creation of pilot project for Office of Counsel for Children.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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