

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1101 Education for Children and Young Adults in Out-of-home Care  
**SPONSOR(S):** Health & Human Services Committee, Children, Families & Seniors Subcommittee, Tramont  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 272

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	15 Y, 0 N, As CS	Brazzell	Brazzell
2) Health & Human Services Committee	17 Y, 0 N, As CS	Brazzell	Calamas

### SUMMARY ANALYSIS

The U.S. and Florida Constitutions provide rights to individuals, including children in foster care, as do certain federal and state laws. Examples include basic rights and a right to privacy under Article I, §2 and Article I, §23 of the Florida Constitution, the right to high quality education under Article IX of the Florida Constitution, and due process rights under the U.S. Constitution. Courts have found that foster children have a constitutional right to be free from unnecessary pain and a fundamental right to physical safety.

Section 39.4085, F.S., sets forth goals for the delivery of services to children in shelter or foster care, including that services should be directed by the principle that the health and safety of children should be of paramount concern. Various policies attempt to ensure that children in foster care gain information useful during their time in care about these rights and goals and address concerns related to them; for example:

- DCF has created materials to inform children in foster care.
- Case managers or other staff to provide verbal and written instructions to a child entering shelter or foster care in an understandable manner on how to identify and report child abuse, abandonment, or neglect. The case manager or other staff must review this information with a child every six months and upon every placement change until the child leaves shelter or foster care. The case manager must document in court reports and case notes the date the child received the information.
- The Florida Children's Ombudsman offers help to children by receiving complaints about placement, care, and services, while assisting in mediating those concerns. The Ombudsman is also a resource to identify and explain relevant policies or procedures to children, young adults, and their caregivers.

CS/CS/HB 1101 creates requirements for DCF to work with children in out-of-home care to ensure they receive information on topics including, at a minimum:

- Nurturing care, personal safety, and protection from abuse, abandonment, and neglect;
- Education;
- Placement, visitation, and contact with siblings, family, and other important persons;
- Court participation;
- Participation in permanency planning, transition planning, and other case planning;
- Access to food, clothing, shelter, and health care; and
- The topic of normalcy and what that means for children and young adults in out-of-home care.

The bill also establishes the Office of the Children's Ombudsman and specifies its responsibilities in assisting children and young adults.

CS/CS/HB 1101 has no fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Department of Children and Families**

The mission of the Department of Children and Families (DCF) is to work in partnership with local communities to protect the vulnerable, promote strong and economically self-sufficient families, and advance personal and family recovery and resiliency.<sup>1</sup>

Under s. 20.19(4), F.S., DCF must provide services relating to:

- Adult protection.
- Child care regulation.
- Child welfare.
- Domestic violence.
- Economic self-sufficiency.
- Homelessness.
- Mental health.
- Refugees.
- Substance abuse.

DCF must also deliver services by contract through private providers to the extent allowed by law and funding.<sup>2</sup> These private providers include community based care lead agencies (CBCs) delivering child welfare services and managing entities (MEs) delivering behavioral health services.

#### **Florida's Child Welfare System**

Chapter 39, F.S., creates the dependency system charged with protecting child welfare. Florida's dependency system identifies children and families in need of services through reports to the central abuse hotline and child protective investigations. DCF and the 19 CBCs throughout Florida<sup>3</sup> work with those families to address the problems endangering children, if possible. If the problems are not addressed, the child welfare system finds safe out-of-home placements for these children.

DCF's practice model is based on the safety of the child within the home by using in-home services, such as parenting coaching and counseling, to maintain and strengthen that child's natural supports in his or her environment.

DCF contracts with CBCs for case management, out-of-home services, and related services. The outsourced provision of child welfare services is intended to increase local community ownership of service delivery and design. CBCs contract with a number of subcontractors for case management and direct care services to children and their families.

DCF remains responsible for a number of child welfare functions, including operating the central abuse hotline, performing child protective investigations, and providing children's legal services.<sup>4</sup> Ultimately, DCF is responsible for program oversight and the overall performance of the child welfare system.<sup>5</sup>

#### Rights of and Goals for Delivery of Services to Children in Foster Care

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<sup>1</sup> S. 20.19(1), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> These 19 CBCs together serve the state's 20 judicial circuits.

<sup>4</sup> Ch. 39, F.S.

<sup>5</sup> *Id.*

The U.S. and Florida Constitutions provide rights to individuals, including children in foster care, as do certain federal and state laws. Examples include basic rights and a right to privacy under Article I, §2 and Article I, §23 of the Florida Constitution, the right to high quality education under Article IX of the Florida Constitution, and due process rights under the U.S. Constitution.

When a state takes a child into custody, it accepts responsibility for the child's safety.<sup>6</sup> Courts have found that foster children have a constitutional right to be free from unnecessary pain and a fundamental right to physical safety.<sup>7</sup> When a state fails to meet that obligation, it deprives the child of a liberty interest under the Fourteenth Amendment.<sup>8</sup>

Section 39.4085, F.S., sets forth goals<sup>9</sup> for the delivery of services to children in shelter or foster care, including that services should be directed by the principle that the health and safety of children should be of paramount concern and children in shelter or foster care should:

- Receive a copy of these goals and have the goals fully explained to them when they are placed in the custody of DCF.
- Enjoy individual dignity, liberty, pursuit of happiness, and the protection of their civil and legal rights as a person while in the custody of the state.
- Have their privacy protected, have their personal belongings secure and transported with them, and unless otherwise ordered by the court, have uncensored communication, including receiving and sending unopened communications and having access to a telephone.
- Have personnel providing services who are sufficiently qualified and experienced to assess risk children face prior to removal from their home and to meet the needs of the children once they are in DCF's custody.
- Remain in the custody of their parents or legal custodians unless and until there has been a determination by a qualified person exercising competent professional judgment that removal is necessary to protect their physical, mental, or emotional health or safety.
- Have a full risk, health, educational, medical, and psychological screening, and, if needed, assessment and testing upon adjudication into foster care; and to have their photograph and fingerprints included in their case management file.
- Be referred to and receive services, including necessary medical, emotional, psychological, psychiatric, and educational evaluations and treatment, as soon as practicable after identification of the need for such services by the screening and assessment process.
- Be placed in a home with no more than one other child, unless part of a sibling group.
- Be placed away from other children known to pose a threat of harm to them, either because of their own risk factors or those of the other child.
- Be placed in a home where the shelter or foster caregiver is aware of and understands the child's history, needs, and risk factors.
- Be the subject of a plan developed by the counselor and the shelter or foster caregiver to deal with identified behaviors that may present a risk to the child or others.
- Be involved and incorporated, where appropriate, in the development of the case plan, to have a case plan that will address their specific needs, and to object to any of the provisions in the case plan.
- Receive meaningful case management and planning that will quickly return the child to the family or move the child on to other forms of permanency.
- Receive regular communication with a case manager, at least once a month, which includes meetings with the child alone and conferring with the caregiver.
- Enjoy regular visitation, at least once a week, with their siblings unless the court orders otherwise.
- Enjoy regular visitation with parents, at least once a month, unless the court orders otherwise.

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<sup>6</sup> *Ray v. Foltz*, 370 F.3d 1079, 1082 (11<sup>th</sup> Cir. 2004)(citing *Taylor v. Ledbetter*, 818 F.2d 791-95 (11<sup>th</sup> Cir. 1987).

<sup>7</sup> *Id.*

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

<sup>9</sup> The provisions in S. 39.4085, F.S., establish goals, not rights. The section does not require the delivery of any particular service or level of service in excess of existing appropriations. A person does not have a cause of action against the state or any of its subdivisions, agencies, contractors, subcontractors, or agents, based upon the adoption of or failure to provide adequate funding for the achievement of these goals by the Legislature. The section does not require the expenditure of funds to meet the goals except funds specifically appropriated for such purpose.

- Receive a free and appropriate education, minimal disruption to their education, and retention in their home school, if appropriate; referral to the child study team; all special educational services, including, where appropriate, the appointment of a parent surrogate; the sharing of all necessary information between the school board and DCF, including information on attendance and educational progress.
- Be able to raise grievances with DCF over the care they are receiving from their caregivers, case managers, or other service providers.
- Be heard by the court, if appropriate, at all review hearings.
- 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. Their guardian ad litem and attorney ad litem must have immediate and unlimited access to the children they represent.
- Have all their records available for review by their guardian ad litem and attorney ad litem if they deem such review is necessary.
- Organize as a group for purposes of ensuring they receive the services and living conditions to which they are entitled and to provide support for one another while in DCF's custody.
- Be afforded prompt access to all available state and federal programs.

In accordance with s. 39.4091, F.S., caregivers for children in out-of-home care must use the "reasonable and prudent parent standard". This means that the caregiver must use sensible parental decision-making that maintains the child's health, safety, and best interests while at the same time encourages the child's emotional and developmental growth when determining whether to allow a child in out-of-home care to participate in extracurricular, enrichment, and social activities.<sup>10</sup>

The federal Preventing Sex Trafficking and Strengthening Families Act requires that, as part of case planning beginning at age 14, children in foster care must be given a document describing their rights with respect to safety, exploitation, education, health, visitation, and court participation. They must also be informed of their rights to be provided certain specific documents such as copies of consumer credit reports. Children are to sign an acknowledgement that they received these documents.<sup>11</sup>

DCF created a 5-page brochure that outlines these expectations and describes the services of the Children's Ombudsman.<sup>12</sup>

### Education and Information about Key Topics for Children in the Child Welfare System

Section 39.4085, F.S., requires that the design and delivery of child welfare services must be directed by the principle that the health and safety of children, including the freedom from abuse, abandonment, or neglect, is of paramount concern. DCF is to operate with the understanding that the rights of children in shelter or foster care are critical to their safety, permanency, and well-being and to work with all stakeholders to help such children become knowledgeable about their rights.

Case managers or other staff must provide verbal and written instructions to a child entering shelter or foster care in an understandable manner on how to identify and report child abuse, abandonment, or neglect. The case manager or other staff must review this information with a child every six months and upon every placement change until the child leaves shelter or foster care. The case manager must document in court reports and case notes the date the child received the information.

### Florida Children's Ombudsman

In September 2016, DCF created an Ombudsman position within the Office of Child and Family Wellbeing (formerly the Office of Child Welfare). The position was intended to listen to and be a voice

<sup>10</sup> Florida Department of Children and Families, CFOP 170-11, Ch. 6 (Sept. 2020), <https://www.myflfamilies.com/resources/policies-procedures/cfop-170-11-placement>

<sup>11</sup> Title 42 U.S.C. 675a.

<sup>12</sup> Florida Department of Children and Families, *Youth in Foster Care*, <https://www.myflfamilies.com/sites/default/files/2022-12/10-28-Foster-Expectations.pdf> (accessed March 22, 2023).

for children and youth involved in the child welfare system. The Ombudsman receives complaints about placement, care, and services and then assists in mediating those concerns. The Ombudsman is a resource to identify and explain relevant policies or procedures to children, young adults, and their caregivers. The current Ombudsman responds to 450 cases on average each year. The office consists of the one Ombudsman who serves mostly as a resource for information to the population served.

DCF currently has a webpage that explains the Ombudsman's role and displays a toll-free number and email address for children and young adults in out-of-home care to communicate about questions, concerns, or complaints.

Rule 65C-46.003(5)(d), F.A.C., requires all licensed residential group homes (child-caring agencies) to have written and posted grievance procedures which allow children in care or others to make complaints without fear of retaliation. This includes the requirement for group homes to post the phone number of the Department's Ombudsman (1-844-KIDS-FLA) in areas frequented by children and where they can read it without scrutiny.<sup>13</sup>

### **Effect of Proposed Changes**

The bill amends s. 39.4085, F.S., to establish requirements for DCF to work with children in out-of-home-care to ensure they receive information related to their situation. It requires case managers or other staff to provide verbal and written information to children about:

- Nurturing care, personal safety, and protection from abuse, abandonment, and neglect.
- Education.
- Placement, visitation, and contact with siblings, family, and other important persons.
- Court participation.
- Participation in permanency planning, transition planning, and other case planning.
- Access to food, clothing, shelter, and health care.
- The topic of normalcy and what that means for children and young adults in out-of-home care.

The case manager or other staff shall document in court reports and case notes the date this discussion occurred. This must be done every six months, or after every placement change, until the children exit out-of-home care.

The bill also establishes the Office of the Children's Ombudsmen (Office) within DCF. The duties of the Office include, at a minimum, to the extent allowed by available resources:

- Receive complaints from children and young adults about placement, care, and services and assist in mediating such concerns.
- Be a resource to identify and explain relevant policies or procedures to children, young adults, and their caregivers.
- Provide recommendations to the department to address systemic problems that are leading to complaints from children and young adults.

DCF must consult with children and young adults who are currently, or have formerly been in, out-of-home care when creating or revising any print or digital written information used in informing children regarding the topics specified in the bill. DCF must use any responses or feedback to ensure that such print or digital written information is understandable by and appropriate and useful for the children and young adults of the ages for whom the print or digital written information is intended.

#### **B. SECTION DIRECTORY:**

**Section 1:** amending s. 39.4085, F.S., relating to goals for dependent children; responsibilities; education.

**Section 2:** providing an effective date of July 1, 2023.

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<sup>13</sup> Department of Children and Families, *Agency Analysis for 2023 HB 1101*, p. 3 (March 1, 2023)

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

DCF has sufficient rulemaking authority to implement the provisions of the bill.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 27, 2023, the Children, Families, and Seniors Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Revises existing statute s. 39.4085, F.S., which includes a process for informing youth about key issues, rather than creating a second statute to establish similar processes.

- Renames the Office of the Ombudsperson as the Office of the Children’s Ombudsman.
- Reduces the number of responsibilities assigned to the Office of the Children’s Ombudsman and removes the required report.

On April 10, 2023, the Health and Human Services Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment added topics related to care and safety to those required for information for children provided by case managers or other staff.

This analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.