

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

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BILL: SB 1100

INTRODUCER: Senator Book

SUBJECT: Child Welfare

DATE: March 22, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Cox</u>	<u>CF</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AHS</u>	_____
3.	_____	_____	<u>AP</u>	_____

**I. Summary:**

SB 1100 makes a number of changes related to the care of children and young adults in out-of-home care and to provisions relating to caregivers. The bill consolidates provisions in current law into a Foster Children’s Bill of Rights. The bill provides roles and responsibilities for the Department of Children and Families (DCF or department), the community-based care lead agencies and other agency staff, and those of caregivers, to ensure that children and young adults in out-of-home care are informed of these rights.

The bill also codifies the role and responsibilities of the Foster Children’s Ombudsman to serve as an autonomous entity within the department, to receive and resolve complaints from children in out-of-home care. The bill requires the department to establish a statewide toll-free telephone number for the Foster Children’s Ombudsman and post the number on the homepage of the department’s website.

The bill makes changes relating to case plan development, to require that information related to the rights be provided to a child who has attained 14 years of age or is otherwise of an appropriate age and capacity to understand be included in the case plan. The bill also requires that if the child is 14 years of age, or is otherwise of an appropriate age and capacity to understand, he or she must be involved in the case planning process.

The bill clarifies roles and responsibilities of foster parents and other caregivers of children in out-of-home care. The bill requires caseworkers to inform foster parents of the costs and requirements for child care and requires each community-based care lead agency to develop a plan to recruit and retain foster homes.

The bill is expected to have a \$120,000 fiscal impact on state government. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2021.

## II. Present Situation:

### Florida Law

Currently, the provisions of Florida law pertaining proceedings related to dependent children are contained in chapter 39, F.S. Statements of the purposes and intent with regard to child safety and protection found in ch. 39, F.S., include the provisions that:

- The health and well-being of all children under the care of the state are of paramount concern;
- The child's family ties are preserved and strengthened whenever possible by only removing the child from parental custody when his or her welfare or public safety cannot be otherwise assured;
- Judicial procedures, as well as other procedures to assure due process to children and other parties, are conducted fairly in order to protect constitutional and other legal rights; and
- Children under the jurisdiction of the courts are provided equal treatment with respect to goals, objectives, services, and case plans, without regard to the location of their placement.<sup>1</sup>

Current law also stipulates that all children of this state are afforded general protections to include:

- Protection from abuse, neglect, and exploitation;
- A permanent and stable home;
- A safe and nurturing environment which will preserve a sense of personal dignity and integrity;
- Adequate nutrition, shelter, and clothing;
- Effective treatment for physical, social, and emotional needs;
- Equal opportunity and access to education, recreation and other community resources;
- Access to preventive services;
- An independent, trained advocate, when intervention is necessary, and a skilled guardian or caregiver in a safe environment when alternative placement is necessary; and
- The ability to contact their guardian ad litem or attorney ad litem, if appointed, by having that individual's name entered on all orders of the court.<sup>2</sup>

Pursuant to s. 39.013(2), F.S., the circuit court has exclusive original jurisdiction of all proceedings under chapter 39, for children voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, or the department, and for the adoption of children whose parental rights have been terminated. Jurisdiction attaches when the initial shelter petition, dependency petition, or termination of parental rights petition is filed, or when a child is taken into the custody of the department. The circuit court may assume jurisdiction over any such proceeding regardless of whether the child was in the physical custody of both parents, was in the sole legal or physical custody of only one parent, caregiver, or some other person, or was not in the physical or legal custody of any person when the event or condition occurred that brought the child to the attention of the court. When the court obtains jurisdiction of any child who has been found to be dependent, the court shall retain jurisdiction, unless relinquished by its order,

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<sup>1</sup> Section 39.001(1)(b)1., (f), (l), and (m), F.S.

<sup>2</sup> Section 39.001(3)(a)-(j), F.S.

until the child reaches 21 years of age, or 22 years of age if the child has a disability, with a number of exceptions.<sup>3</sup>

Currently, decisions on how to properly care for dependent children and how to assess need for such services as counseling, education, and vocational training are discretionary judgmental decisions made pursuant to broad authority vested in the department by the Legislature and have been found by the courts to be immune from tort liability. In *Department of Health and Rehabilitative Services*<sup>4</sup> v. *B.J.M.*,<sup>5</sup> the Florida Supreme Court held that the decisions of the HRS regarding placement of juveniles and rehabilitative services provided to juveniles constituted performance of discretionary governmental functions and therefore the HRS was immune from tort liability. The court found that:

Decisions on how to properly care for a dependent child or rehabilitate a delinquent juvenile, and to assess the need for counseling, education, and vocational training are discretionary judgmental decisions to be made pursuant to the broad discretion vested in the HRS by the Legislature. These decisions represent the cutting edge of the HRS policy. Additionally, it is apparent that both the nature of and the amount of services that may be provided is limited by the HRS resources, and by the legislative-executive policy decisions as to what resources to provide and how those resources may be utilized.

The HRS, along with other governmental agencies in this state, must constantly take into account practical considerations, such as budgetary constraints, when deciding how to allocate its limited funds among a virtually unlimited number of needs. (citation omitted) As a result, in setting up its programs and providing services, the HRS is to a great extent financially “strait-jacketed.” When there are thousands of children in need and resources provide for only a fraction, decisions as to allocation may be difficult and sometimes arbitrary. For the courts to impose liability for tort damages on the HRS for decisions as to the provision of services would not only “saddle [it] with a potentially crushing burden of financial liability, but would also [cause] the judicial branch of government to trespass into the domain of the legislative branch.”<sup>6</sup>

In addition, the court held that the express provisions related to provided services pursuant to a case plan provided additional support for the HRS’ lack of offering services being immune from tort liability. The relevant provisions cited include:

- In no case shall employees or agents of the department or a social service agency acting in good faith be liable for damages as a result of failing to provide services agreed to under the case plan unless the failure to provide such services occurs as a result of bad faith or malicious purpose, or occurs in a manner exhibiting wanton and willful disregard of human rights, safety, or property.
- The inability or failure of the department or of a social service agency or the employees or agents of the social service agency to provide the services agreed to under the case plan shall

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<sup>3</sup> Those exceptions are found in s. 39.013(2)(a)-(d), F.S.

<sup>4</sup> The Department of Health and Rehabilitative Services (HRS) became the Department of Children and Family Services (DCFS) in 1996. *See* ch. 1996-403, L.O.F. The Department was subsequently renamed the Department of Children and Families (DCF) in 2012. *See* ch. 2012-84, L.O.F.

<sup>5</sup> 656 So. 2d 906 (Fla. 1995)

<sup>6</sup> *See Department of Health and Rehabilitative Services v. B.J.M.*, 656 So. 2d 906 (Fla. 1995).

not render the state or the social service agency liable for damages unless such failure to provide services occurs in a manner exhibiting wanton or willful disregard of human rights, safety, or property.<sup>7</sup>

### **Statutorily Created Bill of Rights in Florida**

Currently, there are several “Bills of Rights” specified in Florida Statutes. Typically these provisions enunciate certain rights, and in some cases responsibilities, of particular classes of individuals. Some specifically permit a cause of action for violation of the rights, some specifically disallow a remedy, and others are silent. Rights in statute include, but are not limited to:

- Florida Patient’s Bill of Rights and Responsibilities.<sup>8</sup>
- The Bill of Rights of Persons with Developmental Disabilities.<sup>9</sup>
- Rights of Mental Health Patients.<sup>10</sup>
- Residents’ Rights for Nursing Homes.<sup>11</sup>
- Residents’ Bill of Rights for Assisted Living Facilities.<sup>12</sup>
- Residents’ Bill of Rights for Adult Family-Care Homes.<sup>13</sup>
- Residents’ Rights in Continuing Care Facilities.<sup>14</sup>

### **Foster Children’s Bill of Rights in Other States**

According to the National Conference of State Legislatures, as of October 2019, a Foster Children’s Bill of Rights has been enacted in 15 states and Puerto Rico. Foster Children Bills of Rights enacted in other states are typically designed to inform foster children of their rights within the child welfare system and are required to be posted in a place where children will see them. Many include provisions requiring foster children to be informed about why they are in foster care and how the dependency process will proceed. Other commonly seen provision of foster children’s bill of rights address participation in extracurricular or community activities; efforts to maintain educational stability; access to guardians ad litem; access to mental, behavioral and physical health care; and access to or communication with siblings and family members.<sup>15</sup>

### **Foster Children’s Ombudsman**

The department created a Florida Children’s Ombudsman position in the 2016-2017 fiscal year with the intent to listen and be a voice for children and youth involved in the child welfare

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<sup>7</sup> Section 39.455(1) and (2), F.S. (1991), which are now renumbered as s. 39.011(1) and (2), F.S

<sup>8</sup> Section 381.026, F.S.

<sup>9</sup> Section 393.13, F.S.

<sup>10</sup> Section 394.459, F.S.

<sup>11</sup> Section 400.022, F.S.

<sup>12</sup> Section 429.28, F.S.

<sup>13</sup> Section 429.85, F.S.

<sup>14</sup> Section 651.083, F.S.

<sup>15</sup> See National Conference of State Legislatures, *Foster Care Bill of Rights* (October 29, 2019), available at <http://www.ncsl.org/research/human-services/foster-care-bill-of-rights.aspx#Children> (last visited March 15, 2021).

system.<sup>16</sup> The ombudsman receives complaints about placement, care, and services without fear of retribution. The ombudsman is a resource to identify and explain relevant policies or procedures to children, young adults, and their caregivers.<sup>17</sup> The department also established a toll-free number for children in the child welfare system to reach the ombudsman.

The Children’s Ombudsman cannot respond to emergencies or investigate allegations of abuse or neglect, investigate, challenge, or overturn court-ordered decisions or provide legal advice, or investigate complaints about a guardian ad litem.<sup>18</sup>

**Legislative Findings and Declaration of Intent for Goals of Dependent Children**

Current law provides goals for children who are in out-of-home care.<sup>19</sup> While referred to as goals in s. 39.4085, F.S., they are requirements under other sections of the Florida Statutes, as well as in department rule. For example, a few of those include:

Goal in s. 39.4085, F.S.	Current statute or rule where required
To be involved and incorporated, where appropriate, in the development of the case plan, to have a case plan which will address their specific needs, and to object to any of the provisions of the case plan.	Sections 39.6011 and 39.6013, F.S. Rules 65C-29.009 and 65C-30.006, F.A.C.
To enjoy regular visitation, at least once a week, with their siblings unless the court orders otherwise and to enjoy regular visitation with their parents, at least once a month, unless the court orders otherwise.	Sections 39.4015, 39.402, and 409.1415, F.S.
To be able to raise grievances with the department over the care they are receiving from their caregivers, caseworkers, or other service providers.	Rule 65C-14.006(8), F.A.C.
To be heard by the court, if appropriate, at all review hearings.	Section 39.01(58), F.S. Rule 8.255, Fla. R. Juv. Pro. Art. I, s. 21, FLA. CONST.
To have a guardian ad litem appointed to represent, within reason, their best interests and, where appropriate, an attorney ad litem appointed to represent their legal interests; the guardian ad litem and attorney ad litem shall have immediate and unlimited access to the children they represent.	Sections 39.01305 and 39.822, F.S. Rule 8.217, Fla. R. Juv. Pro.

<sup>16</sup> Department of Children and Families (DCF), *SB 1100 Agency Legislative Bill Analysis*, February 12, 2021, p. 3., (on file with the Senate Committee on Children, Families and Elder Affairs) (hereinafter cited as “The DCF Agency Analysis”).

<sup>17</sup> The DCF, *Florida Children’s Ombudsman*, available at <https://www.myflfamilies.com/service-programs/child-welfare/childrens-ombudsman.shtml> (last visited March 15, 2021).

<sup>18</sup> *Id.*

<sup>19</sup> Section 39.4085, F.S.

## Case Plans

Federal law requires that the department or agency in each state that has the responsibility for providing child welfare services must formulate a written case plan for each child placed in its care or custody.<sup>20</sup> Federal regulation<sup>21</sup> requires that, the case plan for each child must:

- Be a written document that is developed jointly with the parents or guardian of the child in foster care;
- Be developed within a reasonable period of time but in no event later than 60 days from the child's removal from the home;
- Include a discussion of how the case plan is designed to achieve a safe placement for the child in the least restrictive, most family-like setting available and in close proximity to the home of the parents when the case plan goal is reunification;
- Include a discussion of how the placement is consistent with the best interests and special needs of the child;
- Include a description of the services offered and provided to prevent removal of the child from the home and to reunify the family; and
- Document the steps to finalize a placement when the case plan goal is or becomes adoption or placement in another permanent home.

The Preventing Sex Trafficking and Strengthening Families Act made numerous changes to existing law regarding child welfare.<sup>22</sup> The law calls on a child age 14 and over to be more engaged in his or her case and transition planning. Case plans are required to be developed and modified in consultation with children 14 or over. Each child may choose up to two people (other than the foster parent or caseworker) to be part of the case-planning team.<sup>23</sup>

To empower older youth in transition planning for successful adulthoods, the law requires that the case plan include a "list of rights" for youth 14 and over. That list describes the rights of the child regarding "education, health, visitation, and court participation, the right to be provided with [certain] documents..., and the right to stay safe and avoid exploitation."<sup>24</sup> The documents referred to in the list of rights include a credit report on the child that the agency must give the child every year until the child leaves care.<sup>25</sup> Additionally, when exiting care at age 18 or older, the youth must be provided an official copy of his or her birth certificate, social security card, health insurance information, medical records, and a driver's license or identification card.<sup>26</sup>

Currently, Florida law requires the department to prepare a draft of the case plan for each child receiving services under ch. 39, F.S. The additional federal requirements relating to involving the child in the case planning process and providing specified documents are not in current law,<sup>27</sup> but they are in rule.<sup>28</sup>

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<sup>20</sup> 42 U.S.C. 671(16).

<sup>21</sup> 45 C.F.R s. 1356.21(g).

<sup>22</sup> Pub. L. No. 113-183.

<sup>23</sup> Pub. L. No. 113-183, Sec. 113(a), (b)

<sup>24</sup> *Id.*, Sec. 113(d).

<sup>25</sup> *Id.*, Sec. 114(a).

<sup>26</sup> *Id.*

<sup>27</sup> Section 39.6011, F.S.

<sup>28</sup> 65-C-28.009(2) and (3), F.A.C.

## The Rilya Wilson Act

Rilya Wilson disappeared from state custody in January 2001. The child's caregiver maintained that someone from the department removed Rilya from her home sometime in January 2001. The department was unaware that the child was missing until April 2002 due to casework failures. While her caregiver was sentenced to 55 years in prison in 2013 for her disappearance, Rilya remains missing.<sup>29</sup>

With the disappearance of Rilya Wilson, the responsibility of the state to ensure the safety of the children while in the state's care received heightened attention. On May 6, 2002, Governor Jeb Bush established the Blue Ribbon Panel on Child Protection to examine the child protection system, primarily in Dade County. The Governor's press release stated:<sup>30</sup>

The recent case of Rilya Wilson has raised very troubling questions about the state's performance in protecting children in the child welfare system. It is essential that we resolve these issues quickly and ensure that children in the care and custody of the state are properly supervised and cared for. In the case of Rilya, the system failed. We must guard against failure in other cases.

I am asking that the Panel focus its attention on the safety of children in the child welfare system. The Panel will also specifically focus on the adequacy of oversight and accountability within the Department of Children and Families.

Frequent and continuous face-to-face contact with children who are in the custody or under the supervision of the state has been identified as a mechanism for ensuring the children's safety and well-being. The current requirement that each child in the custody or supervision of the state receive a monthly home visit offers child protection staff a regular opportunity to check on the well-being of the child.<sup>31</sup>

For a number of children, the increased visibility that participation in early education and childcare programs provides can minimize further abuse, neglect, or abandonment. Participation in these programs can also be an important ingredient in reversing the developmental effects that abuse, neglect, and abandonment can have on children. Early education and child care programs are provided in Florida through the school readiness program which is housed with the Office of Early Learning.<sup>32</sup> With the establishment of the school readiness program, the different early education and child care programs and their funding sources were merged for the delivery of a comprehensive program of school readiness services to be designed and administered through local early learning coalitions.<sup>33</sup>

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<sup>29</sup> David Ovalle, *Geralyn Graham get 55 years in Rilya Wilson foster child abuse case*, MIAMI HERALD, Feb. 12, 2013), available at <http://www.miamiherald.com/latest-news/article1947207.html>. (last visited March 15, 2021).

<sup>30</sup> Department of Children and Families, Final Progress Report on the Recommendations of the Governor's Blue Ribbon Panel on Child Protection, November 7, 2003, available at <http://centerforchildwelfare.org/kb/FlPerformance/BlueRibbonFinal110703.pdf>, (last visited March 15, 2021).

<sup>31</sup> 65C-30.007(1)(a), F.A.C.; *See also* 42 U.S.C. s. 422(b)(17).

<sup>32</sup> *See* ss.1001.213 and 1002.82, F.S.

<sup>33</sup> *See* ss. 1002.82 and 1002.83, F.S.

Historically, children who have been abused, neglected, or abandoned and are being served through the dependency system have received one of the highest priorities for child care programs. This is due, at least in part, to the interpretation of earlier statutory language that these children were to be provided the highest priority. Current law requires each early learning coalition to give priority for participation in the school readiness program according to specified criteria with an at-risk child younger than 9 years of age being second on the priority list.<sup>34</sup>

### **Recruitment and Retention of Foster Homes**

Foster parents play an important role in the child welfare system and should be treated as critical partners of the agency. When relatives are not available, foster families are called upon to provide the support and stability a child needs at the most critical time of their lives when they are removed from their homes. It is imperative that foster parents are engaged, developed, and supported by the child welfare agency. This will create an environment that attracts quality foster parents who feel supported and adequately prepared to care for the vulnerable children placed in their homes.<sup>35</sup>

The Quality Parenting Initiative (QPI) is a national movement for foster care change, made up of a network of states, counties and private agencies. The goal of QPI is to ensure that every child who is removed from home by a child protection agency receives the love, nurturing, advocacy and support he or she needs for healthy development. Key to the project is increasing the number of committed families, including kin, who can parent these children, supporting excellent practice and ensuring that every family can and does meet the child's needs.<sup>36</sup>

QPI's approach to recruitment and retention of foster parents is based on ensuring strong, respectful relationships between families and children. Essential to raising the standard of care is an insistence on ensuring that everyone serving as a caregiver is willing and able to provide excellent care and has the support necessary to do so. This serves children by raising standards and focusing on finding the right families for children rather than producing as many beds as possible. Those families who can provide loving care will continue fostering because they feel they are respected partners fulfilling an important role in the lives of children and families. They, in turn, are the best recruiters for those who share their commitment to changing lives.<sup>37</sup>

QPI was launched in 2008 in Florida, and is the only program with a statewide presence related to caregiver issues for children in out-of-home care. QPI is not simply a recruitment and retention tool. It is designed to ensure that every child who is removed from his or her home

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<sup>34</sup> Section 1002.87(1)(b), F.S.

<sup>35</sup> Casey Family Programs, *Effective Practices in Foster Parent Recruitment, Infrastructure, and Retention*, p. 14-15, available at [https://calswec.berkeley.edu/sites/default/files/effective\\_practices\\_in\\_foster\\_parent\\_recruitment\\_and\\_retention.pdf](https://calswec.berkeley.edu/sites/default/files/effective_practices_in_foster_parent_recruitment_and_retention.pdf) (last visited March 18, 2021)

<sup>36</sup> Quality Parenting Initiative, *What is QPI?*, available at <https://www.qpi4kids.org/wp-content/uploads/2020/12/what-is-qpi-PDF.pdf> (last visited March 19, 2021).

<sup>37</sup> *Id.*

regardless of whether he or she lives with relatives or in licensed care has excellent parenting that meets his or her emotional, developmental, cognitive and social needs.<sup>38</sup>

**III. Effect of Proposed Changes:**

**Foster Children’s Bill of Rights**

The bill substantially rewords s. 39.4085, F.S., relating to goals for children in out-of-home care, to create a Foster Children’s Bill of Rights for children who are in, and for young adults who are leaving, out-of-home care. The section does not create any new rights, but codifies and places current rights into one section of law. The following table provides each right in s. 39.4085, F.S. and the statutory reference to the current location:

<b>Rights Provided for in the reworded s. 39.4085, F.S.</b>	<b>Present location or reference</b>
To live in a safe, healthful, and comfortable home where he or she is treated with respect and provided with healthful food, appropriate clothing, and adequate storage space for personal use and where the caregiver is aware of and understands the child’s history, needs, and risk factors and respects the child’s preferences for attending religious services and activities	Sections 39.001, 409.175, F.S.  Rules 65C-13.025, 65C-13.028, 65C-13.030, and 65C-14.015, F.A.C.
To be free from physical, sexual, emotional, or other abuse or corporal punishment. This includes the child’s right to be placed away from other children or young adults who are known to pose a threat of harm to him or her because of his or her own risk factors or those of the other child or young adult.	Section 39.001, F.S.  Rule 65C-13.030, F.A.C.
To receive medical, dental, vision, and mental health services as needed; to be free of the administration of psychotropic medication or chemical substances unless authorized by a parent or the court; and not to be locked in any room, building, or facility unless placed in a residential treatment center by court order.	Sections 39.001 and 39.407, F.S.  Rules 65C-28.003 and 65C-28.014, F.A.C.
To be able to have contact and visitation with his or her parents, other family members, and fictive kin and to be placed with his or her siblings and, if not placed together with his or her siblings, to have frequent visitation and ongoing contact with his or her siblings, unless prohibited by court order.	Sections 39.4015, 39.402, and 409.1415, F.S.
To be able to contact the Florida Children’s Ombudsman, as described in s. 39.4088, F.S., regarding violations of rights; to speak to the ombudsman; confidentially; and to be free from threats or punishment for making complaint.	Rule 65C-14.006(8), F.A.C.

<sup>38</sup> *Id.*; See also the DCF, Independent Living, *The Quality Parenting Initiative, Frequently Asked Questions*, available at <https://www.myflfamilies.com/service-programs/independent-living/myfuturemychoice-fp-faqs.shtml> (last visited March 22, 2021).

<p>To maintain a bank account and manage personal income, consistent with his or her age and developmental level, unless prohibited by the case plan, and to be informed about any funds being held in the master trust on behalf of the child.</p>	<p>Sections 39.701 and 743.044, F.S.</p>
<p>To attend school and participate in extracurricular, cultural, and personal enrichment activities consistent with his or her age and developmental level and to have social contact with people outside of the foster care system, such as teachers, church members, mentors, and friends.</p>	<p>Sections 39.016, 39.4091, and 409.145, F.S.</p>
<p>To attend independent living program classes and activities if he or she meets the age requirements and to work and develop job skills at an age-appropriate level that is consistent with state law.</p>	<p>Sections 39.3091, 409.1415, and 409.1451, F.S.</p> <p>Rules 65C-28.009, 65C-14.040, and 65C-30.001, F.A.C.</p>
<p>To attend all court hearings and address the court.</p>	<p>Section 39.01, F.S.</p> <p>Rules 8.255, Fla. R. Juv. Pro.</p> <p>Art. I, s. 21, FLA. CONST.</p>
<p>To have fair and equal access to all available services, placement, care, treatment, and benefits and not to be subjected to discrimination on the basis of race, national origin, color, religion, sex, mental or physical disability, age, or pregnancy.</p>	<p>Section 760.01, F.S.</p> <p>Rule 65C-41.002, F.A.C.</p> <p>Art. I, s. 2, FLA. CONST.</p>
<p>If he or she is 14 years of age or older or, if younger, is of an appropriate age and capacity, to participate in creating and reviewing his or her case plan, to receive information about his or her out-of-home placement and case plan, including being told of changes to the plan, and to have the ability to object to provisions of the case plan.</p>	<p>Section 39.6011 and 39.6013, F.S.</p> <p>Rules 65C-29.009 and 65C-30.006, F.A.C.</p>
<p>If he or she is 16 years of age or older, to have access to existing information regarding the educational and financial assistance options available to him or her, including, but not limited to, the coursework necessary for vocational and postsecondary educational programs, postsecondary educational services and support, the Keys to Independence program, and the tuition waiver available under s. 1009.25, F.S.</p>	<p>Section 39.6035 and 39.6012, F.S.</p> <p>Rule 65C-28.009, F.A.C.</p>

<p>Not to be removed from an out-of-home placement by the department or a community-based care lead agency unless the caregiver becomes unable to care for the child, the child achieves permanency, or the move is otherwise in the child’s best interest and, if moved, the right to a transition that respects his or her relationships and personal belongings under s. 409.1415, F.S.</p>	<p>Section 409.1415, F.S.</p>
<p>To have a guardian ad litem appointed to represent his or her best interest and, if appropriate, an attorney appointed to represent his or her legal interests.</p>	<p>Sections 39.01305 and 39.822, F.S.  Rule 8.217, Fla. R. Juv. Pro.</p>

The bill also provides roles and responsibilities for the department, the community-based care lead agencies and other agency staff, as well as caregivers, related to ensuring that children and young adults in out-of-home care are informed of these rights. The bill authorizes the department to adopt rules to implement the section and provides that provisions of the bill may not be used for any purpose in any civil or administrative action and does not expand or limit any rights or remedies provided under any other law.

The bill also amends 39.701, F.S., relating to judicial reviews, to require that the social study report required for each judicial review must include documentation that the child has been provided with a copy of the bill of rights, that the rights have been reviewed with the child, and signed acknowledgement by the child or caregiver that the child has been provided with an explanation of the rights.

**Florida Children’s Ombudsman**

The bill creates s. 39.4088, F.S., relating to the Florida Children’s Ombudsman, to codify and provide duties for an already existing entity within the department which is currently staffed with one position. The ombudsman is required to serve as an autonomous entity for the purpose of providing children and young adults who are placed in out-of-home care with a means to resolve issues related to their care, placement, or services without fear of retribution. The ombudsman will have access to any record of a state or local agency which is necessary to carry out his or her responsibilities and is authorized meet or communicate with any child or young adult in the child or young adult’s placement or elsewhere.

The ombudsman is also required to disseminate information on the rights of children and young adults in out-of-home care under s. 39.4085, F.S., and the services provided by the ombudsman. The ombudsman may attempt to resolve a complaint informally, conduct whatever investigation he or she determines is necessary to resolve a complaint, update the complainant on the progress of the investigation, and notify the complainant of the final outcome. The ombudsman may not investigate, challenge, or overturn court ordered decisions.

The ombudsman is required to collect certain specified data related to complaints received and must compile and post that information on the department’s website. The ombudsman, in consultation with other entities, is required to develop information explaining the rights to

children and young adults in out-of-home care. The department is required to establish a statewide toll-free telephone number for the ombudsman and make the number available on the department's website homepage. The department is given rulemaking authority to implement the section.

### **Case Plans**

The bill amends s. 39.6011, F. S., relating to case plan development, to require that information related to their rights be provided to a child who has attained 14 years of age or is otherwise of an appropriate age and capacity to understand be included in the case plan. The bill requires documentation that consumer credit report checks were requested for the child as required by federal law and that information related to that report was provided to the child.

The bill also requires that if the child is 14 years of age, or is otherwise of an appropriate age and capacity to understand, he or she must be involved in the case planning process. The child may express a placement preference, choose individuals to be on the case planning team and must sign the case plan unless there is reason to waive the signature. A copy of the case plan must be provided to the child. A copy of the case plan must also be provided to the caregiver if the child is placed in a licensed foster home.

### **Rilya Wilson Act**

The bill amends s. 39.604, F.S., relating to the Rilya Wilson Act, to require that when children are placed in a licensed foster home and are required to be enrolled in an early education or child care program under this section, the caseworker shall inform the caregiver of the amount of the subsidy provided by an early learning coalition, that this amount may not be sufficient to pay the full cost of the services, and that the caregiver will be responsible for paying the difference between the subsidy and the full cost charged by the early education or child care program.

### **Caregiver Responsibilities**

The bill amends s. 409.1415, F.S., relating to the care of children, quality parenting, and the reasonable and prudent parent standard, to require that caregivers:

- Pay the difference between the subsidy from an early learning coalition and the full cost charged by an early education or child care program;
- Ensure that the child in the caregiver's care is aware of and understands his or her rights under s. 309.4085, F.S.; and
- Assist a child in contacting the Florida Children's Ombudsman, if necessary.

The department and other providers are responsible for providing a caregiver with information on treatment plans and how the caregiver can support a treatment plan as well as information on how the caregiver can manage behavioral issues.

The bill amends s. 409.175, F.S., relating to the licensure of family foster homes, residential child-caring agencies, and child placing agencies, to provide that the requirements for licensure and operation include provisions to safeguard the rights of children established under the bill of rights.

The bill clarifies that each community-based care lead agency must provide each foster home with a telephone number for the foster parent to call during normal working hours whenever immediate assistance is needed and the child's caseworker is unavailable. Current law is unclear as to whether this is a duty for the department or the lead agency.

The bill amends s. 409.988, F.S., changing the duties of community-based care lead agency to require each lead agency to recruit and retain foster homes. To perform the duty, the bill also requires each lead agency to:

- Develop a plan to recruit and retain foster homes using best practices identified by the department and specify how the lead agency complies with s. 409.1753, F.S.;
- Annually submit such plan to the department for approval;
- Provide to the department a quarterly report detailing the number of licensed foster homes and beds and occupancy rate; and
- Conduct exit interviews with foster parents who voluntarily give up their license to determine the reasons for giving up their license and identify suggestions for how to better recruit and retain foster homes, and provide a quarterly summary of such interviews to the department.

The bill provides an effective date of October 1, 2021.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The department reported that the bill is expected to have a \$120,000 fiscal impact on the agency for technology enhancements.<sup>39</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill substantially amends the following sections of the Florida Statutes: 39.4085, 39.6011, 39.6013, 39.604, 39.701, 409.1415, 409.175, 409.1753, and 409.988.

The bill creates section 39.4088 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>39</sup> The DCF Agency Analysis, p.10