

By the Committees on Appropriations; Judiciary; and Children, Families, and Elder Affairs; and Senators Galvano and Bradley

576-04708-14

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1 A bill to be entitled
2 An act relating to attorneys for dependent children
3 with special needs; providing legislative findings and
4 intent; creating s. 39.01305, F.S.; requiring
5 appointment of an attorney to represent a dependent
6 child who meets one or more specified criteria;
7 requiring that, if one is available, an attorney who
8 is willing to represent a child without additional
9 compensation be appointed; requiring that the
10 appointment be in writing; requiring that the
11 appointment continue in effect until the attorney is
12 allowed to withdraw or is discharged by the court or
13 until the case is dismissed; requiring that an
14 attorney not acting in a pro bono capacity be
15 adequately compensated for his or her services and
16 have access to funding for certain costs; providing
17 for financial oversight by the Justice Administrative
18 Commission; providing a limit on attorney fees;
19 requiring the Department of Children and Families to
20 develop procedures to identify dependent children who
21 qualify for an attorney; authorizing the department to
22 adopt rules; providing applicability; providing an
23 effective date.

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

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27 Section 1. (1) The Legislature finds that:

28 (a) All children in proceedings under chapter 39, Florida
29 Statutes, have important interests at stake, such as health,

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30 safety, and well-being and the need to obtain permanency.

31 (b) A dependent child who has certain special needs has a
32 particular need for an attorney to represent the dependent child
33 in proceedings under chapter 39, Florida Statutes, as well as in
34 fair hearings and appellate proceedings, so that the attorney
35 may address the child's medical and related needs and the
36 services and supports necessary for the child to live
37 successfully in the community.

38 (2) The Legislature recognizes the existence of
39 organizations that provide attorney representation to children
40 in certain jurisdictions throughout the state. Further, the
41 statewide guardian ad litem program provides best interest
42 representation for dependent children in every jurisdiction in
43 accordance with state and federal law. The Legislature,
44 therefore, does not intend that funding provided for
45 representation under this act supplant proven and existing
46 organizations representing children. Instead, the Legislature
47 intends that funding provided for representation under this act
48 be an additional resource for the representation of more
49 children in these jurisdictions, to the extent necessary to meet
50 the requirements of chapter 39, Florida Statutes, with the
51 cooperation of existing local organizations or through the
52 expansion of those organizations. The Legislature encourages the
53 expansion of pro bono representation for children. This act is
54 not intended to limit the ability of a pro bono attorney to
55 appear on behalf of a child.

56 Section 2. Section 39.01305, Florida Statutes, is created
57 to read:

58 39.01305 Appointment of an attorney for a dependent child

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59 with certain special needs.-

60 (1) An attorney shall be appointed for a dependent child
61 who:

62 (a) Resides in a skilled nursing facility or is being
63 considered for placement in a skilled nursing home;

64 (b) Is prescribed a psychotropic medication but declines to
65 assent to the psychotropic medication;

66 (c) Has a diagnosis of developmental disability as defined
67 in s. 393.063;

68 (d) Is being placed in a residential treatment center or
69 being considered for placement in a residential treatment
70 center; or

71 (e) Is a victim of human trafficking as defined in s.
72 787.06(2)(d).

73 (2)(a) Before a court may appoint an attorney who may be
74 compensated pursuant to this section, the court must request a
75 recommendation from the statewide guardian ad litem office for
76 an attorney who is willing to represent a child without
77 additional compensation. If such an attorney is available within
78 15 days after the court's request, the court must appoint that
79 attorney. However, the court may appoint a compensated attorney
80 within the 15-day period if the statewide guardian ad litem
81 office informs the court that it will not be able to recommend
82 an attorney in that time period.

83 (b) After an attorney is appointed, the appointment
84 continues in effect until the attorney is allowed to withdraw or
85 is discharged by the court or until the case is dismissed. An
86 attorney who is appointed under this section to represent the
87 child shall provide the complete range of legal services, from

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88 the removal from home or from the initial appointment through
89 all available appellate proceedings. With the permission of the
90 court, the attorney for the dependent child may arrange for
91 supplemental or separate counsel to represent the child in
92 appellate proceedings. A court order appointing an attorney
93 under this section must be in writing.

94 (3) Except if the attorney has agreed to provide pro bono
95 services, an appointed attorney or organization must be
96 adequately compensated and provided with access to funding for
97 expert witnesses, depositions, and other costs of litigation.
98 Payment to an attorney is subject to appropriations and subject
99 to review by the Justice Administrative Commission for
100 reasonableness. The Justice Administrative Commission shall
101 contract with attorneys appointed by the court. Attorney fees
102 may not exceed \$1,000 per child per year.

103 (4) The department shall develop procedures to identify a
104 dependent child who has a special need specified under
105 subsection (1) and to request that a court appoint an attorney
106 for the child. The department may adopt rules to administer this
107 section.

108 (5) This section does not limit the authority of the court
109 to appoint an attorney for a dependent child in a proceeding
110 under this chapter.

111 (6) Implementation of this section is subject to
112 appropriations expressly made for that purpose.

113 Section 3. This act shall take effect July 1, 2014.