

By Senator Campbell

33-352A-01

1 A bill to be entitled
2 An act relating to children; creating an Office
3 of Counsel for Children in the tenth regional
4 district of the Department of Children and
5 Family Services to represent the legal
6 interests of children in out-of-home care
7 pursuant to court order; providing an
8 administrative counsel for the office;
9 specifying qualifications; providing for
10 appointment by the Governor; providing duties
11 of the Office of Counsel for Children;
12 providing that a child may not waive the right
13 to counsel supplied by the office; providing
14 that the office is substituted for the
15 department in dependency cases when appointed
16 by the court; requiring a report to the
17 Legislature and the Governor; amending s.
18 39.013, F.S.; providing that time limitations
19 under ch. 39, F.S., do not include continuances
20 requested by any party; providing limitations
21 on continuances; amending s. 39.402, F.S.;
22 providing that time limitations governing
23 placement of a child in a shelter do not
24 include continuances requested by any party;
25 providing limitations on continuances; amending
26 s. 39.506, F.S.; eliminating the requirement
27 for a court's continued review of a child's
28 placement in a shelter; amending s. 39.601,
29 F.S.; modifying case-plan requirements;
30 requiring the department to adopt rules
31 governing the content and format of case plans;

1 amending s. 39.602, F.S.; eliminating certain
2 criteria in case plans when parents do not
3 participate and the child is in out-of-home
4 care; providing an effective date.
5

6 Be It Enacted by the Legislature of the State of Florida:
7

8 Section 1. (1) It is the intent of the Legislature
9 that children who are placed and maintained in out-of-home
10 care by court order under section 39.402, Florida Statutes,
11 receive cost-effective, competent representation of their
12 legal interests. It is further the intent of the Legislature
13 that providing for such representation be done in a manner
14 that promotes efficient and appropriate use of scarce judicial
15 resources; advances and appropriately balances the interests
16 of children in timely resolution of dependency litigation and
17 in family integrity and rehabilitation where appropriate; and
18 ensures prompt systematic response to any circumstance
19 adversely affecting the health, safety, and welfare of
20 children who are maintained in out-of-home care. The
21 Legislature recognizes that the legal interests of children
22 maintained in out-of-home care include at law, without
23 limitation, compliance with the objective criteria and
24 procedures established by law, the expeditious resolution of
25 dependency proceedings so that the child can remain or return
26 home or be placed in a safe, nurturing, and permanent
27 environment, and the use of the least restrictive or
28 detrimental alternatives available.

29 (2)(a) There is created an Office of Counsel for
30 Children in the tenth regional district of the Department of
31 Children and Family Services. The office shall be administered

1 by an administrative counsel, who shall oversee all
2 administrative needs of the office, hire and supervise staff
3 attorneys and support staff, and serve as an attorney for
4 clients of the office as time permits. The administrative
5 counsel must be, and must have been for the preceding 5 years,
6 a member in good standing of The Florida Bar or similar
7 organization in another state, and must have 5 or more years
8 of experience in the area of child advocacy, child welfare, or
9 juvenile law.

10 (b) The Governor shall appoint the administrative
11 counsel based upon an application process to be determined by
12 the Office of the Governor. The administrative counsel shall
13 be appointed for a term of 3 years and shall devote his or her
14 full business time and effort to the office. Vacancies shall
15 be filled in the same manner as appointments.

16 (c) The administrative counsel shall ensure that all
17 staff attorneys either have at the time of hiring, or acquire
18 through supplementary training conducted within a reasonable
19 period of time after hiring, sufficient knowledge regarding
20 the dynamics and needs of children, families, and foster
21 families in cases of child abuse, abandonment, and neglect to
22 perform the duties relating to legal representation of
23 dependent children. Relevant training may include programs or
24 materials developed under the requirements of chapter 39,
25 Florida Statutes, by the Department of Children and Family
26 Services, the Department of Education, the Department of
27 Health, and the Office of the State Courts Administrator.

28 (3)(a) Upon receipt of appointment pursuant to section
29 39.402, Florida Statutes, the administrative counsel shall
30 assign a staff attorney employed by the office to represent
31 the child's legal interests as set forth in chapter 39,

1 Florida Statutes. The office and the assigned attorney must in
2 all circumstances fulfill the same duties of advocacy,
3 loyalty, confidentiality, and competent representation as are
4 due an adult client under the Rules of Professional
5 Responsibility.

6 (b) The office shall represent the child until
7 discharged by order of the court because permanency has been
8 achieved or at such point by order of the court because
9 permanency has been achieved or at such point thereafter at
10 which the court believes that the child no longer needs
11 ongoing representation of his or her legal interests.
12 Notwithstanding such discharge, the office may be reassigned
13 by the court at a later time if necessary.

14 (c) The Office of Counsel for Children shall:

15 1. Represent the legal interests of the minor in all
16 proceedings under chapter 39, Florida Statutes, and any
17 appeals arising therefrom.

18 2. Conduct an independent investigation to obtain
19 first-hand understanding of the situation of the child and the
20 family to the extent necessary to discharge the duties under
21 this section.

22 3. Monitor the actions of the Department of Children
23 and Family Services which impact on the child's legal
24 interests, including, without limitation, efforts by the
25 department to explore and investigate placement options,
26 pursuit of alternatives to continued removal of the child,
27 development of the case plan, and provision of services to all
28 parties under the case plan.

29 4. Ensure that all relevant evidence bearing on
30 decisions as to the child's best interests are timely provided
31

1 to the court at appropriate stages of the proceedings, through
2 efforts that include:

3 a. Reviewing all relevant written records relative to
4 the child, including department, medical, educational, and
5 psychological records.

6 b. Conducting interviews, as appropriate and permitted
7 by law and the Rules of Professional Responsibility, with the
8 child's parents, foster parents, caseworkers, therapists,
9 counselors, school personnel, and mental health professionals,
10 and, if any injuries or abuse have occurred or are alleged,
11 reviewing photographs and available video or audio tape of
12 interviews with the minor.

13 c. Personally meeting with and interviewing the minor
14 as is appropriate given the psychosocial development of the
15 child to determine the minor's goals and concerns regarding
16 placement and permanency options and to monitor regularly the
17 appropriateness and safety of the child's placement.

18 5. Attend all court and administrative hearings and
19 file written petitions, motions, responses, reports,
20 objections, and any other litigation action necessary to
21 protect the legal interests of the child, including all
22 necessary efforts to enforce statutory time standards and
23 minimize the delay of proceedings, and as otherwise necessary
24 to safeguard the physical health, mental health, and welfare
25 of the child.

26 6. As appropriate, keep the minor advised of the
27 status of court proceedings, court actions, and proposals made
28 by other parties, as well as psychiatric, medical, or other
29 treatment or diagnostic services that are to be provided to
30 the minor.

31

1 7. Monitor all matters and actions by other parties
2 affecting the child's health, safety, and welfare in order to
3 inform the court promptly and seek court intervention as
4 needed. This shall include:

5 a. Monitoring matters influencing the implementation
6 of the child's treatment plan and compliance with any
7 disposition orders to determine whether services ordered by
8 the court are actually provided, provided in a timely manner,
9 and accomplishing their intended goal.

10 b. Monitoring timely and complete development and
11 implementation of all aspects of the case plan.

12 c. Monitoring compliance with court orders, including
13 orders that particular services be made available to the
14 child, to his or her family of origin, and to foster parents.

15 d. Monitoring whether the child's family takes
16 advantage of court-ordered services and whether those services
17 are achieving their intended purpose.

18 e. Monitoring for any violation of orders by the
19 parties, new developments, or other changes that justify
20 review of the case.

21 8. Participate in mediation and negotiating
22 settlements.

23 (4)(a) All privileges and confidentiality provided by
24 state law apply to records of the office, including the
25 attorney-client privilege, except when expressly provided by
26 law. All personnel, including attorneys, employees, and
27 volunteers, of the Office of Counsel for Children who come
28 into regular contact with children shall be subject to the
29 same requirements to which department contractors are
30 subjected under section 39.001(2), Florida Statutes.
31 Administration of the requirements must be performed by the

1 Office of Counsel for Children. The right to duly appointed
2 counsel of the Office of Counsel for Children may not be
3 waived by any child except pursuant to the Rules of
4 Professional Responsibility.

5 (b) Once counsel or the Office of Counsel for Children
6 has entered an appearance or been appointed by the court to
7 represent the child, the attorney or office shall continue to
8 represent the child throughout the proceedings. If the
9 attorney-client relationship is discontinued, the court shall
10 appoint appropriate new counsel for the remainder of the
11 proceedings.

12 (c) Upon being appointed by the court in a dependency
13 case, the Office of Counsel for Children is substituted for
14 the Department of Children and Family Services as the moving
15 party in the case.

16 (d) Appointment of the Office of Counsel for Children
17 does not eliminate the need for appointment of a guardian ad
18 litem pursuant to other provisions of law, including section
19 39.822, Florida Statutes.

20 (5) The Office of Counsel for Children shall identify
21 defined and measurable performance outcomes, including the
22 impact of counsel on child safety, improvements in the
23 provision of appropriate services, compliance with statutory
24 time standards, and any associated reduction in the length of
25 stay of children in state care. The office shall report
26 annually to the Legislature and the Governor regarding these
27 and other appropriate performance measures.

28 Section 2. Subsection (10) of section 39.013, Florida
29 Statutes, is amended to read:

30 39.013 Procedures and jurisdiction; right to
31 counsel.--

1 (10) The time limitations in this chapter do not
2 include:

3 (a) Periods of delay resulting from a continuance
4 granted at the request or with the consent of the child's
5 counsel or the child's guardian ad litem, if one has been
6 appointed by the court, or, if the child is of sufficient
7 capacity to express reasonable consent, at the request or with
8 the consent of the child.

9 (b) Periods of delay resulting from a continuance
10 granted at the request of any party ~~the attorney for the~~
11 ~~department or petitioner~~, if the continuance is granted:

12 1. Because of an unavailability of evidence material
13 to the case when the requesting party ~~attorney for the~~
14 ~~department or petitioner~~ has exercised due diligence to obtain
15 such evidence and there are substantial grounds to believe
16 that such evidence will be available within 30 days. However,
17 if the requesting party ~~department or petitioner~~ is not
18 prepared to proceed ~~present its case~~ within 30 days, the
19 parent may move for issuance of an order to show cause or the
20 court on its own motion may impose appropriate sanctions,
21 which may include dismissal of the petition.

22 2. To allow the attorney for the department or
23 petitioner additional time to prepare the case and additional
24 time is justified because of an exceptional circumstance.

25 (c) Reasonable periods of delay necessary to
26 accomplish notice of the hearing to the child's parents;
27 however, the petitioner shall continue regular efforts to
28 provide notice to the parents during such periods of delay.

29 (d) Reasonable periods of delay resulting from a
30 continuance granted at the request of the parent or legal
31 custodian of a subject child.

1 (e) Notwithstanding the foregoing, continuances and
2 extensions of time are limited to the number of days necessary
3 to complete a necessary task in order to preserve the rights
4 of a party or the best interests of a child. Time is of the
5 essence for the best interests of dependent children in
6 conducting dependency proceedings in accordance with the time
7 limitations established in this chapter. Time limitations are
8 a right of the child which may not be waived, extended, or
9 continued at the request of any party in advance of the
10 particular circumstances or need arising upon which delay of
11 the proceedings may be warranted.

12 (f) A party may not be granted more than 60 days in
13 continuances or extensions of time within any 12-month period
14 during dependency proceedings, except under extraordinary
15 circumstances necessary to preserve the constitutional rights
16 of a party or when substantial evidence demonstrates that the
17 child's best interests will be affirmatively harmed without
18 the granting of a continuance or extension of time. Any
19 continuance or extension of time granted under this subsection
20 must be limited to the number of days necessary under the
21 circumstances.

22 Section 3. Subsections (14) and (15) of section
23 39.402, Florida Statutes, are amended to read:

24 39.402 Placement in a shelter.--

25 (14) The time limitations in this section do not
26 include:

27 (a) Periods of delay resulting from a continuance
28 granted at the request or with the consent of the child's
29 counsel or the child's guardian ad litem, if one has been
30 appointed by the court, or, if the child is of sufficient
31 capacity to express reasonable consent, at the request or with

1 the consent of the child's attorney or the child's guardian ad
2 litem, if one has been appointed by the court, and the child.

3 (b) Periods of delay resulting from a continuance
4 granted at the request of any party ~~the attorney for the~~
5 ~~department~~, if the continuance is granted:

6 1. Because of an unavailability of evidence material
7 to the case when the requesting party ~~attorney for the~~
8 ~~department~~ has exercised due diligence to obtain such evidence
9 and there are substantial grounds to believe that such
10 evidence will be available within 30 days. However, if the
11 requesting party department is not prepared to proceed present
12 ~~its case~~ within 30 days, the parent or legal custodian may
13 move for issuance of an order to show cause or the court on
14 its own motion may impose appropriate sanctions, which may
15 include dismissal of the petition.

16 2. To allow the attorney for the department additional
17 time to prepare the case and additional time is justified
18 because of an exceptional circumstance.

19 (c) Reasonable periods of delay necessary to
20 accomplish notice of the hearing to the child's parents or
21 legal custodians; however, the petitioner shall continue
22 regular efforts to provide notice to the parents or legal
23 custodians during such periods of delay.

24 (d) Reasonable periods of delay resulting from a
25 continuance granted at the request of the parent or legal
26 custodian of a subject child.

27 (e) Notwithstanding the foregoing, continuances and
28 extensions of time are limited to the number of days
29 absolutely necessary to complete a necessary task in order to
30 preserve the rights of a party or the best interests of a
31 child. Time is of the essence for the best interests of

1 dependent children in conducting dependency proceedings in
2 accordance with the time limitations set forth in this
3 chapter. Time limitations are a right of the child which may
4 not be waived, extended, or continued at the request of any
5 party in advance of the particular circumstances or need
6 arising upon which delay of the proceedings may be warranted.

7 (f) A party may not be granted more than 60 days in
8 continuances or extensions of time within any 12-month period
9 during dependency proceedings except under extraordinary
10 circumstances necessary to preserve the constitutional rights
11 of a party or when substantial evidence demonstrates that the
12 child's best interests will be affirmatively harmed without
13 the granting of a continuance or extension of time. Any
14 continuance or extension of time granted under this subsection
15 must be strictly limited to the number of days necessary under
16 the circumstances.

17 (15) At the conclusion of a shelter hearing, the court
18 shall notify all parties in writing of the next scheduled
19 hearing to review the shelter placement. Such hearing shall be
20 held no later than 30 days after placement of the child in
21 shelter status, in conjunction with the arraignment hearing,
22 and at such times as otherwise provided by law or determined
23 by the court to be necessary ~~every 15 days thereafter until~~
24 ~~the child is released from shelter status.~~

25 Section 4. Subsection (8) of section 39.506, Florida
26 Statutes, is amended to read:

27 39.506 Arraignment hearings.--

28 (8) At the arraignment hearing, ~~and no more than every~~
29 ~~15 days thereafter until the child is returned home or a~~
30 ~~disposition hearing has been conducted,~~ the court shall review
31 the necessity for the child's continued placement in the

1 shelter. The court shall also make a written determination
2 regarding the child's continued placement in shelter within 24
3 hours after any violation of the time requirements for the
4 filing of a petition or prior to the court's granting any
5 continuance as specified in subsection (5).

6 Section 5. Subsections (2) and (3) of section 39.601,
7 Florida Statutes, are amended and subsection (11) is added to
8 that section to read:

9 39.601 Case plan requirements.--

10 (2) When the child or parent is receiving services,
11 the case plan shall be filed with the court, for approval by
12 the court, at least 72 hours prior to the disposition hearing.
13 The case plan must be served on all parties whose whereabouts
14 are known at least 72 hours prior to the disposition hearing.
15 ~~and must include, in addition to the requirements in~~
16 ~~subsection (1), at a minimum:~~

17 ~~(a) A description of the problem being addressed that~~
18 ~~includes the behavior or act of a parent resulting in risk to~~
19 ~~the child and the reason for the department's intervention.~~

20 ~~(b) A description of the tasks with which the parent~~
21 ~~must comply and the services to be provided to the parent and~~
22 ~~child specifically addressing the identified problem,~~
23 ~~including:~~

- 24 ~~1. Type of services or treatment.~~
- 25 ~~2. Frequency of services or treatment.<~~
- 26 ~~3. Location of the delivery of the services.~~
- 27 ~~4. The accountable department staff or service~~
28 ~~provider.~~

29 ~~(c) A description of the measurable objectives,~~
30 ~~including timeframes for achieving objectives, addressing the~~
31 ~~identified problem.~~

1 (3) When the child is receiving services in an
2 out-of-home placement, the case plan must be filed with the
3 court, for approval by the court, at least 72 hours prior to
4 the disposition hearing. The case plan must be served on all
5 parties whose whereabouts are known at least 72 hours prior to
6 the disposition hearing, ~~and must include, in addition to the~~
7 ~~requirements in subsections (1) and (2), at a minimum:~~

8 ~~(a) A description of the permanency goal for the~~
9 ~~child, including the type of placement. Reasonable efforts to~~
10 ~~place a child in a home that will serve as an adoptive~~
11 ~~placement if reunification is not successful, or with a legal~~
12 ~~custodian, may be made concurrently with reasonable efforts to~~
13 ~~prevent removal of the child from the home or make it possible~~
14 ~~for the child to return safely home.~~

15 ~~(b) A description of the type of home or institution~~
16 ~~in which the child is to be placed.~~

17 ~~(c) A description of the financial support obligation~~
18 ~~to the child, including health insurance, of the child's~~
19 ~~parents.~~

20 ~~(d) A description of the visitation rights and~~
21 ~~obligations of the parents during the period the child is in~~
22 ~~care.~~

23 ~~(e) A discussion of the safety and appropriateness of~~
24 ~~the child's placement, which placement is intended to be safe,~~
25 ~~the least restrictive and most family-like setting available~~
26 ~~consistent with the best interest and special needs of the~~
27 ~~child, and in as close proximity as possible to the child's~~
28 ~~home. The plan must also establish the role for the foster~~
29 ~~parents or legal custodians in the development of the services~~
30 ~~which are to be provided to the child, foster parents, or~~
31 ~~legal custodians. It must also address the child's need for~~

1 ~~services while under the jurisdiction of the court and~~
2 ~~implementation of these services in the case plan.~~

3 ~~(f) A description of the efforts to be undertaken to~~
4 ~~maintain the stability of the child's educational placement.~~

5 ~~(g) A discussion of the department's plans to carry~~
6 ~~out the judicial determination made by the court, with respect~~
7 ~~to the child, in accordance with this chapter and applicable~~
8 ~~federal regulations.~~

9 ~~(h) A description of the plan for assuring that~~
10 ~~services outlined in the case plan are provided to the child~~
11 ~~and the child's parent or parents, to improve the conditions~~
12 ~~in the home and facilitate either the safe return of the child~~
13 ~~to the home or the permanent placement of the child.~~

14 ~~(i) A description of the plan for assuring that~~
15 ~~services as outlined in the case plan are provided to the~~
16 ~~child, the child's parents, and the child's legal custodians,~~
17 ~~to address the needs of the child, and a discussion of the~~
18 ~~appropriateness of the services.~~

19 ~~(j) A description of the plan for assuring that~~
20 ~~services are provided to the child and the child's legal~~
21 ~~custodians or foster parents to address the needs of the child~~
22 ~~while in an out-of-home placement, which shall include an~~
23 ~~itemized list of costs to be borne by the parent associated~~
24 ~~with any services or treatment that the parent and child are~~
25 ~~expected to receive.~~

26 ~~(k) A written notice to the parent that failure of the~~
27 ~~parent to substantially comply with the case plan may result~~
28 ~~in the termination of parental rights, and that a material~~
29 ~~failure to substantially comply may result in the filing of a~~
30 ~~petition for termination of parental rights sooner than the~~
31 ~~compliance periods set forth in the case plan itself. The case~~

1 ~~staffing committee shall coordinate its efforts with the child~~
2 ~~protection team of the Department of Health.~~

3 ~~(1) In the case of a child for whom the permanency~~
4 ~~plan is adoption or placement in another permanent home,~~
5 ~~documentation of the steps the agency is taking to find an~~
6 ~~adoptive family or other permanent living arrangement for the~~
7 ~~child, to place the child with an adoptive family, with a fit~~
8 ~~and willing relative, with a legal custodian, or in another~~
9 ~~planned permanent living arrangement, and to finalize the~~
10 ~~adoption, legal guardianship, or long-term custodial~~
11 ~~relationship. At a minimum, such documentation shall include~~
12 ~~child-specific recruitment efforts such as the use of state,~~
13 ~~regional, and national adoption exchanges, including~~
14 ~~electronic exchange systems.~~

15 (11) The department shall adopt rules governing the
16 content and format of case plans and establishing procedures
17 for developing, implementing, and changing the case plans. The
18 plans at a minimum must comply with the requirements of Title
19 IV-E of the Social Security Act, 42 U.S.C. 671 (1980), as
20 amended.

21 Section 6. Section 39.602, Florida Statutes, is
22 amended to read:

23 39.602 Case planning when parents do not participate
24 and the child is in out-of-home care.--

25 (1) In the event the parents will not or cannot
26 participate in preparation of a case plan, the department
27 shall submit a full explanation of the circumstances and state
28 the nature of its efforts to secure such persons'
29 participation in the preparation of a case plan.

30 (2) In a case in which the physical, emotional, or
31 mental condition or physical location of the parent is the

1 basis for the parent's nonparticipation, it is the burden of
2 the department to provide substantial evidence to the court
3 that such condition or location has rendered the parent unable
4 or unwilling to participate in the preparation of a case plan,
5 either pro se or through counsel. The supporting documentation
6 must be submitted to the court at the time the plan is filed.

7 ~~(3) The plan must include, but need not be limited to,~~
8 ~~the specific services to be provided by the department, the~~
9 ~~goals and plans for the child, and the time for accomplishing~~
10 ~~the provisions of the plan and for accomplishing permanence~~
11 ~~for the child.~~

12 (3)(a)~~(4)(a)~~ At least 72 hours prior to the hearing in
13 which the court will consider approval of the case plan, all
14 parties must be provided with a copy of the plan developed by
15 the department. If the location of one or both parents is
16 unknown, this must be documented in writing and included in
17 the plan submitted to the court. After the filing of the
18 plan, if the location of an absent parent becomes known, that
19 parent must be served with a copy of the plan.

20 (b) Before the filing of the plan, the department
21 shall advise each parent, both orally and in writing, that the
22 failure of the parents to substantially comply with a plan may
23 result in the termination of parental rights, but only after
24 notice and hearing as provided in this chapter. If, after the
25 plan has been submitted to the court, an absent parent is
26 located, the department shall advise the parent, both orally
27 and in writing, that the failure of the parents to
28 substantially comply with a plan may result in termination of
29 parental rights, but only after notice and hearing as provided
30 in this chapter. Proof of written notification must be filed
31 with the court.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Section 7. This act shall take effect July 1, 2001.

SENATE SUMMARY

Creates an Office of Counsel for Children in the tenth regional district of the Department of Children and Family Services to represent the legal interests of children in out-of-home care. Amends various sections of ch. 39, F.S., relating to procedures for out-of-home placement of a child. Provides that the provisions of ch. 39, F.S., relating to time limitations do not include continuances requested by any party. Specifies additional limitations. Deletes a requirement for a court's continued review of a child's placement in a shelter. Modifies case-plan requirements. Requires the department to adopt rules governing case plans. Eliminates certain criteria in case plans when parents do not participate and the child is in out-of-home care.