

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 Fiscal Policy

BILL: CS/CS/CS/SB 1224

INTRODUCER: Fiscal Policy Committee; Appropriations Committee on Criminal and Civil Justice; Children, Families, and Elder Affairs Committee; and Senator Burton

SUBJECT: Dependent Children

DATE: February 23, 2024 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Rao</u>	<u>Tuszynski</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Kolich</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Fav/CS</u>
3.	<u>Rao</u>	<u>Yeatman</u>	<u>FP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1224 adjusts the role and operations of the Statewide Guardian ad Litem Office (Office). The bill specifies the duties and responsibilities of the Office and guardians ad litem (GAL). Specifically, the bill:

- Allows the GAL and AAL to inspect records.
- Requires the GAL to receive invitation to a multidisciplinary team staffing in the event of a placement change.
- Requires that the written description of programs and services required in the case plan for a child who is 13 years of age or older must include age-appropriate activities for the child’s development of relationships, coping skills, and emotional well-being.
- Requires the Statewide GAL Office to 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. The Office is required to offer consultation and technical assistance to chief judges in maintaining attorney registries and assist in recruiting, training, and mentoring of AAL as needed.
- Requires the Office to assist youth in meeting supportive adults with the hope of creating an ongoing relationship and requires collaboration with the Department of Children and Families (DCF) Office of Continuing Care to connect youth with supportive adults.
- Creates the Fostering Prosperity Program in the Department of Education for youth and young adults aging out of foster care providing financial literacy instruction, CLT, 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.

The bill has an indeterminate fiscal impact on state government. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2024.

II. Present Situation:

An estimated 3.9 million referrals of alleged child abuse and neglect were made nationwide in 2021.¹ Of that 3.9 million, approximately 2 million met the requirements for an investigation² leading to approximately 588,000 children with a finding of maltreatment.³ More than 4.28 million children live in Florida, a vast majority of which, fortunately, never come to the attention of Florida's child welfare system.⁴ In 2021, the Department of Children and Families (DCF) investigated 256,060 reports of potential child abuse and approximately 11 percent (27,394) of those investigations resulted in a finding of maltreatment.⁵

Congress appropriates federal funds through various grants to the DCF to supplement state general revenue funds for the implementation of child welfare programs.⁶ The DCF uses these funds to contract with community-care based lead agencies (CBCs) to provide services.⁷

Florida's Child Welfare System - Generally

Chapter 39, F.S., creates Florida's dependency system that is charged with protecting the welfare of children; this system is often referred to as the "child welfare system." The DCF Office of Child and Family Well-Being works in partnership with local communities and the courts to ensure the safety, timely permanency, and well-being of children.

¹ U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, *Report on Child Maltreatment 2021*, p. 8, available at <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2021.pdf> (last viewed Jan. 23, 2024). As of January, 2024, the 2022 Report is not yet available.

² *Id.* at 13; referred to as "screened in referrals."

³ *Id.* at 21; referred to as "victims from reporting states."

⁴ U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, *Child Population Data for Florida*, available at <https://cwoutcomes.acf.hhs.gov/cwodatasite/pdf/florida.html> (last viewed Jan. 23, 2024).

⁵ *Id.*

⁶ The main federal grant programs that supplement state-level child welfare programs are Titles IV-E and IV-B of the Social Security Act.

⁷ Part V of ch. 409, F.S.

Child welfare services are directed toward the prevention of abandonment,⁸ abuse,⁹ and neglect¹⁰ of children.¹¹ The DCF practice model is based on the safety of the child within his or her home, using in-home services such as parenting coaching and counseling to maintain and strengthen that child's natural supports in his or her home environment. Such services are coordinated by the DCF-contracted community-based care lead agencies (CBC).¹² 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.¹³ Ultimately, the DCF is responsible for program oversight and the overall performance of the child welfare system.¹⁴

Department of Children and Families

The DCF's statutory 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.¹⁵ The DCF must develop a strategic plan to fulfill this mission and establish measurable goals, objectives, performance standards, and quality assurance requirements to ensure the DCF is accountable to taxpayers.¹⁶

The DCF is required to provide services relating to:

- Adult protection.
- Child care regulation.
- Child welfare.
- Domestic violence.

⁸ Section 39.01(1), F.S., defined to mean a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. For purposes of this subsection, "establish or maintain a substantial and positive relationship" includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child

⁹ Section 39.01(2), F.S., defined to mean any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

¹⁰ See s. 39.01(50), F.S., defined, in part, to mean when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired.

¹¹ Section 39.001(8), F.S.

¹² Section 409.986(1), F.S.; See generally The Department of Children and Families (The DCF), *About Community-Based Care*, available at <https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/about-community-based-care> (last viewed Jan. 23, 2024).

¹³ Office of Program Policy Analysis and Government Accountability, *Child Welfare System Performance Mixed in First Year of Statewide Community-Based Care*, Report 06-50, June 2006, p. 2, available at available at: <https://oppaga.fl.gov/Documents/Reports/06-50.pdf> (last viewed Jan. 23, 2024).

¹⁴ *Id.*

¹⁵ Section 20.19(1)(a), F.S.

¹⁶ Section 20.19(1)(b), F.S.

- Economic self-sufficiency.
- Homelessness.
- Mental health.
- Refugees.
- Substance abuse.¹⁷

The DCF must also deliver services by contract through private providers to the extent allowed by law and funding.¹⁸ These private providers include CBCs delivering child welfare services and managing entities (MEs) delivering behavioral health services.¹⁹

Dependency Case Process

When child welfare necessitates that the DCF remove a child from the home to ensure his or her safety, a series of dependency court proceedings must occur to place that child in an out-of-home placement, adjudicate the child dependent, and, if necessary, terminate parental rights and free that child for adoption.

Steps in the dependency process usually 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.²⁰

Dependency Proceeding	Description of Process	Controlling Statute(s)
Removal	The DCF may remove a child from his or her home after a protective investigation determines that conditions in that child’s home are unsafe and a safety plan cannot make the conditions safe.	s. 39.401, F.S.
Shelter Hearing	The court must hold a shelter hearing within 24 hours after removal. At this hearing, the judge determines whether there was probable cause to remove the child and whether to keep the child out-of-home.	s. 39.401, F.S.
Petition for Dependency	The DCF must file a petition for dependency within 21 days of the shelter hearing. This petition seeks to find the child dependent.	s. 39.501, F.S.

¹⁷ Section 20.19(4)(a), F.S.,

¹⁸ Section 20.19(1)(c), F.S.

¹⁹ Part V of ch. 409, F.S., and s. 394.9082, F.S.

²⁰ 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. Section 63.022, F.S.

Dependency Proceeding	Description of Process	Controlling Statute(s)
Arrestment Hearing and Shelter Review	The court must hold an arrestment and shelter review within 28 days of the shelter hearing. The hearing allows the parent to admit, deny, or consent to the allegations within the petition for dependency and allows the court to review any previous shelter placement.	s. 39.506, F.S.
Adjudicatory Trial	The court must hold an adjudicatory trial within 30 days of arrestment. The judge determines whether a child is dependent during this trial.	s. 39.507, F.S.
Disposition Hearing	The court must hold a disposition hearing within 15 days of arrestment (if the parents admits or consents to adjudication) or 30 days of adjudication if a court finds the child dependent. At this hearing, the judge reviews the case plan and placement of the child and orders the case plan and the appropriate placement of the child.	s. 39.506, F.S. s. 39.521, F.S.
Postdisposition Change of Custody Hearing	The court may change the temporary out-of-home placement of a child at a postdisposition hearing any time after disposition but before the child is residing in the permanent placement approved at a permanency hearing.	s. 39.522, F.S.
Judicial Review Hearings	The court must review the case plan and placement at least every 6 months, or upon motion of a party.	s. 39.701, F.S.
Petition for Termination of Parental Rights	If the DCF determines that reunification is no longer a viable goal and 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	The court must hold an advisory hearing 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	The court must hold an adjudicatory trial 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.

Community-Based Care Organizations and Services

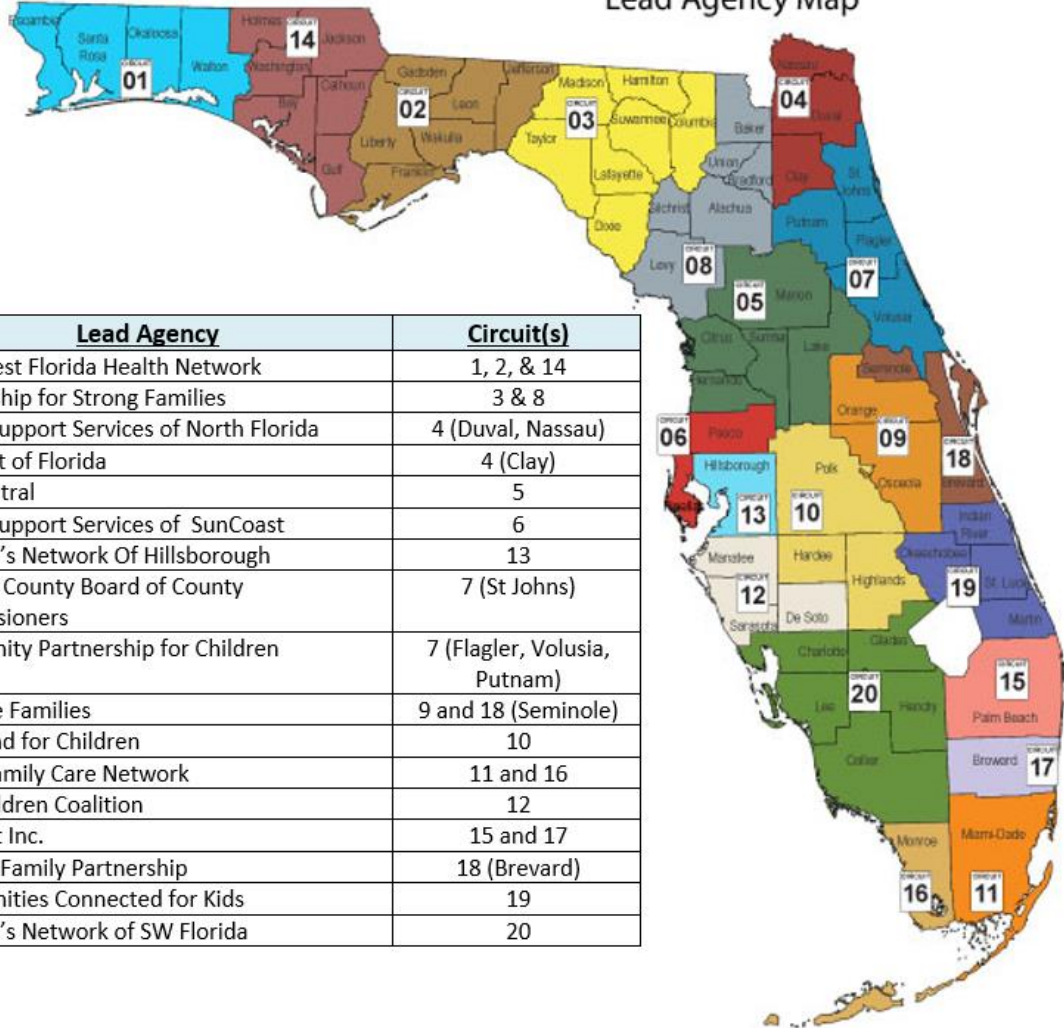
The DCF contracts for case management, out-of-home care (foster care), adoption, and other child welfare related services with the CBCs. This model is designed to increase local community ownership of service delivery and design of child welfare services.²¹ There are 17 CBCs statewide, which together serve the state’s 20 judicial circuits.²² The CBCs employ case

²¹ The Department of Children and Families, *About Community-Based Care*, available at <https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/about-community-based-care> (last visited Jan. 23, 2024).

²² The DCF, *Lead Agency Information*, available at <https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/lead-agency-information> (last visited Jan. 23, 2024).

managers that serve as the primary link between the child welfare system and families with children under the DCF’s supervision. These case managers work with affected families to ensure that a child reaches his or her permanency goal in a timely fashion.²³

Community-Based Care Lead Agency Map



Lead Agency	Circuit(s)
Northwest Florida Health Network	1, 2, & 14
Partnership for Strong Families	3 & 8
Family Support Services of North Florida	4 (Duval, Nassau)
Kids First of Florida	4 (Clay)
Kids Central	5
Family Support Services of SunCoast	6
Children’s Network Of Hillsborough	13
St Johns County Board of County Commissioners	7 (St Johns)
Community Partnership for Children	7 (Flagler, Volusia, Putnam)
Embrace Families	9 and 18 (Seminole)
Heartland for Children	10
Citrus Family Care Network	11 and 16
Safe Children Coalition	12
ChildNet Inc.	15 and 17
Brevard Family Partnership	18 (Brevard)
Communities Connected for Kids	19
Children’s Network of SW Florida	20

The DCF, through the CBCs, administers a system of care²⁴ directed toward:

- Prevention of separation of children from their families;
- Intervention to allow children to remain safely in their own homes;
- Reunification of families who have had children removed from their care;
- Safety for children who are separated from their families;

²³ Section 409.988(1), F.S.

²⁴ *Id.*

- Promoting the well-being of children through emphasis on educational stability and timely health care;
- Permanency; and
- Transition to independence and self-sufficiency.²⁵

The CBCs must give priority to services that are evidence-based and trauma informed.²⁶ The CBCs contract with a number of subcontractors for case management and direct care services to children and their families.

In-Home Services

The DCF is required to make all efforts to keep children with their families and provide interventions that allow children to remain safely in their own homes.²⁷ Protective investigators and CBC case managers can refer families for in-home services to allow children who would otherwise be unsafe to remain in their own homes. As of September 30, 2022, there were 8,136 children receiving in-home services.²⁸

Out-of-home Placement

When a child protective investigator determines that in-home services are not enough to ensure safety, the investigator removes and places the child with a safe and appropriate temporary out-of-home placement, often referred to as “foster care”.²⁹ These out-of-home placements provide housing, support, and services to a child until the conditions in his or her home are safe enough to return or the child achieves permanency with another family through another permanency option, like adoption.³⁰

The CBCs must maintain and license various out-of-home placement types³¹ to place children in the most appropriate available setting after conducting an assessment using child-specific factors.³² Legislative intent is to place a child in the least restrictive, most family-like environment in close proximity to parents when removed from his or her home.³³

The DCF, through the CBCs, places children in a variety of settings. As of December 31, 2023, there were 18,549 children in out-of-home care with 4,274 with non-licensed relatives; 1,552 with non-licensed non-relative kin; 10,142 in licensed family foster homes (to include Level I

²⁵ *Id.*; Also see generally s. 409.988, F.S.

²⁶ Section 409.988(3), F.S.

²⁷ Sections 39.402(7), 39.521(1)(f), and 39.701(d), F.S.

²⁸ The DCF, *Child Welfare Key Indicators Monthly Report*, September 2023, p. 30, available at: https://www.myflfamilies.com/sites/default/files/2023-11/KI_Monthly_Report_Oct2023.pdf (last viewed Jan. 25, 2024).

²⁹ Sections 39.401 through 39.4022, F.S.

³⁰ The Office of Program Policy and Government Accountability, *Program Summary*, available at <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=5053> (last visited Jan. 25, 2024).

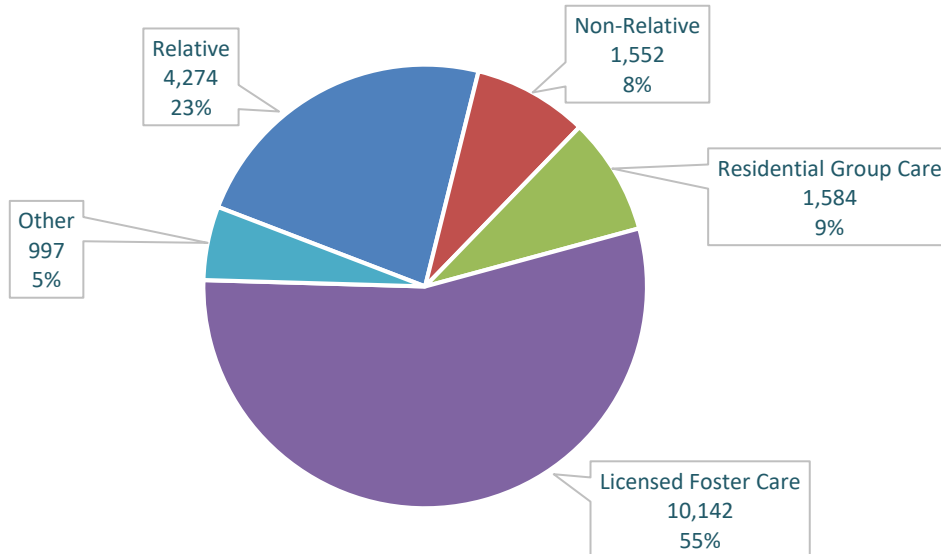
³¹ Chapter 65C-45, F.A.C.

³² Rule 65C-28.004, F.A.C., provides that the child-specific factors include age, sex, sibling status, physical, educational, emotional, and developmental needs, maltreatment, community ties, and school placement.

³³ Sections 39.001(1) and 39.4021(1), F.S.

licensed family and kin); and 1,584 in residential group care.³⁴

Out-of-home Placements as of December 31, 2023



Source: Department of Children and Families, Placement in Out-of-Home Care Data Dashboard

Case planning

For all children and families requiring services in the child welfare system, the DCF must develop and draft a case plan.³⁵ The purpose of a case plan is to develop a documented plan that details the identified concerns and barriers within the family unit, the permanency goal or goals, and the services designed to ameliorate those concerns and barriers and achieve the permanency goal.³⁶

The services detailed in a case plan must be designed in collaboration with the parent and stakeholders to improve the conditions in the home and aid in maintaining the child in the home, facilitate the child’s safe return to the home, ensure proper care of the child, or facilitate the child’s permanent placement.³⁷ The services offered must be the least intrusive possible into the life of the parent and child and must provide the most efficient path to quick reunification or other permanent placement.³⁸

Multidisciplinary Teams

Because of the complex nature of child abuse and neglect investigations and family assessments and interventions, multidisciplinary team staffings (MDTs) are used to enhance and improve child protective investigations and responses necessary for children and families to recover and

³⁴ The DCF Placement in Out-of-Home Care Data, Children in Out-of-Home Care by Placement Type Dashboard, available at: <https://www.myflfamilies.com/services/abuse/domestic-violence/programs/child-welfare-child-protection/placement-out-home-care> (last visited Jan. 26, 2024).

³⁵ See Part VII of ch. 39, F.S.

³⁶ Section 39.6012(1), F.S.

³⁷ *Id.*

³⁸ *Id.*

succeed.³⁹ 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.⁴⁰

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.⁴¹ As a result, a number of states are using a MDT team model, also known as a "Child and Family Team".⁴² 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.⁴³

Currently, Florida law and the 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 lead to quicker case resolution and preserved family connections more often.⁴⁴ Children served by an MDT had fewer removals after intervention, fewer adjudications of jurisdiction, and fewer petitions to terminate parental rights.⁴⁵ When children were removed from the home, and a MDT was assigned to the cases, the children were more likely to be placed with relatives and less likely to be placed in foster care.⁴⁶

³⁹ Section 39.4022, F.S.

⁴⁰ *Id.*

⁴¹ 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, p. 8, available at <https://www.ojp.gov/pdffiles1/Digitization/51625NCJRS.pdf> (last viewed Jan. 27, 2024).

⁴² See e.g. State of Tennessee Department of Children's Services, *Administrative Policies and Procedures: 31.7*, available at <https://files.dcs.tn.gov/policies/chap31/31.7.pdf>; and Indiana Department of Child Services, *Child Welfare Policy*, Jan. 1, 2020, available at <https://www.in.gov/dcs/files/5.07%20Child%20and%20Family%20Team%20Meetings.pdf> (all sites last viewed Jan. 27, 2024).

⁴³ California Department of Social Services, *About Child and Family Teams*, available at <https://www.cdss.ca.gov/inforesources/foster-care/child-and-family-teams/about> (last visited Jan. 27, 2024).

⁴⁴ Duquette, et al., *Children's Justice: How to Improve Legal Representation for Children in the Child Welfare System* [University of Michigan Law School Scholarship Repository, 2021], secs. 12.5 and 13.8, available at <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1109&context=books> (last viewed Jan. 27, 2024)

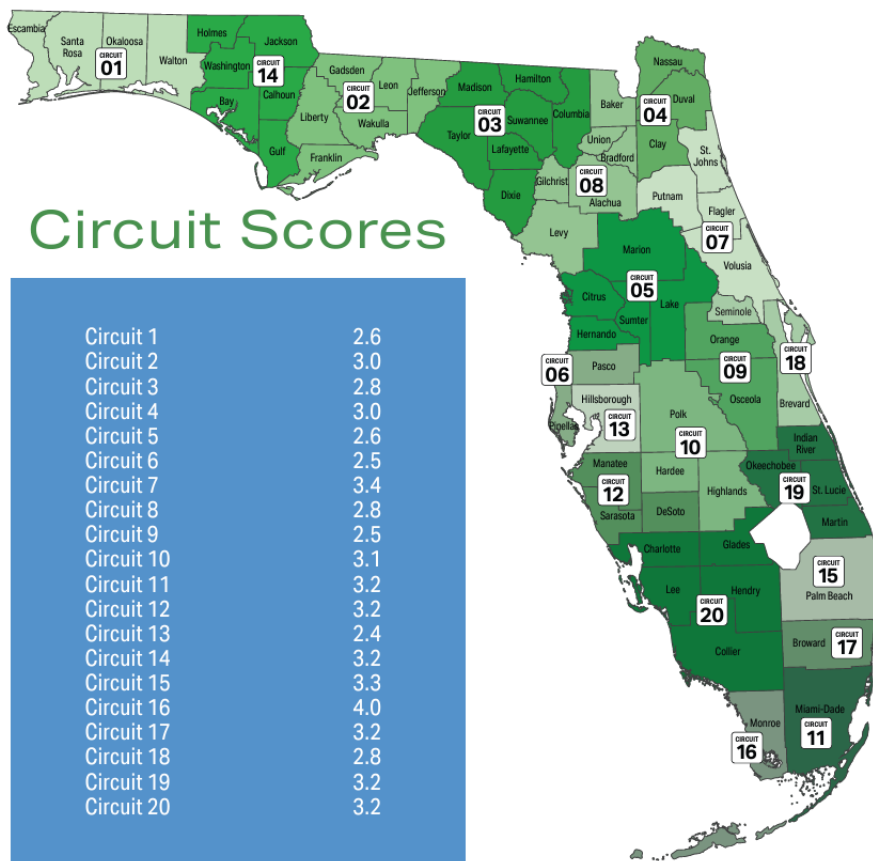
⁴⁵ *Id.*

⁴⁶ *Id.*

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.⁴⁷ DCF has also identified areas that have the most significant systemic impact on improving permanency and well-being⁴⁸ and evaluated progress toward achieving permanency, safety, and well-being for children in the welfare system.⁴⁹

In FY 2022-2023, the DCF gave 12 of 20 circuits a score of 3 or higher, indicating that the circuit’s performance exceeds established standards.⁵⁰ A score of 2.00-2.99 indicated the circuit’s performance does not meet established standards:⁵¹



⁴⁷ The OPPAGA, *Presentation on Independent Living Services*, Senate Committee on Children, Families, and Elder Affairs, January 24, 2023, available at https://oppaga.fl.gov/Documents/Presentations/OPPAGA%20ILS%20Senate%20Presentation_final.pdf (last visited Jan. 27, 2024).

⁴⁸ The DCF, *Annual Accountability Report on the Health of Florida’s Child Welfare System, Fiscal Year 2022-2023*, pg. 3, available at https://myflfamilies.com/sites/default/files/2023-12/Annual_Accountability_Report_on_the_Health_of_Floridas_Child_Welfare_System_F_202022-23.pdf (last visited Jan. 27, 2024) (hereinafter cited as “DCF Accountability Report”)

⁴⁹ *Id.*

⁵⁰ *Id.* at p. 6.

⁵¹ *Id.*

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.⁵² Science shows that children who do well despite serious hardship have had at least one stable and committed relationship with a supportive adult.⁵³

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.⁵⁴ 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.⁵⁵ These young adults also have a higher need for public assistance and are more likely to experience housing instability and homelessness.⁵⁶

Extended Foster Care

In 2013, the Legislature created a path for youth who have not achieved permanency and turned 18 years of age while in licensed care to remain in licensed care and receive case management services until the date of the young adult's 21st birthday.⁵⁷ This program is commonly referred to as "extended foster care" or "EFC." To be eligible for extended foster care (EFC), a young adult must be:

- Completing secondary education or a program leading to an equivalent credential;
- Enrolled in an institution that provides postsecondary or vocational education;
- Participating in a program or activity designed to promote or eliminate barriers to employment;
- Employed at least 80 hours per month; or
- Unable to participate in the above listed activities due to a physical, intellectual, emotional, or psychiatric condition that limits participation.⁵⁸

⁵² Section 409.1451, F.S.

⁵³ National Scientific Council on the Developing Child (2015), *Supportive Relationships and Active Skill-Building Strengthen the Foundations of Resilience: Working Paper No. 13*, available at <https://harvardcenter.wpengepowered.com/wp-content/uploads/2015/05/The-Science-of-Resilience2.pdf> (last visited Jan. 27, 2024).

⁵⁴ Gypen, L., Vanderfaellie, J., et al., "Outcomes of Children Who Grew Up in Foster Care: Systematic-Review", *Children and Youth Services Review*, vol. 76, pp. 74-83, available at <http://dx.doi.org/10.1016/j.chilyouth.2017.02.035> (last visited Jan. 27, 2024).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Chapter 2013-178 s. 5, L.O.F., codified as s. 39.6251, F.S.

⁵⁸ *Id.*

Independent Living Services

Florida's Independent Living service array is designed to assist youth and young adults in obtaining skills and support in six federally identified outcome areas⁵⁹ as they transition to adulthood. Independent Living programs include:

- Extended Foster Care (EFC) – a program that allows young adults to remain in foster care until the age of 21 while they participate in school, work or work training, and live in a supervised living arrangement;
- Postsecondary Education Services and Support- a program that helps pay for housing, and other expenses related to attending an educational institution; and
- Aftercare Services - a temporary needs-based program intended to be a bridge between EFC and PESS programs that may include mentoring, tutoring, mental health and substance abuse services, counseling, and financial assistance.⁶⁰

Office of Continuing Care

In 2020, the Legislature created the Office of Continuing Care within the DCF to help individuals who have aged out of the child welfare system.⁶¹ 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 the CBC's to identify local resources that can provide support to young adults served by the office.⁶²

Guardian ad Litem Program

In 2003, the Legislature created the statewide Guardian ad Litem Office (Office) within the Justice Administrative Commission.⁶³ The Office has oversight responsibilities for and provides technical assistance to all guardian ad litem programs located within the judicial circuits.⁶⁴

⁵⁹ The six federally identified outcome areas are increasing financial self-sufficiency, improving educational attainment, increasing connections to caring adults, reducing homelessness, reducing high-risk behavior, and improving access to health insurance.

⁶⁰ See generally The DCF, Office of Child and Family Well-Being, Legislatively Mandated Reports, Independent Living Services Annual Report FY 2021-2022, February 2023, available at <https://www.myflfamilies.com/services/child-family/independent-living/annual-reports-for-independent-living> (last visited Jan. 27, 2024).

⁶¹ Chapter 2021-169 s. 20, L.O.F.; codified as s. 414.56, F.S.

⁶² Section 414.56, F.S.

⁶³ Chapter 2003-53 s. 1, L.O.F.; codified as s. 39.8296, F.S.

⁶⁴ Section 39.8296(2)(b), F.S.

The court must appoint a Guardian ad Litem (GAL) to represent a child as soon as possible in any child abuse, abandonment, or neglect proceeding.⁶⁵ Florida law outlines requirements to serve as a GAL.⁶⁶ A person appointed as guardian ad litem must be:

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

“Guardian ad litem” for the purposes of ch. 39, F.S., proceedings 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 in a proceeding.⁶⁷

In cases that involve an allegation of child abuse, abandonment, or neglect as defined in s. 39.01, F.S., the court must appoint a guardian ad litem at the earliest possible time to represent the child.⁶⁸ The guardian ad litem must be a party to any judicial proceeding from the date of the appointment until the date of discharge.⁶⁹

The Office has more than 180 attorneys on staff and relies on more than 200 pro bono attorneys volunteering their services.⁷⁰ In 2021, the Office served more than 37,000 kids and had more than 13,000 volunteers.⁷¹

Federal and Florida law provide that a GAL must be appointed to represent the child in every case.⁷² 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.⁷³ 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.⁷⁴

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.⁷⁵

⁶⁵ Section 39.822, F.S.

⁶⁶ Sections 61.402 and 39.821, F.S.

⁶⁷ Section 39.820(1), F.S.

⁶⁸ Section 39.822, F.S.

⁶⁹ Section 39.820(1), F.S.

⁷⁰ Florida Statewide Guardian ad Litem Office, *About Us*, available at <https://guardianadlitem.org/about/> (last visited on Jan. 27, 2024).

⁷¹ *Id.*

⁷² 42 U.S.C. 67 §5106a.(b)(2)(xiii); S. 39.822(1), F.S.

⁷³ 42 U.S.C. 67 §5106a.(b)(2)(xiii).

⁷⁴ *Id.*

⁷⁵ Statewide Guardian ad Litem Office, *Long Range Program Plan*, Fiscal Years 2023-24 through 2027-28; Sept. 30, 2022, p. 13, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=24413&DocType=PDF> (last viewed on Jan. 27, 2024).

- 85.2% of children in the dependency system each month.⁷⁶
- 1,671 new volunteers were certified, with a total of 9,342 volunteers active each month on average.⁷⁷

Transportation of Children by GAL Volunteers

In 2012, the Legislature, allowed GAL volunteers to transport a child on his or her caseload.⁷⁸ This is intended to promote normalcy for the child as well as establish and promote trust between a court-appointed volunteer and the child.⁷⁹

GAL Qualifications Committee

Section 39.8296(2), F.S., creates a Guardian ad Litem Qualification Committee that is composed of five members⁸⁰ to provide for advertisement and the receiving of applications for the position of the executive director of the Office. Current law provides that an executive director serves a 3-year term and may be allowed to serve more than one term.⁸¹

GAL Program Direct Support Organization

Section 39.8298, F.S., allows the Office to create a Direct-Support Organization (DSO). 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 Office.⁸² The executive director of the Office appoints the board of directors.⁸³

Legal Representation of Children in the Child Welfare System

Child representation in dependency proceedings varies but in most instances is based on what is in the child's best interest, direct representation, or a hybrid approach.⁸⁴ The table below provides a summary of the different models and how they operate:⁸⁵

⁷⁶ *Id.*

⁷⁷ *Id.* at p. 14.

⁷⁸ Chapter 2012-123 s. 5, L.O.F.; codified as s. 39.8296(2)(b)7., F.S.

⁷⁹ *Id.*

⁸⁰ Two appointed by the Governor, two appointed by the Chief Justice of the Supreme Court, and one appointed by the Guardian ad Litem Association.

⁸¹ Section 39.8296(2)(a), F.S.

⁸² Section 39.8298(1)(b) and (3), F.S.

⁸³ Section 39.8298(3), F.S.

⁸⁴ The Office of Program Policy Analysis and Government Accountability (OPPAGA), *OPPAGA Review of Florida's Guardian ad Litem Program, Presentation to the Senate Committee on Children, Families, and Elder Affairs*, p. 9, January 26, 2021, available at <https://oppaga.fl.gov/Documents/Presentations/GAL%20Presentation%201-26-21.pdf> (last visited Jan. 27, 2024).

⁸⁵ OPPAGA, *OPPAGA Review of Florida's Guardian ad Litem Program*, p. 5 and 34, December 2020 (on file with the Committee on Children, Families, and Elder Affairs).

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

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

Source: OPPAGA analysis of state statutes and court rules.

Appointment of an Attorney for a Special Needs Child

The Office currently has a role in in the appointment of an attorney for a special needs child. The court must ask the Office for a recommendation for an attorney willing to work without additional compensation, prior to the court appointing an attorney on a compensated basis.⁸⁶ That attorney must be available for services within 15 days after the court’s request.⁸⁷ If, however, the Office does not make a recommendation within 15 days after the court’s request, the court may appoint a compensated attorney.⁸⁸ An attorney appointed for a specific purpose is commonly referred to as attorney ad litem (AAL); however, that term is not defined in statute.

An AAL representing a child provides the complete range of legal services from removal from the home or initial appointment through all appellate proceedings.⁸⁹ With court permission, the attorney is authorized to arrange for supplemental or separate counsel to handle appellate matters.⁹⁰ 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.⁹¹ Notwithstanding the specific procedures to appoint an attorney for a special needs child, the court has the general authority to appoint an attorney for a dependent child in any proceeding under ch. 39, F.S.⁹²

⁸⁶ Section 39.01305, F.S.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Section 39.01305(4)(b), F.S.

⁹⁰ *Id.*

⁹¹ Section 39.01305(5), F.S.

⁹² Section 39.01305(8), F.S.

III. Effect of Proposed Changes:

The bill amends numerous sections of ch. 39, F.S., governing proceedings and services relating to children in the child welfare system to adjust the structure, role, and operations of the Statewide Guardian ad Litem office.

Statewide Guardian Ad Litem Office

The bill changes references from the “Guardian ad Litem Program” to the “Statewide Guardian ad Litem Office,” and requests the Division of Law Revision to prepare a reviser’s bill for the 2025 Regular Session to substitute the term “Statewide Guardian ad Litem Office” for the term “Guardian Ad Litem Program” or “Statewide Guardian Ad Litem Program” throughout the Florida Statutes.

Executive Director

The bill allows the Statewide GAL Office executive director to serve more than one term without convening the Guardian ad Litem Qualification Committee.

Multidisciplinary Teams

The bill requires the Statewide GAL Office to assign an attorney to each case. As available resources allow, the Statewide GAL Office is to assign a multidisciplinary team to represent the child. The bill includes mentors, pro bono attorneys, social workers, and volunteers as part of the MDT.

Training

The bill removes the requirement for the Statewide GAL Office to establish a curriculum committee to develop required training, granting unilateral authority to the office to develop, maintain, and regularly update the GAL training program. The bill also requires a GAL to complete specialized training in the dynamics of child sexual abuse when serving children who have been sexually abused and are subject to proceedings regarding establishing visitation with the child’s abuser under s. 39.0139, F.S.

Role of the Guardian ad Litem

The bill makes the guardian ad litem appointment mandatory rather than optional for the court. This means courts will have no discretion regarding appointing a guardian ad litem for a child, and will increase the number of children in the child welfare system who have a GAL by approximately 7 percent.

The bill conforms references to a GAL’s role in chapter 39 to specify that the GAL represents the *child*, rather than the child’s *best interest*. This representation is to use a best interest standard.

The bill authorizes a child’s GAL to represent a child in other judicial proceedings to secure the services and benefits that provide for the care, safety, and protection of the child. It authorizes

the school district to involve the GAL of a child who has, or is suspected to have, a disability in any transition planning for that child.

The bill requires multidisciplinary teams led by DCF or a CBC to include the GAL.

The bill requires the Statewide GAL Office to provide oversight and technical assistance to AALs. The Statewide GAL Office's responsibilities include, but are not limited to:

- Developing an attorney ad litem training program in collaboration with dependency judges, representatives from legal aid providing attorney ad litem representation, and an attorney ad litem appointed from a registry maintained by the chief judge.
- Offering consultation and technical assistance to chief judges in maintaining attorney registries for the selection of attorneys ad litem.
- Assisting as needed with recruitment and mentoring of AALs.

Transition-Age Youth

Case planning

The bill requires any case plan tailored for a transition to independent living to include a written description of age-appropriate activities for the child's development of relationships, coping skills, and emotional well-being.

Mentors for older foster youth

For youths aged 16 and up who are transitioning out of foster care into independent living, the bill requires the Office of Continuing Care within the DCF to coordinate with the Statewide GAL Office to help those children establish a mentorship with at least one supportive adult. The bill requires documented evidence of a formal agreement in the child's court file.

Fostering Prosperity Grant Program

The bill establishes the Fostering Prosperity program to administer grants to youth and young adults aging out of foster care for:

- Financial literacy instruction using a curriculum developed by the Department of Financial Services in consultation with the Department of Education.
- Classic Learning Test (CLT), SAT, or ACT preparation, including one-on-one support and fee waivers for the examinations.
- Pursuing trade careers or paid apprenticeships.

If a youth later reunifies with the youth's parents, the grants remain available for the youth for up to 1 year.

The bill requires the State Board of Education to adopt rules to administer this program.

Other Provisions

The bill makes numerous conforming language and cross reference changes throughout the bill to give effect to the substantive provisions.

The bill provides an effective date of July 1, 2024.

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:

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.⁹³ 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."⁹⁴ It follows that the unemancipated minors cannot engage legal counsel on their own unless there is a constitutional right or legislative act allowing such engagement.⁹⁵ The U.S. Supreme Court has only found a constitutional right to counsel for minors in delinquency proceedings.⁹⁶

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.⁹⁷

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

⁹³ Fla. Const. Art. III, §11(a)(17); s. 743.01, 07, F.S.

⁹⁴ *Garner v. I. E. Schilling Co.*, 174 So. 837, 839 (Fla. 1937).

⁹⁵ *Buckner v. Family Services of Central Florida, Inc.*, 876 So.2d 1285 (Fla. 5th DCA 2004).

⁹⁶ *In re Gault*, 387 U.S. 1, 41 (1967).

⁹⁷ *Id.* at p. 36.

- If the child is within one of the five categories requiring mandatory appointment in dependency proceedings.⁹⁸

In all other circumstances, “an adult person of reasonable judgment and integrity should conduct the litigation for the minor in judicial proceedings.”⁹⁹

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill has an indeterminate impact on the Statewide Guardian ad Litem Office and educational institutions. However, Budget Amendment Request B0461, which will be implemented on February 15, 2024, will release spending authority for 64.5 FTE, 3,061,234 in salary rate, and \$4,381,391 for Title IV-E reimbursements. These funds will allow the Office to submit claims for independent legal representation provided by an attorney for Title IV-E foster care or a Title IV-E eligible child in foster care.

The Fostering Prosperity program is subject to the appropriation of funds for that purpose by the legislature. The Fostering Prosperity language in the bill, if unfunded, could have a fiscal impact to the institutions providing the fee waivers for the examinations provided under the program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁹⁸ Section 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, F.S.;
- 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), F.S.

⁹⁹ Garner v. I. E. Schilling Co., 174 So. 837, 839 (Fla. 1937).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.001, 39.00145, 39.00146, 39.0016, 39.01, 39.013, 39.01305, 39.0132, 39.0136, 39.01375, 39.0139, 39.202, 39.402, 39.4022, 39.4023, 39.407, 39.4085, 39.502, 39.522, 39.6012, 39.621, 39.6241, 39.701, 39.801, 39.807, 39.808, 39.815, 39.821, 39.822, 39.827, 39.8296, 39.8297, 29.008, 39.6011, 40.24, 43.16, 61.402, 110.205, 320.08058, 943.053, 985.43, 985.441, 985.455, 985.461, 985.48, 39.302, 39.521, 61.13, 119.071, 322.09, 394.495, 414.56, 627.746, 934.255, and 960.065.

This bill creates the following sections of the Florida Statutes: 39.6036 and 1009.898.

This bill repeals section 39.280 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/CS/CS by Fiscal Policy on February 22, 2024:

- Requires the DCF Office of Continuing Care to coordinate with the Statewide Guardian ad Litem Office to identify supportive adults for children transitioning out of the foster care system to live independently.
- Maintains current law that allows the Justice Administrative Commission to inspect court dockets to audit compensation of court appointed attorneys, rather than just attorneys ad litem.

CS/CS by Appropriations Committee on Criminal and Civil Justice on February 8, 2024:

The committee substitute:

- Makes a technical change to remove “attorney ad litem” from the catchline of s. 39.013, F.S.
- Changes “Pathway to Prosperity” to “Fostering Prosperity” and provides that the program is subject to legislative appropriation.

CS by Children, Families, and Elder Affairs on January 30, 2024:

The committee substitute:

- Removes the proposed changes to s. 39.8298, F.S. relating to direct-support organizations and restores current law.
- Removes the proposed changes to s. 39.013, F.S. relating to the appointment of an attorney ad litem.
- Removes changes to s. 39.01305, F.S. related to representation for children with special needs and restores current law.
- Makes technical conforming changes to the name of the Statewide Guardian ad Litem Office within that section.
- Increases the amount of time that a Pathway to Prosperity grant is available to a youth aging out of care from 6 months to 1 year.

- Provides specific rulemaking authority to the State Board of Education to implement the program.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
