

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 875 Dependent Children  
**SPONSOR(S):** Civil Justice Subcommittee, Children, Families & Seniors Subcommittee, Trabulsky  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1384

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	16 Y, 0 N, As CS	Brazzell	Brazzell
2) Civil Justice Subcommittee	17 Y, 0 N, As CS	Mathews	Jones
3) Appropriations Committee			
4) Health & Human Services Committee			

### SUMMARY ANALYSIS

Ch. 39, F.S., creates the state dependency system, which is charged with protecting the welfare of children in Florida. Florida's dependency system identifies children and families in need of services through reports to the central abuse hotline and through child protective investigations. The Department of Children and Families (DCF) works with families to address the concerns and issues endangering children. In some cases, DCF will work to find safe out-of-home placements for the dependent child. A guardian ad litem (GAL) is typically assigned to a child who is under the supervision of DCF and going through the dependency system. A GAL serves to represent the child and his or her best interests throughout the court proceedings. In addition to a GAL, some children may also be assigned an attorney ad litem (AAL) who represents the child in a legal capacity throughout the proceedings. However, not every child in the dependency system is appointed an AAL.

CS/CS/HB 875 adjusts the role and operations of the Statewide GAL office. The bill also specifies the appointment, duties and responsibilities of the Office, GALs, and AALs. For example, the bill:

- Specifies that all children are represented by a GAL.
- Clarifies that the GAL is a fiduciary and provides independent representation of the child using the best interest standard of decisionmaking and advocacy.
- Authorizes the appointment of an AAL for any child in the dependency system if the court believes the child needs such representation and determines the child has a rational and factual understanding of the proceedings to aid the AAL.
- Requires the Statewide GAL Office to provide oversight and technical assistance to AALs and to develop a training program in collaboration with dependency court stakeholders, including, but not limited to, dependency judges and representatives from legal aid providing AAL representation. The office is required to offer consultation and technical assistance to chief judges in maintaining attorney registries and assist in recruiting, training, and mentoring AAL as needed.
- Authorizes a GAL and AAL to inspect records.
- Requires the AAL to receive notice of a multidisciplinary staffing (MDT) for a placement change and includes the GAL as a part of the MDT.
- Establishes a mentoring initiative within the Statewide GAL Office to assist youth in meeting supportive adults with the hope of creating an ongoing relationship.
- Authorizes the executive director of the Statewide GAL Office to create or designate local direct support organizations (DSO) in addition to a state DSO and adds local DSOs to all provisions related to the state DSO.
- Creates the Pathway to Prosperity Program in the Department of Education.

The bill has an indeterminate, but likely significant, fiscal impact on state government and no impact on local government. The bill provides an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

Florida is among the top three states to record the largest populations under the age of 18, second only to California and Texas.<sup>1</sup> More than 4.25 million children live in Florida, a vast majority of which, fortunately, never come to the attention of Florida's Child Welfare System.<sup>2</sup> Nationally, reports of physical and sexual abuse of children have declined substantially over the past 25 years, however, reports of neglect continue. In fact, neglect cases account for 75 percent of all child welfare investigations and 60 percent of all foster care placements.<sup>3</sup>

Congress appropriates federal funds to the Department of Children and Families (DCF) for the implementation of child welfare programs. DCF uses these funds to contract with community-care based lead agencies (CBCs) to provide services for families and children in the state. In 2020, a total of 230,598 referrals were made to DCF for potential child abuse and neglect, with 61 percent of those referrals meeting the criteria triggering an investigation or assessment.<sup>4</sup> Ultimately, 11 percent of children who were investigated or assessed were found to be victims of maltreatment.

#### **Department of Children and Families (DCF)**

DCF's mission 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>5</sup> DCF must develop a strategic plan to fulfill its mission and establish measurable goals, objectives, performance standards, and quality assurance requirements to ensure the department is accountable to taxpayers.<sup>6</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>7</sup> These private providers include CBCs delivering child welfare services and managing entities (MEs) delivering behavioral health services.

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

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<sup>1</sup> Child Welfare Outcomes 2019: Report to Congress, pg. 47, <https://www.acf.hhs.gov/sites/default/files/documents/cb/cwo-report-to-congress-2019.pdf> (last visited Mar. 31, 2023).

<sup>2</sup> U.S. Department of Health and Human Services, *Administration for Children and Families, Children's Bureau, Child Population Data*, <https://cwoutcomes.acf.hhs.gov/cwodatasite/population/index> (last visited Mar. 31, 2023).

<sup>3</sup> Michael Wald, *Beyond CPS: Developing an Effective System for Helping Children in Neglectful Families*, Research Paper No. 2554074, <http://ssrn.com/abstract-2554074> (last visited Mar. 31, 2023).

<sup>4</sup> Child Trends, *State-Level Data for Understanding Child Welfare in the United State-Florida Child Maltreatment, Federal Fiscal Year 2020*, <https://www.childtrends.org/publications/state-level-data-for-understanding-child-welfare-in-the-united-states> (last visited Mar. 31, 2023).

<sup>5</sup> S. 20.19(1), F.S.

<sup>6</sup> *Id.*

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

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 Florida<sup>8</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>9</sup> Ultimately, DCF is responsible for program oversight and the overall performance of the child welfare system.<sup>10</sup>

The Child Welfare Outcomes Report (Report) presents data on national performance as well as child welfare-related contextual factors relevant to state performance.<sup>11</sup> The Report contains information about the performance of individual states in seven outcome categories identified in close consultation with state and local child welfare agency administrators, child advocacy organizations, child welfare researchers, state legislators, and other experts in the child welfare field.<sup>12</sup> These seven outcome categories are:

- Reduce recurrence of child abuse and/or neglect
- Reduce the incidence of child abuse and/or neglect in foster care
- Increase permanency for children in foster care
- Reduce time in foster care to reunification without increasing reentry
- Reduce time in foster care to adoption
- Increase placement stability
- Reduce placements of young children in group homes or institutions

The 2019 Report revealed that the national median performance over time on achieving timely reunifications<sup>13</sup> has declined consistently over the past five years, with a 7.1 percent decline in performance from 2015-2019. The Report also found that states were more likely to complete adoptions between 12 and 23 months from the child's entry into foster care.<sup>14</sup> In 2019, Florida was only one of two states, along with Utah, to report that at least ten percent of adoptions occurred in less than 12 months.<sup>15</sup>

Current law requires any person who knows or suspects that a child has been abused, abandoned,

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<sup>8</sup> The 18 CBCs together serve the state's 20 judicial circuits. *Id.*

<sup>9</sup> OPPAGA, report 06-50.

<sup>10</sup> *Id.*

<sup>11</sup> The U.S. Department of Health and Human Services (HHS) created the Child Welfare Outcomes Report to meet requirements of Section 203(a) of the Adoption and Safe Families Act of 1997 (ASFA). ASFA created Section 479A of the Social Security Act (the Act) to require HHS to issue an annual report that assesses state performance in operating child protection and child welfare programs under Titles IV-B and IV-E of the Act.

<sup>12</sup> Child Welfare Outcomes 2019: Report to Congress, Executive Summary, pg. IV, <https://www.acf.hhs.gov/sites/default/files/documents/cb/cwo-report-to-congress-2019.pdf> (last visited Mar. 18, 2023).

<sup>13</sup> For the Child Welfare Outcomes Reports, a reunification is considered to be timely if it occurs in less than 12 months from the date of entry into foster care. *Id.* at pg. 44.

<sup>14</sup> *Id.* at pg. 47.

<sup>15</sup> *Id.*

or neglected to report such knowledge or suspicion to the Florida Abuse Hotline.<sup>16</sup> The Florida Abuse Hotline<sup>17</sup> receives more than 350,000 child-related calls annually, according to the Report.<sup>18</sup> Calls received are screened to determine if the criteria are met to initiate a protective investigation. Statewide, there are more than 240,000 child protective investigations conducted annually.<sup>19</sup>

Approximately 35,000 children statewide receive child welfare services. Of those children, roughly 29 percent are in in-home care and 64 percent are in out-of-home care.

### Dependency Case Process

When child welfare necessitates that DCF remove a child from the home, a series of dependency court proceedings must occur to adjudicate the child dependent and place that child in out-of-home care. Steps in the dependency process may include:

- A report to the Florida Abuse Hotline.
- A child protective investigation to determine the safety of the child.
- The court finding the child dependent.
- Case planning for the parents to address the problems resulting in their child's dependency.
- Placement in out-of-home care, if necessary.
- Reunification with the child's parent or another option to establish permanency, such as adoption after termination of parental rights.<sup>20</sup>

### **The Dependency Court Process**

<b>Dependency Proceeding</b>	<b>Description of Process</b>	<b>Controlling Statute</b>
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.
Arrestment Hearing and Shelter Review	An arrestment 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 arrestment. The judge determines whether a child is dependent during trial.	s. 39.507, F.S.
Disposition Hearing	If the child is found dependent, disposition occurs within 15 days of arrestment 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.

<sup>16</sup> S. 39.201(1), F.S.

<sup>17</sup> Department of Children and Families, *Florida Abuse Hotline, Overview*, <https://www2.myflfamilies.com/service-programs/abuse-hotline/overview.shtm>, (last visited Mar. 31, 2023).

<sup>18</sup> Child Welfare Key Indicators Monthly Report, *System Overview*, [https://www2.myflfamilies.com/service-programs/child-welfare/kids/results-oriented-accountability/performanceManagement/docs/KI\\_Monthly\\_Report\\_December%202022.pdf](https://www2.myflfamilies.com/service-programs/child-welfare/kids/results-oriented-accountability/performanceManagement/docs/KI_Monthly_Report_December%202022.pdf) (last visited Mar. 31, 2023).

<sup>19</sup> *Id.*

<sup>20</sup> The state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents accountable for meeting the needs of children. S. 63.022, 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.

### Multidisciplinary Teams

The use of a multidisciplinary team (MDT) in a child welfare setting has been an established practice for over 60 years, beginning with hospital-based child protection teams<sup>21</sup> and, more recently, child advocacy centers.<sup>22</sup> Because of the complex nature of child abuse and neglect investigations and family assessments and interventions, MDTs are used to enhance and improve child protective investigations and responses necessary for children and families to recover and succeed. MDT's are becoming more widely used to involve a variety of individuals, both professional and non-professional, that interact and coordinate their efforts to plan for children and families receiving child welfare services.

Using an MDT approach builds upon existing family-centered approaches to care. The use of a strengths-based, family-centered multidisciplinary process is important in engaging children, youth and families in the development and implementation of their individual case or treatment plans or other related services designed to meet their needs.<sup>23</sup> By sharing decision-making and working together, it is more likely that positive and lasting outcomes will be achieved.<sup>24</sup>

MDTs can help eliminate, or at least reduce, many barriers to effective action, including a lack of understanding by the members of one profession of the objectives, standards, conceptual bases, and ethics of the others; lack of effective communication; confusion over roles and responsibilities; interagency competition; mutual distrust; and institutional relationships that limit interprofessional contact.<sup>25</sup> As a result, a number of states<sup>26</sup> are using a MDT team model, also known as a "Child and Family Team." This model is premised on the notion that children and families have the capacity to resolve their problems if given sufficient support and resources to help them do so.<sup>27</sup>

<sup>21</sup> The Kempe Foundation, *Child Protection Team Celebrates 60 Years*, <http://www.kempe.org/child-protection-team-celebrates-60-years/> (last visited Mar. 31, 2023).

<sup>22</sup> The National Children's Alliance, *History of NCA*, <https://www.nationalchildrensalliance.org/history-of-nca/#:~:text=The%20history%20of%20National%20Children's,system%20to%20help%20abused%20children> (last visited Mar. 31, 2023).

<sup>23</sup> The Kinship Center, *The Importance of the Child and Family Team*, <http://www.kinshipcenter.org/about-kinship-center/news-and-events/breaking-news/the-importance-of-the-child-and-family-team-cft.html> (last visited Mar. 31, 2023).

<sup>24</sup> *Id.*

<sup>25</sup> National Center on Child Abuse and Neglect, U.S. Children's Bureau, Administration for Children, Youth and Families, Office of Human Development Services, U.S. Department of Health, Education, and Welfare, *Multidisciplinary Teams In Child Abuse And Neglect Programs*, 1978, <https://www.ojp.gov/pdffiles1/Digitization/51625NCJRS.pdf> (last visited Mar. 31, 2023).

<sup>26</sup> See Clark County Department of Family Services, *Child and Family Team Meetings Nevada Case Planning and Assessment Policies*, [https://www.childwelfare.gov/pubPDFs/NV\\_CaseManagementTrainingFacilitator.pdf](https://www.childwelfare.gov/pubPDFs/NV_CaseManagementTrainingFacilitator.pdf); State of Tennessee Department of Children's Services, *Administrative Policies and Procedures: 31.7*, <https://files.dcs.tn.gov/policies/chap31/31.7.pdf>; Indiana Department of Child Services, *Child Welfare Policy*, Jan. 1, 2020, <https://www.in.gov/dcs/files/5.07%20Child%20and%20Family%20Team%20Meetings.pdf> (all sites last visited Mar. 31, 2023).

<sup>27</sup> California Department of Social Services, *About Child and Family Teams*, <https://www.cdss.ca.gov/inforesources/foster-care/child-and-family-teams/about> (last visited Mar. 31, 2023).

Currently, Florida law and DCF rules provide for the use of MDT's in a number of circumstances, such as:

- Child Protection Teams under s. 39.303, F.S.;
- Child advocacy center multidisciplinary case review teams under s. 39.3035, F.S.;
- Initial placement decisions for a child who is placed in out-of-home care, changes in physical custody after the child is placed in out-of-home care, changes in a child's educational placement, and any other important, complex decisions in the child's life for which an MDT would be necessary, under s. 39.4022, F.S.; and
- When a child is suspected of being a victim of human trafficking under ss. 39.524 and 409.1754, F.S.

The multidisciplinary team (MDT) approach to representing children is increasingly popular and widely considered a good practice, dramatically improving case outcomes and a child's experience in foster care. Research shows that MDTs led to quicker case resolution and preserved family connections more often.<sup>28</sup> Children served by an MDT had fewer removals after intervention, fewer adjudications of jurisdiction, and fewer petitions to terminate parental rights.<sup>29</sup> When children were removed from the home, and an MDT was assigned to the cases, they were more likely to be placed with relatives and less likely to be placed in foster care.<sup>30</sup>

### **Guardian ad Litem Program**

The Guardian ad Litem (GAL) Program is a network of volunteer advocates and professional staff representing the best interest of abused, abandoned, and neglected children. The court must appoint a GAL to represent a child as soon as possible in any child abuse, abandonment, or neglect proceeding.<sup>31</sup>

The Statewide GAL Office within the Justice Administrative Commission has oversight responsibilities for and provides technical assistance to all guardian ad litem programs located within the judicial circuits.<sup>32</sup> The current statutory definition of the GAL program does not reflect the role of the Statewide GAL Office in managing the program statewide. Because the statewide office is not in the current statutory definition of guardian ad litem in ch. 39, F.S., it does not allow appropriate staff for the statewide office access to court records for the children the program represents.

A child receives the services of a lay volunteer, a staff advocate (case manager), and a staff attorney. This model has evolved over the years from what used to be a volunteer-only approach.<sup>33</sup> Florida law outlines requirements to serve as a GAL.<sup>34</sup> A person appointed as guardian ad litem must be:

- certified by the GAL Program pursuant to s. 39.821;
- certified by a not-for-profit legal aid organization as defined in s. 68.096; or
- an attorney who is a member in good standing of The Florida Bar.

In such actions which involve an allegation of child abuse, abandonment, or neglect as defined in section 39.01, F.S., which allegation is verified and determined by the court to be well-founded, the court shall appoint a GAL for the child. The GAL is a party to any judicial proceeding from the date of the appointment until the date of discharge.

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<sup>28</sup> Duquette, et al., Children's Justice: How to Improve Legal Representation for Children in the Child Welfare System [NACC E-version, 2021], secs. 12.5 and 13.8, <https://naccchildlaw.app.box.com/s/oqaqy8o65r15kiu1khvytd2pl5y3sst9/file/9021072247249> (last visited Mar. 31, 2023).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> S. 39.822, F.S.

<sup>32</sup> S. 39.8296(2)(b), F.S.

<sup>33</sup> *Supra* note 51.

<sup>34</sup> S. 61.402, F.S.

The GAL Program has more than 180 attorneys on staff and relies on more than 200 pro bono attorneys volunteering their services.<sup>35</sup> In 2021, the GAL Program served more than 37,000 kids and had more than 13,000 volunteers.<sup>36</sup> Typically, a GAL volunteer represents 1 or 2 children.<sup>37</sup>

Federal and Florida law provide that a GAL must be appointed to represent the child in every case.<sup>38</sup> The Child Abuse Prevention and Treatment Act (CAPTA) makes the approval of CAPTA grants contingent on an eligible state plan, which must include provisions and procedures to appoint a GAL in every case.<sup>39</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>40</sup>

Under Florida law, a court must appoint a GAL at the earliest possible time to represent the child in a dependency proceeding.<sup>41</sup> The FY 23-24 Long Range Program Plan for the GAL Program details the following statistics regarding FY 2021-22:

- The program represented on average:
  - 24,993 children per month, and 36,948 total children during that fiscal year.<sup>42</sup>
  - 85.2% of children in the dependency system each month.<sup>43</sup>
- 1,671 new volunteers were certified, with a total of 9,342 volunteers active each month on average.<sup>44</sup>

In some cases, the GAL Program may discharge from a case when a child's permanency goal has been established and the child is in a stable placement.<sup>45</sup>

"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>46</sup> in a proceeding as provided by law including ch. 39, F.S., until discharged by the court.<sup>47</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>48</sup>

The GAL Program 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>49</sup> The GAL Program acknowledges that there is no attorney-client relationship between the GAL Program attorney and the child, and suggests that independent legal representation is provided through the GAL.<sup>50</sup> The GAL or GAL Program 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.

### Appointment of Attorneys for Special Needs Children and GAL Program Role

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<sup>35</sup> Florida Statewide Guardian ad Litem Office, About Us, <https://guardianadlitem.org/about/> (last visited Mar. 31, 2023).

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

<sup>37</sup> Florida Statewide Guardian Ad Litem Office, Agency Analysis of SB 1920 (2020), p. 4 (Mar. 14, 2021).

<sup>38</sup> 42 U.S.C. 67 §5106a.(b)(2)(xiii); S. 39.822(1), F.S.

<sup>39</sup> 42 U.S.C. 67 §5106a.(b)(2)(xiii).

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

<sup>41</sup> S. 39.822(1), F.S.

<sup>42</sup> Statewide Guardian ad Litem Office, *Long Range Program Plan*, Fiscal Years 2023-24 through 2027-28; Sept. 30, 2022, pg. 14 <http://floridafiscalportal.state.fl.us/Document.aspx?ID=24413&DocType=PDF> (last visited Mar. 31, 2023).

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

<sup>44</sup> *Id.*

<sup>45</sup> OPPAGA Memo at p. 15

<sup>46</sup> *Supra* note 51 at 3.

<sup>47</sup> S. 39.820(1), F.S.

<sup>48</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. 4th DCA 2003)).

<sup>49</sup> The GAL Program, Agency Analysis for SB 948 (2022), p. 3, January 8, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs) [citing *Op. Att'y Gen. Fla. 96-94* (1996)].

<sup>50</sup> *Id.* at pg. 4.

The GAL Program currently has a role in the appointment of attorneys for special needs children. Section 39.01305, F.S., requires the court to ask the Statewide Guardian Ad Litem Office for a recommendation for an attorney willing to work without additional compensation, or pro bono, prior to the court appointing an attorney on a compensated basis. The pro bono attorney must be available for services within 15 days after the court's request. If, however, the Statewide Guardian Ad Litem Office does not make a recommendation within 15 days after the court's request, the court may appoint a compensated attorney.

The attorney representing the child under s. 39.01305, F.S., provides the complete range of legal services from removal from the home or initial appointment through all appellate proceedings. With court permission, the attorney is authorized to arrange for supplemental or separate counsel to handle appellate matters. The Justice Administrative Commission contracts with appointed attorneys, whose fees are limited to \$1,000 per child per year subject to appropriations and to review by the Commission for reasonableness. However, the court has authority to appoint an attorney for a dependent child in a proceeding under ch. 39, F.S.

### GAL Program Direct Support Organization

Section 39.8298, F.S., allows the Statewide GAL Office to create a direct-support organization. The executive director of the Statewide GAL Office appoints the board of directors. The direct-support organization must conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and make expenditures to or for the direct or indirect benefit of the Statewide Guardian Ad Litem Office.<sup>51</sup>

### **Attorney Ad Litem**

An attorney ad litem (AAL) is an attorney appointed to provide legal services to a person such as a parent, a child, or an incapacitated person. The AAL has an attorney-client relationship with the person she is appointed to represent and owes that person the duties of her undivided loyalty, confidentiality, and competent representation. The AAL is an advocate for the person she is appointed to represent and will express the person's wishes to the court or jury.

### Well-being of Children in Florida's Child Welfare System

While there are no standardized definitions or measures for well-being, there is general consensus in the literature and among stakeholders regarding common elements, including financial security, obtaining education, securing housing, finding and maintaining stable employment, independence from public assistance, permanent connections and social supports.<sup>52</sup> DCF has also identified areas that have the most significant systemic impact on improving permanency and well-being<sup>53</sup> and evaluated progress toward achieving permanency, safety, and well-being for children in the welfare system. In FY 2021-2022, DCF gave 17 of 20 circuits a score of 3 or higher, indicating that the circuit's performance exceeds established standards. A score of 2.00-2.99 indicated the circuit's performance does not meet established standards.

The Legislature recognizes the need to focus on creating and preserving family relationships so that young adults have a permanent, lifelong connection with at least one committed adult who provides a safe and stable parenting relationship.<sup>54</sup> Science shows that children who do well despite serious

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<sup>51</sup> Ss. 39.8298(1)(b) and (3), F.S.

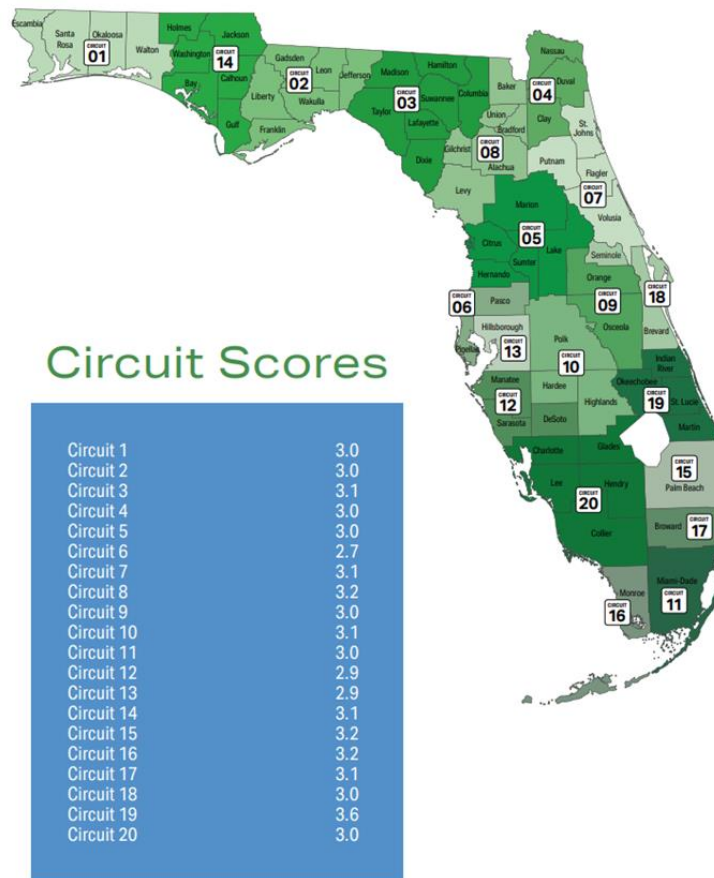
<sup>52</sup> OPPAGA, *Independent Living Services-Presentation to the Senate Committee on Children, Families, and Elder Affairs*, January 24, 2023, [https://oppaga.fl.gov/Documents/Presentations/OPPAGA%20ILS%20Senate%20Presentation\\_final.pdf](https://oppaga.fl.gov/Documents/Presentations/OPPAGA%20ILS%20Senate%20Presentation_final.pdf) (last visited Mar. 31, 2023).

<sup>53</sup> DCF, *Annual Accountability Report on the Health of Florida's Child Welfare System, Fiscal Year 2021 -2022*, pg. 3, [https://www.myflfamilies.com/sites/default/files/2022-12/Accountability\\_System\\_Report\\_2022-revision12DEC22.pdf](https://www.myflfamilies.com/sites/default/files/2022-12/Accountability_System_Report_2022-revision12DEC22.pdf) (last visited Mar. 31, 2023)

<sup>54</sup> S. 409.1451, F.S.



hardship have had at least one stable and committed relationship with a supportive adult.<sup>55</sup> These relationships buffer children from developmental disruption and help them develop “resilience,” or the set of skills needed to respond to adversity and thrive.



## Transition to Adulthood

Young adults who age out of the foster care system more frequently have challenges achieving self-sufficiency compared to young adults who never came to the attention of the foster care system. Young adults who age out of the foster care system are less likely to earn a high school diploma or GED and more likely to have lower rates of college attendance.<sup>57</sup> They suffer more from mental health problems, have a higher rate of involvement with the criminal justice system, and are more likely to have difficulty achieving financial independence.<sup>58</sup> These young adults also have a higher need for public assistance and are more likely to experience housing instability and homelessness.<sup>59</sup>

In 2017, nationally, about 189,000 teens and young adults spent at least one day in foster care.<sup>60</sup> Of those who left care during that year, more than 19,000 aged out of care. In Fiscal Year 2019-20, 1,043 young adults age 17 were in Florida’s foster care system. Of those, 866 (83%) aged out of care at the age of 18 and were eligible to receive foster care services until age 21 (or age 22 if disabled).

<sup>55</sup> National Scientific Council on the Developing Child (2015), *Supportive Relationships and Active Skill-Building Strengthen the Foundations of Resilience: Working Paper No. 13*, <https://harvardcenter.wpeninepowered.com/wp-content/uploads/2015/05/The-Science-of-Resilience2.pdf> (last visited Mar. 31, 2023).

<sup>56</sup> *Id.* at pg. 6.

<sup>57</sup> Gypen, L., Vanderfaeillie, J., et al., “Outcomes of Children Who Grew Up in Foster Care: Systematic-Review”, *Children and Youth Services Review*, vol. 76, pp. 74-83, <http://dx.doi.org/10.1016/j.childyouth.2017.02.035> (last visited Mar. 31, 2023).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

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

The federal Children’s Bureau within the U.S. Department of Health & Human Services collects information about the characteristics and experiences of current and former foster youth across the country. The National Youth in Transition Database tracks the independent living services each state provides to foster youth in care and assesses each state’s performance in providing independent living and transition services.<sup>61</sup> The 2018 Florida survey<sup>62</sup> documented outcomes related to education, employment, housing, finances and transportation, health and well-being, and connections, indicated in the chart below:<sup>63</sup>

Outcomes of Young Adults who Aged Out of Care	
Area	Outcome
<b>Education</b>	<ul style="list-style-type: none"> <li>• 74% were enrolled in and attending high school, GED classes, post-high school vocational training, or college.</li> <li>• 12% experienced barriers that prevented them from continuing education. The top three reported barriers included the need to work full-time, not having transportation, and having academic difficulties.</li> </ul>
<b>Employment</b>	<ul style="list-style-type: none"> <li>• 15% were employed full-time (35 hours per week or more).</li> <li>• 26% were employed part-time.</li> <li>• 78% had a paid job over the last year.</li> <li>• 22% completed an apprenticeship, internship, or other on-the-job training, either paid or unpaid.</li> </ul>
<b>Housing</b>	<ul style="list-style-type: none"> <li>• The top three current living situations included living in their own apartment, house, or trailer; living with friends or a roommate; and living in a group care setting (including a group home or residential care facility).</li> <li>• 41% had to couch surf or move from house to house because they did not have a permanent place to stay.</li> <li>• 27% experienced some type of homelessness in the past year.<sup>64</sup></li> </ul>
<b>Financial &amp; Transportation</b>	<ul style="list-style-type: none"> <li>• 46% received public food assistance.</li> <li>• 10% received social security payments (Supplemental Security Income, Social Security Disability Insurance, or dependents’ payments).</li> <li>• 83% had a reliable means of transportation to school/work.</li> <li>• 76% had an open bank account.</li> </ul>
<b>Health &amp; Well-Being</b>	<ul style="list-style-type: none"> <li>• 85% were on Medicaid.</li> <li>• 18% had children.</li> <li>• 34% had not received medical care for a physical health problem, treatment for a mental health problem, or dental care in the past two years for some health problem needing to be addressed.</li> <li>• 24% were confined in a jail, prison, correctional facility, or juvenile detention facility within the past two years.</li> </ul>
<b>Connections</b>	<ul style="list-style-type: none"> <li>• 85% had at least one adult in their life, other than their case manager, to go to for advice or emotional support.</li> <li>• 67% had a close relationship with biological family members.</li> </ul>

### Independent Living Services Advisory Council

DCF formed the Independent Living Services Advisory Council (ILSAC) in 2005 to improve interagency policy and service coordination to better support older eligible foster youth in the successful transition to

<sup>61</sup> DCF periodically surveys current and former foster youth ages 18-22 who turned 18 in licensed care. Many of the young adults completing the survey receive services through EFC, PESS, and Aftercare.

<sup>62</sup> The survey reflects the responses of 933 young adults.

<sup>63</sup> Florida National Youth in Transition Database, 2018 Survey Data Report, <https://www.myflfamilies.com/service-programs/independent-living/docs/2018%20Florida%20NYTD%20Statewide%20Report%20Final.pdf> (last visited March 31, 2023).

<sup>64</sup> *Id.*

adulthood. The purpose of ILSAC is to review and make recommendations concerning the implementation of Florida's EFC program and independent living services.<sup>65</sup>

The Secretary of DCF appoints members of the ILSAC. The membership of the council must include, at a minimum, representatives from DCF's headquarters and regional offices, CBC's, the Department of Juvenile Justice, the Department of Economic Opportunity, the Department of Education, the Agency for Health Care Administration, the State Youth Advisory Board, CareerSource Florida, the Statewide Guardian ad Litem Office, foster parents, recipients of independent living services, and advocates for children in care.<sup>66</sup>

The ILSAC is required to provide an annual report on the implementation of Florida's independent living services efforts to publicize the availability of independent living services, the success of the services, problems identified, recommendations for DCF or legislative action, and DCF's implementation of the recommendations contained in the report.<sup>67</sup>

The 2020 Annual ILSAC Report provided several recommendations to strengthen the independent living services in Florida, including the need for a more standardized approach to reaching young people to educate them on the independent living supports and services available.<sup>68</sup>

### Office of Continuing Care

The Office of Continuing Care at DCF helps individuals who have aged out of the child welfare system, until age 26. The office provides ongoing support and care coordination needed for young adults to achieve self-sufficiency. Duties of the office include, but are not limited to:

- Informing young adults who age out of the foster care system of the purpose of the office, the types of support the office provides, and how to contact the office.
- Serving as a direct contact to the young adult in order to provide information on how to access services to support the young adult's self-sufficiency, including but not limited to, food assistance, behavioral health services, housing, Medicaid, and educational services.
- Assisting in accessing services and supports for the young adult to attain self-sufficiency, including, but not limited to, completing documentation required to apply for services.
- Collaborating with CBC's to identify local resources that can provide support to young adults served by the office.

### Legal Representation of Children in the Child Welfare System

The two primary models of child representation are best interest and expressed wishes. The term "best interests of a 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.<sup>69</sup>

There are two types of best interest representation:

- Attorney or Professional,<sup>70</sup> and
- Lay Volunteer.<sup>71</sup>

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<sup>65</sup> S. 409.1451(7), F.S.

<sup>66</sup> S. 409.1451(7)(d), F.S.

<sup>67</sup> S. 409.1454(7)(b), F.S.

<sup>68</sup> Department of Children and Families, *The Independent Living Services Advisory Council 2020 Annual Report*, [https://www.myflfamilies.com/service-programs/child-welfare/lmr/docs/2020LMRs/ILSAC\\_Annual\\_Report\\_2020\\_and\\_DCF\\_Response.pdf](https://www.myflfamilies.com/service-programs/child-welfare/lmr/docs/2020LMRs/ILSAC_Annual_Report_2020_and_DCF_Response.pdf) (last visited Mar. 31, 2023).

<sup>69</sup> Office of Program Policy Analysis and Government Accountability (OPPAGA) Research Memorandum, *OPPAGA Review of Florida's Guardian ad Litem Program* (December 2020), <https://www-media.floridabar.org/uploads/2021/03/OPPAGA-Guardian-Ad-Litem-Program.pdf> (last visited Mar. 31, 2023).

<sup>70</sup> Children in states with this representation model 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. See, OPPAGA Research Memorandum, *OPPAGA Review of Florida's Guardian ad Litem Program* (December 2020), <https://www-media.floridabar.org/uploads/2021/03/OPPAGA-Guardian-Ad-Litem-Program.pdf> (last visited Mar. 31, 2023).

<sup>71</sup> Children in states with this representation model 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 other specified circumstances.

Expressed wishes or client-directed<sup>72</sup> representation occurs when an attorney is appointed instead of or in addition to a guardian ad litem (GAL) to represent a child's expressed wishes. Due to the variety of models of representation used nationally, differing structures of child welfare systems among states, designs of studies, and multiplicity of factors impacting the outcomes of children in the child welfare system, research is inconclusive regarding whether one approach is overall more beneficial.<sup>73</sup>

Florida's child representation system authorizes both types of representation. Statute requires best interest representation through GALs, who are to be appointed at the earliest possible time in any (all) abuse and neglect proceedings, though not all children have GALs.<sup>74</sup> It also authorizes attorney representation for children with special needs.<sup>75</sup>

In proceedings involving adoption, it is the intent of the Legislature that, in every adoption, the best interest of the child should govern and be of foremost concern in the court's determination.<sup>76</sup> The court shall make a specific finding as to the best interests of the child in accordance with the provisions of the law. In all matters before courts under Chapter 63, courts shall enter such orders as deemed necessary and suitable to promote and protect the best interests of the person to be adopted.<sup>77</sup>

### **Effect of Proposed Changes**

CS/CS/HB 875 amends several sections of law in Chapter 39, F.S., governing proceedings relating to children, to adjust the role and operations of the Statewide Guardian ad Litem office. The bill also specifies the duties and responsibilities of the Office, guardians ad litem, and attorneys ad litem.

The bill requires the court to appoint a GAL at the earliest possible time to represent the child throughout the proceedings including any appeals. The bill adds that the GAL is a fiduciary and shall provide independent representation of the child using the best interest standard of decisionmaking and advocacy, and makes conforming changes. It requires the executive director to carry out the purposes and functions of the Statewide Guardian ad Litem Office in accordance with Florida's long-established policy of prioritizing children's best interests.

The bill specifies that while all children are represented by a GAL, some may also need an AAL. The bill authorizes the court to appoint an AAL for a child if the court believes that the child needs such representation and determines that the child has a rational and factual understanding of the proceedings and sufficient present ability to consult with an attorney with a reasonable degree of rational understanding and provides requirements for the appointment of an AAL. The bill makes conforming changes where necessary to give effect to this standard.

The bill emphasizes the importance of youth maintaining a lifelong connection to a supportive adult and adds a number of provisions throughout Florida Statutes to assist youth in finding those connections with the hope of creating an ongoing relationship as the youth transitions into independent living and adulthood.

The bill also creates the Pathway to Prosperity program to administer grants for youth aging out, and young adults who have aged out, of foster care to be administered by the Department of Education. The grants may be used for:

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<sup>72</sup> OPPAGA Research Memorandum, *OPPAGA Review of Florida's Guardian ad Litem Program (December 2020)*, [https://www-media.floridabar.org/uploads/2021/03/OPPAGA-Guardian-Ad-Litem-Program.pdf](https://www.media.floridabar.org/uploads/2021/03/OPPAGA-Guardian-Ad-Litem-Program.pdf) (last visited Mar. 31, 2023).

<sup>73</sup> See generally research cited in OPPAGA research memorandum, *id.*, and OPPAGA report 21-07, *Literature Review of Studies on the Effectiveness of Advocacy Models for Children in Dependency*, December 2021, <https://oppaga.fl.gov/Documents/Reports/21-07.pdf>. For example, in at least one state, only attorneys are Guardians ad Litem; in other state systems, children may be assigned representation because of their more challenged situation, which makes a study design involving comparisons to children without representation inappropriate. However, OPPAGA reported, "A consistent theme in studies and documents regarding the advocacy model deployed is the benefits of having strong advocates with in-depth knowledge of social and legal systems." p. ii, *Literature Review*.

<sup>74</sup> S. 39.822(1), F.S.

<sup>75</sup> S. 39.01305, F.S.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

- financial literacy instruction,
- SAT and ACT preparation, including one-on-one support and fee waivers for the examination, and
- assisting those persons pursuing trade careers or paid apprenticeships.

More specifically, the bill:

- Defines the terms “guardian ad litem” and “guardian advocate” in s. 39.001, F.S., instead of ch. 39.820, F.S.; revises the term “guardian ad litem” to specify that the GAL is a fiduciary and uses a best interest standard; and amends the term “party” to conform.
- Revises the requirements of the training program for GALs.
- Specifies that all children are to be represented by a GAL and removes the “special needs” criteria to be eligible for the appointment of an attorney.
- Removes the requirement that the court to appoint an attorney in addition to the GAL during an initial case status hearing for a postdisposition change of custody.
- Removes the attorney from individuals who may request a more frequent review of the case upon good cause shown.
- Requires the GAL to be invited to multidisciplinary staffings.
- Revises specified responsibilities of the GAL, such as expanding a GAL’s involvement in review hearings for children in the dependency system and young adults in extended foster care, including requiring the GAL to provide the court with information related to the child’s connection with a supportive adult, whether there is a formal agreement between the child and the adult, and if there is, that the GAL must ensure the agreement is documented in the court file.
- Requires the written description of programs and services required in the case plan for a child who is 13 years of age or older to include age-appropriate activities for the child’s development of relationships, coping skills, and emotional well-being.
- Requires that in cases in which parents are financially able, the parent or parents shall reimburse the court for the cost of provision of GAL representation rather than services.
- Makes substantive changes to the Statewide GAL Office as follows:
  - Requires the Office to:
    - Participate in the development of the state plan for the promotion of adoption, support of adoptive families, and prevention of abuse, abandonment, and neglect of children;
    - provide oversight and technical assistance to AALs;
    - develop a training program in collaboration with dependency court stakeholders, including, but not limited to, dependency judges, representatives from legal aid providing AAL representation, and an AAL appointed from a registry maintained by the chief judge.
    - offer consultation and technical assistance to chief judges in maintaining attorney registries and
    - assist in recruiting, training, and mentoring of AALs as needed.
- Creates a mentoring initiative within the Statewide GAL Office to:
  - Assist youth in meeting supportive adults with the hope of creating an ongoing kin-like relationship, and
  - Work in collaboration with the DCF Office of Continuing Care.
- Allows the executive director may serve more than one term without the necessity of convening the GAL Qualifications Committee.
- Authorizes the executive director of the Statewide GAL Office to create or designate local direct support organizations (DSO) in addition to a state DSO.
- Creates the Pathway to Prosperity Program, administered by the Department of Education, to award grants to youth and young adults who are aging out of foster care, and requires the grants to extend for a certain period of time after a recipient is reunited with his or her parents. The grants are to be used for:
  - Financial literacy instruction, with curriculum developed by the Department of Financial Services.

- SAT and ACT preparation, including one-on-one support and fee waivers for the examination.
- Youth and young adults planning to pursue trade careers or paid apprenticeships.
- Changes terminology to refer to the “Statewide Guardian ad Litem Office” rather than the “Guardian ad Litem Program” and requests a reviser’s bill for the 2024 session that makes this change throughout the statutes.

Lastly, the bill makes numerous conforming changes to give effect to the substantive provisions of the bill.

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

## B. SECTION DIRECTORY:

- Section 1:** Amending s. 39.001, F.S., relating to purposes and intent; personnel standards and screening.
- Section 2:** Amending s. 39.00145, F.S., relating to records concerning children.
- Section 3:** Amending s. 39.00146, F.S., relating to case record face sheet.
- Section 4:** Amending s. 39.0016, F.S., relating to education of abused, neglected, and abandoned children; agency agreements; children having or suspected of having a disability.
- Section 5:** Amending s. 39.01, F.S., relating to definitions.
- Section 6:** Amending s. 39.013, F.S., relating to procedures and jurisdiction; right to counsel.
- Section 7:** Amending s. 39.01305, F.S., relating to appointment of an attorney for a dependent child with certain special needs.
- Section 8:** Creates an unnumbered section of law.
- Section 9:** Amending s. 39.0132, F.S., relating to oaths, records, and confidential information.
- Section 10:** Amending s. 39.0136, F.S., relating to time limitations; continuances.
- Section 11:** Amending s. 39.0139, F.S., relating to visitation or other contact; restrictions.
- Section 12:** Amending s. 39.202, F.S., relating to confidentiality of reports and records in cases of child abuse or neglect; exception.
- Section 13:** Amending s. 39.402, F.S., relating to placement in a shelter.
- Section 14:** Amending s. 39.4022, F.S., relating to multidisciplinary teams; staffings; assessments; report.
- Section 15:** Amending s. 39.4023, F.S., relating to placement and education transitions; transition plans.
- Section 16:** Amending s. 39.407, F.S., relating to medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of a person with or requesting child custody.
- Section 17:** Amending s. 39.4085, F.S., relating to goals for dependent children; responsibilities; education.
- Section 18:** Amending s. 39.522, F.S., relating to postdisposition change of custody.
- Section 19:** Amending s. 39.6012, F.S., relating to case plan tasks; services.
- Section 20:** Creating s. 39.6036, F.S., relating to supportive adults for children transitioning out of foster care.
- Section 21:** Amending s. 39.621, F.S., relating to permanency determination by the court.
- Section 22:** Amending s. 39.6241, F.S., relating to another planned permanent living arrangement.
- Section 23:** Amending s. 39.701, F.S., relating to judicial review.
- Section 24:** Amending s. 39.801, F.S., relating to procedures and jurisdiction; notice; service of process.
- Section 25:** Amending s. 39.807, F.S., relating to right to counsel; guardian ad litem.
- Section 26:** Amending s. 39.808, F.S., relating to advisory hearing; pretrial status conference.
- Section 27:** Amending s. 38.815, F.S., relating to appeal.
- Section 28:** Repealing s. 39.820, F.S., relating to definitions.
- Section 29:** Amending s. 39.821, F.S., relating to qualifications of guardians ad litem.
- Section 30:** Amending s. 39.822, F.S., relating to appointment of guardian ad litem for abused, abandoned, or neglected child.
- Section 31:** Amending s. 39.827, F.S., relating to hearing for appointment of a guardian advocate.

- Section 32:** Amending s. 39.8296, F.S., relating to Statewide Guardian Ad Litem Office; legislative findings and intent; creation; appointment of executive director; duties of office.
- Section 33:** Amending s. 39.8297, F.S., relating to county funding for guardian ad litem employees.
- Section 34:** Amending s. 39.8298, F.S., relating to Guardian Ad Litem direct-support organization.
- Section 35:** Creating s. 1009.898, F.S., relating to Pathway to Prosperity grants.
- Section 36:** Amending s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment, or neglect.
- Section 37:** Amending s. 39.521, F.S., relating to disposition hearings; powers of disposition.
- Section 38:** Amending s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.
- Section 39:** Amending s. 322.09, F.S., relating to application of minors; responsibility for negligence or misconduct of minor.
- Section 40:** Amending s. 394.495, F.S., relating to child and adolescent mental health system of care; programs and services.
- Section 41:** Amending s. 627.746, F.S., relating to coverage for minors who have a learner's driver license; additional premium prohibited.
- Section 42:** Amending s. 768.28, F.S., relating to waiver of sovereign immunity in tort actions; recovery limits; civil liability for damages caused during a riot; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.
- Section 43:** Amending s. 934.255, F.S., relating to subpoenas in investigation of sexual offenses.
- Section 44:** Amending s. 960.065, F.S., relating to eligibility for awards.
- Section 45:** Creating an unnumbered section of law requesting a reviser's bill.
- Section 46:** Providing an effective date of July 1, 2023.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill has an indeterminate, but potentially significant, fiscal impact on state government due to the cost of appointing attorneys ad litem. It is unknown how many attorneys ad litem would be assigned pursuant to the bill provisions.

The fiscal impact of the Pathways to Prosperity grant program is indeterminate.

### 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. The bill does not appear to impact county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

At common law, children cannot legally enter into contractual agreements. The inability to contract is due to an unemancipated minors' lack of mental capacity to conduct business, known as the disability of non-age. The disability of non-age is expressly recognized in the Florida Constitution and in statute.<sup>78</sup> Due to the disability of non-age, "an adult person of reasonable judgment and integrity" must conduct any litigation for the minor in judicial proceedings.<sup>79</sup> It follows that unemancipated minors cannot engage legal counsel on their own unless there is a constitutional right or legislative act allowing such engagement.<sup>80</sup> The U.S. Supreme Court has only found a constitutional right to counsel for minors in delinquency proceedings.<sup>81</sup>

The Supreme Court held in In re Gault that juveniles need counsel in delinquency proceedings because such actions may result in a loss of liberty, which is comparable in seriousness to a felony prosecution for adults.<sup>82</sup> The Florida Legislature has authorized appointment of legal counsel for minors:

- If the disability of non-age has been removed under chapter 743, F.S.,
- At the discretion of the judge in domestic relations cases, under s. 61.401, F.S.,
- At the discretion of the judge in a dependency proceeding, under s. 39.4085, F.S., or
- If the child is within one of the five categories requiring mandatory appointment in dependency proceedings.<sup>83</sup>

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<sup>78</sup> Fla. Const. Art. III, § 11(a)(17); s. 743.01, 07, F.S.

<sup>79</sup> *Garner v. I. E. Schilling Co.*, 174 So. 837, 839 (Fla. 1937).

<sup>80</sup> *Buckner v. Family Services of Central Florida, Inc.*, 876 So.2d 1285 (Fla. 5<sup>th</sup> DCA 2004).

<sup>81</sup> *In re Gault*, 387 U.S. 1, 41 (1967).

<sup>82</sup> *Id.* at p. 36.

<sup>83</sup> S. 39.01305, F.S., requires an attorney to be appointed for a dependent child who:

- Resides in a skilled nursing facility or is being considered for placement in a skilled nursing home;
- Is prescribed a psychotropic medication but declines assent to the psychotropic medication;
- Has a diagnosis of a developmental disability as defined in s. 393.063;
- Is being placed in a residential treatment center or being considered for placement in a residential treatment center; or
- Is a victim of human trafficking as defined in s. 787.06(2)(d).



In all other circumstances, “an adult person of reasonable judgment and integrity should conduct the litigation for the minor in judicial proceedings.”<sup>84</sup>

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 15, 2023, the Children, Families, and Seniors Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Includes the statewide Guardian ad Litem (GAL) office in the development of the state plan for the promotion of adoption, support of adoptive families, and prevention of abuse, abandonment, and neglect of children.
- Defines the terms “guardian ad litem” and “guardian advocate” in s. 39.001, F.S., instead of ch. 39.820, F.S., and amends the term “party” to remove the representative of the GAL program when the program has been appointed, and makes conforming changes.
- Requires the court to appoint a GAL at the earliest possible time to represent the child throughout the proceedings including any appeals.
- Requires the GAL to be invited to multidisciplinary team meetings.
- Removes the attorney from individuals who may request a more frequent review of the case upon good cause shown.
- Adds a requirement that the GAL provide the court with information related to the child’s connection with a supportive adult, whether there is a formal agreement between the child and the adult, and if there is, GAL must ensure the agreement is documented in court file.
- Revises GALs’ involvement in review hearings for children in the dependency system and young adults in extended foster care.
- Provides that the GAL is a fiduciary and shall provide independent representation of the child using the best interest standard of decisionmaking and advocacy, and makes conforming changes.
- Revises specified responsibilities of the GAL, including restoring provisions that allows GAL’s to transport children.
- Replaces “program” with “office” when referring to the Statewide Guardian ad Litem Program.
- Requires that in cases in which parents are financially able the parent or parents shall reimburse the court for the cost of provision of GAL representation rather than services.
- Requires the executive director to carry out the purposes and functions of the office in accordance with Florida’s long-established policy of prioritizing children’s best interests.
- Allows the executive director may serve more than one term without the necessity of convening the GAL Qualifications Committee.
- Revises the requirements of the training program for GALs.

On April 4, 2023, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarifies that the appointment of a GAL is not optional.
- Requires the court to consider testimony by the child’s surrogate parent for educational decisionmaking.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

