

By Senator Cowin

11-102A-01

1                                   A bill to be entitled  
2           An act relating to child welfare; amending s.  
3           39.301, F.S.; providing a procedure under which  
4           a child may be temporarily removed from his or  
5           her home while injunctive relief is sought;  
6           providing requirements for a safety plan;  
7           specifying circumstances under which a child  
8           must be taken into protective custody while  
9           injunctive relief is sought; amending s.  
10          39.4086, F.S.; expanding the program for  
11          attorneys ad litem for dependent children from  
12          a pilot program within a specified judicial  
13          circuit into a program in additional circuits;  
14          requiring that the Office of the State Courts  
15          Administrator administer the program or  
16          contract with a public or private entity to  
17          administer the program; providing for an  
18          attorney to be appointed within the judicial  
19          circuits to oversee the program; requiring the  
20          Office of the State Courts Administrator to  
21          develop a training program for attorneys ad  
22          litem; providing procedures for the court to  
23          appoint an attorney ad litem under the program;  
24          requiring that the Office of the State Courts  
25          Administrator evaluate the program and report  
26          to the Legislature and the Governor; requesting  
27          the State Supreme Court to adopt rules  
28          governing the duties of attorneys ad litem;  
29          amending s. 402.731, F.S.; requiring that the  
30          Department of Children and Family Services  
31          develop criteria for certifying employees and

1 agents who conduct investigations involving  
2 certain children who receive services from the  
3 department or its service providers; providing  
4 an effective date.

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

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8 Section 1. Subsection (12) of section 39.301, Florida  
9 Statutes, is amended to read:

10 39.301 Initiation of protective investigations.--

11 (12) If the child protective investigator determines  
12 that the child can be maintained safely in the child's own  
13 home only after injunctive relief has been granted pursuant to  
14 s. 39.504, the investigator must file a request for injunction  
15 and shall determine whether a parent or legal custodian is  
16 available, willing, and capable of removing the child from the  
17 home temporarily while the injunctive relief is sought.

18 (a) If a parent or legal custodian is available,  
19 willing, and capable of removing the child from the home  
20 temporarily while injunctive relief is sought and the parent  
21 or legal custodian provides the child protective investigator  
22 with a safety plan developed with the assistance of the child  
23 protective investigator, the child shall be left in the  
24 custody of the parent or legal custodian as long as the safety  
25 plan is followed. In cases in which domestic violence is  
26 occurring in the household, the protective investigator shall  
27 request assistance from the local certified domestic violence  
28 center in developing the safety plan.

29 (b) If a parent or legal custodian is not available,  
30 willing, and capable of removing the child from the home  
31 temporarily while injunctive relief is sought, if the parent

1 or legal custodian is unable or unwilling to provide the child  
2 protective investigator with a safety plan, if the child  
3 protective investigator is unwilling to approve the safety  
4 plan provided by the parent or legal custodian, or if the  
5 parent or legal custodian fails to follow the approved safety  
6 plan, the child shall be taken into protective custody while  
7 injunctive relief is sought pursuant to s. 39.504.

8 (c)~~(a)~~ If the department or its agent determines that  
9 a child requires immediate or long-term protection through:

- 10 1. Medical or other health care; or  
11 2. Homemaker care, day care, protective supervision,  
12 or other services to stabilize the home environment, including  
13 intensive family preservation services through the Family  
14 Builders Program or the Intensive Crisis Counseling Program,  
15 or both,

16  
17 such services must ~~shall~~ first be offered for voluntary  
18 acceptance unless there are high-risk factors that may impact  
19 the ability of the parents or legal custodians to exercise  
20 judgment. Such factors may include the parents' or legal  
21 custodians' young age or history of substance abuse or  
22 domestic violence.

23 (d)~~(b)~~ The parents or legal custodians shall be  
24 informed of the right to refuse services, as well as the  
25 responsibility of the department to protect the child  
26 regardless of the acceptance or refusal of services. If the  
27 services are refused and the department deems that the child's  
28 need for protection so requires, the department shall take the  
29 child into protective custody or petition the court as  
30 provided in this chapter.

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1           (e)~~(c)~~ The department, in consultation with the  
2 judiciary, shall adopt by rule criteria that are factors  
3 requiring that the department take the child into custody,  
4 petition the court as provided in this chapter, or, if the  
5 child is not taken into custody or a petition is not filed  
6 with the court, conduct an administrative review. If after an  
7 administrative review the department determines not to take  
8 the child into custody or petition the court, the department  
9 shall document the reason for its decision in writing and  
10 include it in the investigative file. For all cases that were  
11 accepted by the local law enforcement agency for criminal  
12 investigation pursuant to subsection (2), the department must  
13 include in the file written documentation that the  
14 administrative review included input from law enforcement. In  
15 addition, for all cases that must be referred to child  
16 protection teams pursuant to s. 39.303(2) and (3), the file  
17 must include written documentation that the administrative  
18 review included the results of the team's evaluation. Factors  
19 that must be included in the development of the rule include  
20 noncompliance with the case plan developed by the department,  
21 or its agent, and the family under this chapter and prior  
22 abuse reports with findings that involve the child or  
23 caregiver.

24           Section 2. Section 39.4086, Florida Statutes, is  
25 amended to read:

26           39.4086 ~~Pilot program for~~ Attorneys ad litem for  
27 dependent children.--

28           (1) LEGISLATIVE INTENT.--In furtherance of the goals  
29 set forth in s. 39.4085, it is the intent of the Legislature  
30 that children who are maintained in out-of-home care by court  
31 order under s. 39.402 receive competent legal representation.

1           (2) RESPONSIBILITIES.--

2           (a) The Office of the State Courts Administrator shall  
3 establish an ~~a 3-year pilot~~ Attorney Ad Litem Program in the  
4 Fifth, Ninth, Tenth, and Seventeenth Judicial Circuits  
5 Circuit.

6           (b) The Office of the State Courts Administrator shall  
7 administer ~~establish~~ the ~~pilot~~ program or ~~in the Ninth~~  
8 ~~Judicial Circuit by October 1, 2000. The Ninth Judicial~~  
9 ~~Circuit may~~ contract with a private or public entity ~~in the~~  
10 ~~Ninth Judicial Circuit~~ to administer ~~establish~~ the ~~pilot~~  
11 program. The private or public entity must have appropriate  
12 expertise in representing the rights of children taken into  
13 custody by the Department of Children and Family Services. The  
14 Office of the State Courts Administrator shall identify  
15 measurable outcomes, including, but not limited to, the impact  
16 of counsel on child safety, improvements in the provision of  
17 appropriate services, and any reduction in the length of stay  
18 of children in state care. The ~~pilot~~ program shall be  
19 established and operate independently of any other state  
20 agency responsible for the care of children taken into  
21 custody.

22           (c) The Office of the State Courts Administrator ~~Ninth~~  
23 ~~Judicial Circuit~~ shall designate an attorney within each ~~the~~  
24 ~~Ninth~~ judicial circuit specified in paragraph (a) to conduct  
25 the administrative oversight of the ~~pilot~~ program within the  
26 circuit. The program administrator must be a member in good  
27 standing of The Florida Bar and must have 5 or more years of  
28 experience in the area of child advocacy, child welfare, or  
29 juvenile law. ~~The administrative oversight of the pilot~~  
30 ~~program is subject to supervision by the Ninth Judicial~~  
31 ~~Circuit~~.

1           (d) The Office of the State Courts Administrator ~~in~~  
2 ~~conjunction with the pilot program~~ shall develop a training  
3 program for attorneys ad litem which includes, but need not be  
4 limited to, appropriate standards of practice for attorneys  
5 who represent children.

6           (e) Within funds specifically appropriated for this  
7 ~~pilot program~~, the Office of the State Courts Administrator ~~in~~  
8 ~~conjunction with the pilot program~~ shall design an appropriate  
9 attorney ad litem program, and may establish the number of  
10 attorneys needed to serve as attorneys ad litem, and may  
11 employ attorneys and other personnel. An attorney ad litem  
12 must be a member in good standing of The Florida Bar and may  
13 not serve as an attorney ad litem until he or she has  
14 completed the training program.

15           (f) The court shall appoint the entity responsible for  
16 representation of children in the Fifth, Ninth, Tenth, and  
17 Seventeenth Judicial Circuits ~~Circuit~~ under the ~~pilot~~ program  
18 who are continued in out-of-home care at the shelter hearing  
19 conducted under s. 39.402 if the court deems attorney ad litem  
20 representation necessary. At any time following the shelter  
21 hearing, the court may appoint an attorney ad litem upon the  
22 motion of any party, or upon the court's own motion if an  
23 attorney ad litem has not yet been appointed and the court  
24 deems such representation necessary. The attorney ad litem's  
25 representation shall be limited to proceedings initiated under  
26 this chapter only. The court must appoint a guardian ad litem  
27 pursuant to s. 39.822 for all children who have been appointed  
28 an attorney ad litem. Upon this action by the court, the  
29 department shall provide to the administrator, at a minimum,  
30 the name of the child, the location and placement of the  
31 child, the name of the department's authorized agent and

1 contact information, copies of all notices sent to the parent  
2 or legal custodian of the child, and other information or  
3 records concerning the child.

4 (g) Upon the court's direction, the ~~pilot~~ program  
5 administrator shall assign an attorney ad litem to represent  
6 the child. Once assigned, the attorney ad litem shall  
7 represent the child's wishes for purposes of proceedings under  
8 this chapter as long as the child's wishes are consistent with  
9 the safety and well-being of the child. The child's attorney  
10 must in all circumstances fulfill the same duties of advocacy,  
11 loyalty, confidentiality, and competent representation which  
12 are due an adult client. The court must approve any action by  
13 the attorney ad litem restricting access to the child by the  
14 guardian ad litem or by any other party. The attorney ad litem  
15 shall represent the child until the program is discharged by  
16 order of the court because permanency has been achieved or the  
17 court believes that the attorney ad litem is no longer  
18 necessary.

19 (h) The Office of the State Courts Administrator shall  
20 conduct research and gather statistical information to  
21 evaluate the establishment, operation, and impact of the ~~pilot~~  
22 program in meeting the legal needs of dependent children. In  
23 assessing the effects of the ~~pilot~~ program, including  
24 achievement of outcomes identified under paragraph (b), the  
25 evaluation must include a comparison of children ~~within the~~  
26 ~~Ninth Judicial Circuit~~ who are appointed an attorney ad litem  
27 with those who are not. The office shall submit a report to  
28 the Legislature and the Governor ~~by October 1, 2001, and by~~  
29 ~~October 1, 2002, regarding its findings. The office shall~~  
30 ~~submit a final report by October 1, 2003, which must include~~  
31 ~~an evaluation of the pilot program; findings on the~~

1 ~~feasibility of a statewide program; and recommendations, if~~  
2 ~~any, for locating, establishing, and operating a statewide~~  
3 ~~program.~~

4 (3) ~~STANDARDS.--The Supreme Court is requested, by~~  
5 ~~October 1, 2000,~~to adopt rules of juvenile procedure which  
6 govern ~~include~~ the duties, responsibilities, and conduct of an  
7 attorney ad litem. The Office of the State Courts  
8 Administrator, in consultation with the Dependency Court  
9 Improvement Committee of the Supreme Court, shall develop  
10 implementation guidelines for the attorney ad litem ~~pilot~~  
11 program.

12 (4) ~~FUNDING.--The sums of \$1,040,111 in recurring~~  
13 ~~funds and \$48,674 in nonrecurring funds are appropriated from~~  
14 ~~the General Revenue Fund and two full-time equivalent~~  
15 ~~positions are authorized for Court Operations--Circuit Courts~~  
16 ~~in the State Court System to operate the attorney ad litem~~  
17 ~~pilot program in the Ninth Judicial Circuit and provide~~  
18 ~~adequate guardian ad litem representation that is in the best~~  
19 ~~interests of all children involved in the pilot program. The~~  
20 ~~sum of \$696,798 in recurring funds is appropriated from the~~  
21 ~~General Revenue Fund, and 14 full-time equivalent positions~~  
22 ~~are authorized, for the circuit court budget to ensure best~~  
23 ~~interests representation by the Guardian Ad Litem Program as~~  
24 ~~part of the pilot program. The sum of \$75,000 in nonrecurring~~  
25 ~~funds is appropriated from the General Revenue Fund to the~~  
26 ~~Supreme Court for the Office of the State Courts Administrator~~  
27 ~~for the purpose of evaluating the pilot program.~~

28 (5) ~~The provisions in this section of the act shall~~  
29 ~~take effect October 1, 2000.~~

30 Section 3. Subsection (1) of section 402.731, Florida  
31 Statutes, is amended to read:



1           402.731 Department of Children and Family Services  
2 certification programs for employees and service providers;  
3 employment provisions for transition to community-based  
4 care.--

5           (1) The Department of Children and Family Services is  
6 authorized to create certification programs for its employees  
7 and service providers to ensure that only qualified employees  
8 and service providers provide client services. The department  
9 shall develop specific criteria for certifying employees and  
10 agents who conduct investigations that involve children who  
11 have developmental disabilities, emotional disturbances, or  
12 chronic medical conditions and that involve children who  
13 reside in residential treatment facilities.The department is  
14 authorized to develop rules that include qualifications for  
15 certification, including training and testing requirements,  
16 continuing education requirements for ongoing certification,  
17 and decertification procedures to be used to determine when an  
18 individual no longer meets the qualifications for  
19 certification and to implement the decertification of an  
20 employee or agent.

21           Section 4. This act shall take effect July 1, 2001.  
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SENATE SUMMARY

Provides for temporarily removing a child from his or her home while injunctive relief is sought from the court. Requires that the child be taken into protective custody while injunctive relief is sought if specified conditions cannot be met. Expands the pilot program for attorneys ad litem for dependent children into the Fifth, Ninth, Tenth, and Seventeenth Judicial Circuits. Requires that the Office of the State Courts Administrator administer the program or contract for the administration of the program. Requires a training program for the attorneys ad litem. Provides for program evaluation. Requires that the Office of the State Courts Administrator report to the Legislature and the Governor. Requires that the Department of Children and Family Services develop criteria for certifying employees and agents who investigate the services provided to certain children by the department or its service providers. (See bill for details.)