

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.)

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

BILL: CS/SB 272

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Garcia

SUBJECT: Children and Young Adults in Out-of-home Care

DATE: April 6, 2023 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	Fav/CS
2.			AHS	
3.			FP	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 272 requires case managers and child welfare professionals to provide certain information to children in the child welfare system and also establishes an Office of the Children’s Ombudsman. Specifically, the bill amends s. 39.4085, F.S., to require case managers or other staff to provide information to children in the child welfare system related to:

- Normalcy and what that means for a child in out-of-home care;
- Education;
- Participation in court proceedings;
- Participation in permanency planning;
- Transition planning and other case planning;
- Placement, visitation, and contact with siblings, family, and other individuals important to the child; and
- Access to food, clothing, shelter, and health care.

The bill establishes the Office of the Children’s Ombudsman within the DCF. To the extent permitted by available resources, the office must:

- 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 procedure 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.

The bill also requires the DCF to 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 and use their feedback to ensure that information is understandable by and useful for the children and young adults.

The bill will likely have a fiscal impact on state government. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2023.

II. Present Situation:

Department of Children and Families

The mission of the 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., the DCF must provide services relating to:

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

The DCF must also deliver services by contract through private providers to the extent allowed by law and funding.² 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 18 CBCs throughout Florida³ work with those families to address the problems endangering children, if possible. If

¹ Section 20.19(1), F.S.

² *Id.*

³ These 18 CBCs together serve the state's 20 judicial circuits.

the problems are not addressed, the child welfare system finds safe out-of-home placements for these children.

The 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.

The 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.

The 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.⁴ Ultimately, the DCF is responsible for program oversight and the overall performance of the child welfare system.⁵

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

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.⁶ Courts have found that foster children have a constitutional right to be free from unnecessary pain and a fundamental right to physical safety.⁷ When a state fails to meet that obligation, it deprives the child of a liberty interest under the Fourteenth Amendment.⁸

Section 39.4085, F.S., sets forth goals⁹ 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 the 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.

⁴ Ch. 39, F.S.

⁵ *Id.*

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

⁷ *Id.*

⁸ *Id.*

⁹ The provisions of 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.

- 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 the 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 services, including, where appropriate, the appointment of a parent surrogate; the sharing of all necessary information between the school board and the DCF, including information on attendance and educational progress.
- Be able to raise grievances with the 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 the 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.¹⁰

Public Law 113-183, 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.¹¹

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

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. The 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 of 2016, the DCF created an Ombudsman position which operates within the Office of Child and Family Wellbeing. The position was designed with the intent to listen and be

¹⁰ The DCF, *CFOP 170-11, Ch. 6*, Sept. 2020, available at <https://www.myflfamilies.com/resources/policies-procedures/cfop-170-11-placement> (last visited March 30, 2023).

¹¹ The DCF, *2021 Agency Bill Analysis for SB 272* at p. 2., March 7, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as, "The DCF Analysis").

¹² The DCF, *Youth in Foster Care*, available at <https://www.myflfamilies.com/sites/default/files/2022-12/10-28-Foster-Expectations.pdf> (last visited March 30, 2023).

a voice for children and youth involved in the child welfare system. The Ombudsman receives complaints about placement, care, and services, while assisting 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. Although the Ombudsman is an important piece of the larger child welfare system, this team currently consists of one Ombudsman who serves mostly as a resource for information to the population they serve. As currently structured, the Ombudsman is not responsible for onsite investigations, reaching complaint resolution, or coordination with Lead Agencies, case workers, or the guardian ad litem.

The DCF currently operates a webpage that explains the Ombudsman's role and displays a toll-free number and email address to be used for children and young adults in out-of-home care who may have 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 DCF's Ombudsman (1-844-KIDS-FLA) in areas frequented by children and where they can read it without scrutiny.¹³

III. Effect of Proposed Changes:

The bill requires case managers and child welfare professionals to provide certain information to children in the child welfare system and also establishes an Office of the Children's Ombudsman. Specifically, the bill amends s. 39.4085, F.S., to require case managers or other staff to provide information to children in the child welfare system related to:

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- Provide recommendations to the department to address systemic problems that are leading to complaints from children and young adults.

¹³ The DCF Analysis at p. 3.

The bill also requires the DCF to 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 and use their feedback to ensure that information is understandable by and useful for the children and young adults.

The bill is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There is likely an indeterminate negative fiscal impact on the Department of Children and Families to establish the Children's Ombudsman Office.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 39.4085 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on April 4, 2023:

The Committee Substitute:

- Places the requirement for specific information to be provided to children in the child welfare system in an existing section of law that is already related to the education of dependent youth.
- Establishes the Office of the Children’s Ombudsman and details the responsibilities of that office.
- Requires the DCF to consult with children and young adults in the creation of print and digital materials used to educate and inform children.
- Removes the requirement for an annual report.

- B. **Amendments:**

None.