

By Senator Campbell

33-133-02

1                                   A bill to be entitled  
2           An act relating to children; creating as a  
3           pilot program an Office of Counsel for Children  
4           in the tenth regional district of the  
5           Department of Children and Family Services to  
6           represent the legal interests of children in  
7           out-of-home care pursuant to court order;  
8           providing an administrative counsel for the  
9           office; specifying qualifications; placing the  
10          office in the Department of Legal Affairs for  
11          budget purposes; requiring the court to appoint  
12          the office to represent the legal interests of  
13          the child continued in out-of-home care;  
14          providing for appointment by the Governor;  
15          providing duties of the Office of Counsel for  
16          Children; providing that a child may not waive  
17          the right to counsel supplied by the office;  
18          providing that the office is substituted for  
19          the department in dependency cases when  
20          appointed by the court; requiring a report to  
21          the Legislature and the Governor; requiring the  
22          office to conduct an evaluation of the pilot  
23          program with a report to the Legislature and  
24          Governor; providing for the expiration of the  
25          pilot program; providing an effective date.

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

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29           Section 1. (1) It is the intent of the Legislature  
30 that children who are placed and maintained in out-of-home  
31 care by court order under section 39.402, Florida Statutes,

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

19 (2)(a) There is created as a pilot program an Office  
20 of Counsel for Children in the tenth regional district of the  
21 Department of Children and Family Services. The office shall  
22 be administered by an administrative counsel, who shall  
23 oversee all administrative needs of the office, hire and  
24 supervise staff attorneys and support staff, and serve as an  
25 attorney for clients of the office as time permits. The  
26 administrative counsel must be, and must have been for the  
27 preceding 5 years, a member in good standing of The Florida  
28 Bar or similar organization in another state, and must have 5  
29 or more years of experience in the area of child advocacy,  
30 child welfare, or juvenile law.

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

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

19           (d) The Office of Counsel for Children is assigned to  
20 the Department of Legal Affairs for budget purposes only. The  
21 administrative counsel for the Office of Counsel for Children  
22 shall annually prepare a budget request that is not to be  
23 changed by the Department of Legal Affairs but shall be  
24 transmitted to the Governor for transmittal to the  
25 Legislature. The Office of Counsel for Children is not subject  
26 to control, supervision, or direction by the Department of  
27 Legal Affairs in the performance of its duties.

28           (3)(a) When a court determines at a shelter hearing  
29 held pursuant to section 39.402, Florida Statutes, that a  
30 child shall be continued in out-of-home care, the court shall  
31 appoint the Office of Counsel for Children to represent the

1 legal interests of the child and order that office substituted  
2 as the petitioner. The Counsel for Children's representation  
3 shall be limited to proceedings initiated under this chapter  
4 only and any appeals associated with the proceedings. Upon  
5 appointment of the office by the court, the Department of  
6 Children and Family Services shall provide to the Office of  
7 Counsel for Children, at a minimum, the name of the child, the  
8 location and placement of the child, the name of the  
9 department's authorized agent and contact information, copies  
10 of all notices sent to the parent or legal custodian of the  
11 child, and other information and records concerning the child.  
12 Upon receipt of appointment, the administrative counsel shall  
13 assign a staff attorney employed by the office to represent  
14 the child's legal interests as set forth in chapter 39,  
15 Florida Statutes. The office and the assigned attorney must in  
16 all circumstances fulfill the same duties of advocacy,  
17 loyalty, confidentiality, and competent representation as are  
18 due an adult client under the Rules of Professional  
19 Responsibility.

20 (b) The office shall represent the child until  
21 discharged by order of the court because permanency has been  
22 achieved or whenever the court believes that the child no  
23 longer needs ongoing representation of his or her legal  
24 interests. Notwithstanding such discharge, the office may be  
25 reassigned by the court at a later time if necessary.

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

27 1. Represent the legal interests of the minor in all  
28 proceedings under chapter 39, Florida Statutes, and any  
29 appeals arising therefrom.

30 2. Conduct an independent investigation to obtain  
31 first-hand understanding of the situation of the child and the

1 family to the extent necessary to discharge the duties under  
2 this section.

3 3. Monitor the actions of the Department of Children  
4 and Family Services which impact on the child's legal  
5 interests, including, without limitation, efforts by the  
6 department to explore and investigate placement options,  
7 pursuit of alternatives to continued removal of the child,  
8 development of the case plan, and provision of services to all  
9 parties under the case plan.

10 4. Ensure that all relevant evidence bearing on  
11 decisions as to the child's best interests are timely provided  
12 to the court at appropriate stages of the proceedings, through  
13 efforts that include:

14 a. Reviewing all relevant written records relative to  
15 the child, including department, medical, educational, and  
16 psychological records.

17 b. Conducting interviews, as appropriate and permitted  
18 by law and the Rules of Professional Responsibility, with the  
19 child's parents, foster parents, caseworkers, therapists,  
20 counselors, school personnel, and mental health professionals,  
21 and, if any injuries or abuse have occurred or are alleged,  
22 reviewing photographs and available video or audio tape of  
23 interviews with the minor.

24 c. Personally meeting with and interviewing the minor  
25 as is appropriate given the psychosocial development of the  
26 child to determine the minor's goals and concerns regarding  
27 placement and permanency options and to monitor regularly the  
28 appropriateness and safety of the child's placement.

29 5. Attend all court and administrative hearings and  
30 file written petitions, motions, responses, reports,  
31 objections, and any other litigation action necessary to

1 protect the legal interests of the child, including all  
2 necessary efforts to enforce statutory time standards and  
3 minimize the delay of proceedings, and as otherwise necessary  
4 to safeguard the physical health, mental health, and welfare  
5 of the child.

6 6. As appropriate, keep the minor advised of the  
7 status of court proceedings, court actions, and proposals made  
8 by other parties, as well as psychiatric, medical, or other  
9 treatment or diagnostic services that are to be provided to  
10 the minor.

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

15 a. Monitoring matters influencing the implementation  
16 of the child's treatment plan and compliance with any  
17 disposition orders to determine whether services ordered by  
18 the court are actually provided, provided in a timely manner,  
19 and accomplishing their intended goal.

20 b. Monitoring timely and complete development and  
21 implementation of all aspects of the case plan.

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

25 d. Monitoring whether the child's family takes  
26 advantage of court-ordered services and whether those services  
27 are achieving their intended purpose.

28 e. Monitoring for any violation of orders by the  
29 parties, new developments, or other changes that justify  
30 review of the case.

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1           8. Participate in mediation and negotiating  
2 settlements.

3           (4)(a) All privileges provided by Florida Statutes  
4 applicable to legal representation shall apply to the Office  
5 of Counsel for Children. All personnel, including attorneys,  
6 employees, and volunteers, of the Office of Counsel for  
7 Children who come into regular contact with children shall be  
8 subject to the same requirements to which department  
9 contractors are subjected under section 39.001(2), Florida  
10 Statutes. Administration of the requirements must be performed  
11 by the Office of Counsel for Children. The right to duly  
12 appointed counsel of the Office of Counsel for Children may  
13 not be waived by any child except pursuant to the Rules of  
14 Professional Responsibility.

15           (b) Once counsel or the Office of Counsel for Children  
16 has entered an appearance or been appointed by the court to  
17 represent the child, the attorney or office shall continue to  
18 represent the child throughout the proceedings. If the  
19 attorney-client relationship is discontinued, the court shall  
20 appoint appropriate new counsel for the remainder of the  
21 proceedings.

22           (c) Upon being appointed by the court in a dependency  
23 case, the Office of Counsel for Children is substituted for  
24 the Department of Children and Family Services as the moving  
25 party in the case. The department shall thereafter continue to  
26 perform such other duties and functions assigned to it by law  
27 as if it were still the petitioner, except for those duties  
28 and functions that are expressly assigned to the Office of  
29 Counsel for Children under this section.

30           (d) Appointment of the Office of Counsel for Children  
31 does not eliminate the need for appointment of a guardian ad

1 litem pursuant to other provisions of law, including section  
2 39.822, Florida Statutes.

3 (5) The Office of Counsel for Children shall identify  
4 defined and measurable performance outcomes, including the  
5 impact of counsel on child safety, improvements in the  
6 provision of appropriate services, compliance with statutory  
7 time standards, and any associated reduction in the length of  
8 stay of children in state care. The office shall report  
9 annually to the Legislature and the Governor regarding these  
10 and other appropriate performance measures. For the purposes  
11 of the pilot program, the Office of State Courts Administrator  
12 shall conduct an evaluation of the establishment, operation,  
13 and impact of the pilot program in meeting the legal needs of  
14 dependent children. The Office of State Courts Administrator  
15 shall submit a preliminary report to the Legislature and  
16 Governor by October 1, 2003, and a final report by October 1,  
17 2004, which must include an evaluation of the pilot program,  
18 findings on the feasibility of a statewide program, and  
19 recommendations, if any, for locating, establishing, and  
20 operating a statewide program.

21 (6) The Office of Counsel for Children pilot program  
22 expires June 30, 2005, unless continued by action of the  
23 Legislature.

24 Section 2. This act shall take effect July 1, 2002.  
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SENATE SUMMARY

Creates as a pilot program 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 pursuant to court order. Provides an administrative counsel for the office. Places the office in the Department of Legal Affairs for budget purposes. Provides duties of the office and for appointment by the court. Prohibits a child from waiving right to counsel supplied by the office. Requires an evaluation of the program and a report to the Governor and Legislature. Provides for expiration of the pilot program.