

**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 948

INTRODUCER: Senator Book

SUBJECT: Child Welfare

DATE: January 10, 2022

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Cox	CF	<b>Favorable</b>
2.			ACJ	
3.			AP	

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**I. Summary:**

SB 948 creates the Statewide Office of Child Representation (OCR) and makes a number of changes to various provisions related to guardians ad litem (GAL) under ch. 39, F.S., and regarding attorney representation for the child.

The bill provides that on or after July 1, 2023, a GAL must be appointed in specified circumstances and may be appointed at the court’s discretion upon a finding that circumstances exist which require the appointment. If a GAL is appointed and an attorney for the child is subsequently appointed as required under law, the court may maintain the appointment of the GAL.

The bill defines a “conflict of interest” with respect to GAL volunteers and requires the Guardian ad Litem Program (GALP) to develop guidelines to identify when there is reasonable cause to suspect an assigned GAL has a conflict of interest. The bill prohibits the GALP from appointing a GAL when a conflict of interest is identified. It also requires the court to order that a new GAL be assigned or, unless otherwise prohibited by law, discharge the GAL and appoint an attorney for the child upon request by a child or when a party presents evidence that such circumstances exist. Further, the GALP must identify any GAL who is experiencing a physical or mental health issue or who appears to present a danger to any child, and remove him or her from all assigned cases and terminate his or her volunteer services except for working in the office when certain circumstances are met.

The GAL Qualifications Committee is redesignated as the Child Well-Being Qualifications Committee. The bill provides that the executive director of the GALP may be reappointed to serve more than one term and the reappointment process must be made in accordance with the initial appointment process.

The OCR is established within the Justice Administrative Commission (JAC) and is structured with requirements substantially similar to current law relating to the GALP. The head of the OCR must meet specified qualifications and will be appointed in accordance with the process and serve in accordance with the provisions for the head of the GALP. The bill provides specified duties for the OCR and the Department of Children and Families (DCF) is required to take any necessary steps to obtain federal Title IV-E funding reimbursement for the OCR. The OCR may contract with a local nonprofit agency, which must comply with specified requirements, to provide direct representation for the child. Regional Offices are created within the area serviced by each of the five district court of appeals. Child Representation Counsel (CRC) must comply with proscribed duties.

Section 39.831, F.S., is created to make provisions regarding when an “attorney for the child”, as defined in the bill, must or may be appointed. The bill relocates s. 39.01305(4)(b) and (5), F.S. to s. 39.831, F.S., but clarifies the scope of attorney representation and that compensation must be made in accordance with s. 27.5304, F.S. The bill also sets out several other provisions regarding an attorney for the child, including when the OCR must be appointed, the process that must be followed when OCR has a conflict of interest in representing a child, when the attorney for the child may withdraw or be discharged, his or her access to records, and requirement to file all appropriate motions at least 72 hours before a court hearing.

Several sections are amended to conform cross-references and provisions to changes made by the act.

The bill will result in an indeterminate negative impact on state expenditures. The GALP reports an indeterminate fiscal impact of the bill as it is unknown how many children will meet the criteria in the bill. Further, the JAC states that the bill will likely have a substantial fiscal impact on the JAC through increased workload. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

## **II. Present Situation:**

Current law requires any person who knows or suspects that a child has been abused, abandoned, or neglected to report such knowledge or suspicion to the Florida central abuse hotline (hotline).<sup>1</sup> A child protective investigation begins if the hotline determines the allegations meet the statutory

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<sup>1</sup> Section 39.201(1), F.S.

definition of abuse,<sup>2</sup> abandonment,<sup>3</sup> or neglect.<sup>4</sup> A child protective investigator investigates the situation either immediately, or within 24 hours after the report is received, depending on the nature of the allegation.<sup>5</sup>

After conducting an investigation, if the child protective investigator determines that the child is in need of protection and supervision that necessitates removal, the investigator may initiate formal proceedings to remove the child from his or her home. When the Department of Children and Families (DCF) removes a child from the home, a series of dependency court proceedings must occur before a child may be adjudicated dependent.<sup>6</sup> The dependency court process is summarized in the table below.

### The Dependency Court Process

Dependency Proceeding	Description of Process	Controlling Statute
Removal	A child protective investigation determines the child’s home is unsafe, and the child is removed.	s. 39.401, F.S.
Shelter Hearing	A shelter hearing occurs within 24 hours after removal. The judge determines whether to keep the child out-of-home.	s. 39.401, F.S.
Petition for Dependency	A petition for dependency occurs within 21 days of the shelter hearing. This petition seeks to find the child dependent.	s. 39.501, F.S.
Arraignment Hearing and Shelter Review	An arraignment and shelter review occurs within 28 days of the shelter hearing. This allows the parent to admit, deny, or consent to the allegations within the petition for dependency and allows the court to review any shelter placement.	s. 39.506, F.S.
Adjudicatory Trial	An adjudicatory trial is held within 30 days of arraignment. The judge determines whether a child is dependent during trial.	s. 39.507, F.S.

<sup>2</sup> Section 39.01(2), F.S. The term “abuse” means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired. Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

<sup>3</sup> Section 39.01(1), F.S. The term “abandoned” or “abandonment” means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child’s care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.

<sup>4</sup> Sections 39.01(50) and 39.201(2)(a), F.S. “Neglect” occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child’s physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering necessary services.

<sup>5</sup> Section 39.101(2), F.S.

<sup>6</sup> See s. 39.01(14), F.S., for the definition of “child who is found to be dependent”.

Dependency Proceeding	Description of Process	Controlling Statute
Disposition Hearing	If the child is found dependent, disposition occurs within 15 days of arraignment or 30 days of adjudication. The judge reviews the case plan and placement of the child. The judge orders the case plan for the family and the appropriate placement of the child.	s. 39.506, F.S. s. 39.521, F.S.
Postdisposition hearing	The court may change temporary placement at a postdisposition hearing any time after disposition but before the child is residing in the permanent placement approved at a permanency hearing.	s. 39.522, F.S.
Judicial Review Hearings	The court must review the case plan and placement every 6 months, or upon motion of a party.	s. 39.701, F.S.
Petition for Termination of Parental Rights	Once the child has been out-of-home for 12 months, if DCF determines that reunification is no longer a viable goal, termination of parental rights is in the best interest of the child, and other requirements are met, a petition for termination of parental rights is filed.	s. 39.802, F.S. s. 39.8055, F.S. s. 39.806, F.S. s. 39.810, F.S.
Advisory Hearing	This hearing is set as soon as possible after all parties have been served with the petition for termination of parental rights. The hearing allows the parent to admit, deny, or consent to the allegations within the petition for termination of parental rights.	s. 39.808, F.S.
Adjudicatory Hearing	An adjudicatory trial shall be set within 45 days after the advisory hearing. The judge determines whether to terminate parental rights to the child at this trial.	s. 39.809, F.S.

### Attorney Representation in Dependency Cases

An attorney must comply with the Florida Rules of Professional Conduct promulgated by the Florida Bar. An attorney must zealously advocate for his or her client and must abide by a client's decision on how to proceed in a matter.<sup>7</sup> This means the client has authority to decide the purpose and scope of the attorney's representation, within the limits imposed by law and the attorney's professional obligations, including for instance whether to settle a matter.<sup>8</sup> An attorney has an obligation to communicate with his or her client about such decisions,<sup>9</sup> and should try to reach a mutually agreeable resolution with his or her client if a disagreement arises on how to proceed.<sup>10</sup>

<sup>7</sup> Rules Regulating the Fla. Bar 4-1.2.

<sup>8</sup> *Id.*

<sup>9</sup> Rules Regulating the Fla. Bar 4-1.2 and 4-1.4(a)(1).

<sup>10</sup> Rules Regulating the Fla. Bar 4-1.2.

### ***Attorney Duties and Conflicts of Interest***

Attorneys are required to adhere to specified duties within the Rules of Professional Conduct. For instance, an attorney must be competent to represent his or her client, and must act with reasonable diligence and promptness in representing a client.<sup>11</sup> An attorney also has duties of loyalty and confidentiality to his client.<sup>12</sup> However, an attorney must disclose confidential information if he or she reasonably believes it is necessary to prevent a client from committing a crime, or to prevent death or substantial bodily harm to another.<sup>13</sup> An attorney may also disclose confidential information, in part, if the client gives informed consent or the attorney reasonably believes the disclosure is necessary to serve the client's interest provided the client does not specifically require the information not to be disclosed.<sup>14</sup>

The Rules of Professional Conduct also contain provisions regarding how an attorney must handle circumstances in which conflict of interest exists.<sup>15</sup> This includes, in part, when an attorney has a conflict with a current<sup>16</sup> or former client<sup>17</sup> as well as prohibited transactions.<sup>18</sup> An attorney must not represent a client whose interests are directly adverse to another client, or there is a substantial risk that representation of the client would materially limit the attorney's representation of another client, a former client or personal interest of the lawyer, except when the client waives the conflict in specified circumstances.<sup>19</sup> This means an attorney must not represent opposing parties in litigation.<sup>20</sup> Further, an attorney generally may not use information to the disadvantage of a client without informed consent, unless otherwise permitted in the rules.<sup>21</sup>

An attorney must not represent a client if his or her representation will result in a violation of the Rules of Professional Conduct or law, or the attorney's physical or mental condition materially impairs his or her ability to represent the client.<sup>22</sup> In such instances, the attorney must not commence representation or must withdraw as counsel if specified conditions are met.<sup>23</sup>

### ***Attorney for the DCF***

The DCF must be represented by counsel in dependency and termination of parental rights proceedings.<sup>24</sup> The DCF, through its counsel, must make recommendations to the court and may present evidence including testimony from its own employees or employees of its agents, subcontractors, or other community providers.<sup>25</sup> The DCF may enter into a contract for the

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<sup>11</sup> Rules Regulating the Fla. Bar 4-1.1 and 4-1.3.

<sup>12</sup> Rules Regulating the Fla. Bar 4-1.6 and 4-1.7.

<sup>13</sup> Rules Regulating the Fla. Bar 4-1.6(b).

<sup>14</sup> Rules Regulating the Fla. Bar 4-1.6(a) and (c).

<sup>15</sup> See Rules Regulating the Fla. Bar 4-1.7 to 4-1.11.

<sup>16</sup> Rules Regulating the Fla. Bar 4-1.7

<sup>17</sup> Rules Regulating the Fla. Bar 4-1.9.

<sup>18</sup> Rules Regulating the Fla. Bar 4-1.8.

<sup>19</sup> Rules Regulating the Fla. Bar 4-1.7(a).

<sup>20</sup> Rules Regulating the Fla. Bar 4-1.7.

<sup>21</sup> Rules Regulating the Fla. Bar 4-1.8(b).

<sup>22</sup> Rules Regulating the Fla. Bar 4-1.16(a), F.S.

<sup>23</sup> Rules Regulating the Fla. Bar 4-1.16(a) and (b), F.S.

<sup>24</sup> Section 39.013(12), F.S.

<sup>25</sup> *Id.*

provision of children legal services, and all counsel included those contracted must adopt the child welfare practice model as proscribed by the DCF.<sup>26</sup>

The State of Florida is represented by Children Legal Services through the DCF.<sup>27</sup> The DCF is required to contract with the state attorney in the sixth judicial circuit for children legal services.<sup>28</sup>

### ***Attorney for the parents***

Parents have the right to be represented by counsel in dependency proceedings, and they must be informed of this right at each stage of the dependency proceedings.<sup>29</sup> The court must appoint counsel to represent parents who are indigent.<sup>30</sup> The Office of Criminal Conflict and Civil Regional Counsel (OCCRC) has primary responsibility for representing parents in proceedings under ch. 39, F.S.<sup>31</sup> If OCCRC has a conflict of interest in representing a parent or parents, private counsel who must be selected from a registry is appointed on a rotating basis.<sup>32</sup> The private attorneys contract with the JAC under specified terms to provide such services.<sup>33</sup>

### ***Attorney for the child***

#### Attorney representation of children

An attorney should, as far as reasonably practical, maintain a normal attorney-client relationship when a client's ability to make an adequately informed decision is impaired, such as in representation of a minor child.<sup>34</sup> An attorney may seek the appointment of a GAL if he or she reasonably believes the client is not able to adequately act in his or her own interest.<sup>35</sup> The Rules of Professional Conduct acknowledge that the law recognizes intermediate degrees of competence, and explicitly provides that children ages 10 or 12 are regarded as having opinions which are entitled to be considered in respect of legal proceedings concerning their custody.<sup>36</sup>

#### Child Representation Models

Child representation in dependency proceedings varies but in most instances is based on what is in the child's best interest, direct representation, or a hybrid approach.<sup>37</sup> The child's best interest may not be consistent with the child's expressed wishes.<sup>38</sup> Client-directed attorneys represent a

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<sup>26</sup> Section 409.996(18), F.S.

<sup>27</sup> The DCF, *Children Legal Services Overview*, available at <https://www.myflfamilies.com/service-programs/childrens-legal-services/overview.shtml> (last visited Jan. 3, 2022).

<sup>28</sup> Section 409.996(20)(a), F.S.

<sup>29</sup> Section 39.013(1), F.S.

<sup>30</sup> Section 39.013(9)(a), F.S.

<sup>31</sup> Section 27.511(6)(a), F.S.

<sup>32</sup> Section 27.40(2) and (3), F.S.

<sup>33</sup> Section 27.40(3) and (5), F.S.

<sup>34</sup> Rules Regulating the Fla. Bar 4-1.14.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> OPPAGA, *OPPAGA Review of Florida's Guardian ad Litem Program, Presentation to the Senate Committee on Children, Families, and Elder Affairs*, p. 9, Jan. 26, 2021, available at <https://oppaga.fl.gov/Documents/Presentations/GAL%20Presentation%201-26-21.pdf> (last visited Jan. 3, 2022) (hereinafter cited as "OPPAGA Presentation").

<sup>38</sup> The Office of Program Policy Analysis and Government Accountability (OPPAGA), *Literature Review of Studies on the Effectiveness of Advocacy Models for Children in Dependency*, Report 21-07, p. 3, Dec. 2021, [available at Literature Review](#)

child’s expressed wishes and advocate for the child in a traditional attorney-client role.<sup>39</sup> In cases where the child is unable to speak or direct their attorneys, a substituted judgement model is used.<sup>40</sup>

A summary of the different models and how they operate is set out in the table below.<sup>41</sup>

**Exhibit 3**  
**States’ Models of Representation for Children in Dependency Proceedings Fall Into Six Categories**

Representation Model	Number of States That Use Model	Description
Age Dependent	4	Children in these states receive different types of representation depending on their age. In these states, older children receive a client-directed attorney, and younger children receive a GAL.
Best Interest (attorney or professional)	20	Children in these states always receive a GAL who is required to be either an attorney or a professional (e.g., professional GAL or mental health counselor). These states may also allow for the appointment of a client-directed attorney at the discretion of the judge or in certain circumstances.
Best Interest (lay volunteer)	12	Children in these states always receive a GAL, who is not required to be an attorney. These states may also allow for the appointment of a client-directed attorney at the discretion of the judge or in certain circumstances.
Client-Directed Attorney	7	Children in these states always receive a client-directed attorney. These states may also allow for the appointment of a separate GAL or CASA at the discretion of the judge or in certain circumstances.
Hybrid	6	Children in these states always receive both a client-directed attorney and a GAL.
Multidisciplinary Team	2	Children in these states are represented by a GAL team, made up of a volunteer, a staff advocate, and an attorney.

Source: OPPAGA analysis of state statutes and court rules.

The Legislature directed OPPAGA to conduct a literature review to assess the effectiveness of children being represented by attorneys versus guardian ad litem volunteers in the dependency process.<sup>42</sup> In December 2021, OPPAGA published a report (“OPPAGA Report”) that noted early studies focused on the efficacy of volunteer representation but over time the focus has shifted to assessing attorney representation.<sup>43</sup> Of the literature OPPAGA reviewed, approximately half of the studies discussed child well-being with most of them reporting that cases with volunteer involvement received more services, and several reporting that children with volunteers experienced improved family functioning and performed better in school.<sup>44</sup> Slightly over fifty percent of the studies discussed legal factors and impact of court processes and found that

[of Studies \(fl.gov\)](#) (last visited Jan. 9, 2022) (hereinafter cited as “OPPAGA December 2021 Report”). OPPAGA contacted 61 stakeholders from various professional, legal, and child welfare organizations and prominent researchers in the field. OPPAGA requested original research, relevant research of others, and recommendations for any additional stakeholders that OPPAGA should contact. Eighty-four percent of those contacted responded, and 36% provided OPPAGA with information. Stakeholders submitted 39 studies, 10 of which had not been identified by OPPAGA but 8 of them were not within the scope of this project.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> OPPAGA, *OPPAGA Review of Florida’s Guardian ad Litem Program*, p. 5 and 34, Dec. 2020 (on file with the Committee on Children, Families, and Elder Affairs) (hereinafter cited as “The OPPAGA Memo”).

<sup>42</sup> OPPAGA December 2021 Report at p. i.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at p. ii.

children represented by attorneys are more likely to be present in court and that the type of advocacy model may impact the case length in a variety of ways.<sup>45</sup>

There is widespread consensus amongst professionals favoring legal representation for children in dependency cases.<sup>46</sup> Since 1995, national experts in children's law have recommended that children in dependency proceedings be represented by a client-directed attorney, however, best interest advocates are not excluded from recommendations.<sup>47</sup> Further, in 2002, the Florida Bar's Commission on the Legal Needs of Children recommended that Florida fully fund independent advocacy, including attorneys and GALs for children in certain proceedings, and create a statewide office to oversee and provide best interest and client-directed representation.<sup>48</sup>

Several studies favoring the appointment of attorneys for client-direct representation of children. Reports published in 2011 and 2021 suggest that parents and children who do not have legal representation early in the dependency process delays permanency and found that effective representation would speed up reunification or placement in a permanent home.<sup>49</sup> Further, a 2009 study of attorney GALs in Nebraska found that GALs were not zealously advocating for appropriate permanency, and there was a variation in the average length of foster care stay among children who were reunified or adopted.<sup>50</sup> In contrast, a 2015 study of the Legal Aid Society of Palm Beach (LAS Palm Beach) Foster Children's Project (FCP) in Palm Beach County, Florida, found that children who were represented by the FCP exited to permanency 1.59 times faster than children who were not.<sup>51</sup> Finally, a study of Oregon's practices in 2016-17 found that children in counties with parent and child representation programs were reunified five months faster than the statewide average, and that time to reunification had improved since the inception of the program.<sup>52</sup>

The OPPAGA Report concluded that several of the more recent studies focused on benefits from a multidisciplinary team approach, including better child outcomes, better family preservation, improved information to the court, and increased rates of case dismissals for some children.<sup>53</sup> Literature from professional organizations and government entities was consistent with these findings and focused on high quality legal representation as well as recommended multidisciplinary team models.<sup>54</sup>

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<sup>45</sup> OPPAGA December 2021 Report at p. ii.

<sup>46</sup> *Id.* at p. i. The OPPAGA December 2021 Report identified only one study that compared legal to volunteer advocacy, while the others examined the efficacy of one advocacy model or compared multiple models. The studies report mixed results and numerous authors have identified research limitations of the studies that were conducted.

<sup>47</sup> *Id.* at p. 3.

<sup>48</sup> OPPAGA December 2021 Report.

<sup>49</sup> *Id.* at 9.

<sup>50</sup> *Id.*

<sup>51</sup> OPPAGA December 2021 Report.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at p. ii.

<sup>54</sup> OPPAGA December 2021 Report at p. ii. The Washington State Center for Court Research (WSCCR) conducted an evaluation of the state's Dependent Child Legal Representation (DCLR) Program and published a final report in November 2021, but the OPPAGA Report relied upon the interim report published in March 2020. Two counties that participated in the DCLR Program where all dependent youth received legal representation were compared with two other counties that did not participate in it. The WSCCR concluded that the children who were served by the DCLR Program experienced (a) forty-five percent higher reunification rate with their biological parents; (b) thirty percent reduction in the rate of placement moves; and (c) sixty-five percent reduction in the rate of non-normative school moves that would not occur as a result of graduation.



### Representation under current Florida law

Section 39.01305, F.S., provides that an attorney must be appointed to represent a dependent child<sup>55</sup> who has the following special needs:

- Resides in or is being considered for placement in a skilled nursing home;
- Is prescribed psychotropic medication but does not agree to take it;
- Has a diagnosis of a developmental disability;<sup>56</sup>
- Is being placed or is being considered for placement in a residential treatment center; or
- Is a victim of human trafficking.<sup>57</sup>

A court is not restricted to appointing an attorney to represent a child for the reasons listed above.<sup>58</sup>

The court must request a recommendation from the GALP for an attorney who is willing to represent a child without additional compensation before a court may appoint one under s. 39.01305(4)(a), F.S. If the GAL recommends an attorney who is available within 15 days from the date of the court's request, the court must appoint that attorney.<sup>59</sup> The court may appoint an attorney who will receive additional compensation within 15 days if the GALP notifies the court that it will not be able to make a recommendation within the specified time.<sup>60</sup>

An attorney who is appointed to represent a child continues to be appointed until the attorney is allowed to withdraw or is discharged by the court or until the case is dismissed.<sup>61</sup> An attorney who is appointed must provide a range of legal services including from removal or appointment through any appellate proceedings.<sup>62</sup> The appointment must be in writing and the attorney must be adequately compensated unless he or she was agreed to provide pro bono services.<sup>63</sup> Unless an attorney has agreed to represent a child pro bono, the JAC must contract with attorneys appointed by the court and their fees may not exceed \$1,000 per child per year.<sup>64</sup> All appointed attorneys must also be provided with access to funding for due process costs of litigation subject to appropriations.<sup>65</sup>

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WSCCR, *Evaluation of the Washington State Dependent Child Legal Representation Program*, p. 1, 2021, available at [DCLR Report 2021.pdf \(wa.gov\)](#) (last visited Jan. 4, 2022).

<sup>55</sup> Section 39.01305(2), F.S., defines "dependent child" as a child who is subject to any proceeding under ch. 39, F.S. The term does not require that a child be adjudicated dependent for purposes of this section.

<sup>56</sup> Section 393.063(12), F.S., defines "developmental disability" as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely. *See s. 393.063, F.S.*, for other definitions related to developmental disability.

<sup>57</sup> Section 787.06(2)(d), F.S., defines "human trafficking" as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.

<sup>58</sup> Section 39.01305(8), F.S.

<sup>59</sup> Section 39.01305(4)(a), F.S.

<sup>60</sup> *Id.*

<sup>61</sup> Section 39.01305(4)(b), F.S.

<sup>62</sup> *Id.*

<sup>63</sup> Section 39.01305(4)(b) and (5), F.S.

<sup>64</sup> Section 39.01305(5), F.S.

<sup>65</sup> *Id.*

Several counties in Florida currently operate offices that provide child representation, including Palm Beach, Broward, and Hillsborough counties.<sup>66</sup> For instance, the FCP is appointed to every child 0 to 12 years old who is in out-of-home care.<sup>67</sup> The Legal Aid Society of Broward County (LAS Broward) represents children in dependency cases and provides free legal services for eligible relative and nonrelative caregivers.<sup>68</sup> Similarly, the L. David Shear Children’s Law Center of Bay Area Legal Services provides representation to children who have been abused, abandoned, or neglected.<sup>69</sup>

At least some of these organizations receive government funding.<sup>70</sup> For instance, the LAS Palm Beach County receives public grants, such as the U.S. Department of Justice under the Violence against Women Act and Children’s Services Council of Palm Beach County, and private grants, such as William and Helen Thomas Charitable Foundation.<sup>71</sup> LAS Broward receives funding from the Children’s Services Council of Broward County (CSCBC).<sup>72</sup> In many instances, these organizations rely on donations and pro bono attorneys who donate their services to provide representation to children who are the subject of a dependency case.<sup>73</sup>

The Legal Aid Society of Palm Beach County provides representation to all children in the foster care system who are between birth and 12 years old, and their siblings under a program referred to as the FCP.<sup>74</sup> Four studies found that children who were represented by the FCP had a significantly higher rate of exit to permanency than children not served by the FCP due to higher rates of adoption and long-term custody, but legal representation did not result in significantly lower rates of reunification.<sup>75</sup> Additionally, it has been reported that children who were

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<sup>66</sup> See Legal Aid Society Palm Beach (“LAS Palm Beach”), *children*, available at <https://legalaidpbc.org/children/> (hereinafter cited as “LAS Palm Beach Children”); Legal Aid Service of Broward County (“LAS Broward”), *Children & Education*, available at <https://www.browardlegalaid.org/what-we-do/areas-of-legal-service/children-education/> (hereinafter cited as “LAS Broward Children”); Bay Area Legal Services, *Family & Children*, available at <https://bals.org/help/family-children> (all sites last visited Jan. 3, 2022).

<sup>67</sup> LAS Palm Beach Children.

<sup>68</sup> LAS Broward Children.

<sup>69</sup> *Id.*

<sup>70</sup> See LAS Broward Children.

<sup>71</sup> LAS Palm Beach, *Funding*, available at <https://legalaidpbc.org/funding/> (last visited Jan. 4, 2022).

<sup>72</sup> See LAS Broward Children. The CSCBC is an independent taxing authority created by voters in 2000 and reauthorized in 2014, and its purpose is to provide advocacy and resources to children of Broward County. The CSCBC, *About Us*, available at <https://www.cscbroward.org/about> (last visited Jan. 4, 2022).

<sup>73</sup> See LAS Broward County, *Get Involved with Legal Aid*, available at <https://www.browardlegalaid.org/get-involved/>; Dade Legal Aid, *Pro Bono Enrollment (Attorney)*, available at <http://www.dadelegalaid.org/psb-enrollment-form-attorneys/>; Dade Legal Aid, *Donations through The Miami Foundation*, available at <http://www.dadelegalaid.org/donations-through-the-miami-foundation/>; Bay Area Legal Services, *Justice Works! The Campaign for Bay Area Legal Services*, available at <https://bals.org/support>; and Bay Area Legal Services, *Volunteer Lawyers Program*, available at <https://bals.org/volunteer> (all sites last visited Jan. 4, 2022).

<sup>74</sup> LAS Palm Beach Children.

<sup>75</sup> OPPAGA December 2021 Report at pp. 8-9 [citing Zinn, A.E. & Slowriver, J. (2008) *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County*, Chicago: Chapin Hall Center for Children at the University of Chicago, p. 1.; Zinn, A., & Peters, C. “Expressed Interest Legal Representation for Children in Substitute Care: Evaluation of the Impact of Representation on Children’s Permanency Outcomes.” *Family Court Review* 589 (2015): 1-13, available at <https://doi.org/0.1111/fcre.12175>; Gueinzus, A. T. & Eikoku I. “Legal Representation for Abused and Neglected Youth.” *Mitchell Hamline Law Review* 45, no. 4 (2019): 1234-1333, available at <http://open.mitchellhamline.edu/mhllr/vol45/iss4/7/>; Peters, C., and Walsh, J. “Fiscal Returns on Improved Representation of Children in Dependency court: The State of the Evidence.” *Nova Law Review* 36 (2012): 1-11, available at [SYMPOSIUM: FISCAL RETURNS ON IMPROVED](#)

represented by counsel, including those served by the FCP, exited foster care 88.3 days quicker on average.<sup>76</sup>

#### Office of Child Representation (OCR) (Section 7)

Florida law does not currently provide for an OCR. Colorado and Travis County, Texas, however, do have offices of child representation. The Colorado Office of Child's Representative (COCR) is a state agency that was established in 2000 to provide representation to children.<sup>77</sup>

The COCR represent children in several types of cases, including:

- Dependency and Neglect;
- Juvenile Delinquency;
- Domestic Relations; and
- Adoption, Truancy, Probation, Mental Health, and Paternity.<sup>78</sup>

All COCR attorneys are trained on the law, social science research, child development, mental health and education issues, and best practices in court proceedings.<sup>79</sup> A Colorado court must appoint a GAL in dependency and neglect cases to represent the child's best interest, and must appoint an OCR attorney to act as the child's counsel when the child faces contempt citations or the court has determined that the child holds his or her own patient-therapist privilege.<sup>80, 81</sup> The COCR is responsible for overseeing both roles as a GAL and as counsel for the children, if applicable.<sup>82</sup> When COCR is appointed as counsel for the child, the attorney has a traditional attorney-client role in which he or she represents the child's wishes in court proceedings.<sup>83</sup>

In Colorado, a GAL is a COCR attorney who is appointed to represent the best interest of the child which means that the COCR attorney does not advocate for the child's express wishes in a traditional attorney-client role.<sup>84</sup> Instead, the GAL must advocate for the child's health, safety, and well-being, and his or her advocacy must align with the interests and needs of the child.<sup>85</sup> The GAL has specified requirements that must be met, including attending all court hearings and

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#### REPRESENTATION OF CHILDREN IN DEPENDENCY COURT: THE STATE OF THE EVIDENCE ([improvechildrep.org](http://improvechildrep.org)).

<sup>76</sup> See Florida Times-Union, *Guest Column: Legal Representation for Foster Youth can Make a Difference*, available at <https://www.jacksonville.com/story/opinion/2021/03/28/guest-column-legal-representation-foster-youth-can-make-difference/6997135002/>; Tallahassee, Democrat, *Kids in Florida Foster Care Need Legal Representation – and the Legislature can Help* \ *Opinion*, March 31, 2021, available at [Florida Legislature: State's foster children need legal help \(tallahassee.com\)](http://Florida.Legislature.State's%20foster%20children%20need%20legal%20help%20(tallahassee.com)) (all sites visited Jan. 5, 2022).

<sup>77</sup> The COCR, *What We Do*, available at <https://coloradochildrep.org/about-ocr/> (last visited Jan. 4, 2022).

<sup>78</sup> *Id.*

<sup>79</sup> The COCR, *Case Types Covered by OCR Attorneys*, available at <https://coloradochildrep.org/about-ocr/ocr-cases/> (last visited Jan. 4, 2022).

<sup>80</sup> L.A.N. et al. v. L.M.B., 11 SC 529 (Jan. 22, 2013) (finding that a GAL holds a child's psychotherapist-patient privilege when: (1) the child is too young or incompetent to hold the privilege; (2) the child's interests are adverse to those of his or her parent(s); and (3) section 19-3-311, C.R.S. (2012) does not abrogate the privilege).

<sup>81</sup> The COCR, *Dependency & Neglect Cases*, available at <https://coloradochildrep.org/about-ocr/ocr-cases/dependency-and-neglect/> (last visited Jan. 4, 2022) (hereinafter cited as "D&N Cases").

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> D&N Cases.

<sup>85</sup> *Id.*

conducting an independent investigation which must continue throughout the duration of the case.<sup>86</sup>

The Travis County, Texas Office of Children Representation (TOCR), however, provides legal representation to children who are the subject of dependency cases only.<sup>87</sup> The TOCR counsel act in a traditional attorney-client role and represent children's legal interests.<sup>88</sup>

## **Guardian ad Litem**

### Appointment and Discharge

Federal and Florida law provide that a GAL must be appointed to represent the child in every case.<sup>89</sup> The Child Abuse Prevention and Treatment Act makes the approval of grants contingent on a eligible state plans which must include provisions and procedures to appoint a GAL in every case.<sup>90</sup> The GAL must be appointed to:

- Obtain first-hand knowledge of the child's situation and needs; and
- Make recommendations to the court regarding the best interest of the child.<sup>91</sup>

Under Florida law, a court must appoint a GAL at the earliest possible time to represent the child in a dependency proceeding.<sup>92</sup> The GALP publishes monthly representation reports which summarize, in part, the number of reported dependent children, the GALPs appointments in those cases, and the number of certified volunteer GALs.<sup>93</sup> The December 2020 Representation Report details the following statistics:

- The Office of State Courts Administrator reports there are 31,288 children who are the subject of a dependency case.<sup>94</sup>
- The GALP reports that 22,960 children are appointed to the program, and there are 11,116 certified case volunteers including pro bono attorneys.<sup>95</sup>
- The GALP reports 98 newly certified case volunteers in its December 2020 report.<sup>96</sup>

In some cases, the GALP may discharge from a case when a child's permanency goal has been established and the child is in a stable placement.<sup>97</sup> A summary of the reasons the GALP has been discharged from dependency cases from 2016 to 2020 by Fiscal Year is summarized in the table below.<sup>98</sup>

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<sup>86</sup> *Id.*

<sup>87</sup> Travis County, Tx Gov, *The Office of Child Representation*, available at <https://www.traviscountytexas.gov/criminal-justice/child-representation> (last visited Jan. 4, 2021) (hereinafter cited as "TOCR website").

<sup>88</sup> *Id.*

<sup>89</sup> 42 U.S.C. 67 §5106a.(b)(2)(xiii); Section 39.822(1), F.S.

<sup>90</sup> 42 U.S.C. 67 §5106a.(b)(2)(xiii).

<sup>91</sup> *Id.*

<sup>92</sup> Section 39.822(1), F.S.

<sup>93</sup> See the GAL for Children, *Florida Guardian ad Litem Program, Monthly Representation Report: December 2020*, available at <https://guardianadlitem.org/wp-content/uploads/2021/01/Representation-Report-December-2020.pdf> (last visited Jan. 4, 2022) (hereinafter cited as "December 2020 Representation Report").

<sup>94</sup> *Id.*

<sup>95</sup> December 2020 Representation Report.

<sup>96</sup> *Id.*

<sup>97</sup> The OPPAGA Memo at p. 15.

<sup>98</sup> *Id.* at p. 16.

**Exhibit 6**

**Closure Reasons Reported by GAL Program Remained Stable From Fiscal Year 2016-17 Through the First Half of Fiscal Year 2019-20<sup>1</sup>**

GAL Program Closure Reason for GAL Program Closures	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20 <sup>1</sup>	Four-Year Total
Reunification	29%	31%	29%	31%	30%
Adoption	18%	18%	20%	19%	19%
Permanency Goal Established <sup>2</sup>	18%	19%	23%	22%	21%
Permanent Guardianship	17%	15%	13%	12%	15%
Other <sup>3</sup>	9%	9%	6%	6%	8%
Insufficient Program Resources <sup>4</sup>	5%	4%	4%	4%	5%
Aged Out of Care	3%	4%	4%	4%	4%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

<sup>1</sup>To control for differences between GAL Program closures and DCF discharges, we limited the Fiscal Year 2019-20 data to the first six months (July 1, 2019–December 31, 2019).

<sup>2</sup>Closure reasons of APPLA are included here.

<sup>3</sup>Other includes children who ran away, were transferred to or placed in another circuit, and cases that were either consolidated or bifurcated by the courts.

<sup>4</sup>This includes cases to which the GAL Program was appointed where the program was either unable to staff the case at all or had to discharge from a case before it concluded. Closure reasons of APPLA are included here.

Source: OPPAGA analysis of Florida Guardian ad Litem Program data representing 80% of GAL children with a closed case.

**Role of the GALP and GAL**

“Guardian ad litem” is defined as the Statewide Guardian Ad Litem Office, which includes circuit guardian ad litem programs, a duly certified volunteer, a staff member, a staff attorney, a contract attorney, pro bono attorney working on behalf of a GAL; court-appointed attorney; or responsible adult who is appointed by the court to represent the best interest of a child<sup>99</sup> in a proceeding as provided by law including ch. 39, F.S., until discharged by the court.<sup>100</sup>

The Florida Supreme Court has recognized that a GAL is appointed to serve as the child’s representative in court to present what is in the child’s best interest.<sup>101</sup> The GALP reports that the adult representing the child’s best interest will ordinarily be represented by counsel in the judicial proceedings, and suggests such attorney owes a duty of care to both the guardian ad litem and the child with whom the GAL is appointed to represent.<sup>102</sup> The GALP acknowledges that there is no attorney-client relationship between the GALP attorney and the child, and suggests that independent legal representation is provided through the GAL.<sup>103</sup>

The GAL or GALP representative must review all disposition recommendations or changes in placements, and must be present at all critical stages of the proceeding or submit a written report,

<sup>99</sup> The term “Best interest of the child” generally refers to deliberations undertaken by courts in making decisions about the services, actions, and orders that will best serve a child and who is best suited to care for that child. OPPAGA December 2021 Report at p. 3.

<sup>100</sup> Section 39.820(1), F.S.

<sup>101</sup> *D.H. v. Adept Cmty. Servs.*, 271 So. 3d 870, 879 (Fla. 2018) (citing *C.M. v Dep’t of Children & Family Servs.*, 854 So.2d 777, 779 (Fla. 4<sup>th</sup> DCA 2003).

<sup>102</sup> The GALP, *Agency Analysis for SB 948* (2022), p. 3, January 8, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as “The GALP Analysis”) [citing *Op. Att’y Gen. Fla. 96-94* (1996)].

<sup>103</sup> *Id.* at p. 4.

which must be filed and served on all parties whose whereabouts are known at least 72 hours prior to the hearing.<sup>104</sup>

Performance Advocacy Snapshot (PASS) summarizes the individual GAL circuit program performance and GAL influence on child welfare outcomes by circuit.<sup>105</sup> The December 2020 PASS report states that a GAL has been appointed to 73.4% of children who are the subject of dependency proceedings, with some exceptions.<sup>106</sup> It also reports 67.5% active certified volunteers statewide.<sup>107</sup> Children achieving permanency within 12 months of entering care totals 18 percent and 40.6 percent of adoptions occur within 24 months according to the PASS report.<sup>108</sup>

### Activities of GAL

The GALP reports that GAL are involved in a number of activities related to the child, including, in part:

- Attending school events;
- Guiding children through changes of placement;
- Creating community awareness about children who are abused, abandoned, or neglected;
- Being a safe and stable adult in the child's life; or
- Reporting quality information to judges.<sup>109</sup>

### Conflicts of Interest

Under current law, there is no statutory provision under ch. 39, F.S., which requires the GALP to identify any conflict of interest a GAL may have. The GALP Standards of Operation, however, provide that the GALP “shall not accept appointment to a case where the Program has an impermissible conflict of interest and shall seek discharge if an impermissible conflict of interest arises after appointment. An impermissible conflict of interest between the GAL Program and a child or children will be found if the GAL Program has a duty, or the appearance of a duty, to another that may prevent the GAL Program from being fully able to represent the child to whom the Program is appointed. If an individual GAL Volunteer or staff member has a conflict, this may be resolved by assigning another individual from the Program in the discretion of the Circuit Director.”<sup>110</sup> Standard 7.D. further states that GALs have an obligation to notify the GAL Program Attorney if they are aware of a possible conflict of interest, which could include prior involvement with individuals involved in the case, any personal reasons that may not allow them to provide best interests advocacy for a child, and situations when the GALP is appointed to represent multiple related children whose interests conflict with one another.

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<sup>104</sup> Section 39.822(4), F.S.

<sup>105</sup> See The GALP, *Statewide Guardian ad Litem Program – Performance Advocacy Snapshot (PASS)*, Dec. 2020, available at <https://guardianadlitem.org/wp-content/uploads/2021/01/Performance-Advocacy-SnapShot-December-2020-Revised.pdf> (last visited Jan. 4, 2022) (hereinafter cited as “December 2020 PASS”).

<sup>106</sup> *Id.*

<sup>107</sup> December 2020 PASS.

<sup>108</sup> *Id.*

<sup>109</sup> The GALP Analysis at p. 5.

<sup>110</sup> *Id.* at p. 9-10 (citing GAL’s Standard 7.D.).

Further, Standard 7.D. states that an impermissible conflict will not be found simply because the GAL is advocating in good faith for the child's best interests and the child conveys a position that may be opposed to the position taken by the GAL.<sup>111</sup>

The GAL's Standards of Operation 3, Code of Conduct, prohibit GALs from practicing, condoning, facilitating, or participating in any form of discrimination, including in part, discrimination based on race, color, gender, sexual orientation, sexual identity, age, religion, or ethnicity.<sup>112</sup> Finally, the GALP reports that the Standards of Operation prohibit a GAL from receiving a fee for their services as a GAL or accepting a gift for personal benefit.<sup>113</sup>

#### GAL Executive Director Appointment and Reappointment

The GALP's executive director is appointed by the Governor from a list of at least three nominees of eligible applicants selected by the Guardian Ad Litem Qualifications Committee (GALQC).<sup>114</sup> The executive director must meet minimum qualifications, serve a term of 3 years, and has specified duties.<sup>115</sup> The executive director is permitted to serve more than one term, but current law is unclear on whether any additional terms are subject to the appointment process.

### **Funding**

#### ***GAL Funding***

The OPPAGA reports that state funding for the GALP has increased by 21% over the past five years from \$43.6 million in Fiscal Year 2015-16 to \$52.9 million in Fiscal Year 2019-20.<sup>116</sup> In Fiscal Year 2020-21, the GALP was appropriated \$56.2 million.<sup>117</sup> Other sources of funding, including local governments, federal Victims of Crime Act (VOCA) funds, and non-profit sources, have also increased over the past five years from \$4.6 million in Calendar Year (CY) 2015 to \$9.7 million in CY 2019.<sup>118</sup> With this increase, the number of staff increased, the number of volunteers remained stable, and the number of children served has decreased from 40,032 in Fiscal Year (FY) 2016-17 to 36,506 in FY 2019-20.<sup>119</sup>

#### ***Family First Prevention Services Act***

The Bipartisan Budget Act of 2018 (HR 1892) was signed into law on February 9, 2018, which included the Family First Prevention Services Act (FFPSA). The legislation aims at providing financial assistance with a focus on prevention services and reducing funds to residential group

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<sup>111</sup> The GALP, *Standards of Operation*, Revised April 2020, p. 18, available at <https://guardianadlitem.org/wp-content/uploads/2020/05/GAL-Standards-Rev.-4.30.2020-FINAL.pdf> (last visited Jan. 4, 2022) (hereinafter cited as "GALP SOP 2020").

<sup>112</sup> *Id.* at p. 10.

<sup>113</sup> The GALP Analysis at p. 11.

<sup>114</sup> Section 39.8296(2)(a), F.S.

<sup>115</sup> *Id.*

<sup>116</sup> OPPAGA Presentation at p. 7.

<sup>117</sup> See Transparency Florida, *2021-22 Operating Budget in Agency Format, Justice Administration*, available at <http://www.transparencyflorida.gov/OperatingBudget/Agency.aspx?FY=22&BE=21000000&SC=F&OB=Y> (last visited January 10, 2022).

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

care.<sup>120</sup> It also has the potential to dramatically change child welfare systems by expanding the way in which Title IV-E funding may be spent.<sup>121</sup> The FFPSA requirements include:

- Option to use funds for up to 12 months for evidence-based services, such as substance abuse treatment;
- Eligible candidates include children who can remain safely in the home with the provision of services, children in foster care who are parents, or parents or caregivers who require services to prevent a child's entry into foster care;
- States must prepare a prevention plan for the child to safely remain at home with services; and
- Services must be trauma-informed and pre-approved on the Health and Human Services website.<sup>122</sup>

Title IV-E funds previously were restricted to being used for the costs of eligible children's foster care maintenance; administrative expenses to manage the foster care program; training for specified persons; and kinship guardianship assistance. Title IV-E federal funding is now available for direct legal representation and advocacy for eligible children in foster care and their parents.<sup>123</sup> As the GALP attorney does not have a direct attorney-client relationship with the child<sup>124</sup> and directly represent the children in Florida dependency proceedings, it is unclear whether the GALP is eligible for Title IV-E funding under the new federal standards. However, the GALP has not begun to be reimbursed for legal representation and advocacy under the FFPSA standards.

### III. Effect of Proposed Changes:

#### Office of Child Representation (Section 7)

The bill establishes a new Office of Child Representation (OCR) to provide direct legal representation to specified children during dependency proceedings. Similar to the GALP, the bill creates the OCR within the JAC which provides administrative support and services but does not control, supervisor, or direct the OCR in the performance of its duties. However, employees are governed by plans, including salary and benefits, approved by the JAC.

The bill provides for an executive director to be appointed to the OCR with the same appointment process, term, and requirements as the executive of the GALP provided for in s. 39.8296(2)(a), F.S. The OCR executive director must be a member of The Florida Bar in good standing for at least 5 years and have knowledge of dependency law and social service delivery systems to meet the needs of children who are abused, abandoned and neglected. The bill requires the appointment of the initial executive director to be completed by January 1, 2023.

<sup>120</sup> The DCF, *The Florida Center for Child Welfare FFPSA Updates*, available at <http://centerforchildwelfare.fmhi.usf.edu/FFPSA.shtml> (last visited Jan. 4, 2022).

<sup>121</sup> National Conference of State Legislatures, *Family First Prevention Services Act Update*, available at <https://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx> (last visited Jan. 4, 2022).

<sup>122</sup> The DCF, *Family First Prevention Services Act*, p. 26, Aug. 28, 2020, available at [http://centerforchildwelfare.fmhi.usf.edu/kb/prevplans/FFPSA-StatewideWebinar8\\_28\\_2020.pdf](http://centerforchildwelfare.fmhi.usf.edu/kb/prevplans/FFPSA-StatewideWebinar8_28_2020.pdf) (last visited Jan. 4, 2022).

<sup>123</sup> U.S. Department of Health and Human Services, Administration for Children and Families, *High Quality Memo*, p. 10-11, Jan. 14, 2021, available at [https://www.courts.ca.gov/documents/ffdrp\\_acf2021\\_high\\_quality\\_memo.pdf](https://www.courts.ca.gov/documents/ffdrp_acf2021_high_quality_memo.pdf) (last visited Jan. 4, 2022).

<sup>124</sup> The GALP SOP 2020, p. 7.



The OCR, within the resources of the JAC, must provide oversight and technical assistance, in part, as follows:

- Identify the resources required to implement methods of collecting, reporting, and tracking case data;
- Review and collect information relating to offices of child representation and other models of attorney representation in other states;
- Develop statewide performance measures and standards in collaboration with the regional offices of OCR;
- Develop a training program for each attorney for the child, and create a curriculum committee composed of specified professionals<sup>125</sup> for such purpose;
- Develop protocols that must be implemented to assist children in meeting eligibility requirements to receive all federal funding;<sup>126</sup>
- Review methods of funding, maximum the use of those funds, and review the kinds of services being provided by the regional offices;
- Determine the feasibility or desirability of new concepts regarding the operation and scope of services provided by the OCR;
- Establish standards and protocols to represent children who have diminished capacity;
- Retain responsibility for the quality of contracted services and ensure that services are delivered in accordance with applicable laws; and
- Submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court, including:
  - An interim report describing the progress of the statewide office in meeting the responsibilities described in this paragraph.
  - A proposed plan that includes alternatives for meeting the representation needs of children in this state. The plan may include recommendations for implementation in only a portion of this state or phased-in statewide implementation and must include an estimate of the cost of each such alternative.
  - An annual status report that includes any additional recommendations for addressing the representation needs of children in this state and related issues.

The DCF or community-based care lead agency must take any steps necessary to obtain and maintain eligible federal funding.

The bill provides that OCR may contract with local nonprofit agencies to provide direct representation to a child if it is the most efficient method to satisfy its duties and if federal funding has been approved for reimbursement. Such contract must contain the following provisions:

- The distribution of funds and method of payment by the OCR to the local nonprofit agency;

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<sup>125</sup> Members must include, but not limited to, a dependency judge, a director of circuit guardian ad litem programs, an active certified guardian ad litem, a mental health professional who specializes in the treatment of children, a member of a child advocacy group, a representative of a domestic violence advocacy group, an individual with at least a Master of Social Work degree, and a social worker experienced in working with victims and perpetrators of child abuse.

<sup>126</sup> This may not be construed to mean that the protocols may interfere with zealous and effective representation of the children.

- Funding for the provision of services and payment of a reasonable administrative cost by the DCF to the local nonprofit agency.

A local nonprofit agency that is contracted with OCR must comply with the following requirements:

- Provide competent representation to all children to whom the agency is appointed;
- Ensure that any documentation required for Title IV-E funds reimbursement is provided to the OCR on a monthly basis;
- Provide accurate and timely information to the OCR;
- Ensure that all staff comply with mandatory training as required by the OCR; and
- Comply with relevant statutory requirements and provisions under the contract.

The bill provides for regional offices to be established within each of the five district court of appeals which must commence fulfilling their purpose and duties on July 1, 2023.

Finally, the CRCs who are the heads of the regional offices must serve on a full-time basis and may not engage in private practice. Assistant child representation counsel (ACRC) must give priority to his or her duties in that position but part-time ACRC may practice dependency law for private payment provided the representation does not result in a legal or ethical conflict of interest with a case that OCR is providing representation.

### **Attorney for the Child (Sections 1-3 and 8)**

#### ***Appointment***

Section 39.013(13), F.S. is amended to provide that an attorney for the child must be appointed pursuant to s. 39.831, F.S. The bill defines “attorney for the child” as an attorney providing direct representation to the child, which may include the appointment of the Office of the Child Representation, an attorney provided by an entity contracted through the Office of the Child Representation to provide direct representation, any privately court-appointed counsel who is compensated pursuant to s. 27.5304, F.S., any privately retained counsel or pro bono counsel, or any other attorney who represents the child under ch. 39, F.S.

The bill creates s. 39.831, F.S., which provides that an attorney for the child:

- Must be appointed when the child has special needs as provided in s. 39.01305(3), F.S.;
- Must be appointed by the court for any child who is subject to a dependency proceeding and who is placed in out-of-home licensed care on or after July 1, 2023; and
- May be appointed upon a finding by the court that circumstances exist which necessitate the appointment.

The bill modifies s. 39.01305(4)(a), F.S., to provide that an attorney must be appointed as provided for in s. 39.831, F.S.

#### ***Scope of Representation and Compensation***

The bill clarifies that the scope of the appointment of an attorney for the child is limited to representation of the child in the dependency proceedings, which may include representation in fair hearings and appellate proceedings that are directly related to matters needing resolution for

the child to achieve permanency. Further, representation in fair hearings must be provided within the resources allotted for representation in the dependency proceedings. Trained staff of the OCR or local nonprofit agency, which may include social workers, case workers, education advocates, or health care advocates, may attend the fair hearings rather than the appointed attorney when appropriate.

The bill relocates s. 39.01305(4)(b), F.S., to s. 39.831, F.S., which specifies that the appointment continues in effect until the attorney is allowed to withdraw, the attorney is discharged by the court, or the case is dismissed. The attorney for the child must provide all legal services required from the time the child is removed or the initial appointment through appellate proceedings. With court permission, the attorney for the child may arrange for supplemental or separate counsel to represent the child in appellate proceedings. An order appointing an attorney for the child must be in writing.

The bill clarifies that the attorney must be adequately compensated as provided in s. 27.5304, F.S. The bill also relocates s. 39.01305(5), F.S., to s. 39.831, F.S., in regards to payment required to be made to an attorney for his or her representation which may not exceed \$1,000 unless the attorney agrees to represent the child pro bono, and the requirement to provide access to funding for due process costs of litigation which is subject to appropriations.

The court must appoint the OCR unless the child is otherwise represented. Similar to the GALP, parents who are financially able must reimburse the court for the costs of the OCR representation, but reimbursement for the attorney's services may not be contingent upon successful collection by the court of reimbursement from the parent.

### ***Conflicts of Interest***

If the OCR determines that the interests of clients are so adverse or hostile that they cannot all be counseled by child representation counsel or his or her staff because of a conflict of interest, the OCR must file a motion to withdraw and move the court to appoint alternative counsel. The bill provides that the OCR must not automatically determine the appointment to represent siblings as a conflict of interest. If requested, the OCR must provide the JAC with a copy of the motion at the time it is filed. The court must consider the OCR's submission regarding the conflict without requiring the disclosure of any confidential communications. The court must deny the motion if there are insufficient grounds for the request. If the motion is granted, the court must appoint an attorney as provided in s. 27.40, F.S.

### ***Access to Records***

Upon presentation of a court order by an attorney for the child, an agency, person, or organization must allow the attorney to inspect and copy records related to the child who is the subject of the appointment, including records that are made confidential. An agency must also allow an attorney for the child to inspect and copy records that are exempt from s. 119.07(1), F.S., or s. 24(a), Art. I of the Florida Constitution, but he or she must maintain the confidential or exempt<sup>127</sup> status of any records shared.

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<sup>127</sup> When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record. *See Williams v. City of Minneola*, 575 So. 2d 683, 687

The attorney for the child must review all disposition recommendations and changes in placement and file any appropriate motions at least 72 hours in advance of the hearing. The DCF must develop procedures to request that a court appoint an attorney for the child, and may adopt rules to implement the section.

### **Guardian ad Litem (Section 4 to 7)**

Part XI is retitled to state “GUARDIAN AD LITEM, GUARDIAN ADVOCATES, AND ATTORNEY FOR THE CHILD.”

#### ***Appointment***

The bill amends s. 39.822, F.S., providing that a GAL will continue to be appointed as proscribed under current law before July 1, 2023. On or after that date:

- The GAL must be appointed at the earliest possible time to represent a child who is:
  - Placed in nonlicensed care or remains in-home under the protective supervision of the DCF;
  - The subject of a dependency proceeding and the subject of a criminal proceeding;
  - The subject of a termination of parental rights proceeding under Part X; or
  - A dependent child as described in s. 39.01305(3), F.S.<sup>128</sup>
- The GAL may be appointed at the court’s discretion upon a finding that circumstances exist which require the appointment.

If a guardian ad litem is appointed, the court may maintain the appointment even if an attorney for the child is later appointed because the child subsequently meets the above-mentioned criteria requiring the appointment of an attorney, such as he or she was placed in out-of-home care.

#### ***Conflicts of Interest***

The GALP must develop guidelines to identify any possible conflicts of interest of a GAL when he or she is being considered for assignment to a child’s case, and prohibits the GALP from appointing such GALs when a conflict is identified. “Conflict of interest” is defined as a GAL who:

- Has a personal relationship that could influence a recommendation regarding a child whom he or she is serving as a GAL;
- Is in a position to derive a personal benefit from his or her role as a GAL; or
- Has a personal factor or circumstance, including a bias or prejudice, which impairs the GALs ability to fully and fairly discharge his or her duties.

The bill permits the court to order that a new GAL be assigned or, unless otherwise provided by law, that the GAL be discharged and an attorney for the child be appointed upon:

- Consent of a child who is the subject of a dependency proceeding; or

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(Fla. 5th DCA 1991). Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>128</sup> See below for further discussion on this section.

- Any party presenting evidence that there is reasonable cause to suspect the assigned GAL has a conflict of interest.

The bill also requires the GALP to identify any GAL who is experiencing any physical or mental health issues and who appears to present a danger to any child, remove such GAL from all assigned cases, and terminate his or her direct contact voluntary services with the GALP. This action must be disclosed to the court. A GAL who has a physical or mental issue may work at the GALP office without direct child contact provided such issue does not negatively affect his or her ability to perform any required work duties or pose a risk of harm to any children represented by the program. A GAL who has caused harm to any child during the course of his or her appointment must not be employed or permitted to volunteer for the program.

### ***Reappointment Process***

The GAL Qualifications Committee who nominates at least three eligible applicants for the executive director position of the GALP to the Governor is renamed to the Child Well-Being Qualifications Committee. The bill provides that the executive director may be reappointed to serve more than one term pursuant to the appointment process. Every term is for a 3 year period.

### **Conforming Sections (Sections 9-40)**

The bill amends ss. 39.00145, 39.0139, 39.402, 39.407, and 39.4085 in part, to change the term “attorney ad litem” or other term used to refer to an attorney appointed to represent a child to the term “attorney for the child.”

The bill also amends ss. 28.345, 29.007, 39.001, 39.00145, 39.0132, 39.0139, 39.202, 39.302, 39.402, 39.407, 39.4085, 39.502, 39.521, 39.6011, 39.6012, 39.6251, 39.701, 39.702, 39.801, 39.802, 39.808, 39.810, 39.811, 39.812, 43.16, 63.085, 322.09, 394.495, 627.746, 768.28, 934.255, and 960.065 to update reference to the attorney for the child as counsel for a party that is applicable to these sections as contemplated in the provisions in this bill.

The bill is effective July 1, 2022.

## **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:**

The bill permits the attorney for the child to file a termination of parental rights petition which the GALP reports could raise constitutional issues with respect to the fundamental rights of parents.<sup>129</sup> However, s. 39.802, F.S., currently authorizes any party who has knowledge of the facts alleged or is informed of them and believes that they are true may file a termination of parental rights.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

To the extent a parent is financially able, he or she may have to reimburse the cost of the attorney for the child pursuant to s. 39.831(1)(c), F.S.

**C. Government Sector Impact:****Statewide Guardian ad Litem Office Fiscal Impact**

The bill's provisions would clearly reduce the demand for services provided by the GALP, though the impact is indeterminate. The GALP reports an indeterminate fiscal impact of the bill as it is unknown how many children will meet the criteria under s. 39.822(1)(b), F.S.<sup>130</sup> As of September 30, 2021, there were 10,282 receiving in-home care and 22,450 were in out-of-home care for a total of 34,881 children receiving child welfare services as of that date.<sup>131</sup> The GAL reports, therefore, that the GALP would have to represent a minimum of 10,282 children and, based on this data, it can be estimated that a minimum of 22,450 children would be appointed attorneys through the OCR.<sup>132</sup> Further, the number of GALs appointed to represent children will vary depending on how many termination of parental rights petitions are filed, how many children have special needs, and whether the children have pending delinquency proceedings. The GALP did not offer an opinion on the potential fiscal impact of the provision for the creation of OCR.<sup>133</sup>

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<sup>129</sup> The GALP Analysis at p. 17.

<sup>130</sup> *Id.* at p. 18.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> The 2021 GALP Analysis at p. 15.

### **Justice Administrative Commission Fiscal Impact**

The bill will have an indeterminate, but significant, negative fiscal impact on the Justice Administrative Commission. The bill's provisions require the JAC to provide administrative support and services to the Statewide Office of Child Representation. Additional funding would be necessary for new administrative and infrastructure costs inherent in establishing and serving the new Offices of Child Representation, including employee training on the legal requirements of the OCR and incorporating the OCR into the existing state budgeting, finance, and IT systems. The JAC provided estimates of the fiscal impact in its agency analysis for SB 1920 (2021),<sup>134</sup> which is substantially similar to SB 948. In the 2021 Agency Analysis, the JAC estimated that FTE costs for these functions would total \$594,183 as follows:

- One-half FTE in Executive
- One FTE in Human Resources
- One FTE in Accounting
- One-half FTE in Financial Services
- One FTE in Information Technology
- One 3/4 FTE in Budget

Additionally, the JAC estimated that between \$1.1 million to \$5.5 million will be needed beginning in FY 2022-2023 for private court-appointed attorneys where the Offices of Child Representation have a conflict precluding representation. These costs are likely to be higher in the first year of appointments while the offices are beginning implementation of this initiative.<sup>135</sup>

The JAC's updated agency analysis for SB 948 refers to the JAC 2021 Agency Analysis and suggests that the potential fiscal impact for SB 948 may be greater because the scope of children's right to counsel under SB 948 may increase the number of appointments of private court-appointed counsel due to conflicts of interest.<sup>136</sup> The JAC 2022 Agency Analysis also suggests that the fiscal impact for expenditures relating to attorney fees and due process services will be increased for SB 948.<sup>137</sup>

### **Regional Office of the Child Representation Fiscal Impact**

The bill requires the creation of five regional offices of child representation, which would have a significant negative fiscal impact on state resources. The estimated costs for the regional offices are difficult to quantify due to the multiple cost drivers, including expected caseload and conflict rate of the offices. In addition to operating costs, each office would also incur start-up costs and ongoing overhead costs. The example below projects annual recurring costs of \$20.9 million based on the assumptions below; however, funding scenarios could easily range from \$10 to \$30 million.

<sup>134</sup> JAC, *2021 Legislative Session Bill Analysis for SB 1920*, Apr. 2, 2021 (on file with the Senate Appropriations Subcommittee on Criminal and Civil Justice) (hereinafter cited as "JAC 2021 Agency Analysis").

<sup>135</sup> *Id.*

<sup>136</sup> JAC, *2022 Legislative Session Bill Analysis for SB 948*, p. 12, Dec. 17, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "JAC 2022 Agency Analysis").

<sup>137</sup> *Id.*

<b>ASSUMPTIONS</b>	
<b>Number of Children Eligible</b>	6,500
<b>Caseload Per Attorney</b>	60
<b>Length of Appointment (In Months)</b>	12
<b>Cost Per Case Paid to Registry Attorney</b>	\$1,000
<b>Conflict Rate</b>	10%

FTE		Total Recurring Need	Total Nonrecurring Need
6.00	Salaries and Benefits for Director Positions (1 Per Region + Executive Director)	\$ 1,078,152	\$ -
	Operations Costs for Directors (Standard # 3 w/ Law Library)	\$ 63,600	\$ 23,370
5.00	Salaries and Benefits for Regional "Chiefs"	\$ 718,365	\$ -
	Operations Costs for Chiefs (Standard # 3 w/ Law Library)	\$ 53,000	\$ 19,475
109.00	Salaries and Benefits for Attorneys (Estimated at \$50,000 starting salary)	\$ 7,995,695	\$ -
	Operations Costs for Attorneys (Standard # 3 w/ Law Library)	\$ 726,375	\$ 421,958
58.00	S&B Support / Other	\$ 3,754,050	\$ -
	Operations for Support Positions (Standard # 3)	\$ 501,584	\$ 202,478
	Human Resource Outsourcing Costs	\$ 41,830	\$ -
	Risk Management Insurance Costs	\$ 42,768	\$ -
	Overhead Costs (Rent / IT Costs / Travel / Utilities / Supplies / Training)	\$ 1,989,995	\$ -
	Due Process Costs Per Case	\$ 2,925,000	\$ -
	Private Registry Attorney Fees (JAC HQ)	\$ 650,000	\$ -
	Private Registry Due Process Conflict Costs (JAC HQ)	\$ 325,000	\$ -
178.00		<b>\$ 20,865,414</b>	<b>\$ 667,281</b>

As discussed in the “Present Situation,” state funding for these services could be partially offset by Title IV-E federal funds.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 28.345, 29.007, 39.001, 39.00145, 39.01, 39.013, 39.01305, 39.00145, 39.0132, 39.0139, 39.202, 39.302, 39.402,



39.407, 39.4085, 39.502, 39.521, 39.6011, 39.6012, 39.6251, 39.701, 39.702, 39.801, 39.802, 39.808, 39.810, 39.811, 39.812, 39.822, 39.8296, 43.16, 63.085, 322.09, 394.495, 627.746, 768.28, 934.255, and 960.065.

This bill creates the following sections of the Florida Statutes: 39.83 and 39.831.

**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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