

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 1101 Education for Children and Young Adults in Out-of-home Care

SPONSOR(S): Health & Human Services Committee and Children, Families & Seniors Subcommittee, Tramont and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 272

FINAL HOUSE FLOOR ACTION: 116 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 1101 passed the House on May 2, 2023, as CS/CS/SB 272.

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 are of paramount concern. The Legislature has also enacted a variety of laws guiding the delivery of services and established programs to meet the full range of needs of children in foster care. DCF has created processes to help children in foster care gain information useful during their time in care about these goals, laws, and programs and address concerns related to them.

The bill names the act the "Nancy C. Detert Champion for Children Act". It creates requirements for DCF to work with children in out-of-home care to ensure they regularly 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. It also opens the Keys to Independence Program to former foster youth who are in the Postsecondary Education Services and Support program and who had been adopted out of foster care or placed with a guardian after turning 16.

The bill has no fiscal impact on state or local governments.

The bill was approved by the Governor on June 16, 2023, ch. 2023-248, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h1101z1.DOCX

DATE: 6/19/2023

A. EFFECT OF 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.¹

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 delivers these services by contract through private regional providers, which include community based care lead agencies (CBCs) delivering child welfare services and managing entities (MEs) delivering behavioral health services.

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 Florida² 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.³ Ultimately, DCF is responsible for program oversight and the overall performance of the child welfare system.⁴

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

¹ S. 20.19(1), F.S.

² These 19 CBCs together serve the state's 20 judicial circuits.

³ Ch. 39, F.S.

⁴ *Id.*

When a state takes a child into custody, it accepts responsibility for the child's safety.⁵ Courts have found that foster children have a constitutional right to be free from unnecessary pain and a fundamental right to physical safety.⁶ When a state fails to meet that obligation, it deprives the child of a liberty interest under the Fourteenth Amendment of the U.S. Constitution.⁷

Section 39.4085, F.S., sets forth goals⁸ 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.
- 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

⁵ *Ray v. Foltz*, 370 F.3d 1079, 1082 (11th Cir. 2004)(citing *Taylor v. Ledbetter*, 818 F.2d 791-95 (11th Cir. 1987).

⁶ *Id.*

⁷ *Id.*

⁸ 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.

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.⁹

Education of Children in Out-Of-Home Care

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.¹⁰

DCF created a 5-page brochure that outlines these expectations and describes the services of the Children's Ombudsman (see below).¹¹

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

⁹ Florida Department of Children and Families, CFOP 170-11, Ch. 6 (Sept. 2020), <https://www.myflfamilies.com/resources/policies-procedures/cfop-170-11-placement>

¹⁰ Title 42 U.S.C. 675a.

¹¹ 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).

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 for children and youth involved in the child welfare system. The Ombudsman receives complaints about placement, care, and services from children and young adults 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.¹²

Independent Living Services for Former Foster Youth

Florida provides independent living services to older youth to help them transition out of foster care and to prepare them to become self-sufficient adults. DCF contracts with Daniel Kids to operate Florida’s Independent Living Resource Center. It serves as an information clearinghouse to address all areas of independent living in Florida. It provides information and referral services to former foster youth and others and provides annual statewide training opportunities for Independent Living professionals.¹³

Florida’s independent living services include extended foster care (EFC), which applies to young adults who were in licensed foster care upon turning 18 who meet certain requirements.¹⁴ Of the 866 children who aged out of foster care in SY 2019-20, 487 entered EFC and were eligible to receive foster care services until age 21 (or age 22 if disabled). Florida also offers two other independent living programs: Postsecondary Education Services and Supports (PESS) and Aftercare Services. The following table provides information about each program.

Independent Living Programs		
Program	Eligibility	Services
Extended Foster Care (EFC)	Young adults who turned 18 in foster care and are: <ul style="list-style-type: none"> • Completing high school or its equivalent; or • Enrolled in college or vocational schooling; or • Working at least 80 hours per month. To stay in EFC, the young adult must:	Young adults may choose to remain in licensed foster care and receive foster care services until the age of 21 (22 with a disability).

¹² Department of Children and Families, *Agency Analysis for 2023 HB 1101*, p. 3 (March 1, 2023)
¹³ Daniel, *Florida’s Independent Living Resource Center*, <https://www.danielkids.org/our-programs/floridas-i-l-resource-center/> (last visited Feb. 22, 2021).
¹⁴ S. 39.6251, F.S.

	<ul style="list-style-type: none"> • Meet with a case manager every month. • Continue to participate in at least one of the required activities above. • Attend court reviews every six months. 	
Postsecondary Education Services and Support (PESS)	<ol style="list-style-type: none"> 1. Young adults who turned 18 in foster care and spent at least 6 months in licensed out-of-home care before age 18. 2. Young adults who are at least 18 and were adopted from foster care after age 16 or were placed with a court-approved guardian after spending at least 6 months in licensed foster care within the 12 months immediately preceding such adoption or placement; and <ul style="list-style-type: none"> • Have earned a high school diploma or equivalent; and • Are attending a college or vocational school that is Florida Bright Futures eligible. 	<ul style="list-style-type: none"> • \$1,720 per month for: <ul style="list-style-type: none"> ○ Housing ○ Utilities ○ Living expenses • Available until the age 23.
Aftercare Services	<p>Young adults who turned 18 while in licensed foster care, but are not yet 23, and</p> <ul style="list-style-type: none"> • Are <i>not</i> in EFC; and • Are <i>not</i> in PESS. 	<ul style="list-style-type: none"> • Mentoring • Tutoring • Substance abuse treatment • Counseling • Job and career skills training • Temporary financial assistance for necessities

Keys-to-Independence Program

The Keys-to-Independence program is a state-funded program designed to remove barriers for foster youth and former foster youth in obtaining a drivers license.¹⁵ The program pays the cost of driver education, licensure and other costs incidental to licensure and motor vehicle insurance for children in out-of-home care who have successfully completed a driver education program.¹⁶ Program services are provided to eligible youth to the extent funding permits. Eligible children include individuals who are:

- Currently in out-of-home care,¹⁷ or
- Certified under s. 743.067, F.S., as an unaccompanied homeless youth and who are citizens of the United States or legal resident of this state.¹⁸

Children are also eligible for the program if they demonstrate that the costs of licensure and incidental to licensure are creating a barrier for obtaining employment or completing educational goals, and they:

- Are in EFC¹⁹,
- Were in licensed care when they reached 18 years of age, and are currently receiving postsecondary education services and support under s. 409.1451(2),²⁰ or
- unaccompanied homeless youth certified under s. 743.067 who are citizens of the United States or legal residents of this state and who are either completing secondary education; employed at least part time; attending any postsecondary education program at least part time; or have a disability that precludes full-time work or education.²¹

Effect of Proposed Changes

The bill is named the “Nancy C. Detert Chamption for Children Act.”

Education of Children in Out-of-Home Care

¹⁵ S. 409.1454, F.S.

¹⁶ S. 409.1454(2), F.S.

¹⁷ S. 409.1454(2)(a), F.S.

¹⁸ S. 409.1454(2)(b), F.S.

¹⁹ S. 409.1454(4)(a), F.S.

²⁰ S. 409.1454(4)(b), F.S.

²¹ S. 409.1454(4)(c), F.S.

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.

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.

Office of the Children's Ombudsmen

The bill also codifies in law 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, and
- Provide recommendations to the department to address systemic problems that are leading to complaints from children and young adults.

Keys-to-Independence Program

The bill opens the Keys-to-Independence Program to former foster youth who are in the PESS program and who had been adopted out of foster care or placed with a guardian after turning 16.

The bill provides an effective date of July 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:

The Keys to Independence program serves children and young adults to the extent of available resources. Even though more individuals are eligible, there will not be a fiscal impact on the program.

D. FISCAL COMMENTS:

None.