

By Senator Lynn

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1 A bill to be entitled

2 An act relating to legal representation for children in
3 state custody; amending s. 39.0139, F.S.; deleting a
4 requirement that the court appoint an attorney ad litem
5 for a child alleged to have been abused by a parent or
6 caregiver; amending s. 39.402, F.S.; providing for court
7 appointment of an attorney to represent a child during a
8 shelter hearing; amending s. 39.407, F.S.; providing for a
9 child to be represented by an attorney rather than an
10 attorney ad litem in a hearing involving the child's
11 medical and behavioral status; amending s. 39.4085, F.S.;
12 adding as a goal for children in shelter or foster care
13 that the child's guardian ad litem and attorney meet with
14 the child; deleting a reference to an attorney ad litem;
15 amending s. 39.502, F.S.; providing for the court
16 appointment of an attorney during a dependency hearing;
17 amending s. 39.521, F.S.; providing for the continuation
18 or discharge of a child's attorney during dependency
19 procedures; amending s. 39.701, F.S.; providing for the
20 judicial review of the appointment or continuation of
21 appointment of an attorney for a child during dependency
22 proceedings; amending s. 39.8296, F.S.; deleting a
23 reference to an attorney ad litem; deleting obsolete
24 reporting requirements; creating s. 39.830, F.S.;
25 providing for attorney representation for children in the
26 dependency system; requiring each circuit court to develop
27 a system for providing legal representation; providing for
28 a training program; providing for data collection;
29 repealing s. 39.4086, F.S., relating to a pilot program

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30 for attorneys ad litem for dependent children; providing a
31 directive to the Division of Statutory Revision; providing
32 an effective date.

33
34 Be It Enacted by the Legislature of the State of Florida:

35
36 Section 1. Paragraph (a) of subsection (4) of section
37 39.0139, Florida Statutes, is amended to read:

38 39.0139 Visitation or other contact; restrictions.--

39 (4) HEARINGS.--A person who meets any of the criteria set
40 forth in paragraph (3) (a) may visit or have other contact with a
41 child only after a hearing and an order by the court that allows
42 the visitation or other contact. At such a hearing:

43 (a) The court must appoint ~~an attorney ad litem or a~~
44 guardian ad litem for the child if one has not already been
45 appointed. The ~~Any attorney ad litem or~~ guardian ad litem
46 appointed shall have special training in the dynamics of child
47 sexual abuse.

48 Section 2. Paragraph (c) of subsection (8) of section
49 39.402, Florida Statutes, is amended to read:

50 39.402 Placement in a shelter.--

51 (8)

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

53 1. Appoint a guardian ad litem to represent the best
54 interest of the child, unless the court finds that such
55 representation is unnecessary, and an attorney to represent the
56 child if considered necessary by the court;

57 2. Inform the parents or legal custodians of their right to
58 counsel to represent them at the shelter hearing and at each

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59 subsequent hearing or proceeding, and the right of the parents to
60 appointed counsel, pursuant to the procedures set forth in s.
61 39.013; and

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

64 Section 3. Paragraph (f) of subsection (3) of section
65 39.407, Florida Statutes, is amended to read:

66 39.407 Medical, psychiatric, and psychological examination
67 and treatment of child; physical, mental, or substance abuse
68 examination of person with or requesting child custody.--

69 (3)

70 (f)~~1.~~ The department shall fully inform the court of the
71 child's medical and behavioral status as part of the social
72 services report prepared for each judicial review hearing held
73 for a child for whom psychotropic medication has been prescribed
74 or provided under this subsection. As a part of the information
75 provided to the court, the department shall furnish copies of all
76 pertinent medical records concerning the child which have been
77 generated since the previous hearing.

78 1. On its own motion or on good cause shown by any party,
79 including an attorney or ~~any~~ guardian ad litem, ~~attorney, or~~
80 ~~attorney ad litem~~ who has been appointed to represent the child
81 or the child's interests, the court may review the status more
82 frequently than required in this subsection.

83 2. The court may, in the best interests of the child, order
84 the department to obtain a medical opinion addressing whether the
85 continued use of the medication under the circumstances is safe
86 and medically appropriate.

87 Section 4. Subsections (20) and (21) of section 39.4085,

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88 Florida Statutes, are amended to read:

89 39.4085 Legislative findings and declaration of intent for
90 goals for dependent children.--The Legislature finds and declares
91 that the design and delivery of child welfare services should be
92 directed by the principle that the health and safety of children
93 should be of paramount concern and, therefore, establishes the
94 following goals for children in shelter or foster care:

95 (20) To have a guardian ad litem appointed to represent,
96 within reason, their best interests and, where appropriate, an
97 attorney ~~ad litem~~ appointed to represent their legal interests;
98 the guardian ad litem and attorney ~~ad litem~~ shall have immediate
99 and unlimited access to the children they represent and shall
100 meet with and provide each child with an opportunity to express
101 his or her wishes.

102 (21) To have all their records available for review by
103 their guardian ad litem and attorney ~~ad litem~~ if they deem such
104 review necessary.

105
106 The provisions of this section establish goals and not rights.
107 Nothing in this section shall be interpreted as requiring the
108 delivery of any particular service or level of service in excess
109 of existing appropriations. No person shall have a cause of
110 action against the state or any of its subdivisions, agencies,
111 contractors, subcontractors, or agents, based upon the adoption
112 of or failure to provide adequate funding for the achievement of
113 these goals by the Legislature. Nothing herein shall require the
114 expenditure of funds to meet the goals established herein except
115 funds specifically appropriated for such purpose.

116 Section 5. Subsection (8) of section 39.502, Florida

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117 Statutes, is amended to read:

118 39.502 Notice, process, and service.--

119 (8) It is not necessary to the validity of a proceeding
120 under ~~covered by~~ this part that the parents be present if their
121 identity or residence is unknown after a diligent search has been
122 made, but in this event the petitioner shall file an affidavit of
123 diligent search prepared by the person who made the search and
124 inquiry, and the court may appoint a guardian ad litem and
125 attorney for the child.

126 Section 6. Paragraph (d) of subsection (1) of section
127 39.521, Florida Statutes, is amended to read:

128 39.521 Disposition hearings; powers of disposition.--

129 (1) A disposition hearing shall be conducted by the court,
130 if the court finds that the facts alleged in the petition for
131 dependency were proven in the adjudicatory hearing, or if the
132 parents or legal custodians have consented to the finding of
133 dependency or admitted the allegations in the petition, have
134 failed to appear for the arraignment hearing after proper notice,
135 or have not been located despite a diligent search having been
136 conducted.

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

- 139 1. The placement or custody of the child.
- 140 2. Special conditions of placement and visitation.
- 141 3. Evaluation, counseling, treatment activities, and other
142 actions to be taken by the parties, if ordered.
- 143 4. The persons or entities responsible for supervising or
144 monitoring services to the child and parent.
- 145 5. Continuation or discharge of the child's guardian ad

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146 | litem and attorney, as appropriate.

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

149 | a. Ninety days after the disposition hearing;

150 | b. Ninety days after the court accepts the case plan;

151 | c. Six months after the date of the last review hearing; or

152 | d. Six months after the date of the child's removal from
153 | his or her home, if no review hearing has been held since the
154 | child's removal from the home.

155 | 7. If the child is in an out-of-home placement, child
156 | support to be paid by the parents, or the guardian of the child's
157 | estate if possessed of assets which under law may be disbursed
158 | for the care, support, and maintenance of the child. The court
159 | may exercise jurisdiction over all child support matters, shall
160 | adjudicate the financial obligation, including health insurance,
161 | of the child's parents or guardian, and shall enforce the
162 | financial obligation as provided in chapter 61. The state's child
163 | support enforcement agency shall enforce child support orders
164 | under this section in the same manner as child support orders
165 | under chapter 61. Placement of the child shall not be contingent
166 | upon issuance of a support order.

167 | 8.a. If the court does not commit the child to the
168 | temporary legal custody of an adult relative, legal custodian, or
169 | other adult approved by the court, the disposition order shall
170 | include the reasons for such a decision and ~~shall include~~ a
171 | determination as to whether diligent efforts were made by the
172 | department to locate an adult relative, legal custodian, or other
173 | adult willing to care for the child in order to present that
174 | placement option to the court instead of placement with the

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175 department.

176 b. If no suitable relative is found and the child is placed
177 with the department or a legal custodian or other adult approved
178 by the court, both the department and the court shall consider
179 transferring temporary legal custody to an adult relative
180 approved by the court at a later date, but are not ~~neither the~~
181 ~~department nor the court is~~ obligated to do so ~~place the child~~ if
182 it is in the child's best interest to remain in the current
183 placement.

184

185 For the purposes of this section, "diligent efforts to locate an
186 adult relative" means a search similar to the diligent search for
187 a parent, but without the continuing obligation to search after
188 an initial adequate search is completed.

189 9. Other requirements necessary to protect the health,
190 safety, and well-being of the child, to preserve the stability of
191 the child's educational placement, and to promote family
192 preservation or reunification whenever possible.

193 Section 7. Paragraph (c) of subsection (8) of section
194 39.701, Florida Statutes, is amended to read:

195 39.701 Judicial review.--

196 (8) The court and any citizen review panel shall take into
197 consideration the information contained in the social services
198 study and investigation and all medical, psychological, and
199 educational records that support the terms of the case plan;
200 testimony by the social services agency, the parent, the foster
201 parent or legal custodian, the guardian ad litem if one has been
202 appointed for the child, and any other person deemed appropriate;
203 and any relevant and material evidence submitted to the court,

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204 including written and oral reports to the extent of their
205 probative value. These reports and evidence may be received by
206 the court in its effort to determine the action to be taken with
207 regard to the child and may be relied upon to the extent of their
208 probative value, even though not competent in an adjudicatory
209 hearing. In its deliberations, the court and any citizen review
210 panel shall seek to determine:

211 (c) If an attorney or a guardian ad litem needs to be
212 appointed for the child in a case in which they have ~~a guardian~~
213 ~~ad litem~~ has not previously been appointed or if there is a need
214 to continue their appointment ~~a guardian ad litem~~ in a case in
215 which an attorney or a guardian ad litem has been appointed.

216 Section 8. Paragraph (b) of subsection (2) of section
217 39.8296, Florida Statutes, is amended to read:

218 39.8296 Statewide Guardian Ad Litem Office; legislative
219 findings and intent; creation; appointment of executive director;
220 duties of office.--

221 (2) STATEWIDE GUARDIAN AD LITEM OFFICE.--There is created a
222 Statewide Guardian Ad Litem Office within the Justice
223 Administrative Commission. The Justice Administrative Commission
224 shall provide administrative support and service to the office to
225 the extent requested by the executive director within the
226 available resources of the commission. The Statewide Guardian Ad
227 Litem Office shall not be subject to control, supervision, or
228 direction by the Justice Administrative Commission in the
229 performance of its duties, but the employees of the office shall
230 be governed by the classification plan and salary and benefits
231 plan approved by the Justice Administrative Commission.

232 (b) The Statewide Guardian Ad Litem Office shall, within

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233 available resources, have oversight responsibilities for and
234 provide technical assistance to all guardian ad litem ~~and~~
235 ~~attorney ad litem~~ programs located within the judicial circuits.

236 1. The office shall identify the resources required to
237 implement methods of collecting, reporting, and tracking reliable
238 and consistent case data.

239 2. The office shall review the current guardian ad litem
240 programs in Florida and other states.

241 3. The office, in consultation with local guardian ad litem
242 offices, shall develop statewide performance measures and
243 standards.

244 4. The office shall develop a guardian ad litem training
245 program. The office shall establish a curriculum committee to
246 develop the training program, which ~~specified in this~~
247 ~~subparagraph. The curriculum committee~~ shall include, but need
248 not be limited to, dependency judges, directors of circuit
249 guardian ad litem programs, active certified guardians ad litem,
250 a mental health professional who specializes in the treatment of
251 children, a member of a child advocacy group, a representative of
252 the Florida Coalition Against Domestic Violence, and a social
253 worker experienced in working with victims and perpetrators of
254 child abuse.

255 5. The office shall review the various methods of funding
256 guardian ad litem programs, shall maximize the use of those
257 funding sources to the extent possible, and shall review the
258 kinds of services being provided by circuit guardian ad litem
259 programs.

260 6. The office shall determine the feasibility or
261 desirability of new concepts of organization, administration,

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262 financing, or service delivery designed to preserve the civil and
263 constitutional rights and fulfill other needs of dependent
264 children.

265 ~~7. No later than October 1, 2004, the office shall submit~~
266 ~~to the Governor, the President of the Senate, the Speaker of the~~
267 ~~House of Representatives, and the Chief Justice of the Supreme~~
268 ~~Court an interim report describing the progress of the office in~~
269 ~~meeting the goals as described in this section. No later than~~
270 ~~October 1, 2004, the office shall submit to the Governor, the~~
271 ~~President of the Senate, the Speaker of the House of~~
272 ~~Representatives, and the Chief Justice of the Supreme Court a~~
273 ~~proposed plan including alternatives for meeting the state's~~
274 ~~guardian ad litem and attorney ad litem needs. This plan may~~
275 ~~include recommendations for less than the entire state, may~~
276 ~~include a phase-in system, and shall include estimates of the~~
277 ~~cost of each of the alternatives. Each year thereafter, The~~
278 office shall annually provide a status report and ~~provide further~~
279 recommendations to address the need for guardian ad litem
280 services and related issues.

281 Section 9. Section 39.830, Florida Statutes, is created to
282 read:

283 39.830 Attorney representation.--

284 (1) LEGISLATIVE INTENT.--In furtherance of the goals set
285 forth in s. 39.4085, it is the intent of the Legislature that
286 children in the dependency system receive needed legal
287 representation.

288 (2) LEGAL REPRESENTATION.--Each circuit court shall
289 establish a system for providing legal, client-directed
290 representation for children taken into custody by the department

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291 and maintained in out-of-home care by court order pursuant to a
292 hearing held under s. 39.402.

293 (a) At the hearing or at any time following the hearing,
294 the court may appoint an attorney who has completed the training
295 program under subsection (3) to represent the child upon motion
296 of a party or upon the court's own motion, if the court considers
297 such representation necessary. Upon the court's determination,
298 the department shall provide to the attorney the name of the
299 child, the location and placement of the child, the name of the
300 department's authorized agent and contact information, copies of
301 all notices sent to the parent or legal custodian of the child,
302 and any other relevant information or records concerning the
303 child.

304 (b) Once assigned, the attorney shall represent the child's
305 wishes after consulting with and advising the child in a manner
306 appropriate to the child's age. The attorney must in all
307 circumstances fulfill the same duties of advocacy, loyalty,
308 confidentiality, and competent representation which are due an
309 adult client. The attorney shall represent the child until
310 discharged by court order because permanency has been achieved or
311 the court believes that the legal representation is no longer
312 necessary.

313 (c) The judicial circuit may contract with a public or
314 private entity having appropriate expertise and training to
315 provide attorney representation.

316 (3) TRAINING.--The Office of the State Courts
317 Administrator, in consultation with the circuit courts, shall
318 develop a training program for attorneys to be appointed to
319 represent children under this section which includes appropriate

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320 standards of practice for attorneys who represent children. The
321 office may contract with a public or private entity to provide
322 the training program.

323 (4) DATA COLLECTION.--The Office of the State Courts
324 Administrator shall collect data and other information necessary
325 to evaluate and make recommendations concerning the
326 establishment, operation, and effect of access to legal
327 representation in meeting the legal needs of children in the
328 dependency system.

329 Section 10. Section 39.4086, Florida Statutes, is repealed.

330 Section 11. The Division of Statutory Revision is directed
331 to redesignate the title of part XII of chapter 39, Florida
332 Statutes, as "GUARDIAN AD LITEM, GUARDIAN ADVOCATE, AND ATTORNEY
333 REPRESENTATION."

334 Section 12. This act shall take effect July 1, 2008.