

By the Committee on Judiciary; and Senator Burt

308-1773A-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 public defenders' representation  
5           of children as recipients of moneys from the  
6           Family Courts Trust Funds; amending s. 27.51,  
7           F.S.; requiring the public defender to provide  
8           representation for a child in a proceeding  
9           under ch. 39, F.S., and related proceedings;  
10          requiring appointment as guardian ad litem and  
11          the provision of best-interest representation  
12          to the child; requiring petition to the court  
13          to retain best-interest representation for a  
14          child; amending s. 39.001, F.S.; requiring an  
15          appointed public defender to participate in  
16          revising the statewide plan to prevent abuse,  
17          abandonment, and neglect of children; requiring  
18          that the public defender's offices participate  
19          in revising local plans; amending s. 39.01,  
20          F.S.; redefining the term "party" to include,  
21          under certain circumstances, a guardian ad  
22          litem; limiting a child's right to file  
23          documents; providing for notice to a party;  
24          providing for excusing a child from appearing  
25          in court; amending s. 39.202, F.S.; authorizing  
26          access to records by the guardian ad litem and  
27          the child; amending s. 39.302, F.S.; requiring  
28          notification of the guardian ad litem or legal  
29          counsel of reports of institutional child  
30          abuse, neglect, or abandonment; amending s.  
31          39.305, F.S.; providing for a public defender

1 to participate in developing the model plan for  
2 intervention and treatment in certain  
3 sexual-abuse cases; amending s. 39.402, F.S.;  
4 providing for notice of and representation for  
5 a child at a shelter hearing; providing for  
6 continuance of the hearing in order for the  
7 child to obtain representation; amending s.  
8 39.407, F.S.; authorizing legal counsel to  
9 represent a child placed in residential  
10 treatment; requiring that notice and  
11 information regarding the child's treatment be  
12 provided to the child's guardian ad litem and  
13 legal counsel; amending s. 39.4085, F.S.;  
14 requiring that the child, the guardian ad  
15 litem, or legal counsel participate in  
16 developing a case plan; providing for the right  
17 of a child to be heard at all review hearings;  
18 providing for appointment of a guardian ad  
19 litem or legal counsel; repealing s. 39.4086,  
20 F.S., relating to a pilot program for  
21 appointing attorneys ad litem for dependent  
22 children; amending s. 39.502, F.S.; providing  
23 for notice and service of process on legal  
24 counsel or guardian ad litem; amending s.  
25 39.504, F.S.; authorizing the child's guardian  
26 ad litem or attorney to file for an injunction  
27 to prevent child abuse or an unlawful sexual  
28 offense; amending s. 39.505, F.S.; specifying  
29 that the guardian ad litem need not file an  
30 answer to a petition or pleading; amending s.  
31 39.510, F.S.; authorizing the representative of

1 a party to appeal a court order; amending s.  
2 39.521, F.S.; requiring that a case plan and  
3 certain reports be provided to specified  
4 parties; limiting discharge of a guardian ad  
5 litem or legal counsel unless other  
6 representation is provided to a child; amending  
7 s. 39.701, F.S.; authorizing the court to  
8 dismiss a child from a judicial review hearing;  
9 requiring that notice be provided to the child  
10 and legal counsel; requiring service of reports  
11 on specified parties; requiring the court to  
12 determine whether a child needs a guardian ad  
13 litem or attorney; authorizing the court to  
14 determine whether a child's placement is  
15 appropriate; amending s. 39.801, F.S.;  
16 requiring that notice of a petition be served  
17 on a child; exempting a child's legal counsel  
18 from payment of fees for service of process or  
19 other papers; amending s. 39.802, F.S.;  
20 providing for a child through legal counsel to  
21 file a petition for termination of parental  
22 rights; amending s. 39.805, F.S.; providing  
23 that a guardian ad litem need not file an  
24 answer; amending s. 39.806, F.S.; providing  
25 requirements for a child in filing a petition  
26 for termination of parental rights; amending s.  
27 39.807, F.S.; providing requirements for the  
28 representation provided to a child by the  
29 guardian ad litem or legal counsel; eliminating  
30 provisions related to posting of a bond and  
31 service on a guardian ad litem; amending s.

1 39.808, F.S.; providing for appointment of  
2 legal counsel following a petition to terminate  
3 parental rights; amending s. 39.810, F.S.;  
4 providing for the court to consider the  
5 expressed interest of the child in a hearing on  
6 a petition to terminate parental rights;  
7 providing that the court must consider  
8 information related to best-interest  
9 requirements provided by a guardian ad litem;  
10 amending s. 39.811, F.S.; requiring that the  
11 court consider information provided by the  
12 child or the guardian ad litem in determining  
13 whether to retain jurisdiction over a dependent  
14 child; amending s. 39.820, F.S.; amending the  
15 definition of the term "guardian ad litem" to  
16 eliminate references to the guardian ad litem  
17 program; amending s. 39.821, F.S.; providing  
18 qualifications for guardians ad litem and staff  
19 members of the public defender providing  
20 representation to children; amending s. 39.822,  
21 F.S.; designating who may be a guardian ad  
22 litem; requiring background checks of specified  
23 guardians ad litem; creating s. 39.8225, F.S.;  
24 providing powers and duties of a guardian ad  
25 litem; requiring that a guardian ad litem  
26 represent the child's best interest; requiring  
27 that a guardian ad litem investigate  
28 allegations in a pleading filed; providing  
29 requirements for conducting an investigation;  
30 requiring that the guardian ad litem and  
31 attorney consult with the child; requiring a

1 report; providing for attorney review of the  
2 report and presentation to the court; requiring  
3 that the court be informed of the expressed  
4 interest of the child; authorizing the court to  
5 issue a blanket order for the guardian ad litem  
6 to obtain information; authorizing the guardian  
7 ad litem to petition the court to issue orders;  
8 providing for notice of written reports to all  
9 parties; requiring that the guardian ad litem  
10 file certain pleadings through counsel;  
11 creating s. 39.84, F.S.; providing for  
12 confidentiality; creating s. 39.86, F.S.;  
13 providing immunity for a guardian ad litem and  
14 a court-appointed psychologist; creating s.  
15 39.8226, F.S.; providing for appointment of  
16 legal counsel for a child; requiring that the  
17 court determine capacity of a child before  
18 appointing legal counsel; providing for  
19 appointment of legal counsel when the public  
20 defender is providing representation;  
21 authorizing the public defender to petition for  
22 appointment of counsel; amending s. 40.24,  
23 F.S.; providing for payment for jurors to be  
24 used to fund the representation of children in  
25 a proceeding under ch. 39, F.S., and related  
26 proceedings; amending s. 215.5601, F.S.;  
27 providing for an appointed public defender  
28 rather than the director of the guardian ad  
29 litem program to be a member of the Lawton  
30 Chiles Endowment Fund Advisory Council;  
31 amending s. 985.308, F.S.; excluding the

1 guardian ad litem program from the membership  
2 of a sexual abuse intervention network;  
3 providing an effective 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, public defender's  
20 representation of children in dependency proceedings ~~guardian~~  
21 ~~ad litem programs~~, mediation programs, legal support,  
22 training, automation, and other related costs incurred to  
23 benefit the citizens of the state and the courts in relation  
24 to family law cases. The trust fund shall be used to fund the  
25 publication of the handbook created pursuant to s. 741.0306.

26 Section 2. Section 27.51, Florida Statutes, is amended  
27 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;

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

11 (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; ~~or~~

21 (e) A child who is a party in a proceeding under  
22 chapter 39.

23 (2) The court may not appoint the public defender to  
24 represent, even on a temporary basis, any person who is not  
25 indigent. The court, however, may appoint private counsel in  
26 capital cases as provided in s. 925.035.

27 (3) Each public defender shall serve on a full-time  
28 basis and is prohibited from engaging in the private practice  
29 of law while holding office. Assistant public defenders shall  
30 give priority and preference to their duties as assistant  
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1 public defenders and shall not otherwise engage in the  
2 practice of criminal law.

3 (4) The public defender for a judicial circuit  
4 enumerated in this subsection shall, after the record on  
5 appeal is transmitted to the appellate court by the office of  
6 the public defender which handled the trial and if requested  
7 by any public defender within the indicated appellate  
8 district, handle all felony appeals to the state and federal  
9 courts required of the official making such request:

10 (a) Public defender of the second judicial circuit, on  
11 behalf of any public defender within the district comprising  
12 the First District Court of Appeal.

13 (b) Public defender of the tenth judicial circuit, on  
14 behalf of any public defender within the district comprising  
15 the Second District Court of Appeal.

16 (c) Public defender of the eleventh judicial circuit,  
17 on behalf of any public defender within the district  
18 comprising the Third District Court of Appeal.

19 (d) Public defender of the fifteenth judicial circuit,  
20 on behalf of any public defender within the district  
21 comprising the Fourth District Court of Appeal.

22 (e) Public defender of the seventh judicial circuit,  
23 on behalf of any public defender within the district  
24 comprising the Fifth District Court of Appeal.

25 (5) When the public defender for a judicial circuit  
26 enumerated in subsection (4) has represented at trial a person  
27 sentenced to death, the public defender shall not represent  
28 that person in any direct appellate proceedings. That public  
29 defender shall notify the Florida Supreme Court within 10 days  
30 after filing a notice of appeal, and the Court shall appoint  
31



1 another public defender enumerated in subsection (4) to  
2 represent the person in any direct appellate proceedings.

3 (6)(a) When direct appellate proceedings prosecuted by  
4 a public defender on behalf of an accused and challenging a  
5 judgment of conviction and sentence of death terminate in an  
6 affirmance of such conviction and sentence, whether by the  
7 Florida Supreme Court or by the United States Supreme Court or  
8 by expiration of any deadline for filing such appeal in a  
9 state or federal court, the public defender shall notify the  
10 accused of his or her rights pursuant to Rule 3.850, Florida  
11 Rules of Criminal Procedure, including any time limits  
12 pertinent thereto, and shall advise such person that  
13 representation in any collateral proceedings is the  
14 responsibility of the capital collateral representative. The  
15 public defender shall then forward all original files on the  
16 matter to the capital collateral representative, retaining  
17 such copies for his or her files as may be desired. However,  
18 the trial court shall retain the power to appoint the public  
19 defender or other attorney not employed by the capital  
20 collateral representative to represent such person in  
21 proceedings for relief by executive clemency pursuant to s.  
22 925.035.

23 (b) It is the intent of the Legislature that any  
24 public defender representing an inmate in any collateral  
25 proceedings in any court on June 24, 1985, shall continue  
26 representation of that inmate in all postconviction  
27 proceedings unless relieved of responsibility from further  
28 representation by the court.

29 (7) When representing a child who is a party in a  
30 proceeding under chapter 39 the public defender's office shall  
31 be appointed as the guardian ad litem for the child as defined

1 in s. 39.820, and shall provide for representation of the best  
2 interest of the child through a staff or volunteer lay  
3 representative and an attorney who shall represent the child  
4 as provided in s. 39.8225. The public defender may also  
5 represent the child in proceedings related to collateral  
6 issues such as education, medical treatment or testing, or  
7 other treatment of the child who is a party in a proceeding  
8 under chapter 39. However, the public defender must petition  
9 the court for legal representation of the expressed interest  
10 of the child as provided in s. 39.8226(3) and may petition the  
11 court for legal representation as provided in s. 39.8226(4).

12 (8)(7) A sum shall be appropriated to the public  
13 defender of each judicial circuit enumerated in subsection (4)  
14 for the employment of assistant public defenders and clerical  
15 employees and the payment of expenses incurred in cases on  
16 appeal.

17 Section 3. Paragraph (a) of subsection (7) of section  
18 39.001, Florida Statutes, is amended to read:

19 39.001 Purposes and intent; personnel standards and  
20 screening.--

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 a public  
29 defender appointed by the Governor shall participate and fully  
30 cooperate in the development of the state plan at both the  
31 state and local levels. Furthermore, appropriate local

1 agencies and organizations shall be provided an opportunity to  
2 participate in the development of the state plan at the local  
3 level. Appropriate local groups and organizations shall  
4 include, but not be limited to, community mental health  
5 centers; public defenders ~~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 4. 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. While the child is a party, he or she may file  
29 documents in a proceeding under this chapter only through a  
30 court-appointed attorney or guardian ad litem. If information  
31 or notice must be provided to a party, service shall be made

1 as provided in s. 39.502.The presence of the child may be  
2 excused by order of the court when the child requests to be  
3 excused ~~presence would not be in the child's best interest.~~  
4 Notice to the child and the presence of the child may be  
5 excused by order of the court when the age, capacity, or other  
6 condition of the child is such that the notice or the presence  
7 of the child would be meaningless, physically dangerous,or  
8 emotionally detrimental to the child.

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

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

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

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

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

1 additional evaluative needs of the child; to the child, the  
2 guardian ad litem, and their attorneys;by order of the  
3 court;~~or~~ to health plan payors, limited to that information  
4 used for insurance reimbursement purposes.

5 Section 6. Present subsections (4), (5), and (6) of  
6 section 39.302, Florida Statutes, are redesignated as  
7 subsections (5), (6), and (7), respectively, and a new  
8 subsection (4) is added to that section to read:

9 39.302 Protective investigations of institutional  
10 child abuse, abandonment, or neglect.--

11 (4) Upon receipt of a report of institutional child  
12 abuse, abandonment, or neglect as provided in subsection (1)  
13 the department shall, within 24 hours, notify the guardian ad  
14 litem or legal counsel for any child alleged to be abused,  
15 abandoned, or neglected. Copies of the child-protective  
16 investigation shall be provided to the guardian ad litem or  
17 attorney immediately upon completion.

18 Section 7. Section 39.305, Florida Statutes, is  
19 amended to read:

20 39.305 Intervention and treatment in sexual abuse  
21 cases; model plan.--The department shall develop a model plan  
22 for community intervention and treatment of intrafamily sexual  
23 abuse in conjunction with the Department of Law Enforcement,  
24 the Department of Health, the Department of Education, the  
25 Attorney General, a public defender appointed by the Governor  
26 ~~the state Guardian Ad Litem Program~~, the Department of  
27 Corrections, representatives of the judiciary, and  
28 professionals and advocates from the mental health and child  
29 welfare community.

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

4           39.402 Placement in a shelter.--

5           (5)(a) The parents or legal custodians of the child,  
6 the child, and the child's guardian ad litem, if known, or the  
7 public defender shall be given such notice as best ensures  
8 their actual knowledge of the date, time, and location of the  
9 shelter hearing. If the parents or legal custodians are  
10 outside the jurisdiction of the court, are not known, or  
11 cannot be located or refuse or evade service, they shall be  
12 given such notice as best ensures their actual knowledge of  
13 the date, time, and location of the shelter hearing. The  
14 person providing or attempting to provide notice to the  
15 parents or legal custodians, the child, and the child's  
16 guardian ad litem, if known, or the public defender shall, if  
17 the person's or entities to be provided notice ~~parents or~~  
18 ~~legal custodians~~ are not present at the hearing, advise the  
19 court either in person or by sworn affidavit, of the attempts  
20 made to provide notice and the results of those attempts.

21           (b) The parents or legal custodians, the child, and  
22 the child's guardian ad litem, if known, or the public  
23 defender shall be given written notice that:

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

26           2. The parents ~~They~~ have the right to be represented  
27 by counsel and the child has the right to counsel as provided  
28 in s. 39.8226 or a guardian ad litem as provided in s.  
29 39.8225., and,

30           a. If indigent, the parents have the right to be  
31 represented by appointed counsel, at the shelter hearing and

1 at each subsequent hearing or proceeding, pursuant to the  
2 procedures set forth in s. 39.013.

3 b. If the child's parents and the child are indigent  
4 or time or circumstances prevent obtaining a private guardian  
5 ad litem or counsel, the public defender shall be appointed to  
6 represent the child.

7 c. If the parents or legal custodians appear for the  
8 shelter hearing without legal counsel, then, at their request,  
9 the shelter hearing may be continued up to 72 hours to enable  
10 the parents or legal custodians to consult legal counsel.

11 d. If the child appears for the shelter hearing  
12 without a guardian ad litem, legal counsel, or representation  
13 by the public defender, the shelter hearing may be continued  
14 up to 72 hours to enable representation to be retained on  
15 behalf of the child.

16 e. If a continuance is requested by the parents or  
17 legal custodians, or on behalf of the child, the child shall  
18 be continued in shelter care for the length of the  
19 continuance, if granted by the court.

20 (8)

21 (b) The parents or legal custodians of the child, the  
22 child, and the child's guardian ad litem, if known, or the  
23 public defender shall be given such notice as best ensures  
24 their actual knowledge of the time and place of the shelter  
25 hearing. The failure to provide notice to a party or  
26 participant does not invalidate an order placing a child in a  
27 shelter if the court finds that the petitioner has made a good  
28 faith effort to provide such notice. The court shall require  
29 the parents or legal custodians present at the hearing to  
30 provide to the court on the record the names, addresses, and  
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1 relationships of all parents, prospective parents, and next of  
2 kin of the child, so far as are known.

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

4 1. Appoint an attorney for the child pursuant to s.  
5 39.8226 or a guardian ad litem to represent the best interest  
6 of the child pursuant to s. 39.8225, unless the court finds  
7 that such representation of the child is otherwise provided is  
8 unnecessary;

9 2. Inform the parents or legal custodians of their  
10 right to counsel to represent them at the shelter hearing and  
11 at each subsequent hearing or proceeding, and the right of the  
12 parents to appointed counsel, pursuant to the procedures set  
13 forth in s. 39.013; and

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

16 (e) At the shelter hearing, the department shall  
17 provide the court and the child and either the child's  
18 guardian ad litem, if known, or the public defender copies of  
19 any available law enforcement, medical, or other professional  
20 reports, and shall also provide copies of abuse hotline  
21 reports pursuant to state and federal confidentiality  
22 requirements.

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

25 39.407 Medical, psychiatric, and psychological  
26 examination and treatment of child; physical or mental  
27 examination of parent or person requesting custody of child.--

28 (5) Children who are in the legal custody of the  
29 department may be placed by the department in a residential  
30 treatment center licensed under s. 394.875 or a hospital  
31 licensed under chapter 395 for residential mental health



1 treatment only pursuant to this section or may be placed by  
2 the court in accordance with an order of involuntary  
3 examination or involuntary placement entered pursuant to s.  
4 394.463 or s. 394.467. All children placed in a residential  
5 treatment program under this subsection must have a guardian  
6 ad litem or legal counsel appointed.

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

8 1. "Residential treatment" means placement for  
9 observation, diagnosis, or treatment of an emotional  
10 disturbance in a residential treatment center licensed under  
11 s. 394.875 or a hospital licensed under chapter 395.

12 2. "Least restrictive alternative" means the treatment  
13 and conditions of treatment that, separately and in  
14 combination, are no more intrusive or restrictive of freedom  
15 than reasonably necessary to achieve a substantial therapeutic  
16 benefit or to protect the child or adolescent or others from  
17 physical injury.

18 3. "Suitable for residential treatment" or  
19 "suitability" means a determination concerning a child or  
20 adolescent with an emotional disturbance as defined in s.  
21 394.492(5) or a serious emotional disturbance as defined in s.  
22 394.492(6) that each of the following criteria is met:

23 a. The child requires residential treatment.

24 b. The child is in need of a residential treatment  
25 program and is expected to benefit from mental health  
26 treatment.

27 c. An appropriate, less restrictive alternative to  
28 residential treatment is unavailable.

29 (b) Whenever the department believes that a child in  
30 its legal custody is emotionally disturbed and may need  
31 residential treatment, an examination and suitability

1 assessment must be conducted by a qualified evaluator who is  
2 appointed by the Agency for Health Care Administration. This  
3 suitability assessment must be completed before the placement  
4 of the child in a residential treatment center for emotionally  
5 disturbed children and adolescents or a hospital. The  
6 qualified evaluator must be a psychiatrist or a psychologist  
7 licensed in Florida who has at least 3 years of experience in  
8 the diagnosis and treatment of serious emotional disturbances  
9 in children and adolescents and who has no actual or perceived  
10 conflict of interest with any inpatient facility or  
11 residential treatment center or program.

12 (c) Before a child is admitted under this subsection,  
13 the child shall be assessed for suitability for residential  
14 treatment by a qualified evaluator who has conducted a  
15 personal examination and assessment of the child and has made  
16 written findings that:

17 1. The child appears to have an emotional disturbance  
18 serious enough to require residential treatment and is  
19 reasonably likely to benefit from the treatment.

20 2. The child has been provided with a clinically  
21 appropriate explanation of the nature and purpose of the  
22 treatment.

23 3. All available modalities of treatment less  
24 restrictive than residential treatment have been considered,  
25 and a less restrictive alternative that would offer comparable  
26 benefits to the child is unavailable.

27  
28 A copy of the written findings of the evaluation and  
29 suitability assessment must be provided to the department and  
30 to the guardian ad litem or legal counsel, who shall have the  
31 opportunity to discuss the findings with the evaluator.

1           (d) Immediately upon placing a child in a residential  
2 treatment program under this section, the department must  
3 notify the guardian ad litem or legal counsel and the court  
4 having jurisdiction over the child and must provide the  
5 guardian ad litem or legal counsel and the court with a copy  
6 of the assessment by the qualified evaluator.

7           (e) Within 10 days after the admission of a child to a  
8 residential treatment program, the director of the residential  
9 treatment program or the director's designee must ensure that  
10 an individualized plan of treatment has been prepared by the  
11 program and has been explained to the child, to the  
12 department, and to the guardian ad litem or legal counsel, and  
13 submitted to the department. The child must be involved in the  
14 preparation of the plan to the maximum feasible extent  
15 consistent with his or her ability to understand and  
16 participate, and the guardian ad litem or legal counsel and  
17 the child's foster parents must be involved to the maximum  
18 extent consistent with the child's treatment needs. The plan  
19 must include a preliminary plan for residential treatment and  
20 aftercare upon completion of residential treatment. The plan  
21 must include specific behavioral and emotional goals against  
22 which the success of the residential treatment may be  
23 measured. A copy of the plan must be provided to the child, to  
24 the guardian ad litem or legal counsel, and to the department.

25           (f) Within 30 days after admission, the residential  
26 treatment program must review the appropriateness and  
27 suitability of the child's placement in the program. The  
28 residential treatment program must determine whether the child  
29 is receiving benefit towards the treatment goals and whether  
30 the child could be treated in a less restrictive treatment  
31 program. The residential treatment program shall prepare a

1 written report of its findings and submit the report to the  
2 guardian ad litem or legal counsel and to the department. The  
3 department must submit the report to the court. The report  
4 must include a discharge plan for the child. The residential  
5 treatment program must continue to evaluate the child's  
6 treatment progress every 30 days thereafter and must include  
7 its findings in a written report submitted to the guardian ad  
8 litem or legal counsel and the department. The department may  
9 not reimburse a facility until the facility has submitted  
10 every written report that is due.

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

16 2. The court must conduct a hearing to review the  
17 status of the child's residential treatment plan no later than  
18 3 months after the child's admission to the residential  
19 treatment program. An independent review of the child's  
20 progress towards achieving the goals and objectives of the  
21 treatment plan must be completed by a qualified evaluator and  
22 submitted to the court and to the guardian ad litem or legal  
23 counsel before the court's ~~its~~ 3-month review.

24 3. For any child in residential treatment at the time  
25 a judicial review is held pursuant to s. 39.701, the child's  
26 continued placement in residential treatment must be a subject  
27 of the judicial review.

28 4. If at any time the court determines that the child  
29 is not suitable for continued residential treatment, the court  
30 shall order the department to place the child in the least  
31

1 restrictive setting that is best suited to meet his or her  
2 needs.

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

6 (i) The department must adopt rules for implementing  
7 timeframes for the completion of suitability assessments by  
8 qualified evaluators and a procedure that includes timeframes  
9 for completing the 3-month independent review by the qualified  
10 evaluators of the child's progress towards achieving the goals  
11 and objectives of the treatment plan which review must be  
12 submitted to the court. The Agency for Health Care  
13 Administration must adopt rules for the registration of  
14 qualified evaluators, the procedure for selecting the  
15 evaluators to conduct the reviews required under this section,  
16 and a reasonable, cost-efficient fee schedule for qualified  
17 evaluators.

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

21 39.4085 Legislative findings and declaration of intent  
22 for goals for dependent children.--The Legislature finds and  
23 declares that the design and delivery of child welfare  
24 services should be directed by the principle that the health  
25 and safety of children should be of paramount concern and,  
26 therefore, establishes the following goals for children in  
27 shelter or foster care:

28 (11) To be the subject of a plan developed by the  
29 counselor and the shelter or foster caregiver with the child,  
30 when the child is of an age or capacity to participate, and  
31 the child's guardian ad litem and with their legal counsel to

1 deal with identified behaviors that may present a risk to the  
2 child or others.

3 (12) To be involved and incorporated, where  
4 appropriate, and to have the child's guardian ad litem and the  
5 legal counsel of the child and of the guardian ad litem  
6 involved in the development of the case plan, to have a case  
7 plan which will address their specific needs, and to object to  
8 any of the provisions of the case plan.

9 (19) To be heard by the court, ~~if appropriate,~~ at all  
10 review hearings, unless the child chooses not to be heard or  
11 because of age, capacity, or other condition of the child, the  
12 court determines it would be meaningless, physically  
13 dangerous, or emotionally detrimental to the child.

14 (20) To have a guardian ad litem appointed to  
15 represent, ~~within reason,~~ their best interests and, as  
16 provided in s. 39.8226 where appropriate, legal counsel an  
17 attorney ad litem appointed to represent their expressed legal  
18 interests; the guardian ad litem and legal counsel attorney ad  
19 litem shall have immediate and unlimited access to the  
20 children they represent.

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

24 Section 11. Section 39.4086, Florida Statutes, is  
25 repealed.

26 Section 12. Section 39.502, Florida Statutes, is  
27 amended to read:

28 39.502 Notice, process, and service.--

29 (1) Unless parental rights have been terminated, all  
30 parents must be notified of all proceedings or hearings  
31 involving the child. Notice in cases involving shelter

1 hearings and hearings resulting from medical emergencies must  
2 be that most likely to result in actual notice to the parents.  
3 In all other dependency proceedings, notice must be provided  
4 in accordance with subsections (4)-(9).

5 (2) Notice of all proceedings or hearings involving  
6 the child and all documents and reports related to those  
7 proceedings or required to be given to the child shall be  
8 served on or delivered to the child through the court  
9 appointed representative for the child, either the guardian ad  
10 litem or the child's or the guardian ad litem's legal counsel.  
11 If the court has not appointed a representative for the child,  
12 service or delivery shall be made to the child unless the  
13 court determines that, because of age, capacity, or other  
14 condition of the child, it would be meaningless or emotionally  
15 detrimental to the child.

16 ~~(3)(2)~~ Personal appearance of any person in a hearing  
17 before the court obviates the necessity of serving process on  
18 that person.

19 ~~(4)(3)~~ Upon the filing of a petition containing  
20 allegations of facts which, if true, would establish that the  
21 child is a dependent child, and upon the request of the  
22 petitioner, the clerk or deputy clerk shall issue a summons.

23 ~~(5)(4)~~ The summons shall require the person on whom it  
24 is served to appear for a hearing at a time and place  
25 specified, not less than 72 hours after service of the  
26 summons. A copy of the petition shall be attached to the  
27 summons.

28 ~~(6)(5)~~ The summons shall be directed to, and shall be  
29 served upon, all parties other than the petitioner.

30 ~~(7)(6)~~ It is the duty of the petitioner or moving  
31 party to notify all participants and parties known to the

1 petitioner or moving party of all hearings subsequent to the  
2 initial hearing unless notice is contained in prior court  
3 orders and these orders were provided to the participant or  
4 party. Proof of notice or provision of orders may be provided  
5 by certified mail with a signed return receipt.

6 (8)~~(7)~~ Service of the summons and service of  
7 pleadings, papers, and notices subsequent to the summons on  
8 persons outside this state must be made pursuant to s.  
9 61.1312.

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

17 (10)~~(9)~~ When an affidavit of diligent search has been  
18 filed under subsection (8), the petitioner shall continue to  
19 search for and attempt to serve the person sought until  
20 excused from further search by the court. The petitioner shall  
21 report on the results of the search at each court hearing  
22 until the person is identified or located or further search is  
23 excused by the court.

24 (11)~~(10)~~ Service by publication shall not be required  
25 for dependency hearings and the failure to serve a party or  
26 give notice to a participant shall not affect the validity of  
27 an order of adjudication or disposition if the court finds  
28 that the petitioner has completed a diligent search for that  
29 party.

30 (12)~~(11)~~ Upon the application of a party or the  
31 petitioner, the clerk or deputy clerk shall issue, and the



1 court on its own motion may issue, subpoenas requiring  
2 attendance and testimony of witnesses and production of  
3 records, documents, and other tangible objects at any hearing.

4 (13)~~(12)~~ All process and orders issued by the court  
5 shall be served or executed as other process and orders of the  
6 circuit court and, in addition, may be served or executed by  
7 authorized agents of the department, or the guardian ad litem,  
8 or legal counsel for the child.

9 (14)~~(13)~~ Subpoenas may be served within the state by  
10 any person over 18 years of age who is not a party to the  
11 proceeding and, in addition, may be served by authorized  
12 agents of the department, or the guardian ad litem, or legal  
13 counsel for the child.

14 (15)~~(14)~~ No fee shall be paid for service of any  
15 process or other papers by an agent of the department, or the  
16 guardian ad litem, or legal counsel for the child. If any  
17 process, orders, or any other papers are served or executed by  
18 any sheriff, the sheriff's fees shall be paid by the county.

19 (16)~~(15)~~ A party who is identified as a person with  
20 mental illness or with a developmental disability must be  
21 informed by the court of the availability of advocacy services  
22 through the department, the Association for Retarded Citizens,  
23 or other appropriate mental health or developmental disability  
24 advocacy groups and encouraged to seek such services.

25 (17)~~(16)~~ If the party to whom an order is directed is  
26 present or represented at the final hearing, service of the  
27 order is not required.

28 (18)~~(17)~~ The parent or legal custodian of the child,  
29 the attorney for the department, the guardian ad litem, the  
30 child, and all other parties and participants shall be given  
31

1 reasonable notice of all hearings provided for under this  
2 part.

3 (19)~~(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,at the  
6 conclusion of any hearing, a written notice containing the  
7 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 child through the guardian ad litem or legal counsel,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 guardian ad litem,and to any law

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

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

7 39.505 No answer required.--No answer to the petition  
8 or any other pleading need be filed by any child, guardian ad  
9 litem, parent, or legal custodian, but any matters that ~~which~~  
10 might be set forth in an answer or other pleading may be  
11 pleaded orally before the court or filed in writing as any  
12 such person may choose. Notwithstanding the filing of an  
13 answer or any pleading, the respondent shall, prior to an  
14 adjudicatory hearing, be advised by the court of the right to  
15 counsel and shall be given an opportunity to deny the  
16 allegations in the petition for dependency or to enter a plea  
17 to allegations in the petition before the court.

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

20 39.510 Appeal.--

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

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

31 39.521 Disposition hearings; powers of disposition.--

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

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

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

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

1 the department unless other legal representation is provided  
2 for the child.

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

5           a. Ninety days after the disposition hearing;

6           b. Ninety days after the court accepts the case plan;

7           c. Six months after the date of the last review  
8 hearing; or

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

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

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

31

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

1 this report must be provided to the child and the child's  
2 guardian ad litem prior to the judicial 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 after consideration of  
10 ~~based on~~ a report of the department or agency, report of ~~or~~  
11 the child's guardian ad litem, or any testimony of the child,  
12 and any other relevant factors; if its jurisdiction is to be  
13 terminated, the court 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 when, based on the child's  
24 age, capacity, or other condition, the court determines that  
25 the child's attendance would be meaningless, physically  
26 dangerous, or emotionally detrimental to the child. The court,  
27 ~~but~~ may not dispense with the hearing or the presence of other  
28 parties to the review unless before the review a hearing is  
29 held before a citizen 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 for the child, ~~or~~  
5 ~~the representative of the guardian ad litem program if the~~  
6 ~~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; to the child and the  
17 guardian ad litem, unless the guardian ad litem prepared the  
18 report;and to the citizen review panel, at least 72 hours  
19 before the judicial review hearing or citizen review panel  
20 hearing. The requirement for providing parents with a copy of  
21 the written report does not apply to those parents who have  
22 voluntarily surrendered their child for adoption or who have  
23 had their parental rights to the child terminated.

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



1 living, must be submitted to the court. The report must be  
2 submitted to the court and all parties as provided in  
3 paragraph (b) at least 72 hours before each scheduled judicial  
4 review.

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

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

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

28 ~~(c) If a guardian ad litem needs to be appointed for~~  
29 ~~the child in a case in which a guardian ad litem has not~~  
30 ~~previously been appointed or if there is a need to continue a~~

31

1 ~~guardian ad litem in a case in which a guardian ad litem has~~  
2 ~~been appointed.~~

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

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

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

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

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

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

28 (8)(a) Based upon the criteria set forth in subsection  
29 (7) and the recommended order of the citizen review panel, if  
30 any, the court shall determine whether or not the social  
31 service agency shall initiate proceedings to have a child

1 declared a dependent child, return the child to the parent,  
2 continue the child in out-of-home care for a specified period  
3 of time, or initiate termination of parental rights  
4 proceedings for subsequent placement in an adoptive home. The  
5 court must determine whether a guardian ad litem or legal  
6 counsel needs to be appointed for the child in a case in which  
7 a guardian ad litem or legal counsel has not previously been  
8 appointed or when there is a need to continue a guardian ad  
9 litem or legal counsel in a case in which a guardian ad litem  
10 or legal counsel has been appointed. The court may also  
11 determine whether the current placement of the child is  
12 appropriate to protect the child's safety; well-being; and  
13 physical, mental, and emotional health. Modifications to the  
14 plan must be handled as prescribed in s. 39.601. If the court  
15 finds that the prevention or reunification efforts of the  
16 department will allow the child to remain safely at home or be  
17 safely returned to the home, the court shall allow the child  
18 to remain in or return to the home after making a specific  
19 finding of fact that the reasons for the creation of the case  
20 plan have been remedied to the extent that the child's safety,  
21 well-being, and physical, mental, and emotional health will  
22 not be endangered.

23 (d) The court may extend the time limitation of the  
24 case plan, or may modify the terms of the plan, based upon  
25 information provided by the social service agency, the child,  
26 and the guardian ad litem, if one has been appointed, the  
27 parent or parents, and the foster parents or legal custodian,  
28 and any other competent information on record demonstrating  
29 the need for the amendment. If the court extends the time  
30 limitation of the case plan, the court must make specific  
31 findings concerning the frequency of past parent-child

1 visitation, if any, and the court may authorize the expansion  
2 or restriction of future visitation. Modifications to the plan  
3 must be handled as prescribed in s. 39.601. Any extension of a  
4 case plan must comply with the time requirements and other  
5 requirements specified by this chapter.

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

9 39.801 Procedures and jurisdiction; notice; service of  
10 process.--

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

14 (a) Notice of the date, time, and place of the  
15 advisory hearing for the petition to terminate parental rights  
16 and a copy of the petition must be personally served upon the  
17 following persons, specifically notifying them that a petition  
18 has been filed:

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

1  
2 The document containing the notice to respond or appear must  
3 contain, in type at least as large as the type in the balance  
4 of the document, the following or substantially similar  
5 language: "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY  
6 HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL  
7 RIGHTS OF THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON  
8 THE DATE AND TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS  
9 A PARENT TO THE CHILD OR CHILDREN NAMED IN THE PETITION  
10 ATTACHED TO THIS NOTICE."

11 (5) All process and orders issued by the court must be  
12 served or executed as other process and orders of the circuit  
13 court and, in addition, may be served or executed by  
14 authorized agents of the department, or the guardian ad litem,  
15 or the child.

16 (7) A fee may not be paid for service of any process  
17 or other papers by an agent of the department, or the guardian  
18 ad litem, or the child's legal counsel. If any process,  
19 orders, or other papers are served or executed by any sheriff,  
20 the sheriff's fees must be paid by the county.

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

23 39.802 Petition for termination of parental rights;  
24 filing; elements.--

25 (1) All proceedings seeking an adjudication to  
26 terminate parental rights pursuant to this chapter must be  
27 initiated by the filing of an original petition by the  
28 department, the child through legal counsel appointed pursuant  
29 to s. 39.8226, the guardian ad litem, or any other person who  
30 has knowledge of the facts alleged or is informed of them and  
31 believes that they are true.

1           Section 20. Section 39.805, Florida Statutes, is  
2 amended to read:

3           39.805 No answer required.--No answer to the petition  
4 or any other pleading need be filed by any child, guardian ad  
5 litem, or parent, but any matters that ~~which~~ might be set  
6 forth in an answer or other pleading may be pleaded orally  
7 before the court or filed in writing as any such person may  
8 choose. Notwithstanding the filing of any answer or any  
9 pleading, the child or parent shall, prior to the adjudicatory  
10 hearing, be advised by the court of the right to counsel and  
11 shall be given an opportunity to deny the allegations in the  
12 petition for termination of parental rights or to enter a plea  
13 to allegations in the petition before the court.

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

16           39.806 Grounds for termination of parental rights.--

17           (1) The department, the child through legal counsel  
18 appointed pursuant to s. 39.8226, the guardian ad litem, or  
19 any person who has knowledge of the facts alleged or who is  
20 informed of those facts and believes that they are true may  
21 petition for the termination of parental rights under any of  
22 the following circumstances:

23           (a) When the parent or parents have voluntarily  
24 executed a written surrender of the child and consented to the  
25 entry of an order giving custody of the child to the  
26 department for subsequent adoption and the department is  
27 willing to accept custody of the child.

28           1. The surrender document must be executed before two  
29 witnesses and a notary public or other person authorized to  
30 take acknowledgments.

31

1           2. The surrender and consent may be withdrawn after  
2 acceptance by the department only after a finding by the court  
3 that the surrender and consent were obtained by fraud or under  
4 duress.

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

8           (c) When the parent or parents engaged in conduct  
9 toward the child or toward other children that demonstrates  
10 that the continuing involvement of the parent or parents in  
11 the parent-child relationship threatens the life, safety,  
12 well-being, or physical, mental, or emotional health of the  
13 child irrespective of the provision of services. Provision of  
14 services may be evidenced by proof that services were provided  
15 through a previous plan or offered as a case plan from a child  
16 welfare agency.

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

19           1. The period of time for which the parent is expected  
20 to be incarcerated will constitute a substantial portion of  
21 the period of time before the child will attain the age of 18  
22 years;

23           2. The incarcerated parent has been determined by the  
24 court to be a violent career criminal as defined in s.  
25 775.084, a habitual violent felony offender as defined in s.  
26 775.084, or a sexual predator as defined in s. 775.21; has  
27 been convicted of first degree or second degree murder in  
28 violation of s. 782.04 or a sexual battery that constitutes a  
29 capital, life, or first degree felony violation of s. 794.011;  
30 or has been convicted of an offense in another jurisdiction  
31 which is substantially similar to one of the offenses listed

1 in this paragraph. As used in this section, the term  
2 "substantially similar offense" means any offense that is  
3 substantially similar in elements and penalties to one of  
4 those listed in this subparagraph, and that is in violation of  
5 a law of any other jurisdiction, whether that of another  
6 state, the District of Columbia, the United States or any  
7 possession or territory thereof, or any foreign jurisdiction;  
8 or

9 3. The court determines by clear and convincing  
10 evidence that continuing the parental relationship with the  
11 incarcerated parent would be harmful to the child and, for  
12 this reason, that termination of the parental rights of the  
13 incarcerated parent is in the best interest of the child.

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



1 (f) When the parent or parents engaged in egregious  
2 conduct or had the opportunity and capability to prevent and  
3 knowingly failed to prevent egregious conduct that threatens  
4 the life, safety, or physical, mental, or emotional health of  
5 the child or the child's sibling.

6 1. As used in this subsection, the term "sibling"  
7 means another child who resides with or is cared for by the  
8 parent or parents regardless of whether the child is related  
9 legally or by consanguinity.

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

17 (g) When the parent or parents have subjected the  
18 child to aggravated child abuse as defined in s. 827.03,  
19 sexual battery or sexual abuse as defined in s. 39.01, or  
20 chronic abuse.

21 (h) When the parent or parents have committed murder  
22 or voluntary manslaughter of another child, or a felony  
23 assault that results in serious bodily injury to the child or  
24 another child, or aided or abetted, attempted, conspired, or  
25 solicited to commit such a murder or voluntary manslaughter or  
26 felony assault.

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

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

31 39.807 Right to counsel; guardian ad litem.--

1           (2)(a) The court shall appoint a guardian ad litem or  
2 legal counsel, or both, to represent ~~the best interest of the~~  
3 child in any proceedings for termination of parental rights  
4 ~~proceedings~~ and shall ascertain at each stage of the  
5 proceedings whether a guardian ad litem or legal counsel has  
6 been appointed.

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

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

11           ~~(b) The guardian ad litem has the following~~  
12 ~~responsibilities:~~

13           1. ~~To investigate the allegations of the petition and~~  
14 ~~any subsequent matters arising in the case and, unless excused~~  
15 ~~by the court, to file a written report. This report must~~  
16 ~~include a statement of the wishes of the child and the~~  
17 ~~recommendations of the guardian ad litem and must be provided~~  
18 ~~to all parties and the court at least 72 hours before the~~  
19 ~~disposition hearing.~~

20           2. ~~To be present at all court hearings unless excused~~  
21 ~~by the court.~~

22           3. ~~To represent the best interests of the child until~~  
23 ~~the jurisdiction of the court over the child terminates or~~  
24 ~~until excused by the court.~~

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

27           ~~(d) A guardian ad litem is entitled to receive service~~  
28 ~~of pleadings and papers as provided by the Florida Rules of~~  
29 ~~Juvenile Procedure.~~

30           (d)(e) This subsection does not apply to any voluntary  
31 relinquishment of parental rights proceeding.

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

3           39.808 Advisory hearing; pretrial status conference.--

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

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

11           39.810 Manifest best interests of the child.--In a  
12 hearing on a petition for termination of parental rights, the  
13 court shall consider the manifest best interests of the child.  
14 This consideration shall not include a comparison between the  
15 attributes of the parents and those of any persons providing a  
16 present or potential placement for the child. For the purpose  
17 of determining the manifest best interests of the child, the  
18 court shall consider and evaluate all relevant factors,  
19 including, but not limited to:

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

24           (11) Any information related to subsections (1)  
25 through (10) which is provided by the guardian ad litem and,  
26 when requested by the court, any ~~The~~ recommendations for the  
27 child provided by the child's guardian ad litem ~~or legal~~  
28 ~~representative~~.

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

31           39.811 Powers of disposition; order of disposition.--

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

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

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

8           2. Enter an order returning the child to the parent or  
9 parents. The court shall retain jurisdiction over a child  
10 returned to the parent or parents for a period of 6 months,  
11 but, at that time, based on a report of the social service  
12 agency, information provided by the child and the guardian ad  
13 litem, if appointed, and any other relevant factors, the court  
14 shall make a determination as to whether its jurisdiction  
15 shall continue or be terminated.

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

18           (9) After termination of parental rights, the court  
19 shall retain jurisdiction over any child for whom custody is  
20 given to a social service agency until the child is adopted.  
21 The court shall review the status and, pursuant to s.  
22 39.701(8)(a), the appropriateness of the child's placement and  
23 the progress being made toward permanent adoptive placement.  
24 As part of this continuing jurisdiction, for good cause shown  
25 by the guardian ad litem for the child or by the child, the  
26 court may review the appropriateness of the adoptive placement  
27 of the child.

28           Section 26. Section 39.820, Florida Statutes, is  
29 amended to read:

30           39.820 Definitions.--As used in the Florida Statutes  
31 ~~this part~~, the term:

1           (1) "Guardian ad litem" as referred to in any civil or  
2 criminal proceeding includes the following: a public defender  
3 as represented by the staff or volunteers appointed by the  
4 public defender to provide the best-interest representation to  
5 the child,~~certified guardian ad litem program, a~~  
6 court-appointed ~~duly certified~~ volunteer guardian ad litem, a  
7 ~~staff attorney, contract attorney, or certified pro bono~~  
8 ~~attorney working on behalf of a guardian ad litem or the~~  
9 ~~program; staff members of a program office;~~ a court-appointed  
10 attorney; or a responsible adult who is appointed by the court  
11 to represent the best interests of a child in a proceeding as  
12 provided for by law, ~~including, but not limited to, this~~  
13 ~~chapter,~~ who is a party to any judicial proceeding as a  
14 representative of the child, and who serves until discharged  
15 by the court.

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

19           Section 27. Section 39.821, Florida Statutes, is  
20 amended to read:

21           39.821 Qualifications of guardians ad litem.--

22           (1) Because of the special trust or responsibility  
23 placed in a guardian ad litem and the staff of the public  
24 defenders representing children in proceedings under chapter  
25 39, the public defenders ~~Guardian Ad Litem Program~~ may use any  
26 private funds collected ~~by the program,~~ or any state funds so  
27 designated, to conduct a security background investigation  
28 before certifying a volunteer or staff member to serve. A  
29 security background investigation must include, but need not  
30 be limited to, employment history checks, checks of  
31 references, local criminal records checks through local law

1 enforcement agencies, and statewide criminal records checks  
2 through the Department of Law Enforcement. Upon request, an  
3 employer shall furnish a copy of the personnel record for the  
4 employee or former employee who is the subject of a security  
5 background investigation conducted under this section. The  
6 information contained in the personnel record may include, but  
7 need not be limited to, disciplinary matters and the reason  
8 why the employee was terminated from employment. An employer  
9 who releases a personnel record for purposes of a security  
10 background investigation is presumed to have acted in good  
11 faith and is not liable for information contained in the  
12 record without a showing that the employer maliciously  
13 falsified the record. A security background investigation  
14 conducted under this section must ensure that a person is not  
15 certified as a guardian ad litem or hired as a staff member of  
16 a public defender to represent children in proceedings under  
17 chapter 39 if the person has been convicted of, regardless of  
18 adjudication, or entered a plea of nolo contendere or guilty  
19 to, any offense prohibited under the provisions of the Florida  
20 Statutes specified in s. 435.04(2) or under any similar law in  
21 another jurisdiction. Before certifying an applicant to serve  
22 as a guardian ad litem or as a staff member of a public  
23 defender to represent children in proceedings under chapter  
24 39, the public defender ~~chief judge of the circuit court~~ may  
25 request a federal criminal records check of the applicant  
26 through the Federal Bureau of Investigation. In analyzing and  
27 evaluating the information obtained in the security background  
28 investigation, the office program must give particular  
29 emphasis to past activities involving children, including, but  
30 not limited to, child-related criminal offenses or child  
31 abuse. The office program has the sole discretion in

1 determining whether to certify a person based on his or her  
2 security background investigation. The information collected  
3 pursuant to the security background investigation is  
4 confidential and exempt from s. 119.07(1).

5 (2) This section does not apply to a certified  
6 guardian ad litem who was certified before October 1, 1995, an  
7 attorney who is a member in good standing of The Florida Bar,  
8 or a licensed professional who has undergone a comparable  
9 security background investigation as a condition of licensure  
10 within 5 years before ~~of~~ applying for certification as a  
11 guardian ad litem or as a staff member of a public defender  
12 representing children in proceedings under chapter 39.

13 (3) It is a misdemeanor of the first degree,  
14 punishable as provided in s. 775.082 or s. 775.083, for any  
15 person to willfully, knowingly, or intentionally fail, by  
16 false statement, misrepresentation, impersonation, or other  
17 fraudulent means, to disclose in any application for a  
18 volunteer position or for paid employment with a public  
19 defender to represent children in proceedings under chapter 39  
20 ~~the Guardian Ad Litem Program~~, any material fact used in  
21 making a determination as to the applicant's qualifications  
22 for such position.

23 Section 28. Section 39.822, Florida Statutes, is  
24 amended to read:

25 39.822 Appointment of guardian ad litem for abused,  
26 abandoned, or neglected child.--

27 (1) A guardian ad litem for a child must be a public  
28 defender, must be an individual investigated by a public  
29 defender and appointed by the court for one specific case, or  
30 must be an attorney who is a member in good standing of The  
31 Florida Bar. Before appointing an individual under this

1 chapter, the court shall request the public defender to  
2 conduct a security background investigation as provided in s.  
3 39.821. A guardian ad litem who is not an attorney and who is  
4 investigated for the limited representation in a case must be  
5 represented by legal counsel in all proceedings related to the  
6 child.~~shall be appointed by the court at the earliest~~  
7 ~~possible time to represent the child in any child abuse,~~  
8 ~~abandonment, or neglect judicial proceeding, whether civil or~~  
9 ~~criminal. Any person participating in a civil or criminal~~  
10 ~~judicial proceeding resulting from such appointment shall be~~  
11 ~~presumed prima facie to be acting in good faith and in so~~  
12 ~~doing shall be immune from any liability, civil or criminal,~~  
13 ~~that otherwise might be incurred or imposed.~~

14 (2) In those cases in which the parents are  
15 financially able, the parent or parents of the child shall pay  
16 ~~reimburse the court~~, in part or in whole, for the cost of  
17 provision of guardian ad litem services and legal services.  
18 Reimbursement for services contracted through a public  
19 defender to the individual providing guardian ad litem  
20 ~~services~~ shall not be contingent upon successful collection by  
21 ~~the court~~ from the parent or parents.

22 (3) In a dependency proceeding, the guardian ad litem  
23 or the ~~program~~ representative of the public defender shall  
24 review all disposition recommendations and changes in  
25 placements, and must be present at all critical stages of the  
26 dependency proceeding and shall ~~or~~ submit a written report of  
27 findings in proceedings to determine dependency and to  
28 terminate parental rights and may submit a report of findings  
29 in other proceedings and when requested by the court, the  
30 guardian an litem may submit recommendations to the court.  
31 Written reports must be filed with the court and served on all



1 parties whose whereabouts are known at least 72 hours prior to  
2 the hearing.

3 Section 29. Section 39.8225, Florida Statutes, is  
4 created to read:

5 39.8225 Guardians ad litem; powers, duties, and  
6 authority.--

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

10 (2) In an action brought pursuant to the Florida Rules  
11 of Juvenile Procedure for dependency proceedings, the guardian  
12 ad litem shall represent the best interest of the child after  
13 investigating the allegations in the pleadings and the needs  
14 of the child, after discussing the allegations with the child  
15 and legal counsel, and after giving significant weight to the  
16 expressed interests of the child. The guardian ad litem, other  
17 than a public defender, must be represented by an attorney.

18 (3) The guardian ad litem shall investigate the  
19 allegations in the pleadings and the needs of the child for  
20 the case and the guardian ad litem, in his or her  
21 investigation, shall:

22 (a) Visit and when possible discuss the case with the  
23 child.

24 (b) When appropriate for the representation, observe  
25 the child's interactions with parents, siblings, or foster  
26 parents; observe the child's family placement or proposed  
27 permanent placement when there is one; and, when appropriate,  
28 observe his or her socialization skills at school or other  
29 care facilities.

30 (c) Conduct interviews with persons involved with the  
31 child or related to the case, including, but not limited to,

1 when appropriate for the representation, an interview with the  
2 child's parent, guardian, custodian, teacher, or foster  
3 family; medical professionals treating or evaluating the  
4 child; other caretakers or proposed adoptive parents; staff  
5 members of the Department of Children and Family Services or  
6 the Department of Juvenile Justice; law enforcement personnel  
7 who are involved in the case; and any other person whom the  
8 guardian ad litem and the attorney determines appropriate.

9 (d) Obtain the legal, social, medical, or  
10 psychological reports relevant to understanding the facts of  
11 the case and the status and conditions of the child and other  
12 participants in the proceeding. However, the attorney client  
13 privilege and the work-product privilege may be claimed by  
14 legal counsel on behalf of their clients.

15 (4) The guardian ad litem and the attorney shall  
16 consult with the child before any hearing, court appearance,  
17 or other proceeding unless the court has excused the child's  
18 presence in court pursuant to court order under 39.01(51). If  
19 the child is of an age and capacity to understand, the  
20 proceeding must be explained to the child in language  
21 appropriate to the child's age, education, and comprehension  
22 ability, and the child shall be offered the opportunity to  
23 attend the proceeding.

24 (5) Before each hearing, the guardian ad litem shall  
25 discuss with legal counsel information on all observations,  
26 documentation obtained, and factual information the guardian  
27 ad litem believes that the court should have in order to make  
28 a best-interest determination for the child regarding the  
29 issues before the court. If a public defender is providing  
30 representation, the information may be discussed with  
31 representatives of the office, as required by office

1 procedures. After reviewing the information and consulting  
2 with the child and, when appropriate, with staff members of  
3 the public defender, the attorney and the guardian ad litem  
4 shall determine the best manner in which to provide the court  
5 with all information necessary for the court to know the  
6 child, know the expressed interests of the child, and  
7 determine what is in the best interest of the child. In every  
8 case the court must be informed of the expressed interest of  
9 the child related to the proceeding. When the law requires a  
10 written report, the guardian ad litem and counsel shall  
11 provide the information to the court as required by law.

12 (6) If a written report is not required to include  
13 recommendations, the guardian ad litem must be prepared to  
14 present the court with a recommendation as to the best  
15 interest of the child based on what the child would want if he  
16 or she could, using adult judgment and knowledge, evaluate the  
17 available information and make a request to the court.

18 (7) When a guardian ad litem is appointed, the court  
19 may issue an order directing persons and entities contacted by  
20 the guardian ad litem to allow the guardian ad litem to  
21 inspect and copy any documents related to the child, the  
22 child's parents, or other custodial persons or any household  
23 member with whom the child resided, currently resides, or is  
24 proposed to reside or any person who is otherwise related to  
25 the allegation in the pleadings. The guardian ad litem,  
26 through counsel, may also petition the court for an order  
27 directed to a specified person, agency, or organization,  
28 including, but not limited to, a hospital, medical doctor,  
29 dentist, psychologist, or psychiatrist, which order directs  
30 that the guardian ad litem be allowed to inspect and copy any  
31 records or documents that relate to the minor child, the

1 child's parent or other custodial person, or any household  
2 member with whom the child resides. An order based on a  
3 petition shall be obtained only after notice to all parties  
4 and a hearing thereon.

5 (8) The guardian ad litem shall submit his or her  
6 report to the court, if a report is to be submitted, regarding  
7 any stipulation or agreement, whether incidental, temporary,  
8 or permanent, which affects the interest or welfare of the  
9 minor child, within 10 days after the date the stipulation or  
10 agreement is served upon the guardian ad litem or as directed  
11 by the court.

12 (9) The guardian ad litem, through counsel, may  
13 request the court to order an expert examination of the child,  
14 the child's parent, or any other interested party by a medical  
15 doctor, dentist, or other health care provider, including a  
16 psychiatrist, psychologist, or other mental health  
17 professional.

18 (10) The guardian ad litem may, unless a report is  
19 otherwise required by law, file a written report that may  
20 include recommendations and shall include any expressed  
21 interests of the child. When a report is filed, it must be  
22 filed and served on all parties at least 20 days before the  
23 hearing at which it will be presented, unless the court waives  
24 the time limit or the law requiring the report specifies a  
25 different time.

26 (11) The guardian ad litem must be provided with  
27 copies of all pleadings, notices, and other documents filed in  
28 the action and is entitled to reasonable notice before any  
29 action affecting the child is taken by any of the parties,  
30 their counsel, or the court.

31

1           (12) A guardian ad litem, acting through counsel,  
2 shall actively file any pleadings, motions, or petitions for  
3 relief which the guardian ad litem considers appropriate or  
4 necessary in furtherance of the guardian's representation of  
5 the child. The guardian ad litem, through counsel, is entitled  
6 to be present and to participate in all depositions, hearings,  
7 and other proceedings in the action, and, through counsel, may  
8 compel the attendance of witnesses.

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

11           (14) A guardian ad litem is not required to post bond  
12 but shall file an acceptance of the office.

13           (15) A guardian ad litem is entitled to receive  
14 service of pleadings and papers as provided by the Florida  
15 Rules of Procedure applicable to the case.

16           Section 30. Section 39.8226, Florida Statutes, is  
17 created to read:

18           39.8226 Legal counsel for a child.--

19           (1) The court may appoint counsel to represent the  
20 expressed interest of a child, in lieu of or in addition to a  
21 guardian ad litem, in any dependency case related to the  
22 child, if the court determines that the child is of an age and  
23 capacity to participate in his or her representation and the  
24 child or the child's parents or guardian can pay for the  
25 representation.

26           (2)(a) If a public defender has been appointed to  
27 represent the child, the court may appoint counsel to  
28 represent the expressed interest of a child, in lieu of or in  
29 addition to a guardian ad litem, only if the court finds that  
30 the child is of an age and capacity to participate in his or  
31 her representation and either the expressed interests of the

1 child and the best-interest representation by the guardian ad  
2 litem do not coincide or the complexity of the pending case or  
3 other legal actions suggest that representation for the child  
4 is appropriate.

5 (b) If the guardian ad litem's best-interest  
6 representation and the expressed interests of the child do not  
7 coincide, the public defender must petition the court for a  
8 review to determine whether the provisions of paragraph (a)  
9 have been met, whether the child wants independent counsel and  
10 whether the child wants or it is appropriate or required under  
11 the law for a guardian ad litem to continue to represent the  
12 best interest of the child in some or all issues.

13 (3) Upon petition of the public defender, the court  
14 may appoint independent counsel to represent the child in  
15 collateral issues if the office does not have the expertise to  
16 provide appropriate representation. The petition must address  
17 whether the guardian ad litem will continue to represent the  
18 best interest of the child in any or all proceedings.

19 Section 31. Section 39.84, Florida Statutes, is  
20 created to read:

21 39.84 Guardians ad litem; confidentiality.--The  
22 guardian ad litem shall maintain as confidential all  
23 information and documents received from any source and may not  
24 disclose such information or documents except, as provided by  
25 law or Florida rules of evidence and procedure, in testimony  
26 or a report to the court. When a report is filed with the  
27 court, it must be served upon the parties to the action and  
28 their counsel or as directed by the court.

29 Section 32. Section 39.86, Florida Statutes, is  
30 created to read:

31

1           39.86 Guardians ad litem and psychologists;  
2 immunity.--Any person participating in a judicial proceeding  
3 as a guardian ad litem or a court-appointed psychologist shall  
4 be presumed prima facie to be acting in good faith, and, in so  
5 doing, shall be immune from any liability, civil or criminal,  
6 that otherwise might be incurred or imposed.

7           Section 33. Subsection (8) of section 40.24, Florida  
8 Statutes, is amended to read:

9           40.24 Compensation and reimbursement policy.--

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

30           Section 34. Paragraph (a) of subsection (6) of section  
31 215.5601, Florida Statutes, is amended to read:

1           215.5601 Lawton Chiles Endowment Fund.--  
2           (6) ADVISORY COUNCIL.--The Lawton Chiles Endowment  
3 Fund Advisory Council is established for the purpose of  
4 reviewing the funding priorities of the state agencies,  
5 evaluating their requests against the mission and goals of the  
6 agencies and legislative intent for the use of endowment  
7 funds, and allowing for public input and advocacy.  
8           (a) The advisory council shall consist of 15 members,  
9 including:  
10           1. The director of the United Way of Florida, Inc., or  
11 his or her designee;  
12           2. The director of the Foster Parents Association, or  
13 his or her designee;  
14           3. The chair of the Department of Elderly Affairs  
15 Advisory Council, or his or her designee;  
16           4. The president of the Florida Association of Area  
17 Agencies on Aging, or his or her designee;  
18           5. The State Long-Term Care Ombudsman, or his or her  
19 designee;  
20           6. The state director of the Florida AARP, or his or  
21 her designee;  
22           7. The director of the Florida Pediatric Society, or  
23 his or her designee;  
24           8. A public defender ~~A representative of the Guardian~~  
25 ~~Ad Litem Program~~, appointed by the Governor;  
26           9. A representative of a child welfare lead agency for  
27 community-based care, appointed by the Governor;  
28           10. A representative of an elder care lead agency for  
29 community-based care, appointed by the Governor;  
30           11. A representative of a statewide child advocacy  
31 organization, appointed by the Governor;



1           12. One consumer caregiver for children, appointed by  
2 the Governor;

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

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

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

9           Section 35. Subsection (12) of section 985.308,  
10 Florida Statutes, is amended to read:

11           985.308 Juvenile sexual offender commitment programs;  
12 sexual abuse intervention networks.--

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

15           (a) Local law enforcement agencies;

16           (b) Local school boards;

17           (c) Child protective investigators;

18           (d) The office of the state attorney;

19           (e) The office of the public defender;

20           (f) The juvenile division of the circuit court;

21           (g) Professionals licensed under chapter 458, chapter

22 459, s. 490.0145, or s. 491.0144 providing treatment for

23 juvenile sexual offenders or their victims;

24           ~~(h) The guardian ad litem program;~~

25           (h)(i) The Department of Juvenile Justice; and

26           (i)(j) The Department of Children and Family Services.

27           Section 36. This act shall take effect October 1,  
28 2002.

29

30

31

1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   Senate Bill 686

4 The committee substitute makes the following substantial  
5 changes to SB 686:

- 6       --       The representation of children is moved from the  
7               Office of Public Advocacy to the public defender.
- 8       --       The creation of the Office of Public Advocacy and  
9               the circuit offices of public advocacy are removed  
10              from the bill.
- 11       --       The Department of Children and Families is  
12              required to notify a child's guardian ad litem or  
13              legal counsel of reports of institutional abuse,  
14              neglect, or abandonment and to furnish a copy of  
15              the completed report to the guardian ad litem or  
16              legal counsel.
- 17       --       The court is required to consider information  
18              regarding the best interest of the child furnished  
19              by the guardian ad litem and any recommendations  
20              of the guardian ad litem when making a decision  
21              regarding termination of parental rights.
- 22       --       The guardian ad litem is required to notify the  
23              court of the expressed interests of a dependent  
24              child represented by the guardian ad litem.
- 25       --       The court is authorized to issue a blanket order  
26              regarding the guardian ad litem's ability to  
27              obtain information regarding the child rather than  
28              requiring an order for each document to be  
29              obtained.
- 30       --       Section 39.84, F.S., is created to provide that  
31              information obtained by a guardian ad litem is  
              confidential except as provided by law or rules of  
              evidence and as provided to the court in testimony  
              or a report.
- Section 39.86, F.S., is created to provide  
              immunity to a guardian ad litem and a court  
              appointed psychologist participating in a judicial  
              proceeding.
- The bill is limited to representation in  
              dependency cases. Thus, provisions of the bill  
              related to representation of a child in education,  
              family law, abandoned newborns, adoption  
              proceedings, mental health proceedings and  
              criminal proceedings are removed from the bill.
- Representation by the public defender's offices is  
              limited to dependency and related proceedings.