

By the Committee on Judiciary; and Senator Burt

308-658A-02

1 A bill to be entitled
2 An act relating to legal proceedings involving
3 minor children; amending s. 25.388, F.S.;
4 including the circuit offices of public
5 advocacy as recipients of moneys from the
6 Family Courts Trust Funds; amending s. 27.51,
7 F.S.; deleting the requirement that the public
8 defender provide representation for an alleged
9 delinquent child; creating the Office of Public
10 Advocacy within the Justice Administrative
11 Commission; requiring the office to establish
12 standards for the representation of children;
13 requiring an annual report to the Legislature;
14 requiring the Office of Public Advocacy to
15 establish an office of public advocacy in each
16 judicial circuit; authorizing the circuit
17 offices of public advocacy to provide and
18 coordinate the provision of legal services for
19 children when private representation is
20 unavailable; requiring the offices to provide
21 representation for children in dependency or
22 delinquency proceedings; providing for
23 appointing a guardian ad litem and an attorney
24 to represent the guardian at litem; requiring
25 the Office of Public Advocacy to establish a
26 nonprofit organization to assist in funding the
27 services provided to children; amending s.
28 39.001, F.S.; requiring the Office of Public
29 Advocacy to participate in revising the
30 statewide plan to prevent abuse, abandonment,
31 and neglect of children; requiring that the

1 circuit offices of public advocacy participate
2 in revising local plans; amending s. 39.01,
3 F.S.; redefining the term "party" to include,
4 under certain circumstances, a guardian ad
5 litem; providing for notice to a party through
6 counsel; providing for excusing a child from
7 appearing in court; amending s. 39.202, F.S.;
8 authorizing access to records by the guardian
9 ad litem and legal counsel; amending s. 39.305,
10 F.S.; providing for the Office of Public
11 Advocacy to participate in developing the model
12 plan for intervention and treatment in certain
13 sexual-abuse cases; amending s. 39.402, F.S.;
14 providing for notice of and representation for
15 a child at a shelter hearing; providing for
16 continuance of the hearing in order for the
17 child to obtain representation; amending s.
18 39.407, F.S.; authorizing legal counsel to
19 represent a child placed in residential
20 treatment; requiring that notice and
21 information regarding the child's treatment be
22 provided to the child's guardian ad litem and
23 legal counsel; amending s. 39.4085, F.S.;
24 requiring that the child, the guardian ad
25 litem, or legal counsel participate in
26 developing a case plan; providing for the right
27 of a child to be heard at all review hearings;
28 providing for appointment of a guardian ad
29 litem or legal counsel; repealing s. 39.4086,
30 F.S., relating to a pilot program for
31 appointing attorneys ad litem for dependent

1 children; amending s. 39.502, F.S.; providing
2 for notice and service of process on legal
3 counsel; amending s. 39.504, F.S.; authorizing
4 the child's guardian ad litem or attorney to
5 file for an injunction to prevent child abuse
6 or an unlawful sexual offense; amending s.
7 39.505, F.S.; specifying that the guardian ad
8 litem need not file an answer to a petition or
9 pleading; amending s. 39.510, F.S.; authorizing
10 the representative of a party to appeal a court
11 order; amending s. 39.521, F.S.; requiring that
12 a case plan and certain reports be provided to
13 specified parties; limiting discharge of a
14 guardian ad litem or legal counsel unless other
15 representation is provided to a child; amending
16 s. 39.701, F.S.; authorizing the court to
17 dismiss a child from a judicial review hearing;
18 requiring that notice be provided to the child
19 and legal counsel; requiring service of reports
20 on specified parties; authorizing the court to
21 determine whether a child's placement is
22 appropriate; amending s. 39.801, F.S.;
23 requiring that notice of a petition be served
24 on a child and legal counsel; exempting a
25 child's legal counsel from payment of fees for
26 service of process or other papers; amending s.
27 39.802, F.S.; providing for a child or a
28 child's legal counsel to file a petition for
29 termination of parental rights; amending s.
30 39.805, F.S.; providing that a guardian ad
31 litem need not file an answer; amending s.

1 39.806, F.S.; providing requirements for a
2 child or legal counsel in filing a petition for
3 termination of parental rights; amending s.
4 39.807, F.S.; providing requirements for the
5 representation provided to a child by the
6 guardian ad litem or legal counsel; amending s.
7 39.808, F.S.; providing for appointment of
8 legal counsel following a petition to terminate
9 parental rights; amending s. 39.810, F.S.;
10 providing for the court to consider the
11 expressed interest of the child in a hearing on
12 a petition to terminate parental rights;
13 amending s. 39.811, F.S.; requiring that the
14 court consider information provided by the
15 child or the guardian ad litem in determining
16 whether to retain jurisdiction over a dependent
17 child; amending s. 39.820, F.S.; amending the
18 definition of the term "guardian ad litem" to
19 eliminate references to the guardian ad litem
20 program; amending s. 39.821, F.S.; providing
21 qualifications for guardians ad litem and staff
22 members of the Office of Public Advocacy or a
23 circuit office of public advocacy; amending s.
24 39.822, F.S.; requiring the certification of
25 guardians ad litem; creating s. 39.8225, F.S.;
26 providing powers and duties of a guardian ad
27 litem; requiring that a guardian ad litem
28 represent the child's best interest; requiring
29 that a guardian ad litem investigate
30 allegations in a pleading filed pursuant to
31 family law rules of procedure or juvenile rules

1 of procedure; providing requirements for
2 conducting an investigation; requiring that the
3 guardian ad litem and attorney consult with the
4 child; requiring a report; providing for
5 attorney review of the report and presentation
6 to the court; providing an attorney-client
7 privilege for the guardian ad litem and the
8 child; authorizing the guardian ad litem to
9 petition the court to issue orders; providing
10 for notice of written reports to all parties;
11 requiring that the guardian ad litem file
12 certain pleadings through counsel; creating s.
13 39.8226, F.S.; providing for appointment of
14 legal counsel for a child; requiring such
15 appointment in a delinquency proceeding;
16 requiring that the court determine capacity of
17 a child before appointing legal counsel in
18 other proceedings; providing for appointment of
19 legal counsel when the circuit office of public
20 advocacy is providing representation;
21 authorizing the circuit office of public
22 advocacy to petition for appointment of
23 counsel; amending s. 40.24, F.S.; providing for
24 payment for jurors to be used to fund the
25 circuit offices of public advocacy; amending
26 ss. 48.041, 48.042, F.S.; providing for service
27 of process on a minor child's attorney of
28 record; amending s. 61.401, F.S.; providing for
29 appointment of guardian ad litem or legal
30 counsel in specified actions; repealing ss.
31 61.402, 61.403, F.S., relating to

1 qualifications of a guardian ad litem and the
2 powers and duties of a guardian ad litem;
3 amending s. 61.404, F.S., relating to the
4 confidentiality of guardians ad litem;
5 conforming a cross-reference to changes made by
6 the act; amending s. 63.0423, F.S.; providing
7 for a guardian ad litem to be a party to an
8 action; amending s. 63.0427, F.S.; requiring
9 that the court consider the expressed interest
10 of a child in determining contact with the
11 child's family after adoption; amending s.
12 215.5601, F.S.; providing for the director of
13 the Office of Public Advocacy rather than the
14 director of the guardian ad litem program to be
15 a member of the Lawton Chiles Endowment Fund
16 Advisory Council; amending s. 228.093, F.S.;
17 authorizing a guardian ad litem to challenge
18 the content of a child's school records;
19 amending s. 384.27, F.S.; providing for the
20 appointment of a guardian ad litem in certain
21 cases involving the examination or treatment of
22 a child for a sexually transmissible disease;
23 amending s. 393.065, F.S.; authorizing a
24 guardian ad litem to appeal a determination of
25 eligibility for developmental services;
26 amending s. 393.0651, F.S.; allowing a guardian
27 ad litem to be appointed as the client advocate
28 for a developmentally disabled child; amending
29 s. 393.11, F.S.; providing for representation
30 by a guardian ad litem for purposes of
31 involuntary admission for residential services;

1 providing for service of notice; authorizing a
2 guardian ad litem to appeal an order of
3 involuntary admission; amending s. 397.501,
4 F.S.; authorizing a guardian ad litem to
5 provide representation to a child receiving
6 substance abuse treatment services; amending s.
7 742.011, F.S.; authorizing a guardian ad litem
8 to bring a paternity action; amending s.
9 744.3021, F.S.; providing for a guardian ad
10 litem to represent the interests of a minor at
11 a hearing on the appointment of a guardian;
12 amending s. 984.16, F.S.; authorizing a
13 guardian ad litem to petition the court for a
14 subpoena; amending ss. 984.17, 984.20, F.S.;
15 providing for appointment of legal counsel in a
16 case involving a petition for a child in need
17 of services; providing for a guardian ad litem
18 to be a party in such a case; amending s.
19 985.203, F.S.; providing that a child's right
20 to counsel may not be waived until the child
21 has been advised by an attorney; providing for
22 appointment of a guardian ad litem; amending s.
23 985.223, F.S.; providing for service on the
24 child's guardian ad litem in a delinquency
25 case; amending s. 985.233, F.S.; requiring that
26 the presentence investigation report be
27 provided to a child's guardian ad litem;
28 amending s. 985.234, F.S.; authorizing the
29 guardian ad litem to appeal a court order on
30 behalf of a child; amending s. 985.308, F.S.;
31 including the circuit office of public advocacy

1 in the membership of a sexual abuse
2 intervention network; providing an effective
3 date.
4

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

7 Section 1. Subsection (1) of section 25.388, Florida
8 Statutes, is amended to read:

9 25.388 Family Courts Trust Fund.--

10 (1)(a) The trust fund moneys in the Family Courts
11 Trust Fund, administered by the Supreme Court, shall be used
12 to implement family court plans in all judicial circuits of
13 this state.

14 (b) The Supreme Court, through the Office of the State
15 Courts Administrator, shall adopt a comprehensive plan for the
16 operation of the trust fund and the expenditure of any moneys
17 deposited into the trust fund. The plan shall provide for a
18 comprehensive integrated response to families in litigation,
19 including domestic violence matters, circuit offices of public
20 advocacy ~~guardian ad litem programs~~, mediation programs, legal
21 support, training, automation, and other related costs
22 incurred to benefit the citizens of the state and the courts
23 in relation to family law cases. The trust fund shall be used
24 to fund the publication of the handbook created pursuant to s.
25 741.0306.

26 Section 2. Subsection (1) of section 27.51, Florida
27 Statutes, is amended to read:

28 27.51 Duties of public defender.--

29 (1) The public defender shall represent, without
30 additional compensation, any person who is determined by the
31 court to be indigent as provided in s. 27.52 and who is:

1 (a) Under arrest for, or is charged with, a felony;

2 (b) Under arrest for, or is charged with, a
3 misdemeanor, a violation of chapter 316 which is punishable by
4 imprisonment, criminal contempt, or a violation of a municipal
5 or county ordinance in the county court, unless the court,
6 prior to trial, files in the cause an order of no imprisonment
7 which states that the defendant will not be imprisoned if he
8 or she is convicted; or

9 ~~(c) Alleged to be a delinquent child pursuant to a~~
10 ~~petition filed before a circuit court; or~~

11 (c)(d) Sought by petition filed in such court to be
12 involuntarily placed as a mentally ill person or sexually
13 violent predator or involuntarily admitted to residential
14 services as a person with developmental disabilities. However,
15 a public defender does not have the authority to represent any
16 person who is a plaintiff in a civil action brought under the
17 Florida Rules of Civil Procedure, the Federal Rules of Civil
18 Procedure, or the federal statutes, or who is a petitioner in
19 an administrative proceeding challenging a rule under chapter
20 120, unless specifically authorized by statute.

21 Section 3. Office of Public Advocacy.--

22 (1) The Office of Public Advocacy is created within
23 the judicial branch of government. The office shall be under
24 the Justice Administrative Commission for budget and
25 administrative purposes.

26 (2) The office shall establish standards for
27 representation of children by the circuit offices of public
28 advocacy, including recommended case loads for attorneys and
29 for volunteer and staff guardians ad litem.

30 (3) The office shall establish standards for a child
31 to qualify for representation by the office, including child

1 and parent income levels. However, if the parent or person who
2 has custody of the child cannot or will not provide adequate
3 representation, the court may appoint the circuit office of
4 public advocacy.

5 (4) The office shall document the need for child
6 advocacy throughout the state and report annually on October 1
7 to the Legislature on the need and the cost to adequately
8 provide advocacy for children in the court and education
9 systems of the state. The report must include information on
10 the type and level of advocacy provided in prior years by both
11 public entities and private entities providing contract or pro
12 bono services.

13 (5) The office shall develop performance measures and
14 standards for its services throughout the state.

15 (6) The office shall establish a circuit office of
16 public advocacy in each judicial circuit in the state. Each
17 circuit office shall consist of an administrator, staff or pro
18 bono attorneys, social workers, volunteer coordinators,
19 volunteer or staff guardians ad litem, and support staff. The
20 administrator in each office must be knowledgeable and
21 proficient in the legal process and the legal representation
22 of children in administrative and court proceedings, as well
23 as discovery and mediation processes.

24 (7) Each circuit office of public advocacy may provide
25 and coordinate the provision of legal representation of
26 children in each aspect of court proceedings when private
27 representation is not available to the child and the child's
28 rights are not otherwise protected. The office must provide
29 representation for every child not otherwise represented who
30 is a party to a dependency or delinquency proceeding or who is
31 a witness in a criminal case related to dependency.

1 Representation should be provided as requested by the court in
2 family law and education matters and when the child is a
3 witness in a criminal case. The office may not provide
4 representation in a civil matter unless it involves an issue
5 that concerns a child otherwise represented by the office.

6 (8) If a circuit office of public advocacy is
7 appointed to represent a child, a staff or volunteer guardian
8 ad litem shall be appointed to the case and an attorney shall
9 be assigned to represent the guardian ad litem.

10 (9) The attorney shall provide representation to the
11 guardian ad litem only with respect to the guardian ad litem's
12 representation of the best interest of the child.

13 (10) To the extent possible, the statewide office of
14 public advocacy or circuit offices of public advocacy shall
15 enter into contracts with private entities or public or
16 private colleges or universities to provide contract or pro
17 bono legal representation to children as court-appointed
18 counsel for the child, to provide pro bono representation of
19 guardians ad litem, or to provide volunteer guardians ad
20 litem.

21 (11) The Office of Public Advocacy shall establish a
22 not-for-profit support organization under section 501(c)(3) of
23 the Internal Revenue Code to assist in funding the needs of
24 children receiving services through the circuit offices of
25 public advocacy.

26 Section 4. Subsection (3) and paragraph (a) of
27 subsection (7) of section 39.001, Florida Statutes, are
28 amended to read:

29 39.001 Purposes and intent; personnel standards and
30 screening.--

31

1 (3) GENERAL PROTECTIONS FOR CHILDREN.--It is a purpose
2 of the Legislature that the children of this state be provided
3 with the following protections:

4 (a) Protection from abuse, abandonment, neglect, and
5 exploitation.

6 (b) A permanent and stable home.

7 (c) A safe and nurturing environment which will
8 preserve a sense of personal dignity and integrity.

9 (d) Adequate nutrition, shelter, and clothing.

10 (e) Effective treatment to address physical, social,
11 and emotional needs, regardless of geographical location.

12 (f) Equal opportunity and access to quality and
13 effective education, which will meet the individual needs of
14 each child, and to recreation and other community resources to
15 develop individual abilities.

16 (g) Access to preventive services.

17 (h) An independent, trained advocate, when
18 intervention by the department is necessary and a skilled
19 guardian or caregiver in a safe environment when alternative
20 placement is necessary.

21 (7) PLAN FOR COMPREHENSIVE APPROACH.--

22 (a) The department shall develop a state plan for the
23 prevention of abuse, abandonment, and neglect of children and
24 shall submit the plan to the Speaker of the House of
25 Representatives, the President of the Senate, and the Governor
26 no later than January 1, 1983. The Department of Education,
27 ~~and~~ the Division of Children's Medical Services Prevention and
28 Intervention of the Department of Health, and the Office of
29 Public Advocacy shall participate and fully cooperate in the
30 development of the state plan at both the state and local
31 levels. Furthermore, appropriate local agencies and

1 organizations shall be provided an opportunity to participate
2 in the development of the state plan at the local level.
3 Appropriate local groups and organizations shall include, but
4 not be limited to, community mental health centers; circuit
5 offices of public advocacy ~~guardian ad litem programs for~~
6 ~~children under the circuit court~~; the school boards of the
7 local school districts; the Florida local advocacy councils;
8 private or public organizations or programs with recognized
9 expertise in working with children who are sexually abused,
10 physically abused, emotionally abused, abandoned, or neglected
11 and with expertise in working with the families of such
12 children; private or public programs or organizations with
13 expertise in maternal and infant health care;
14 multidisciplinary child protection teams; child day care
15 centers; and law enforcement agencies, ~~and the circuit courts,~~
16 ~~when guardian ad litem programs are not available in the local~~
17 ~~area~~. The state plan to be provided to the Legislature and
18 the Governor shall include, as a minimum, the information
19 required of the various groups in paragraph (b).

20 Section 5. Subsection (51) of section 39.01, Florida
21 Statutes, is amended to read:

22 39.01 Definitions.--When used in this chapter, unless
23 the context otherwise requires:

24 (51) "Party" means the parent or parents of the child,
25 the petitioner, the department, the guardian ad litem as
26 defined in s. 39.820 ~~or the representative of the guardian ad~~
27 ~~litem program when the program has been appointed~~, and the
28 child. If information or notice must be provided to a party,
29 service on the party's legal counsel constitutes service on
30 the party, unless the party requests or the court orders
31 actual service on the party in addition to the legal counsel.

1 The presence of the child may be excused by order of the court
2 when the child requests to be excused ~~presence would not be in~~
3 ~~the child's best interest~~. Notice to the child and the
4 presence of the child may be excused by order of the court
5 when the age, capacity, or other condition of the child is
6 such that the notice or the presence of the child would be
7 meaningless or emotionally detrimental to the child.

8 Section 6. Paragraph (d) of subsection (2) and
9 subsection (5) of section 39.202, Florida Statutes, are
10 amended to read:

11 39.202 Confidentiality of reports and records in cases
12 of child abuse or neglect.--

13 (2) Access to such records, excluding the name of the
14 reporter which shall be released only as provided in
15 subsection (4), shall be granted only to the following
16 persons, officials, and agencies:

17 (d) The parent or legal custodian of any child who is
18 alleged to have been abused, abandoned, or neglected, and the
19 child, the guardian ad litem, and their attorneys. This access
20 shall be made available no later than 30 days after the
21 department receives the initial report of abuse, neglect, or
22 abandonment. However, any information otherwise made
23 confidential or exempt by law shall not be released pursuant
24 to this paragraph.

25 (5) All records and reports of the child protection
26 team of the Department of Health are confidential and exempt
27 from the provisions of ss. 119.07(1) and 456.057, and shall
28 not be disclosed, except, upon request, to the state
29 attorney; law enforcement agencies; the department; and
30 necessary professionals, in furtherance of the treatment or
31 additional evaluative needs of the child, by order of the

1 court; the child's guardian ad litem and legal counsel; or to
2 health plan payors, limited to that information used for
3 insurance reimbursement purposes.

4 Section 7. Section 39.305, Florida Statutes, is
5 amended to read:

6 39.305 Intervention and treatment in sexual abuse
7 cases; model plan.--The department shall develop a model plan
8 for community intervention and treatment of intrafamily sexual
9 abuse in conjunction with the Department of Law Enforcement,
10 the Department of Health, the Department of Education, the
11 Attorney General, the Office of Public Advocacy ~~state Guardian~~
12 ~~Ad Litem Program~~, the Department of Corrections,
13 representatives of the judiciary, and professionals and
14 advocates from the mental health and child welfare community.

15 Section 8. Subsection (5) and paragraphs (b), (c), and
16 (e) of subsection (8) of section 39.402, Florida Statutes, are
17 amended to read:

18 39.402 Placement in a shelter.--

19 (5)(a) The parents or legal custodians of the child,
20 the child, and the child's guardian ad litem or legal counsel,
21 if known, or the circuit office of public advocacy shall be
22 given such notice as best ensures their actual knowledge of
23 the date, time, and location of the shelter hearing. If the
24 parents or legal custodians are outside the jurisdiction of
25 the court, are not known, or cannot be located or refuse or
26 evade service, they shall be given such notice as best ensures
27 their actual knowledge of the date, time, and location of the
28 shelter hearing. The person providing or attempting to
29 provide notice to the parents or legal custodians and the
30 child's guardian ad litem or legal counsel or the circuit
31 office of public advocacy shall, if the person's or entities

1 to be provided notice ~~parents or legal custodians~~ are not
2 present at the hearing, advise the court either in person or
3 by sworn affidavit, of the attempts made to provide notice and
4 the results of those attempts.

5 (b) The parents or legal custodians, the child, and
6 the child's guardian ad litem or legal counsel or the circuit
7 office of public advocacy shall be given written notice that:

8 1. They will be given an opportunity to be heard and
9 to present evidence at the shelter hearing; and

10 2. The parents ~~They~~ have the right to be represented
11 by counsel and the child has the right to counsel or a
12 guardian ad litem., and,

13 a. If indigent, the parents have the right to be
14 represented by appointed counsel, at the shelter hearing and
15 at each subsequent hearing or proceeding, pursuant to the
16 procedures set forth in s. 39.013.

17 b. If the child's parents and the child are indigent
18 or time or circumstances prevent obtaining a private guardian
19 ad litem or counsel, the circuit office of public advocacy
20 shall be appointed to represent the child.

21 c. If the parents or legal custodians appear for the
22 shelter hearing without legal counsel, then, at their request,
23 the shelter hearing may be continued up to 72 hours to enable
24 the parents or legal custodians to consult legal counsel.

25 d. If the child appears for the shelter hearing
26 without a guardian ad litem, legal counsel, or representation
27 by the circuit office of public advocacy, the shelter hearing
28 may be continued up to 72 hours to enable representation to be
29 retained on behalf of the child.

30 e. If a continuance is requested by the parents or
31 legal custodians, or by or on behalf of the child, the child

1 shall be continued in shelter care for the length of the
2 continuance, if granted by the court.

3 (8)

4 (b) The parents or legal custodians of the child, the
5 child, and the child's guardian ad litem or legal counsel or
6 the circuit office of public advocacy shall be given such
7 notice as best ensures their actual knowledge of the time and
8 place of the shelter hearing. The failure to provide notice to
9 a party or participant does not invalidate an order placing a
10 child in a shelter if the court finds that the petitioner has
11 made a good faith effort to provide such notice. The court
12 shall require the parents or legal custodians present at the
13 hearing to provide to the court on the record the names,
14 addresses, and relationships of all parents, prospective
15 parents, and next of kin of the child, so far as are known.

16 (c) At the shelter hearing, the court shall:

17 1. Appoint a guardian ad litem to represent the best
18 interest of the child, unless the court finds that such
19 representation of the child is otherwise provided ~~is~~
20 ~~unnecessary~~;

21 2. Inform the parents or legal custodians of their
22 right to counsel to represent them at the shelter hearing and
23 at each subsequent hearing or proceeding, and the right of the
24 parents to appointed counsel, pursuant to the procedures set
25 forth in s. 39.013; and

26 3. Give the parents or legal custodians an opportunity
27 to be heard and to present evidence.

28 (e) At the shelter hearing, the department shall
29 provide the court and the child's guardian ad litem, legal
30 counsel, or representative of the circuit office of public
31 advocacy copies of any available law enforcement, medical, or

1 other professional reports, and shall also provide copies of
2 abuse hotline reports pursuant to state and federal
3 confidentiality requirements.

4 Section 9. Subsection (5) of section 39.407, Florida
5 Statutes, is amended to read:

6 39.407 Medical, psychiatric, and psychological
7 examination and treatment of child; physical or mental
8 examination of parent or person requesting custody of child.--

9 (5) Children who are in the legal custody of the
10 department may be placed by the department in a residential
11 treatment center licensed under s. 394.875 or a hospital
12 licensed under chapter 395 for residential mental health
13 treatment only pursuant to this section or may be placed by
14 the court in accordance with an order of involuntary
15 examination or involuntary placement entered pursuant to s.
16 394.463 or s. 394.467. All children placed in a residential
17 treatment program under this subsection must have a guardian
18 ad litem or legal counsel appointed.

19 (a) As used in this subsection, the term:

20 1. "Residential treatment" means placement for
21 observation, diagnosis, or treatment of an emotional
22 disturbance in a residential treatment center licensed under
23 s. 394.875 or a hospital licensed under chapter 395.

24 2. "Least restrictive alternative" means the treatment
25 and conditions of treatment that, separately and in
26 combination, are no more intrusive or restrictive of freedom
27 than reasonably necessary to achieve a substantial therapeutic
28 benefit or to protect the child or adolescent or others from
29 physical injury.

30 3. "Suitable for residential treatment" or
31 "suitability" means a determination concerning a child or

1 adolescent with an emotional disturbance as defined in s.
2 394.492(5) or a serious emotional disturbance as defined in s.
3 394.492(6) that each of the following criteria is met:
4 a. The child requires residential treatment.
5 b. The child is in need of a residential treatment
6 program and is expected to benefit from mental health
7 treatment.
8 c. An appropriate, less restrictive alternative to
9 residential treatment is unavailable.
10 (b) Whenever the department believes that a child in
11 its legal custody is emotionally disturbed and may need
12 residential treatment, an examination and suitability
13 assessment must be conducted by a qualified evaluator who is
14 appointed by the Agency for Health Care Administration. This
15 suitability assessment must be completed before the placement
16 of the child in a residential treatment center for emotionally
17 disturbed children and adolescents or a hospital. The
18 qualified evaluator must be a psychiatrist or a psychologist
19 licensed in Florida who has at least 3 years of experience in
20 the diagnosis and treatment of serious emotional disturbances
21 in children and adolescents and who has no actual or perceived
22 conflict of interest with any inpatient facility or
23 residential treatment center or program.
24 (c) Before a child is admitted under this subsection,
25 the child shall be assessed for suitability for residential
26 treatment by a qualified evaluator who has conducted a
27 personal examination and assessment of the child and has made
28 written findings that:
29 1. The child appears to have an emotional disturbance
30 serious enough to require residential treatment and is
31 reasonably likely to benefit from the treatment.

1 2. The child has been provided with a clinically
2 appropriate explanation of the nature and purpose of the
3 treatment.

4 3. All available modalities of treatment less
5 restrictive than residential treatment have been considered,
6 and a less restrictive alternative that would offer comparable
7 benefits to the child is unavailable.

8
9 A copy of the written findings of the evaluation and
10 suitability assessment must be provided to the department and
11 to the guardian ad litem or legal counsel, who shall have the
12 opportunity to discuss the findings with the evaluator.

13 (d) Immediately upon placing a child in a residential
14 treatment program under this section, the department must
15 notify the guardian ad litem or legal counsel and the court
16 having jurisdiction over the child and must provide the
17 guardian ad litem or legal counsel and the court with a copy
18 of the assessment by the qualified evaluator.

19 (e) Within 10 days after the admission of a child to a
20 residential treatment program, the director of the residential
21 treatment program or the director's designee must ensure that
22 an individualized plan of treatment has been prepared by the
23 program and has been explained to the child, to the
24 department, and to the guardian ad litem or legal counsel, and
25 submitted to the department. The child must be involved in the
26 preparation of the plan to the maximum feasible extent
27 consistent with his or her ability to understand and
28 participate, and the guardian ad litem or legal counsel and
29 the child's foster parents must be involved to the maximum
30 extent consistent with the child's treatment needs. The plan
31 must include a preliminary plan for residential treatment and

1 aftercare upon completion of residential treatment. The plan
2 must include specific behavioral and emotional goals against
3 which the success of the residential treatment may be
4 measured. A copy of the plan must be provided to the child, to
5 the guardian ad litem or legal counsel, and to the department.

6 (f) Within 30 days after admission, the residential
7 treatment program must review the appropriateness and
8 suitability of the child's placement in the program. The
9 residential treatment program must determine whether the child
10 is receiving benefit towards the treatment goals and whether
11 the child could be treated in a less restrictive treatment
12 program. The residential treatment program shall prepare a
13 written report of its findings and submit the report to the
14 guardian ad litem or legal counsel and to the department. The
15 department must submit the report to the court. The report
16 must include a discharge plan for the child. The residential
17 treatment program must continue to evaluate the child's
18 treatment progress every 30 days thereafter and must include
19 its findings in a written report submitted to the guardian ad
20 litem or legal counsel and the department. The department may
21 not reimburse a facility until the facility has submitted
22 every written report that is due.

23 (g)1. The department must submit, at the beginning of
24 each month, to the court having jurisdiction over the child
25 and to the guardian ad litem or legal counsel, a written
26 report regarding the child's progress towards achieving the
27 goals specified in the individualized plan of treatment.

28 2. The court must conduct a hearing to review the
29 status of the child's residential treatment plan no later than
30 3 months after the child's admission to the residential
31 treatment program. An independent review of the child's

1 progress towards achieving the goals and objectives of the
2 treatment plan must be completed by a qualified evaluator and
3 submitted to the court and to the guardian ad litem or legal
4 counsel before the court's ~~its~~ 3-month review.

5 3. For any child in residential treatment at the time
6 a judicial review is held pursuant to s. 39.701, the child's
7 continued placement in residential treatment must be a subject
8 of the judicial review.

9 4. If at any time the court determines that the child
10 is not suitable for continued residential treatment, the court
11 shall order the department to place the child in the least
12 restrictive setting that is best suited to meet his or her
13 needs.

14 (h) After the initial 3-month review, the court must
15 conduct a review of the child's residential treatment plan
16 every 90 days.

17 (i) The department must adopt rules for implementing
18 timeframes for the completion of suitability assessments by
19 qualified evaluators and a procedure that includes timeframes
20 for completing the 3-month independent review by the qualified
21 evaluators of the child's progress towards achieving the goals
22 and objectives of the treatment plan which review must be
23 submitted to the court. The Agency for Health Care
24 Administration must adopt rules for the registration of
25 qualified evaluators, the procedure for selecting the
26 evaluators to conduct the reviews required under this section,
27 and a reasonable, cost-efficient fee schedule for qualified
28 evaluators.

29 Section 10. Subsections (11), (12), (19), (20), and
30 (21) of section 39.4085, Florida Statutes, are amended to
31 read:

1 39.4085 Legislative findings and declaration of intent
2 for goals for dependent children.--The Legislature finds and
3 declares that the design and delivery of child welfare
4 services should be directed by the principle that the health
5 and safety of children should be of paramount concern and,
6 therefore, establishes the following goals for children in
7 shelter or foster care:

8 (11) To be the subject of a plan developed by the
9 counselor and the shelter or foster caregiver with the child
10 and the child's guardian ad litem or legal counsel to deal
11 with identified behaviors that may present a risk to the child
12 or others.

13 (12) To be involved and incorporated, where
14 appropriate, and to have their guardian ad litem or legal
15 counsel be involved in the development of the case plan, to
16 have a case plan which will address their specific needs, and
17 to object to any of the provisions of the case plan.

18 (19) To be heard by the court, ~~if appropriate,~~ at all
19 review hearings, unless the child chooses not to be heard or
20 because of age, capacity, or other condition of the child, the
21 court determines it would be meaningless or emotionally
22 detrimental to the child.

23 (20) To have a guardian ad litem appointed to
24 represent, ~~within reason,~~ their best interests and, where
25 appropriate, legal counsel ~~an attorney ad litem~~ appointed to
26 represent their expressed ~~legal~~ interests; the guardian ad
27 litem and legal counsel ~~attorney ad litem~~ shall have immediate
28 and unlimited access to the children they represent.

29 (21) To have all their records available for review by
30 their guardian ad litem and legal counsel ~~attorney ad litem~~ if
31 ~~they deem such review necessary.~~

1 Section 11. Section 39.4086, Florida Statutes, is
2 repealed.

3 Section 12. Subsections (8), (12), (13), (14), (17),
4 and (18) of section 39.502, Florida Statutes, are amended to
5 read:

6 39.502 Notice, process, and service.--

7 (8) It is not necessary to the validity of a
8 proceeding covered by this part that the parents be present if
9 their identity or residence is unknown after a diligent search
10 has been made, but in this event the petitioner shall file an
11 affidavit of diligent search prepared by the person who made
12 the search and inquiry, and the court shall ~~may~~ appoint a
13 guardian ad litem or legal counsel for the child.

14 (12) All process and orders issued by the court shall
15 be served or executed as other process and orders of the
16 circuit court and, in addition, may be served or executed by
17 authorized agents of the department, ~~or the~~ guardian ad litem,
18 or legal counsel.

19 (13) Subpoenas may be served within the state by any
20 person over 18 years of age who is not a party to the
21 proceeding and, in addition, may be served by authorized
22 agents of the department, ~~or the~~ guardian ad litem, or legal
23 counsel.

24 (14) No fee shall be paid for service of any process
25 or other papers by an agent of the department, ~~or the~~ guardian
26 ad litem, or legal counsel. If any process, orders, or any
27 other papers are served or executed by any sheriff, the
28 sheriff's fees shall be paid by the county.

29 (17) The parent or legal custodian of the child, the
30 attorney for the department, the guardian ad litem, the child,
31 the child's legal counsel, and all other parties and

1 participants shall be given reasonable notice of all hearings
2 provided for under this part.

3 (18) In all proceedings under this part, the court
4 shall provide to the parent or legal custodian of the child,
5 the child, and the child's guardian ad litem or legal counsel,
6 at the conclusion of any hearing, a written notice containing
7 the date of the next scheduled hearing. The court shall also
8 include the date of the next hearing in any order issued by
9 the court.

10 Section 13. Subsections (1) and (4) of section 39.504,
11 Florida Statutes, are amended to read:

12 39.504 Injunction pending disposition of petition;
13 penalty.--

14 (1)(a) When a petition for shelter placement or a
15 petition for dependency has been filed or when a child has
16 been taken into custody and reasonable cause, as defined in
17 paragraph (b), exists, the court, upon the request of the
18 department, a law enforcement officer, the state attorney, the
19 guardian ad litem or legal counsel for the child, or other
20 responsible person, or upon its own motion, may ~~shall have the~~
21 ~~authority to~~ issue an injunction to prevent any act of child
22 abuse or any unlawful sexual offense involving a child.

23 (b) Reasonable cause for the issuance of an injunction
24 exists if there is evidence of child abuse or an unlawful
25 sexual offense involving a child or if there is a reasonable
26 likelihood of such abuse or offense occurring based upon a
27 recent overt act or failure to act.

28 (4) A copy of any injunction issued pursuant to this
29 section shall be delivered to the protected party, ~~or~~ a parent
30 or caregiver or individual acting in the place of a parent who
31 is not the respondent, the child, the guardian ad litem or

1 legal counsel for the child, and to any law enforcement agency
2 having jurisdiction to enforce such injunction. Upon delivery
3 of the injunction to the appropriate law enforcement agency,
4 the agency shall have the duty and responsibility to enforce
5 the injunction.

6 Section 14. Section 39.505, Florida Statutes, is
7 amended to read:

8 39.505 No answer required.--No answer to the petition
9 or any other pleading need be filed by any child, guardian ad
10 litem, parent, or legal custodian, but any matters that ~~which~~
11 might be set forth in an answer or other pleading may be
12 pleaded orally before the court or filed in writing as any
13 such person may choose. Notwithstanding the filing of an
14 answer or any pleading, the respondent shall, prior to an
15 adjudicatory hearing, be advised by the court of the right to
16 counsel and shall be given an opportunity to deny the
17 allegations in the petition for dependency or to enter a plea
18 to allegations in the petition before the court.

19 Section 15. Subsection (1) of section 39.510, Florida
20 Statutes, is amended to read:

21 39.510 Appeal.--

22 (1) Any party to the proceeding who is affected by an
23 order of the court, who represents a party affected by an
24 order of the court, or the department may appeal to the
25 appropriate district court of appeal within the time and in
26 the manner prescribed by the Florida Rules of Appellate
27 Procedure. Appointed counsel shall be compensated as provided
28 in this chapter.

29 Section 16. Paragraphs (a) and (d) of subsection (1),
30 paragraph (b) of subsection (5), and subsection (8) of section
31 39.521, Florida Statutes, are amended to read:

1 39.521 Disposition hearings; powers of disposition.--

2 (1) A disposition hearing shall be conducted by the
3 court, if the court finds that the facts alleged in the
4 petition for dependency were proven in the adjudicatory
5 hearing, or if the parents or legal custodians have consented
6 to the finding of dependency or admitted the allegations in
7 the petition, have failed to appear for the arraignment
8 hearing after proper notice, or have not been located despite
9 a diligent search having been conducted.

10 (a) A written case plan and a predisposition study
11 prepared by an authorized agent of the department must be
12 filed with the court and served upon the parents of the child,
13 provided to the child, representative of the guardian ad litem
14 or legal counsel for the child ~~program, if the program has~~
15 ~~been appointed~~, and provided to all other parties, not less
16 than 72 hours before the disposition hearing. All such case
17 plans must be approved by the court. If the court does not
18 approve the case plan at the disposition hearing, the court
19 must set a hearing within 30 days after the disposition
20 hearing to review and approve the case plan.

21 (d) The court shall, in its written order of
22 disposition, include all of the following:

- 23 1. The placement or custody of the child.
- 24 2. Special conditions of placement and visitation.
- 25 3. Evaluation, counseling, treatment activities, and
26 other actions to be taken by the parties, if ordered.
- 27 4. The persons or entities responsible for supervising
28 or monitoring services to the child and parent.
- 29 5. Continuation or discharge of the guardian ad litem
30 or legal counsel for the child, as appropriate. The guardian
31 ad litem or legal counsel for the child may not be discharged

1 pursuant to this section before termination of supervision by
2 the department unless other legal representation is provided
3 for the child.

4 6. The date, time, and location of the next scheduled
5 review hearing, which must occur within the earlier of:

6 a. Ninety days after the disposition hearing;
7 b. Ninety days after the court accepts the case plan;
8 c. Six months after the date of the last review
9 hearing; or

10 d. Six months after the date of the child's removal
11 from his or her home, if no review hearing has been held since
12 the child's removal from the home.

13 7. If the child is in an out-of-home placement, child
14 support to be paid by the parents, or the guardian of the
15 child's estate if possessed of assets which under law may be
16 disbursed for the care, support, and maintenance of the child.
17 The court may exercise jurisdiction over all child support
18 matters, shall adjudicate the financial obligation, including
19 health insurance, of the child's parents or guardian, and
20 shall enforce the financial obligation as provided in chapter
21 61. The state's child support enforcement agency shall enforce
22 child support orders under this section in the same manner as
23 child support orders under chapter 61. Placement of the child
24 shall not be contingent upon issuance of a support order.

25 8.a. If the court does not commit the child to the
26 temporary legal custody of an adult relative, legal custodian,
27 or other adult approved by the court, the disposition order
28 shall include the reasons for such a decision and shall
29 include a determination as to whether diligent efforts were
30 made by the department to locate an adult relative, legal
31 custodian, or other adult willing to care for the child in

1 order to present that placement option to the court instead of
2 placement with the department.

3 b. If diligent efforts are made to locate an adult
4 relative willing and able to care for the child but, because
5 no suitable relative is found, the child is placed with the
6 department or a legal custodian or other adult approved by the
7 court, both the department and the court shall consider
8 transferring temporary legal custody to an adult relative
9 approved by the court at a later date, but neither the
10 department nor the court is obligated to so place the child if
11 it is in the child's best interest to remain in the current
12 placement.

13
14 For the purposes of this subparagraph, "diligent efforts to
15 locate an adult relative" means a search similar to the
16 diligent search for a parent, but without the continuing
17 obligation to search after an initial adequate search is
18 completed.

19 9. Other requirements necessary to protect the health,
20 safety, and well-being of the child, to preserve the stability
21 of the child's educational placement, and to promote family
22 preservation or reunification whenever possible.

23 (5)

24 (b) The results of the assessment described in
25 paragraph (a) and the actions taken as a result of the
26 assessment must be included in the next judicial review of the
27 child. At each subsequent judicial review, the court must be
28 advised in writing of the status of the child's placement,
29 with special reference regarding the stability of the
30 placement and the permanency planning for the child. A copy of
31 this report must be provided to the child and the child's

1 guardian ad litem or legal counsel prior to the judicial
2 review.

3 (8) The court may enter an order ending its
4 jurisdiction over a child when a child has been returned to
5 the parents, except that ~~provided~~ the court may ~~shall~~ not
6 terminate its jurisdiction or the department's supervision
7 over the child until 6 months after the child's return. The
8 court shall determine whether its jurisdiction should be
9 continued or terminated in such a case based on a report of
10 the department or agency or the child's guardian ad litem or
11 based on testimony of the child, and any other relevant
12 factors; if its jurisdiction is to be terminated, the court
13 shall enter an order to that effect.

14 Section 17. Paragraph (a) of subsection (2), paragraph
15 (d) of subsection (5), paragraphs (b) and (c) of subsection
16 (6), subsection (7), and paragraphs (a) and (d) of subsection
17 (8) of section 39.701, Florida Statutes, are amended to read:

18 39.701 Judicial review.--

19 (2)(a) The court shall review the status of the child
20 and shall hold a hearing as provided in this part at least
21 every 6 months until the child reaches permanency status. The
22 court may dispense with the attendance of the child at the
23 hearing upon the child's request or based on the child's age,
24 capacity, or other condition, the court determines that the
25 child's attendance would be meaningless or emotionally
26 detrimental to the child. The court, ~~but~~ may not dispense with
27 the hearing or the presence of other parties to the review
28 unless before the review a hearing is held before a citizen
29 review panel.

30
31

1 (5) Notice of a judicial review hearing or a citizen
2 review panel hearing, and a copy of the motion for judicial
3 review, if any, must be served by the clerk of the court upon:

4 (d) The child and guardian ad litem or legal counsel
5 ~~for the child, or the representative of the guardian ad litem~~
6 ~~program if the program has been appointed.~~

7
8 Service of notice is not required on any of the persons listed
9 in paragraphs (a)-(f) if the person was present at the
10 previous hearing during which the date, time, and location of
11 the hearing was announced.

12 (6)

13 (b) A copy of the social service agency's written
14 report and any ~~the~~ written report of the guardian ad litem
15 must be served on all parties whose whereabouts are known; to
16 the foster parents or legal custodians; and to the citizen
17 review panel, at least 72 hours before the judicial review
18 hearing or citizen review panel hearing. The requirement for
19 providing parents with a copy of the written report does not
20 apply to those parents who have voluntarily surrendered their
21 child for adoption or who have had their parental rights to
22 the child terminated.

23 (c) In a case in which the child has been permanently
24 placed with the social service agency, the agency shall
25 furnish to the court a written report concerning the progress
26 being made to place the child for adoption. If the child
27 cannot be placed for adoption, a report on the progress made
28 by the child towards alternative permanency goals or
29 placements, including, but not limited to, guardianship,
30 long-term custody, long-term licensed custody, or independent
31 living, must be submitted to the court. The report must be

1 submitted to the court and all parties at least 72 hours
2 before each scheduled judicial review.

3 (7) The court and any citizen review panel shall take
4 into consideration the information contained in the social
5 services study and investigation and all medical,
6 psychological, and educational records that support the terms
7 of the case plan; testimony by the social services agency, the
8 parent, the foster parent or legal custodian, the child, the
9 guardian ad litem if one has been appointed for the child, and
10 any other person deemed appropriate; and any relevant and
11 material evidence submitted to the court, including written
12 and oral reports to the extent of their probative value. These
13 reports and evidence may be received by the court in its
14 effort to determine the action to be taken with regard to the
15 child and may be relied upon to the extent of their probative
16 value, even though not competent in an adjudicatory hearing.
17 In its deliberations, the court and any citizen review panel
18 shall seek to determine:

19 (a) If the parent was advised of the right to receive
20 assistance from any person or social service agency in the
21 preparation of the case plan.

22 (b) If the parent has been advised of the right to
23 have counsel present at the judicial review or citizen review
24 hearings. If not so advised, the court or citizen review panel
25 shall advise the parent of such right.

26 (c) If a guardian ad litem needs to be appointed for
27 the child in a case in which a guardian ad litem has not
28 previously been appointed, or if there is a need to continue a
29 guardian ad litem in a case in which a guardian ad litem has
30 been appointed, or if the child should be represented by legal
31 counsel.

1 (d) The compliance or lack of compliance of all
2 parties with applicable items of the case plan, including the
3 parents' compliance with child support orders.

4 (e) The compliance or lack of compliance with a
5 visitation contract between the parent and the social service
6 agency for contact with the child, including the frequency,
7 duration, and results of the parent-child visitation and the
8 reason for any noncompliance.

9 (f) The compliance or lack of compliance of the parent
10 in meeting specified financial obligations pertaining to the
11 care of the child, including the reason for failure to comply
12 if such is the case.

13 (g) The appropriateness of the child's current
14 placement, including whether the child is in a setting which
15 is as family-like and as close to the parent's home as
16 possible, consistent with the child's best interests and
17 special needs, and including maintaining stability in the
18 child's educational placement.

19 (h) A projected date likely for the child's return
20 home or other permanent placement.

21 (i) When appropriate, the basis for the unwillingness
22 or inability of the parent to become a party to a case plan.
23 The court and the citizen review panel shall determine if the
24 efforts of the social service agency to secure party
25 participation in a case plan were sufficient.

26 (8)(a) Based upon the criteria set forth in subsection
27 (7) and the recommended order of the citizen review panel, if
28 any, the court shall determine whether or not the social
29 service agency shall initiate proceedings to have a child
30 declared a dependent child, return the child to the parent,
31 continue the child in out-of-home care for a specified period

1 of time, or initiate termination of parental rights
2 proceedings for subsequent placement in an adoptive home. The
3 court may also determine whether the current placement of the
4 child is appropriate to protect the child's safety;
5 well-being; and physical, mental, and emotional health.
6 Modifications to the plan must be handled as prescribed in s.
7 39.601. If the court finds that the prevention or
8 reunification efforts of the department will allow the child
9 to remain safely at home or be safely returned to the home,
10 the court shall allow the child to remain in or return to the
11 home after making a specific finding of fact that the reasons
12 for the creation of the case plan have been remedied to the
13 extent that the child's safety, well-being, and physical,
14 mental, and emotional health will not be endangered.

15 (d) The court may extend the time limitation of the
16 case plan, or may modify the terms of the plan, based upon
17 information provided by the social service agency, the child,
18 and the guardian ad litem, if one has been appointed, the
19 parent or parents, and the foster parents or legal custodian,
20 and any other competent information on record demonstrating
21 the need for the amendment. If the court extends the time
22 limitation of the case plan, the court must make specific
23 findings concerning the frequency of past parent-child
24 visitation, if any, and the court may authorize the expansion
25 or restriction of future visitation. Modifications to the plan
26 must be handled as prescribed in s. 39.601. Any extension of a
27 case plan must comply with the time requirements and other
28 requirements specified by this chapter.

29 Section 18. Paragraph (a) of subsection (3) and
30 subsections (5) and (7) of section 39.801, Florida Statutes,
31 are amended to read:

1 39.801 Procedures and jurisdiction; notice; service of
2 process.--

3 (3) Before the court may terminate parental rights, in
4 addition to the other requirements set forth in this part, the
5 following requirements must be met:

6 (a) Notice of the date, time, and place of the
7 advisory hearing for the petition to terminate parental rights
8 and a copy of the petition must be personally served upon the
9 following persons, specifically notifying them that a petition
10 has been filed:

- 11 1. The parents of the child.
- 12 2. The legal custodians of the child.
- 13 3. If the parents who would be entitled to notice are
14 dead or unknown, a living relative of the child, unless upon
15 diligent search and inquiry no such relative can be found.
- 16 4. Any person who has physical custody of the child.
- 17 5. Any grandparent entitled to priority for adoption
18 under s. 63.0425.
- 19 6. Any prospective parent who has been identified
20 under s. 39.503 or s. 39.803.
- 21 7. The child and the guardian ad litem for the child
22 or the legal counsel for the child ~~representative of the~~
23 ~~guardian ad litem program, if the program has been appointed.~~

24
25 The document containing the notice to respond or appear must
26 contain, in type at least as large as the type in the balance
27 of the document, the following or substantially similar
28 language: "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY
29 HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL
30 RIGHTS OF THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON
31 THE DATE AND TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS

1 A PARENT TO THE CHILD OR CHILDREN NAMED IN THE PETITION
2 ATTACHED TO THIS NOTICE."

3 (5) All process and orders issued by the court must be
4 served or executed as other process and orders of the circuit
5 court and, in addition, may be served or executed by
6 authorized agents of the department, ~~or~~ the guardian ad litem,
7 or the child's legal counsel.

8 (7) A fee may not be paid for service of any process
9 or other papers by an agent of the department, ~~or~~ the guardian
10 ad litem, or the child's legal counsel. If any process,
11 orders, or other papers are served or executed by any sheriff,
12 the sheriff's fees must be paid by the county.

13 Section 19. Subsection (1) of section 39.802, Florida
14 Statutes, is amended to read:

15 39.802 Petition for termination of parental rights;
16 filing; elements.--

17 (1) All proceedings seeking an adjudication to
18 terminate parental rights pursuant to this chapter must be
19 initiated by the filing of an original petition by the
20 department, the child, the guardian ad litem, legal counsel
21 for the child, or any other person who has knowledge of the
22 facts alleged or is informed of them and believes that they
23 are true.

24 Section 20. Section 39.805, Florida Statutes, is
25 amended to read:

26 39.805 No answer required.--No answer to the petition
27 or any other pleading need be filed by any child, guardian ad
28 litem, or parent, but any matters that ~~which~~ might be set
29 forth in an answer or other pleading may be pleaded orally
30 before the court or filed in writing as any such person may
31 choose. Notwithstanding the filing of any answer or any

1 pleading, the child or parent shall, prior to the adjudicatory
2 hearing, be advised by the court of the right to counsel and
3 shall be given an opportunity to deny the allegations in the
4 petition for termination of parental rights or to enter a plea
5 to allegations in the petition before the court.

6 Section 21. Subsection (1) of section 39.806, Florida
7 Statutes, is amended to read:

8 39.806 Grounds for termination of parental rights.--

9 (1) The department, the child,the guardian ad litem,
10 legal counsel for the child,or any person who has knowledge
11 of the facts alleged or who is informed of those facts and
12 believes that they are true may petition for the termination
13 of parental rights under any of the following circumstances:

14 (a) When the parent or parents have voluntarily
15 executed a written surrender of the child and consented to the
16 entry of an order giving custody of the child to the
17 department for subsequent adoption and the department is
18 willing to accept custody of the child.

19 1. The surrender document must be executed before two
20 witnesses and a notary public or other person authorized to
21 take acknowledgments.

22 2. The surrender and consent may be withdrawn after
23 acceptance by the department only after a finding by the court
24 that the surrender and consent were obtained by fraud or under
25 duress.

26 (b) Abandonment as defined in s. 39.01(1) or when the
27 identity or location of the parent or parents is unknown and
28 cannot be ascertained by diligent search within 60 days.

29 (c) When the parent or parents engaged in conduct
30 toward the child or toward other children that demonstrates
31 that the continuing involvement of the parent or parents in

1 the parent-child relationship threatens the life, safety,
2 well-being, or physical, mental, or emotional health of the
3 child irrespective of the provision of services. Provision of
4 services may be evidenced by proof that services were provided
5 through a previous plan or offered as a case plan from a child
6 welfare agency.

7 (d) When the parent of a child is incarcerated in a
8 state or federal correctional institution and either:

9 1. The period of time for which the parent is expected
10 to be incarcerated will constitute a substantial portion of
11 the period of time before the child will attain the age of 18
12 years;

13 2. The incarcerated parent has been determined by the
14 court to be a violent career criminal as defined in s.
15 775.084, a habitual violent felony offender as defined in s.
16 775.084, or a sexual predator as defined in s. 775.21; has
17 been convicted of first degree or second degree murder in
18 violation of s. 782.04 or a sexual battery that constitutes a
19 capital, life, or first degree felony violation of s. 794.011;
20 or has been convicted of an offense in another jurisdiction
21 which is substantially similar to one of the offenses listed
22 in this paragraph. As used in this section, the term
23 "substantially similar offense" means any offense that is
24 substantially similar in elements and penalties to one of
25 those listed in this subparagraph, and that is in violation of
26 a law of any other jurisdiction, whether that of another
27 state, the District of Columbia, the United States or any
28 possession or territory thereof, or any foreign jurisdiction;
29 or

30 3. The court determines by clear and convincing
31 evidence that continuing the parental relationship with the

1 incarcerated parent would be harmful to the child and, for
2 this reason, that termination of the parental rights of the
3 incarcerated parent is in the best interest of the child.

4 (e) A petition for termination of parental rights may
5 also be filed when a child has been adjudicated dependent, a
6 case plan has been filed with the court, and the child
7 continues to be abused, neglected, or abandoned by the
8 parents. In this case, the failure of the parents to
9 substantially comply for a period of 12 months after an
10 adjudication of the child as a dependent child or the child's
11 placement into shelter care, whichever came first, constitutes
12 evidence of continuing abuse, neglect, or abandonment unless
13 the failure to substantially comply with the case plan was due
14 either to the lack of financial resources of the parents or to
15 the failure of the department to make reasonable efforts to
16 reunify the parent and child. Such 12-month period may begin
17 to run only after the child's placement into shelter care or
18 the entry of a disposition order placing the custody of the
19 child with the department or a person other than the parent
20 and the approval by the court of a case plan with a goal of
21 reunification with the parent, whichever came first.

22 (f) When the parent or parents engaged in egregious
23 conduct or had the opportunity and capability to prevent and
24 knowingly failed to prevent egregious conduct that threatens
25 the life, safety, or physical, mental, or emotional health of
26 the child or the child's sibling.

27 1. As used in this subsection, the term "sibling"
28 means another child who resides with or is cared for by the
29 parent or parents regardless of whether the child is related
30 legally or by consanguinity.

31

1 2. As used in this subsection, the term "egregious
2 conduct" means abuse, abandonment, neglect, or any other
3 conduct of the parent or parents that is deplorable, flagrant,
4 or outrageous by a normal standard of conduct. Egregious
5 conduct may include an act or omission that occurred only once
6 but was of such intensity, magnitude, or severity as to
7 endanger the life of the child.

8 (g) When the parent or parents have subjected the
9 child to aggravated child abuse as defined in s. 827.03,
10 sexual battery or sexual abuse as defined in s. 39.01, or
11 chronic abuse.

12 (h) When the parent or parents have committed murder
13 or voluntary manslaughter of another child, or a felony
14 assault that results in serious bodily injury to the child or
15 another child, or aided or abetted, attempted, conspired, or
16 solicited to commit such a murder or voluntary manslaughter or
17 felony assault.

18 (i) When the parental rights of the parent to a
19 sibling have been terminated involuntarily.

20 Section 22. Subsection (2) of section 39.807, Florida
21 Statutes, is amended to read:

22 39.807 Right to counsel; guardian ad litem.--

23 (2)(a) The court shall appoint a guardian ad litem or
24 legal counsel to represent ~~the best interest of~~ the child in
25 any proceedings for termination of parental rights ~~proceedings~~
26 and shall ascertain at each stage of the proceedings whether a
27 guardian ad litem or legal counsel has been appointed.

28 (b) A guardian ad litem shall represent the best
29 interest of the child as provided in s. 39.8225.

30 (c) Legal counsel for a child must be an attorney
31 appointed as provided in s. 39.8226.

1 ~~(b) The guardian ad litem has the following~~
2 ~~responsibilities:~~

3 ~~1. To investigate the allegations of the petition and~~
4 ~~any subsequent matters arising in the case and, unless excused~~
5 ~~by the court, to file a written report. This report must~~
6 ~~include a statement of the wishes of the child and the~~
7 ~~recommendations of the guardian ad litem and must be provided~~
8 ~~to all parties and the court at least 72 hours before the~~
9 ~~disposition hearing.~~

10 ~~2. To be present at all court hearings unless excused~~
11 ~~by the court.~~

12 ~~3. To represent the best interests of the child until~~
13 ~~the jurisdiction of the court over the child terminates or~~
14 ~~until excused by the court.~~

15 (d)~~(c)~~ A guardian ad litem is not required to post
16 bond but shall file an acceptance of the office.

17 (e)~~(d)~~ A guardian ad litem is entitled to receive
18 service of pleadings and papers as provided by the Florida
19 Rules of Juvenile Procedure.

20 (f)~~(e)~~ This subsection does not apply to any voluntary
21 relinquishment of parental rights proceeding.

22 Section 23. Subsection (2) of section 39.808, Florida
23 Statutes, is amended to read:

24 39.808 Advisory hearing; pretrial status conference.--

25 (2) At the hearing the court shall inform the parties
26 of their rights under s. 39.807, shall appoint counsel for the
27 parties in accordance with legal requirements, and shall
28 appoint a guardian ad litem or legal counsel to represent ~~the~~
29 ~~interests of~~ the child if one has not already been appointed.

30 Section 24. Subsections (10) and (11) of section
31 39.810, Florida Statutes, are amended to read:

1 39.810 Manifest best interests of the child.--In a
2 hearing on a petition for termination of parental rights, the
3 court shall consider the manifest best interests of the child.
4 This consideration shall not include a comparison between the
5 attributes of the parents and those of any persons providing a
6 present or potential placement for the child. For the purpose
7 of determining the manifest best interests of the child, the
8 court shall consider and evaluate all relevant factors,
9 including, but not limited to:

10 (10) The expressed interests ~~reasonable preferences~~
11 ~~and wishes~~ of the child, if the court deems the child to be of
12 sufficient intelligence, understanding, and experience to
13 express a preference.

14 (11) Any ~~The~~ recommendations for the child provided by
15 the child's guardian ad litem ~~or legal representative~~.

16 Section 25. Subsections (1) and (9) of section 39.811,
17 Florida Statutes, are amended to read:

18 39.811 Powers of disposition; order of disposition.--

19 (1) If the court finds that the grounds for
20 termination of parental rights have not been established by
21 clear and convincing evidence, the court shall:

22 (a) If grounds for dependency have been established,
23 adjudicate or readjudicate the child dependent and:

24 1. Enter an order placing or continuing the child in
25 out-of-home care under a case plan; or

26 2. Enter an order returning the child to the parent or
27 parents. The court shall retain jurisdiction over a child
28 returned to the parent or parents for a period of 6 months,
29 but, at that time, based on a report of the social service
30 agency, information provided by the child and the guardian ad
31 litem, if appointed, and any other relevant factors, the court

1 shall make a determination as to whether its jurisdiction
2 shall continue or be terminated.

3 (b) If grounds for dependency have not been
4 established, dismiss the petition.

5 (9) After termination of parental rights, the court
6 shall retain jurisdiction over any child for whom custody is
7 given to a social service agency until the child is adopted.
8 The court shall review the status of the child's placement and
9 the progress being made toward permanent adoptive placement.
10 As part of this continuing jurisdiction, for good cause shown
11 by the guardian ad litem for the child or by the child, the
12 court may review the appropriateness of the adoptive placement
13 of the child.

14 Section 26. Section 39.820, Florida Statutes, is
15 amended to read:

16 39.820 Definitions.--As used in the Florida Statutes
17 ~~this part~~, the term:

18 (1) "Guardian ad litem" as referred to in any civil or
19 criminal proceeding includes the following: a circuit office
20 of public advocacy ~~certified guardian ad litem program~~, a duly
21 certified volunteer guardian ad litem, a staff attorney or,
22 contract attorney, ~~or certified pro bono attorney working on~~
23 ~~behalf of a guardian ad litem or the program~~; staff members of
24 ~~an a program~~ office; a court-appointed attorney; or a
25 responsible adult who is appointed by the court to represent
26 the best interests of a child in a proceeding as provided for
27 by law, ~~including, but not limited to, this chapter~~, who is a
28 party to any judicial proceeding as a representative of the
29 child, and who serves until discharged by the court.

30
31

1 (2) "Guardian advocate" means a person appointed by
2 the court to act on behalf of a drug dependent newborn
3 pursuant to the provisions of this part.

4 Section 27. Section 39.821, Florida Statutes, is
5 amended to read:

6 39.821 Qualifications of guardians ad litem.--

7 (1) Because of the special trust or responsibility
8 placed in a guardian ad litem and the staff of offices of
9 public advocacy, the Office of Public Advocacy ~~Guardian Ad~~
10 ~~Litem Program~~ may use any private funds collected by the
11 program, or any state funds so designated, to conduct a
12 security background investigation before certifying a
13 volunteer or staff member to serve. A security background
14 investigation must include, but need not be limited to,
15 employment history checks, checks of references, local
16 criminal records checks through local law enforcement
17 agencies, and statewide criminal records checks through the
18 Department of Law Enforcement. Upon request, an employer shall
19 furnish a copy of the personnel record for the employee or
20 former employee who is the subject of a security background
21 investigation conducted under this section. The information
22 contained in the personnel record may include, but need not be
23 limited to, disciplinary matters and the reason why the
24 employee was terminated from employment. An employer who
25 releases a personnel record for purposes of a security
26 background investigation is presumed to have acted in good
27 faith and is not liable for information contained in the
28 record without a showing that the employer maliciously
29 falsified the record. A security background investigation
30 conducted under this section must ensure that a person is not
31 certified as a guardian ad litem or hired as a staff member of

1 a circuit office of public advocacy if the person has been
2 convicted of, regardless of adjudication, or entered a plea of
3 nolo contendere or guilty to, any offense prohibited under the
4 provisions of the Florida Statutes specified in s. 435.04(2)
5 or under any similar law in another jurisdiction. Before
6 certifying an applicant to serve as a guardian ad litem or as
7 a staff member of an office of public advocacy, the head of a
8 circuit office of public advocacy or the director of the
9 Office of Public Advocacy ~~chief judge of the circuit court~~ may
10 request a federal criminal records check of the applicant
11 through the Federal Bureau of Investigation. In analyzing and
12 evaluating the information obtained in the security background
13 investigation, the office program must give particular
14 emphasis to past activities involving children, including, but
15 not limited to, child-related criminal offenses or child
16 abuse. The office program has the sole discretion in
17 determining whether to certify a person based on his or her
18 security background investigation. The information collected
19 pursuant to the security background investigation is
20 confidential and exempt from s. 119.07(1).

21 (2) This section does not apply to a certified
22 guardian ad litem who was certified before October 1, 1995, an
23 attorney who is a member in good standing of The Florida Bar,
24 or a licensed professional who has undergone a comparable
25 security background investigation as a condition of licensure
26 within 5 years before ~~of~~ applying for certification as a
27 guardian ad litem or as a staff member of an office of public
28 advocacy.

29 (3) It is a misdemeanor of the first degree,
30 punishable as provided in s. 775.082 or s. 775.083, for any
31 person to willfully, knowingly, or intentionally fail, by

1 false statement, misrepresentation, impersonation, or other
2 fraudulent means, to disclose in any application for a
3 volunteer position or for paid employment with an office of
4 public advocacy ~~the Guardian Ad Litem Program~~, any material
5 fact used in making a determination as to the applicant's
6 qualifications for such position.

7 Section 28. Section 39.822, Florida Statutes, is
8 amended to read:

9 39.822 Appointment of guardian ad litem for abused,
10 abandoned, or neglected child.--

11 (1) A guardian ad litem for a child must be an
12 individual certified by an office of public advocacy or be an
13 attorney who is a member in good standing of The Florida Bar.
14 Before certifying a guardian ad litem to be appointed under
15 this chapter, the Office of Public Advocacy shall conduct a
16 security background investigation as provided in s. 39.821.
17 Upon completing the background investigation of a person known
18 to the child and whom the court has approved to serve as
19 guardian ad litem for the case, the circuit office of public
20 advocacy may certify an individual to serve as guardian ad
21 litem for the specified case without completing all other
22 requirements to become a certified guardian ad litem. A
23 guardian ad litem certified for the limited representation in
24 a case must be represented by legal counsel. ~~shall be~~
25 ~~appointed by the court at the earliest possible time to~~
26 ~~represent the child in any child abuse, abandonment, or~~
27 ~~neglect judicial proceeding, whether civil or criminal. Any~~
28 ~~person participating in a civil or criminal judicial~~
29 ~~proceeding resulting from such appointment shall be presumed~~
30 ~~prima facie to be acting in good faith and in so doing shall~~

31

1 ~~be immune from any liability, civil or criminal, that~~
2 ~~otherwise might be incurred or imposed.~~

3 (2) In those cases in which the parents are
4 financially able, the parent or parents of the child shall
5 reimburse the court, in part or in whole, for the cost of
6 provision of guardian ad litem services. Reimbursement to the
7 individual providing guardian ad litem services shall not be
8 contingent upon successful collection by the court from the
9 parent or parents.

10 (3) The guardian ad litem or the program
11 representative shall review all disposition recommendations
12 and changes in placements, and must be present at all critical
13 stages of the dependency proceeding or submit a written report
14 of recommendations to the court. Written reports must be filed
15 with the court and served on all parties whose whereabouts are
16 known at least 72 hours prior to the hearing.

17 Section 29. Section 39.8225, Florida Statutes, is
18 created to read:

19 39.8225 Guardians ad litem; powers, duties, and
20 authority.--

21 (1) A guardian ad litem shall act in the child's best
22 interest, advocate for the child, and take appropriate action
23 to protect the best interest of the child.

24 (2) In an action brought pursuant to the Florida Rules
25 of Civil Procedure, the guardian ad litem shall represent the
26 best interest of the child as is appropriate to the legal
27 action in which the guardian ad litem is appointed. The
28 guardian ad litem shall be an advocate for the child in the
29 litigation and take appropriate action to protect the "best
30 interest" of the child. The guardian ad litem must be
31 represented by an attorney.

1 (3) In an action brought pursuant to the Florida Rules
2 of Juvenile Procedure or the Florida Family Law Rules, the
3 guardian ad litem shall represent the "best interest" of the
4 child after investigating the allegations in the pleadings and
5 the needs of the child, after discussing the allegations with
6 the child and legal counsel, and after giving significant
7 weight to the expressed interests of the child.

8 (4) The guardian ad litem shall investigate the
9 allegations in the pleadings and the needs of the child for
10 the case and, in accordance with the court appointment, the
11 guardian ad litem in his or her investigation shall:

12 (a) Visit and where possible discuss the case with the
13 child.

14 (b) Where appropriate for the representation, observe
15 the child's interactions with parents, siblings, or foster
16 parents; observe the child's family placement or proposed
17 permanent placement when there is one; and, for a young child,
18 observe his or her socialization skills at school or other
19 care facilities.

20 (c) Conduct interviews related to issues in the case,
21 including, where appropriate for the representation, an
22 interview with the child's parent, guardian, custodian,
23 teacher, or foster family; medical professionals treating or
24 evaluating the child; other caretakers or proposed adoptive
25 parents; staff members of the Department of Children and
26 Family Services or the Department of Juvenile Justice; law
27 enforcement personnel who are involved in the case; and any
28 other person whom the guardian ad litem and the attorney
29 determines appropriate.

30 (d) Obtain the legal, social, medical, or
31 psychological reports relevant to understanding the facts of

1 the case and the status and conditions of the child and other
2 participants in the proceeding.

3 (5) The guardian ad litem and the attorney shall
4 consult with the child before any hearing, court appearance,
5 or other proceeding. If the child is of an age and
6 intelligence to understand, the proceeding must be explained
7 to the child in language appropriate to the child's age,
8 education, and comprehension ability, and the child shall be
9 offered the opportunity to attend the proceeding.

10 (6) Before each hearing, the guardian ad litem shall
11 prepare a report containing information on all observations,
12 documentation obtained, and factual information the guardian
13 ad litem determines that the court should have in order to
14 make a best-interest determination for the child regarding the
15 issues before the court. The report must be presented to,
16 discussed with, and reviewed by the attorney retained by the
17 guardian ad litem or assigned to the case, and discussed with
18 the child to the extent the child can understand the
19 information contained in the report. If a circuit office of
20 public advocacy is providing representation, the report may be
21 discussed with other representatives of the office, as
22 required by office procedures. After reviewing the report and
23 consulting with the child and, where appropriate, with other
24 staff members of the circuit office of public advocacy, the
25 attorney and the guardian ad litem shall determine the best
26 manner in which to provide the court with all information
27 necessary for the court to know the child, know the expressed
28 interests of the child, and determine what is in the best
29 interest of the child.

30 (7) The guardian ad litem must be prepared to present
31 the court with a recommendation as to the best interest of the

1 child based on what the child would want if he or she could,
2 using adult judgment and knowledge, evaluate the available
3 information and make a request to the court.

4 (8) The guardian ad litem may claim attorney-client
5 privilege on behalf of the child. If the guardian ad litem or
6 the child is called as a witness in the case, either party may
7 claim the privilege with respect to conversations between the
8 guardian ad litem and the child. However, the child may not
9 claim an attorney-client privilege concerning matters that the
10 guardian ad litem determines are necessary for the court to
11 determine the best interest of the child with respect to the
12 safety and well-being of the child.

13 (9) The guardian ad litem, through counsel, may
14 petition the court for an order directed to a specified
15 person, agency, or organization, including, but not limited
16 to, a hospital, medical doctor, dentist, psychologist, or
17 psychiatrist, which order directs that the guardian ad litem
18 be allowed to inspect and copy any records or documents that
19 relate to the minor child, the child's parent or other
20 custodial person, or any household member with whom the child
21 resides. The order shall be obtained only after notice to all
22 parties and a hearing thereon.

23 (10) The guardian ad litem, through counsel, may
24 request the court to order an expert examination of the child,
25 the child's parent, or any other interested party by a medical
26 doctor, dentist, or other health care provider, including a
27 psychiatrist, psychologist, or other mental health
28 professional.

29 (11) The guardian ad litem may file a written report
30 that may include recommendations and a statement of the
31 expressed interests of the child. The report must be filed and

1 served on all parties at least 20 days before the hearing at
2 which it will be presented, unless the court waives the time
3 limit. The guardian ad litem must be provided with copies of
4 all pleadings, notices, and other documents filed in the
5 action and is entitled to reasonable notice before any action
6 affecting the child is taken by any of the parties, their
7 counsel, or the court.

8 (12) A guardian ad litem, acting through counsel,
9 shall actively file any pleadings, motions, or petitions for
10 relief that the guardian ad litem deems appropriate or
11 necessary in furtherance of the guardian's representation of
12 the child. The guardian ad litem, through counsel, is entitled
13 to be present and to participate in all depositions, hearings,
14 and other proceedings in the action, and, through counsel, may
15 compel the attendance of witnesses.

16 (13) The duties and rights of a nonattorney guardian
17 ad litem does not include the right to practice law.

18 (14) The guardian ad litem shall submit his or her
19 report to the court, if a report is to be submitted, regarding
20 any stipulation or agreement, whether incidental, temporary,
21 or permanent, which affects the interest or welfare of the
22 minor child, within 10 days after the date the stipulation or
23 agreement is served upon the guardian ad litem.

24 Section 30. Section 39.8226, Florida Statutes, is
25 created to read:

26 39.8226 Legal counsel for a child.--

27 (1) The court shall appoint counsel to represent the
28 interests of a child in any delinquency proceeding.

29 (2) The court may appoint counsel to represent the
30 interest of a child, rather than a guardian ad litem, in any
31 other case related to the child if the court determines that

1 the child is of an age and maturity to participate in his or
2 her representation and the child or the child's parents or
3 guardian can pay for the representation.

4 (3)(a) If a circuit office of public advocacy has been
5 appointed to represent the child, the court may appoint
6 counsel to represent the interest of a child, rather than a
7 guardian ad litem, only if the court finds that the child is
8 of an age and maturity to participate in his or her
9 representation and if the expressed interests of the child and
10 the best-interest representation by the guardian ad litem do
11 not coincide or the complexity of the pending case or other
12 legal actions suggest that representation for the child is
13 appropriate.

14 (b) If the guardian ad litem's best-interest
15 representation and the expressed interests of the child do not
16 coincide, the director of the circuit office of public
17 advocacy must interview the child and provide an independent
18 report to the court regarding representation of the child. The
19 report must address whether the child wants independent
20 counsel and whether the child wants the guardian ad litem to
21 continue to represent the best interest of the child in some
22 or all issues, including issues in a case in which independent
23 counsel has been appointed.

24 (4) Upon petition of the office of public advocacy,
25 the court may appoint independent counsel to represent the
26 child in collateral issues if the office does not have the
27 expertise to provide appropriate representation. The petition
28 must address whether the guardian ad litem will continue to
29 represent the best interest of the child in any or all
30 proceedings.

31

1 Section 31. Subsection (8) of section 40.24, Florida
2 Statutes, is amended to read:

3 40.24 Compensation and reimbursement policy.--

4 (8) In circuits that elect to allow jurors to donate
5 their jury service fee upon conclusion of juror service, each
6 juror may irrevocably donate all of the juror's compensation
7 to the 26 U.S.C. s. 501(c)(3) organization specified by the
8 circuit office of public advocacy ~~guardian ad litem program~~ or
9 to a domestic violence shelter as specified annually on a
10 rotating basis by the clerk of court in the circuit for the
11 juror's county of residence. The funds collected may not
12 reduce or offset the amount of compensation that the guardian
13 ad litem program or domestic violence shelter would otherwise
14 receive from the state. The clerk of court shall ensure that
15 all jurors are given written notice at the conclusion of their
16 service that they have the option to so donate their
17 compensation, and that the applicable program specified by the
18 guardian ad litem program or a domestic violence shelter
19 receives all funds donated by the jurors. Any guardian ad
20 litem program receiving donations of juror compensation must
21 expend such moneys on services for children for whom guardians
22 ad litem have been appointed.

23 Section 32. Subsection (1) of section 48.041, Florida
24 Statutes, is amended to read:

25 48.041 Service on minor.--

26 (1) Process against a minor who has never been married
27 shall be served:

28 (a) By serving a parent or guardian of the minor as
29 provided for in s. 48.031 or, when there is a legal guardian
30 appointed for the minor, by serving the guardian as provided
31 for in s. 48.031.

1 (b) By serving the guardian ad litem or other person,
2 if one is appointed by the court to represent the minor.
3 Service on the guardian ad litem is unnecessary when he or she
4 appears voluntarily or when the court orders the appearance
5 without service of process on him or her.

6 (c) By serving the minor through the minor's attorney
7 of record.

8 Section 33. Subsection (1) of section 48.042, Florida
9 Statutes, is amended to read:

10 48.042 Service on incompetent.--

11 (1) Process against an incompetent shall be served:

12 (a) By serving two copies of the process to the person
13 who has care or custody of the incompetent or, when there is a
14 legal guardian appointed for the incompetent, by serving the
15 guardian as provided in s. 48.031.

16 (b) By serving the guardian ad litem or other person,
17 if one is appointed by the court to represent the incompetent.
18 Service on the guardian ad litem is unnecessary when he or she
19 appears voluntarily or when the court orders the appearance
20 without service of process on him or her.

21 (c) By serving a minor through the minor's attorney of
22 record.

23 Section 34. Section 61.401, Florida Statutes, is
24 amended to read:

25 61.401 Appointment of guardian ad litem.--In an action
26 for dissolution of marriage, modification, parental
27 responsibility, custody, or visitation, if the court finds it
28 is in the best interest of the child, the court may appoint a
29 guardian ad litem for the child ~~to act as next friend of the~~
30 ~~child, investigator or evaluator, not as attorney or advocate.~~

31 The court in its discretion may also appoint legal counsel for

1 a child to act as attorney or advocate if the court determines
2 that the child is of an age, maturity, and intelligence to
3 participate in his or her representation. ~~however,~~The
4 guardian ad litem and the legal counsel may ~~shall~~ not be the
5 same person. In any action that involves ~~such actions which~~
6 ~~involve~~ an allegation of child abuse, abandonment, or neglect
7 as defined in s. 39.01, which allegation is verified and
8 determined by the court to be well-founded, the court shall
9 appoint a guardian ad litem or legal counsel for the child.
10 The guardian ad litem and the child shall be a party to any
11 judicial proceeding on or after ~~from~~ the date the court
12 determines it is in the best interest of the child for the
13 child to have a guardian ad litem or legal counsel ~~of the~~
14 ~~appointment~~ until the date the guardian ad litem or legal
15 counsel is discharged ~~of discharge~~.

16 Section 35. Sections 61.402 and 61.403, Florida
17 Statutes, are repealed.

18 Section 36. Section 61.404, Florida Statutes, is
19 amended to read:

20 61.404 Guardians ad litem; confidentiality.--The
21 guardian ad litem shall maintain as confidential all
22 information and documents received from any source described
23 in s. 39.8225(9) ~~s. 61.403(2)~~ and may not disclose such
24 information or documents except, in the guardian ad litem's
25 discretion, in a report to the court, served upon both parties
26 to the action and their counsel or as directed by the court.

27 Section 37. Subsection (7) of section 63.0423, Florida
28 Statutes, is amended to read:

29 63.0423 Procedures with respect to abandoned
30 newborns.--

31

1 (7) If a claim of parental rights of a newborn infant
2 is made before the judgment to terminate parental rights is
3 entered, the circuit court shall hold the action for
4 termination of parental rights pending subsequent adoption in
5 abeyance for a period of time not to exceed 60 days.

6 (a) The court shall order scientific testing to
7 determine maternity or paternity at the expense of the parent
8 claiming parental rights unless maternity or paternity has
9 been previously established legally or by scientific testing.

10 (b) The court may appoint a guardian ad litem for the
11 newborn infant and the guardian ad litem shall be a party to
12 the action. The court may order whatever investigation, home
13 evaluation, and psychological evaluation are necessary to
14 determine what is in the best interest of the newborn infant.

15 (c) The court may not terminate parental rights solely
16 on the basis that the parent left a newborn infant at a
17 hospital, emergency medical services station, or fire station
18 in accordance with s. 383.50.

19 (d) The court shall enter a judgment with written
20 findings of fact and conclusions of law.

21 Section 38. Section 63.0427, Florida Statutes, is
22 amended to read:

23 63.0427 Adopted minor's right to continued
24 communication or contact with siblings.--

25 (1) A child whose parents have had their parental
26 rights terminated and whose custody has been awarded to the
27 department pursuant to s. 39.811, and who is the subject of a
28 petition for adoption under this chapter, shall have the right
29 to have the court consider the appropriateness of postadoption
30 communication or contact, including, but not limited to,
31 visits, letters and cards, or telephone calls, with his or her

1 | siblings or, upon agreement of the adoptive parents, other
2 | specified biological relatives who are not included in the
3 | petition for adoption. The court shall determine if the best
4 | interests of the child support such continued communication or
5 | contact and shall consider the following in making such
6 | determination:

7 | (a) Any orders of the court pursuant to s. 39.811(7).

8 | (b) The expressed interests of the child, if any.

9 | (c)~~(b)~~ Recommendations of the department, the foster
10 | parents if other than the adoptive parents, and the guardian
11 | ad litem.

12 | (d)~~(c)~~ Statements of prospective adoptive parents.

13 | (e)~~(d)~~ Any other information deemed relevant and
14 | material by the court.

15 |
16 | If the court determines that the child's best interests will
17 | be served by postadoption communication or contact with any
18 | sibling or, upon agreement of the adoptive parents, other
19 | specified biological relatives, the court shall so order,
20 | stating the nature and frequency for the communication or
21 | contact. This order shall be made a part of the final adoption
22 | order, but in no event shall continuing validity of the
23 | adoption be contingent upon such postadoption communication or
24 | contact, nor shall the ability of the adoptive parents and
25 | child to change residence within or outside the State of
26 | Florida be impaired by such communication or contact.

27 | (2) Notwithstanding the provisions of s. 63.162, the
28 | adoptive parent may petition for review at any time of a
29 | sibling's or other specified biological relatives'
30 | communication or contact ordered pursuant to subsection (1),
31 | if the adoptive parent believes that the best interests of the

1 adopted child are being compromised, and the court shall have
2 authority to order the communication or contact to be
3 terminated, or to order such conditions in regard to
4 communication or contact as the court deems to be in the best
5 interests of the adopted child. As part of the review
6 process, the court shall consider any expressed interest of
7 the child, if any, and the court may order the parties to
8 engage in mediation. The department need ~~shall~~ not be
9 ~~required to~~ be a party to such review.

10 Section 39. Paragraph (a) of subsection (6) of section
11 215.5601, Florida Statutes, is amended to read:

12 215.5601 Lawton Chiles Endowment Fund.--

13 (6) ADVISORY COUNCIL.--The Lawton Chiles Endowment
14 Fund Advisory Council is established for the purpose of
15 reviewing the funding priorities of the state agencies,
16 evaluating their requests against the mission and goals of the
17 agencies and legislative intent for the use of endowment
18 funds, and allowing for public input and advocacy.

19 (a) The advisory council shall consist of 15 members,
20 including:

21 1. The director of the United Way of Florida, Inc., or
22 his or her designee;

23 2. The director of the Foster Parents Association, or
24 his or her designee;

25 3. The chair of the Department of Elderly Affairs
26 Advisory Council, or his or her designee;

27 4. The president of the Florida Association of Area
28 Agencies on Aging, or his or her designee;

29 5. The State Long-Term Care Ombudsman, or his or her
30 designee;

31

1 6. The state director of the Florida AARP, or his or
2 her designee;

3 7. The director of the Florida Pediatric Society, or
4 his or her designee;

5 8. The director of the Office of Public Advocacy ~~A~~
6 ~~representative of the Guardian Ad Litem Program, appointed by~~
7 ~~the Governor;~~

8 9. A representative of a child welfare lead agency for
9 community-based care, appointed by the Governor;

10 10. A representative of an elder care lead agency for
11 community-based care, appointed by the Governor;

12 11. A representative of a statewide child advocacy
13 organization, appointed by the Governor;

14 12. One consumer caregiver for children, appointed by
15 the Governor;

16 13. One person over the age of 60 years to represent
17 the interests of elders, appointed by the Governor;

18 14. One person under the age of 18 years to represent
19 the interests of children, appointed by the Governor; and

20 15. One consumer caregiver for a functionally impaired
21 elderly person, appointed by the Governor.

22 Section 40. Paragraph (c) of subsection (3) of section
23 228.093, Florida Statutes, is amended to read:

24 228.093 Pupil and student records and reports; rights
25 of parents, guardians, pupils, and students; notification;
26 penalty.--

27 (3) RIGHTS OF PARENT, GUARDIAN, PUPIL, OR
28 STUDENT.--The parent or guardian of any pupil or student who
29 attends or has attended any public school, area
30 vocational-technical training center, community college, or
31 institution of higher education in the State University System

1 shall have the following rights with respect to any records or
2 reports created, maintained, and used by any public
3 educational institution in the state. However, whenever a
4 pupil or student has attained 18 years of age, or is attending
5 an institution of postsecondary education, the permission or
6 consent required of, and the rights accorded to, the parents
7 of the pupil or student shall thereafter be required of and
8 accorded to the pupil or student only, unless the pupil or
9 student is a dependent pupil or student of such parents as
10 defined in 26 U.S.C. s. 152 (s. 152 of the Internal Revenue
11 Code of 1954). The State Board of Education shall formulate,
12 adopt, and promulgate rules whereby parents, guardians,
13 pupils, or students may exercise these rights:

14 (c) Right to challenge and hearing.--Such parent,
15 guardian, pupil, or student may ~~shall have the right to~~
16 challenge the content of any record or report to which such
17 person is granted access under paragraph (a), in order to
18 ensure that the record or report is not inaccurate,
19 misleading, or otherwise in violation of the privacy or other
20 rights of the pupil or student and to provide an opportunity
21 for the correction, deletion, or expunction of any inaccurate,
22 misleading, or otherwise inappropriate data or material
23 contained therein. In addition, a court-appointed guardian ad
24 litem for a child may challenge the content of the record or
25 report on behalf of the child.Any challenge arising under ~~the~~
26 ~~provisions of~~ this paragraph may be settled through informal
27 meetings or discussions between the parent, guardian, pupil,
28 or student and appropriate officials of the educational
29 institution. If the parties at such a meeting agree to make
30 corrections, to make deletions, to expunge material, or to add
31 a statement of explanation or rebuttal to the file, such

1 agreement shall be reduced to writing and signed by the
2 parties; and the appropriate school officials shall take the
3 necessary actions to implement the agreement. If the parties
4 cannot reach an agreement, upon the request of either party, a
5 hearing shall be held on such challenge under rules
6 promulgated by the State Board of Education. Upon the request
7 of the parent, guardian, pupil, or student, the hearing shall
8 be exempt from the requirements of s. 286.011. Such rules
9 shall include at least the following provisions:

10 1. The hearing shall be conducted within a reasonable
11 period of time following the request for the hearing.

12 2. The hearing shall be conducted, and the decision
13 rendered, by an official of the educational institution or
14 other party who does not have a direct interest in the outcome
15 of the hearing.

16 3. The parent, guardian, pupil, or student shall be
17 afforded a full and fair opportunity to present evidence
18 relevant to the issues raised under this paragraph.

19 4. The decision shall be rendered in writing within a
20 reasonable period of time after the conclusion of the hearing.

21 5. The appropriate school officials shall take the
22 necessary actions to implement the decision.

23 Section 41. Paragraph (d) is added to subsection (4)
24 of section 384.27, Florida Statutes, to read:

25 384.27 Physical examination and treatment.--

26 (4) No order requiring a person to be examined or
27 treated for a sexually transmissible disease shall be issued
28 unless:

29 (d) The court has appointed a guardian ad litem for a
30 minor child for whom the court finds there is not a parent,
31 guardian, or other caregiver to represent the interest of the

1 minor child and the child is not of sufficient age and
2 maturity to participate in his or her representation.

3 Section 42. Subsection (3) of section 393.065, Florida
4 Statutes, is amended to read:

5 393.065 Application and eligibility determination.--

6 (3) The department shall notify each applicant, in
7 writing, of its eligibility decision. Any applicant determined
8 by the department to be ineligible for developmental services
9 shall have the right to appeal this decision pursuant to ss.
10 120.569 and 120.57. A court-appointed guardian ad litem may
11 appeal on behalf of a minor child seeking services.

12 Section 43. Section 393.0651, Florida Statutes, is
13 amended to read:

14 393.0651 Family or individual support plan.--The
15 department shall provide for an appropriate family support
16 plan for children ages birth to 18 years of age and an
17 individual support plan for each client. The parent or
18 guardian of the client or, if competent, the client, or, when
19 appropriate, the client advocate who may be a court-appointed
20 guardian ad litem, shall be consulted in the development of
21 the plan and shall receive a copy of the plan. Each plan shall
22 include the most appropriate, least restrictive, and most
23 cost-beneficial environment for accomplishment of the
24 objectives for client progress and a specification of all
25 services authorized. The plan shall include provisions for the
26 most appropriate level of care for the client. Within the
27 specification of needs and services for each client, when
28 residential care is necessary, the department shall move
29 toward placement of clients in residential facilities based
30 within the client's community. The ultimate goal of each plan,
31 whenever possible, shall be to enable the client to live a

1 dignified life in the least restrictive setting, be that in
2 the home or in the community. For children under 6 years of
3 age, the family support plan shall be developed within the
4 45-day application period as specified in s. 393.065(1); for
5 all applicants 6 years of age or older, the family or
6 individual support plan shall be developed within the 60-day
7 period as specified in that subsection.

8 (1) The department shall develop and specify by rule
9 the core components of support plans to be used by each
10 district.

11 (2)(a) The family or individual support plan shall be
12 integrated with the individual education plan (IEP) for all
13 clients who are public school students entitled to a free
14 appropriate public education under the Individuals with
15 Disabilities Education Act, I.D.E.A., as amended. The family
16 or individual support plan and IEP shall be implemented to
17 maximize the attainment of educational and habilitation goals.
18 If the IEP for a student enrolled in a public school program
19 indicates placement in a public or private residential program
20 is necessary to provide special education and related services
21 to a client, the local education agency shall provide for the
22 costs of that service in accordance with the requirements of
23 the Individuals with Disabilities Education Act, I.D.E.A., as
24 amended. This shall not preclude local education agencies and
25 the department from sharing the residential service costs of
26 students who are clients and require residential placement.
27 Under no circumstances shall clients entitled to a public
28 education or their parents be assessed a fee by the department
29 under s. 402.33 for placement in a residential program.

30 (b) For clients who are entering or exiting the school
31 system, an interdepartmental staffing team composed of

1 representatives of the department and the local school system
2 shall develop a written transitional living and training plan
3 with the participation of the client or with the parent or
4 guardian of the client, or the client advocate or guardian ad
5 litem, as appropriate.

6 (3) Each family or individual support plan shall be
7 facilitated through case management designed solely to advance
8 the individual needs of the client.

9 (4) In the development of the family or individual
10 support plan, a client advocate may be appointed by the
11 support planning team for a client who is a minor or for a
12 client who is not capable of express and informed consent
13 when:

14 (a) The parent or guardian cannot be identified;

15 (b) The whereabouts of the parent or guardian cannot
16 be discovered; or

17 (c) The state is the only legal representative of the
18 client.

19
20 Such appointment shall not be construed to extend the powers
21 of the client advocate to include any of those powers
22 delegated by law to a legal guardian.

23 (5) If there is a court-appointed guardian ad litem
24 for a child, the guardian ad litem may be appointed as the
25 client advocate for the child.

26 (6)~~(5)~~ The department shall place a client in the most
27 appropriate and least restrictive, and cost-beneficial,
28 residential facility according to his or her individual
29 habilitation plan. The parent or guardian of the client or, if
30 competent, the client, or, when appropriate, the client
31 advocate, and the administrator of the residential facility to

1 which placement is proposed shall be consulted in determining
2 the appropriate placement for the client. Considerations for
3 placement shall be made in the following order:

4 (a) Client's own home or the home of a family member
5 or direct service provider.

6 (b) Foster care facility.

7 (c) Group home facility.

8 (d) Intermediate care facility for the developmentally
9 disabled.

10 (e) Other facilities licensed by the department which
11 offer special programs for people with developmental
12 disabilities.

13 (f) Developmental services institution.

14 (7)~~(6)~~ In developing a client's annual family or
15 individual support plan, the individual or family with the
16 assistance of the support planning team shall identify
17 measurable objectives for client progress and shall specify a
18 time period expected for achievement of each objective.

19 (8)~~(7)~~ The individual, family, and support coordinator
20 shall review progress in achieving the objectives specified in
21 each client's family or individual support plan, and shall
22 revise the plan annually, following consultation with the
23 client, if competent, or with the parent or guardian of the
24 client, or, when appropriate, the client advocate. The
25 department shall annually report in writing to the client, if
26 competent, or to the parent or guardian of the client, or to
27 the client advocate, when appropriate, with respect to the
28 client's habilitative and medical progress.

29 (9)~~(8)~~ Any client, or any parent of a minor client, or
30 guardian, authorized guardian advocate, or client advocate for
31 a client, who is substantially affected by the client's

1 initial family or individual support plan, or the annual
2 review thereof, shall have the right to file a notice to
3 challenge the decision pursuant to ss. 120.569 and 120.57.
4 Notice of such right to appeal shall be included in all
5 support plans provided by the department.

6 Section 44. Paragraph (b) of subsection (6),
7 paragraphs (d) and (e) of subsection (8), paragraph (a) of
8 subsection (12), and subsection (13) of section 393.11,
9 Florida Statutes, are amended to read:

10 393.11 Involuntary admission to residential
11 services.--

12 (6) COUNSEL; GUARDIAN AD LITEM.--

13 (b) If the attorney, during the course of his or her
14 representation, reasonably believes that the person with
15 mental retardation cannot adequately act in his or her own
16 interest, the attorney may seek the appointment of a guardian
17 ad litem. A prior finding of incompetency is not required
18 before a guardian ad litem is appointed pursuant to this
19 section. If a child is already represented by a guardian ad
20 litem in another proceeding, the court shall appoint that
21 guardian ad litem to act in the best interest of the child
22 unless the court excuses the guardian ad litem for cause.

23 (8) ORDER.--

24 (d) If an order of involuntary admission to
25 residential services provided by the developmental services
26 program of the department is entered by the court, a copy of
27 the written order shall be served upon the person, the
28 guardian ad litem, the person's counsel, the department, and
29 the state attorney and the person's defense counsel, if
30 applicable. The order of involuntary admission sent to the
31 department shall also be accompanied by a copy of the

1 examining committee's report and other reports contained in
2 the court file.

3 (e) Upon receiving the order, the department shall,
4 within 45 days, provide the court with a copy of the person's
5 family or individual support plan and copies of all
6 examinations and evaluations, outlining the treatment and
7 rehabilitative programs. The department shall document that
8 the person has been placed in the most appropriate, least
9 restrictive and cost-beneficial residential facility. A copy
10 of the family or individual support plan and other
11 examinations and evaluations shall be served upon the person,
12 the guardian ad litem, and the person's counsel at the same
13 time the documents are filed with the court.

14 (12) APPEAL.--

15 (a) Any party to the proceeding who is affected by an
16 order of the court and the guardian ad litem may appeal to the
17 appropriate district court of appeal within the time and in
18 the manner prescribed by the Florida Rules of Appellate
19 Procedure.

20 (13) HABEAS CORPUS.--At any time and without notice,
21 any person involuntarily admitted to the developmental
22 services program of the department, or the person's guardian
23 ad litem, parent, or legal guardian, in his or her behalf, is
24 entitled to a writ of habeas corpus to question the cause,
25 legality, and appropriateness of the person's involuntary
26 admission. Each person, or the person's parent or legal
27 guardian, shall receive specific written notice of the right
28 to petition for a writ of habeas corpus at the time of his or
29 her involuntary placement.

30 Section 45. Subsections (8) and (9) of section
31 397.501, Florida Statutes, are amended to read:

1 397.501 Rights of clients.--Clients receiving
2 substance abuse services from any service provider are
3 guaranteed protection of the rights specified in this section,
4 unless otherwise expressly provided, and service providers
5 must ensure the protection of such rights.

6 (8) RIGHT TO COUNSEL.--Each client must be informed
7 that he or she has the right to be represented by counsel in
8 any involuntary proceeding for assessment, stabilization, or
9 treatment and that he or she, or if the client is a minor his
10 or her parent, legal guardian, ~~or~~ legal custodian, or guardian
11 ad litem if a guardian ad litem has been appointed for the
12 child in this or other actions related to the care or custody
13 of a minor, may apply immediately to the court to have an
14 attorney appointed if he or she cannot afford one.

15 (9) RIGHT TO HABEAS CORPUS.--At any time, and without
16 notice, a client involuntarily retained by a provider, or the
17 client's parent, guardian, custodian, guardian ad litem, or
18 attorney on behalf of the client, may petition for a writ of
19 habeas corpus to question the cause and legality of such
20 retention and request that the court issue a writ for the
21 client's release.

22 Section 46. Section 742.011, Florida Statutes, is
23 amended to read:

24 742.011 Determination of paternity proceedings;
25 jurisdiction.--Any woman who is pregnant or has a child, any
26 man who has reason to believe that he is the father of a
27 child, or any child may bring proceedings in the circuit
28 court, in chancery, to determine the paternity of the child
29 when paternity has not been established by law or otherwise. A
30 paternity action may also be brought by a guardian ad litem
31 appointed for the child in a dependency or custody action.

1 Section 47. Section 744.3021, Florida Statutes, is
2 amended to read:

3 744.3021 Guardians of minors.--

4 (1) Upon petition of a parent, brother, sister, next
5 of kin, or other person interested in the welfare of a minor,
6 a guardian for a minor may be appointed by the court without
7 the necessity of adjudication pursuant to s. 744.331. A
8 guardian appointed for a minor, whether of the person or
9 property, has the authority of a plenary guardian.

10 (2) A minor is not required to attend the hearing on
11 the petition for appointment of a guardian, unless otherwise
12 directed by the court.

13 (3) In its discretion, the court may appoint an
14 attorney or guardian ad litem to represent the interests of a
15 minor at the hearing on the petition for appointment of a
16 guardian.

17 Section 48. Subsection (6) of section 984.16, Florida
18 Statutes, is amended to read:

19 984.16 Process and service.--

20 (6) Upon the application of a party, the child's
21 guardian ad litem, or the petitioner, the clerk or deputy
22 clerk shall issue, and the court on its own motion may issue,
23 subpoenas requiring attendance and testimony of witnesses and
24 production of records, documents, or other tangible objects at
25 any hearing.

26 Section 49. Subsections (1), (2), and (3) of section
27 984.17, Florida Statutes, are amended to read:

28 984.17 Response to petition and representation of
29 parties.--

30
31

1 (1) At the time a petition is filed, the court shall
2 ~~may~~ appoint a guardian ad litem or legal counsel for the
3 child. The guardian ad litem shall be a party to the action.

4 (2) No answer to the petition or any other pleading
5 need be filed by any child, guardian ad litem, parent, or
6 legal custodian, but any matters which might be set forth in
7 an answer or other pleading may be pleaded orally before the
8 court or filed in writing as any such person may choose.
9 Notwithstanding the filing of an answer or any pleading, the
10 child or parent shall, prior to an adjudicatory hearing, be
11 advised by the court of the right to counsel.

12 (3) When a petition for a child in need of services
13 has been filed and the parents, guardian, or legal custodian
14 of the child and the child or the child's guardian ad litem
15 have advised the department that the truth of the allegations
16 is acknowledged and that no contest is to be made of the
17 adjudication, the attorney representing the department may set
18 the case before the court for a disposition hearing. If there
19 is a change in the plea at this hearing, the court shall
20 continue the hearing to permit the attorney representing the
21 department to prepare and present the case.

22 Section 50. Subsection (1) of section 984.20, Florida
23 Statutes, is amended to read:

24 984.20 Hearings for child-in-need-of-services cases.--

25 (1) ARRAIGNMENT HEARING.--

26 (a) When a child has been taken into custody by order
27 of the court, an arraignment hearing shall be held within 7
28 days after the date the child is taken into custody. The
29 hearing shall be held for the child or the guardian ad litem
30 and the parent, guardian, or custodian to admit, deny, or
31 consent to findings that a child is in need of services as

1 alleged in the petition. If the child or the guardian ad
2 litem and the parent, guardian, or custodian admit or consent
3 to the findings in the petition, the court shall proceed as
4 set forth in the Florida Rules of Juvenile Procedure. However,
5 if either the child or the guardian ad litem or the parent,
6 guardian, or custodian denies any of the allegations of the
7 petition, the court shall hold an adjudicatory hearing within
8 7 days after the date of the arraignment hearing.

9 (b) When a child is in the custody of the parent,
10 guardian, or custodian, upon the filing of a petition, the
11 clerk shall set a date for an arraignment hearing within a
12 reasonable time from the date of the filing of the petition.
13 If the child or guardian ad litem and the parent, guardian, or
14 custodian admit or consent to an adjudication, the court shall
15 proceed as set forth in the Florida Rules of Juvenile
16 Procedure. However, if either the child or the guardian ad
17 litem or the parent, guardian, or custodian denies any of the
18 allegations of child in need of services, the court shall hold
19 an adjudicatory hearing within a reasonable time from the date
20 of the arraignment hearing.

21 (c) If at the arraignment hearing the child or the
22 guardian ad litem and the parent, guardian, or custodian
23 consents or admits to the allegations in the petition and the
24 court determines that the petition meets the requirements of
25 s. 984.15(3)(e), the court shall proceed to hold a disposition
26 hearing at the earliest practicable time that will allow for
27 the completion of a predisposition study.

28 Section 51. Section 985.203, Florida Statutes, is
29 amended to read:

30 985.203 Right to counsel.--
31

1 (1) A child is entitled to representation by legal
2 counsel at all stages of any proceedings under this part. If
3 the child and the parents or other legal guardian are indigent
4 and unable to employ counsel for the child, the court shall
5 appoint counsel pursuant to s. 27.52. Determination of
6 indigency and costs of representation shall be as provided by
7 ss. 27.52 and 938.29. Legal counsel representing a child who
8 exercises the right to counsel shall be allowed to provide
9 advice and counsel to the child at any time subsequent to the
10 child's arrest, including prior to a detention hearing while
11 in secure detention care. A child shall be represented by
12 legal counsel at all stages of all court proceedings unless
13 the right to counsel is freely, knowingly, and intelligently
14 waived by the child. Counsel may not be waived until the
15 child has met with and been advised by an attorney.If the
16 child appears without counsel, the court shall advise the
17 child of his or her rights with respect to representation of
18 court-appointed counsel.

19 (2) When the court finds the child is not competent to
20 participate in his or her representation, the court may
21 appoint a guardian ad litem for the child. If a guardian ad
22 litem has been appointed in another case related to the child,
23 to the extent possible, the same guardian ad litem should be
24 appointed in the delinquency proceeding.

25 ~~(3)~~~~(2)~~ If the parents or legal guardian of an indigent
26 child are not indigent but refuse to employ counsel, the court
27 shall appoint counsel pursuant to s. 27.52(2)(d) to represent
28 the child at the detention hearing and until counsel is
29 provided. Costs of representation shall be assessed as
30 provided by ss. 27.52(2)(d) and 938.29. Thereafter, the court
31 shall not appoint counsel for an indigent child with

1 nonindigent parents or legal guardian but shall order the
2 parents or legal guardian to obtain private counsel. A parent
3 or legal guardian of an indigent child who has been ordered to
4 obtain private counsel for the child and who willfully fails
5 to follow the court order shall be punished by the court in
6 civil contempt proceedings.

7 (4)~~(3)~~ An indigent child with nonindigent parents or
8 legal guardian may have counsel appointed pursuant to s.
9 27.52(2)(d) if the parents or legal guardian have willfully
10 refused to obey the court order to obtain counsel for the
11 child and have been punished by civil contempt and then still
12 have willfully refused to obey the court order. Costs of
13 representation shall be assessed as provided by ss.
14 27.52(2)(d) and 938.29.

15 (5)~~(4)~~ Notwithstanding any provision of this section
16 or any other law to the contrary, if a child is transferred
17 for criminal prosecution pursuant to this chapter, a
18 nonindigent or indigent-but-able-to-contribute parent or legal
19 guardian of the child pursuant to s. 27.52 is liable for
20 necessary legal fees and costs incident to the criminal
21 prosecution of the child as an adult.

22 Section 52. Paragraphs (a) and (h) of subsection (1),
23 paragraph (e) of subsection (4), paragraph (b) of subsection
24 (5), and paragraph (d) of subsection (6) of section 985.223,
25 Florida Statutes, are amended to read:

26 985.223 Incompetency in juvenile delinquency cases.--

27 (1) If, at any time prior to or during a delinquency
28 case, the court has reason to believe that the child named in
29 the petition may be incompetent to proceed with the hearing,
30 the court on its own motion may, or on the motion of the
31

1 child's attorney or state attorney must, stay all proceedings
2 and order an evaluation of the child's mental condition.

3 (a) Any motion questioning the child's competency to
4 proceed must be served upon the child's attorney, the child's
5 guardian ad litem, if any,the state attorney, the attorneys
6 representing the Department of Juvenile Justice, and the
7 attorneys representing the Department of Children and Family
8 Services. Thereafter, any motion, notice of hearing, order, or
9 other legal pleading relating to the child's competency to
10 proceed with the hearing must be served upon the child's
11 attorney, the child's guardian ad litem, if any,the state
12 attorney, the attorneys representing the Department of
13 Juvenile Justice, and the attorneys representing the
14 Department of Children and Family Services.

15 (h) After placement of the child in the appropriate
16 setting, the Department of Children and Family Services must,
17 within 30 days after the Department of Children and Family
18 Services places the child, prepare and submit to the court a
19 treatment plan for the child's restoration of competency. A
20 copy of the treatment plan must be served upon the child's
21 attorney, the child's guardian ad litem, if any,the state
22 attorney, and the attorneys representing the Department of
23 Juvenile Justice.

24 (4) A child who is determined to be mentally ill or
25 retarded, who has been adjudicated incompetent to proceed, and
26 who meets the criteria set forth in subsection (3), must be
27 committed to the Department of Children and Family Services,
28 and the Department of Children and Family Services must treat
29 or train the child in a secure facility or program which is
30 the least restrictive alternative consistent with public
31 safety. Any placement of a child to a secure residential

1 program must be separate from adult forensic programs. If the
2 child attains competency, then custody, case management, and
3 supervision of the child will be transferred to the department
4 in order to continue delinquency proceedings; however, the
5 court retains authority to order the Department of Children
6 and Family Services to provide continued treatment to maintain
7 competency.

8 (e) The service provider must file a written report
9 with the court pursuant to the applicable Florida Rules of
10 Juvenile Procedure not later than 6 months after the date of
11 commitment, or at the end of any period of extended treatment
12 or training, and at any time the Department of Children and
13 Family Services, through its service provider determines the
14 child has attained competency or no longer meets the criteria
15 for secure placement, or at such shorter intervals as ordered
16 by the court. A copy of a written report evaluating the
17 child's competency must be filed by the provider with the
18 court and with the state attorney, the child's attorney, the
19 child's guardian ad litem, if any,the department, and the
20 Department of Children and Family Services.

21 (5)

22 (b) Whenever the provider files a report with the
23 court informing the court that the child will never become
24 competent to proceed, the Department of Children and Family
25 Services will develop a discharge plan for the child prior to
26 any hearing determining whether the child will ever become
27 competent to proceed. The Department of Children and Family
28 Services must send the proposed discharge plan to the court,
29 the state attorney, the child's attorney, the child's guardian
30 ad litem, if any,and the attorneys representing the
31 Department of Juvenile Justice. The provider will continue to

1 provide services to the child until the court issues the order
2 finding the child will never become competent to proceed.

3 (6)

4 (d) The service provider must file a written report
5 with the court pursuant to the applicable Florida Rules of
6 Juvenile Procedure, not later than 6 months after the date of
7 commitment, at the end of any period of extended treatment or
8 training, and at any time the service provider determines the
9 child has attained competency or will never attain competency,
10 or at such shorter intervals as ordered by the court. A copy
11 of a written report evaluating the child's competency must be
12 filed by the provider with the court, the state attorney, the
13 child's attorney, the child's guardian ad litem, if any, the
14 Department of Children and Family Services, and the
15 department.

16 Section 53. Paragraph (b) of subsection (2) and
17 paragraph (b) of subsection (3) of section 985.233, Florida
18 Statutes, are amended to read:

19 985.233 Sentencing powers; procedures; alternatives
20 for juveniles prosecuted as adults.--

21 (2) PRESENTENCE INVESTIGATION REPORT.--

22 (b) Upon completion of the presentence investigation
23 report, it must be made available to the child's counsel the
24 child's guardian ad litem, if any, and the state attorney by
25 the department prior to the sentencing hearing.

26 (3) SENTENCING HEARING.--

27 (b) After considering the presentence investigation
28 report, the court shall give all parties present at the
29 hearing an opportunity to comment on the issue of sentence and
30 any proposed rehabilitative plan. Parties to the case include
31 the parent, child, the child's guardian ad litem, if any,

1 guardian, or legal custodian of the offender; the offender's
2 counsel; the state attorney; representatives of the Department
3 of Corrections and the Department of Juvenile Justice; the
4 victim or victim's representative; representatives of the
5 school system; and the law enforcement officers involved in
6 the case.

7 Section 54. Paragraph (a) of subsection (1) of section
8 985.234, Florida Statutes, is amended to read:

9 985.234 Appeal.--

10 (1) An appeal from an order of the court affecting a
11 party to a case involving a child pursuant to this part may be
12 taken to the appropriate district court of appeal within the
13 time and in the manner prescribed by s. 924.051 and the
14 Florida Rules of Appellate Procedure by:

15 (a) Any child, ~~and~~ any parent or legal guardian or
16 custodian of any child, and the guardian ad litem for a child.

17
18 In the case of an appeal by the state, the notice of appeal
19 shall be filed by the appropriate state attorney or his or her
20 authorized assistant pursuant to the provisions of s. 27.18.
21 Such an appeal shall embody all assignments of error in each
22 preadjudicatory hearing order that the state seeks to have
23 reviewed. The state shall pay all costs of the appeal except
24 for the child's attorney's fee.

25 Section 55. Subsection (12) of section 985.308,
26 Florida Statutes, is amended to read:

27 985.308 Juvenile sexual offender commitment programs;
28 sexual abuse intervention networks.--

29 (12) Membership of a sexual abuse intervention network
30 shall include, but is not limited to, representatives from:

31 (a) Local law enforcement agencies;

- 1 (b) Local school boards;
2 (c) Child protective investigators;
3 (d) The office of the state attorney;
4 (e) The office of the public defender;
5 (f) The juvenile division of the circuit court;
6 (g) Professionals licensed under chapter 458, chapter
7 459, s. 490.0145, or s. 491.0144 providing treatment for
8 juvenile sexual offenders or their victims;
9 (h) The circuit office of public advocacy ~~guardian ad~~
10 ~~litem~~ ~~program~~;
11 (i) The Department of Juvenile Justice; and
12 (j) The Department of Children and Family Services.
13 Section 56. This act shall take effect October 1,
14 2002.

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17 SENATE SUMMARY

18 Establishes the Office of Public Advocacy within the
19 Justice Administrative Commission. Provides for an office
20 of public advocacy to be established within each judicial
21 circuit. Provides requirements for the offices of public
22 advocacy in providing legal representation for children.
23 Requires that representation be provided to a child in a
24 dependency or delinquency proceeding. Revises various
25 provisions of law to authorize a circuit office of public
26 advocacy rather than personnel from a guardian ad litem
27 program to represent a child in specified legal
28 proceedings. (See bill for details.)
29
30
31