

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 185 Dependent Children

**SPONSOR(S):** Appropriations Committee, Children, Families & Seniors Subcommittee, Trabulsy and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1224

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	13 Y, 4 N, As CS	DesRochers	Brazzell
2) Appropriations Committee	23 Y, 0 N, As CS	Smith	Pridgeon
3) Health & Human Services Committee	19 Y, 0 N	DesRochers	Calamas

### SUMMARY ANALYSIS

When a child lives in an unsafe home as a victim of abuse, neglect, or abandonment, state officials temporarily transfer the rights of physical custody to that child from the primary caregiver(s) to the Florida Department of Children and Families. This event initiates the dependency court process. Early in the dependency court process, the presiding judge evaluates whether the allegations of wrongdoing are well-founded and decides whether guardian ad litem and attorney ad litem appointments are necessary.

The guardian ad litem serves as the child's fiduciary representative in court to speak for the child's best interests. The "guardian ad litem" is typically a multidisciplinary team involving a lay volunteer, a staff attorney, and a case manager. The court may appoint an attorney ad litem to serve as the child's independent legal representative in court to speak for the child's express wishes.

CS/CS/HB 185 requires the appointment of a Guardian ad litem (GAL) at the earliest possible time to represent a child throughout dependency proceedings, including appeals. The bill allows for representation of the child by GAL in proceedings outside of dependency cases in order to secure services and benefits that provide for the care, safety, and protection of the child.

The bill makes guardian ad litem appointment to a child mandatory. The bill expands the Statewide GAL Office's scope of duties. CS/CS/HB 185 also establishes the Fostering Prosperity grant program to help youth transition from foster care to independent adult living and requires increased GAL involvement in, and court attention to, ensuring a youth aging out of care has a permanent connection to a caring adult.

The bill has no fiscal impact on state and local governments. See Fiscal Comments.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

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

Chapter 39, F.S., creates the dependency system charged with protecting child welfare. The Florida Legislature has declared four main purposes of the dependency system:<sup>1</sup>

- To provide for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development;
- To ensure secure and safe custody;
- To promote the health and well-being of all children under the state's care; and
- To prevent the occurrence of child abuse, neglect, and abandonment.

Florida's dependency system identifies children and families in need of services through reports to the central abuse hotline and child protective investigations. The Department of Children and Families (DCF) works with those families to address the problems endangering children, if possible. 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. If the problems are not addressed, the child welfare system finds safe out-of-home placements for these children.

DCF contracts with community-based care lead agencies (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 in turn 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>2</sup> Ultimately, DCF is responsible for program oversight and the overall performance of the child welfare system.<sup>3</sup>

During state fiscal year (SFY) 2022-23, there were a total of 618,916 Florida Abuse Hotline contacts for potential child abuse and neglect, and 35 percent of those contacts were screened in because they met criteria to trigger an investigation or assessment.<sup>4</sup> Ultimately, 10 percent of children who were investigated or assessed were found to be victims of maltreatment.<sup>5</sup>

Approximately 59,000 children statewide receive child welfare services. Of those children, roughly 48 percent are in in-home care and 52 percent are in out-of-home care.<sup>6</sup>

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<sup>1</sup> S. 39.001(1)(a), F.S.

<sup>2</sup> OPPAGA, report 06-50.

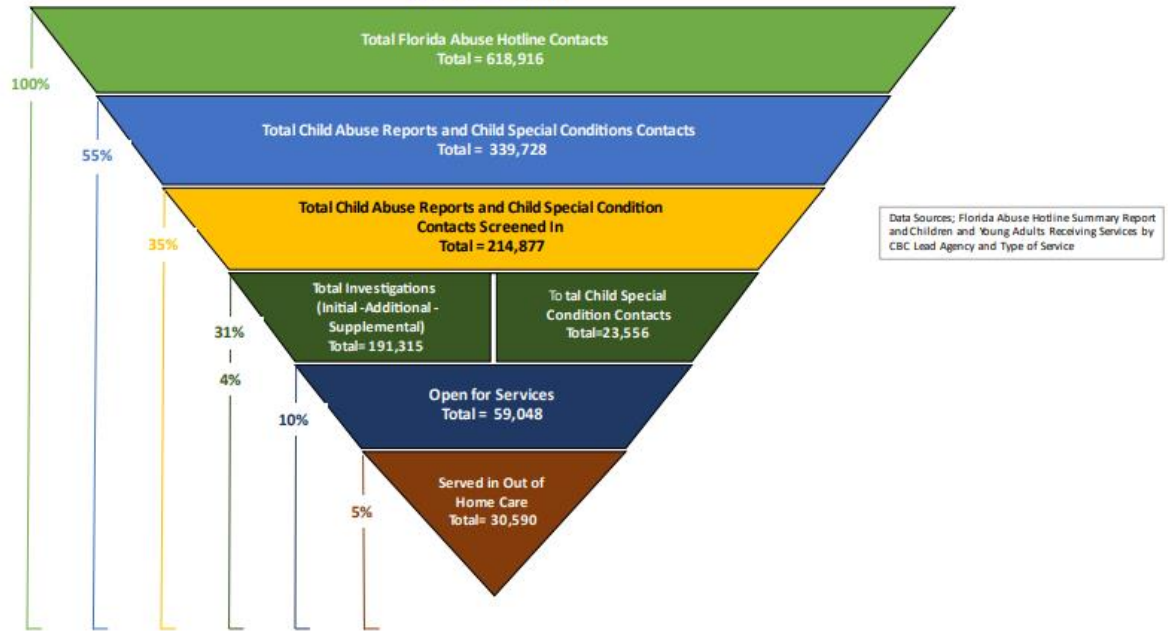
<sup>3</sup> *Id.*

<sup>4</sup> Florida Department of Children and Families, *Child Welfare Key Indicators Monthly Report October 2023: A Results-Oriented Accountability Report*, Office of Child Welfare, p. 9 (Oct. 2023), [https://www.myflfamilies.com/sites/default/files/2023-11/KI\\_Monthly\\_Report\\_Oct2023.pdf](https://www.myflfamilies.com/sites/default/files/2023-11/KI_Monthly_Report_Oct2023.pdf) (last visited Feb. 6, 2024).

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

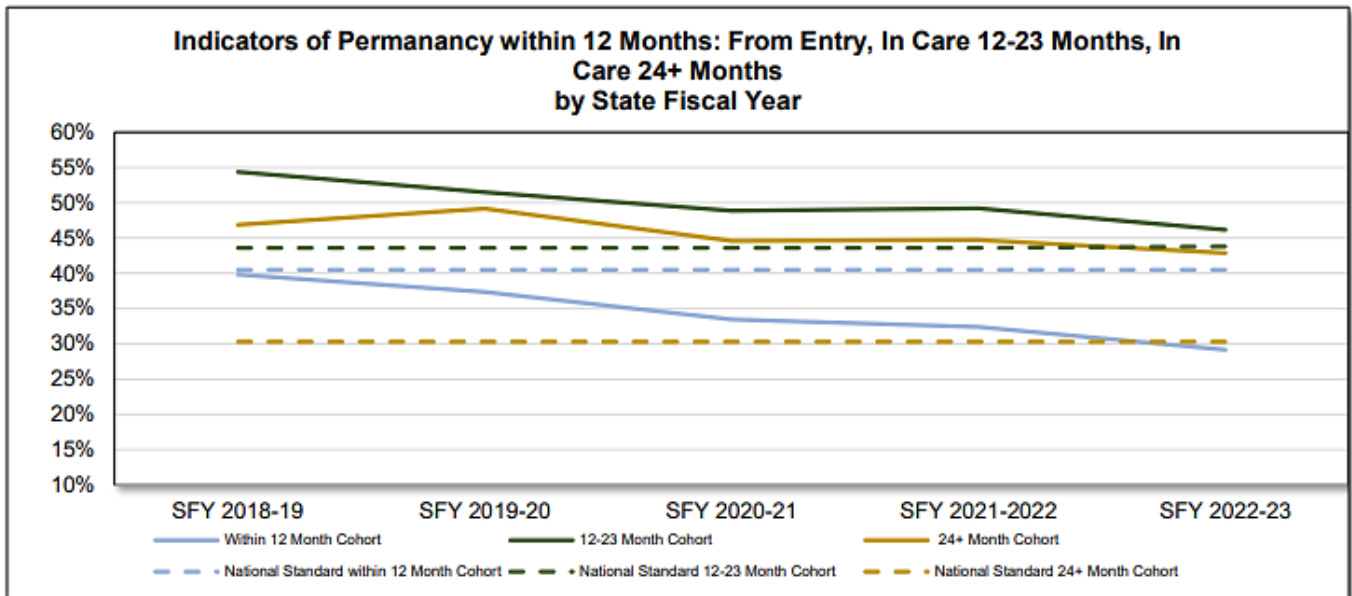
<sup>6</sup> *Id.*

## Florida Child Protection System Overview 2022-23 SFY



Data Sources; Florida Abuse Hotline Summary Report and Children and Young Adults Receiving Services by CBC Lead Agency and Type of Service

Also for SFY 2022-23, DCF’s permanency report describes Florida’s performance for three cohorts of children entering care (children in care within 12 months; children in care 12-23 months; and children in care 24 months of longer).<sup>7</sup> As the below chart illustrates, Florida’s performance for each cohort generally declined over the past several years, with the children within the 12 months cohort declining most notably and falling below national standards.<sup>8</sup>



### Dependency Case Process

<sup>7</sup> Florida Department of Children and Families, *Results-Oriented Accountability 2023 Annual Performance Report*, Office of Quality and Innovation, p. 26, (Nov. 21, 2023), <https://www.myflfamilies.com/sites/default/files/2023-11/ROA%20Annual%20Performance%20Report%202022-23.pdf> (last visited Feb. 6, 2024).

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

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>9</sup>

### The Dependency Court Process

Dependency Proceeding	Description of Process	Controlling Statute
<b>Removal</b>	A child protective investigation determines the child's home is unsafe, and the child is removed.	s. 39.401, F.S.
<b>Shelter Hearing</b>	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.
<b>Petition for Dependency</b>	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.
<b>Arraignment Hearing and Shelter Review</b>	An arraignment 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.
<b>Adjudicatory Trial</b>	An adjudicatory trial is held within 30 days of arraignment. The judge determines whether a child is dependent during trial.	s. 39.507, F.S.
<b>Disposition Hearing</b>	If the child is found dependent, disposition occurs within 15 days of arraignment 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.
<b>Postdisposition hearing</b>	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.
<b>Judicial Review Hearings</b>	The court must review the case plan and placement every 6 months, or upon motion of a party.	s. 39.701, F.S.
<b>Petition for Termination of Parental Rights</b>	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.
<b>Advisory Hearing</b>	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.
<b>Adjudicatory Hearing</b>	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.

The Florida Supreme Court's *Florida Rules of Juvenile Procedure* control procedural matters for ch. 39 dependency proceedings unless otherwise provided by law.<sup>10</sup>

<sup>9</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.

<sup>10</sup> s. 39.013(1), F.S.; Fla. R. Juv. P. 8.000.

## Parties to Dependency Cases

The Florida Constitution requires that the courts “be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay.”<sup>11</sup> Generally, persons with an interest in the outcome of legal action, and who are necessary or proper to a complete resolution of the case, are parties to the legal action.<sup>12</sup>

In ch. 39 court cases, the terms “party” and “parties” include the petitioner, the child who is the subject of the dependency case, the child’s parent(s), DCF, the guardian ad litem, or the representative of the guardian ad litem program (when appointed).<sup>13</sup> Any party to a ch. 39 proceeding who is affected by a court order may appeal to the appropriate appellate court.<sup>14</sup>

## Multidisciplinary Teams

The use of a multidisciplinary team (MDT) in child welfare settings is a concept that has been an established practice for over 60 years with hospital-based child protection teams<sup>15</sup> and, more recently, child advocacy centers.<sup>16</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>17</sup> By sharing decision-making and working together, it is more likely that positive and lasting outcomes will be achieved.<sup>18</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>19</sup> As a result, a number of states<sup>20</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>21</sup>

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

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<sup>11</sup> Art. I, s. 21, Fla. Const.

<sup>12</sup> See Fla. R. Civ. P. 1.210(a).

<sup>13</sup> S. 39.01(58), F.S.; Fla. R. Juv. P. 8.210(a).

<sup>14</sup> S. 39.510(1), F.S.; S. 39.815(1), F.S.

<sup>15</sup> The Kempe Foundation, *Child Protection Team Celebrates 60 Years*, <http://www.kempe.org/child-protection-team-celebrates-60-years> (last visited Feb. 6, 2024).

<sup>16</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 Feb. 6, 2024).

<sup>17</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 Feb. 6, 2024).

<sup>18</sup> *Id.*

<sup>19</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 Feb. 6, 2024).

State of Tennessee Department of Children’s Services, *Administrative Policies and Procedures: 31.7*, <https://files.dcs.tn.gov/policies/chap31/31.7.pdf> (last visited Feb. 6, 2024).

<sup>21</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 Feb. 6, 2024).

- 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>22</sup> Children served by an MDT had fewer removals after intervention, fewer adjudications of jurisdiction, and fewer petitions to terminate parental rights.<sup>23</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>24</sup>

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

### *Significant Relationships*

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>25</sup> Studies indicate children who do well despite serious hardship have had at least one stable and committed relationship with a supportive adult.<sup>26</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.

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>27</sup>

### *Florida Child Welfare System Performance Serving Children*

The DCF infographic below scores the health of Florida's child welfare system at the circuit level.<sup>28</sup> DCF identifies areas with the most significant systemic impact on improving permanency and well-being<sup>29</sup> and evaluates progress toward achieving permanency, safety, and well-being for children in the welfare system. The overall score for each of the 20 circuits aggregates individual circuit performance scores on permanency, safety, and well-being. For fiscal year (FY) 2022-23, the overall median score

<sup>22</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, available at [Children's Justice: How to Improve Legal Representation of Children in the Child Welfare System \(umich.edu\)](https://www.umich.edu/childrens-justice) (last visited Feb. 6, 2024).

<sup>23</sup> *Id.*

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

<sup>25</sup> S. 409.1451, F.S.

<sup>26</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.wpenginpowered.com/wp-content/uploads/2015/05/The-Science-of-Resilience2.pdf>, (last visited Feb. 6, 2024).

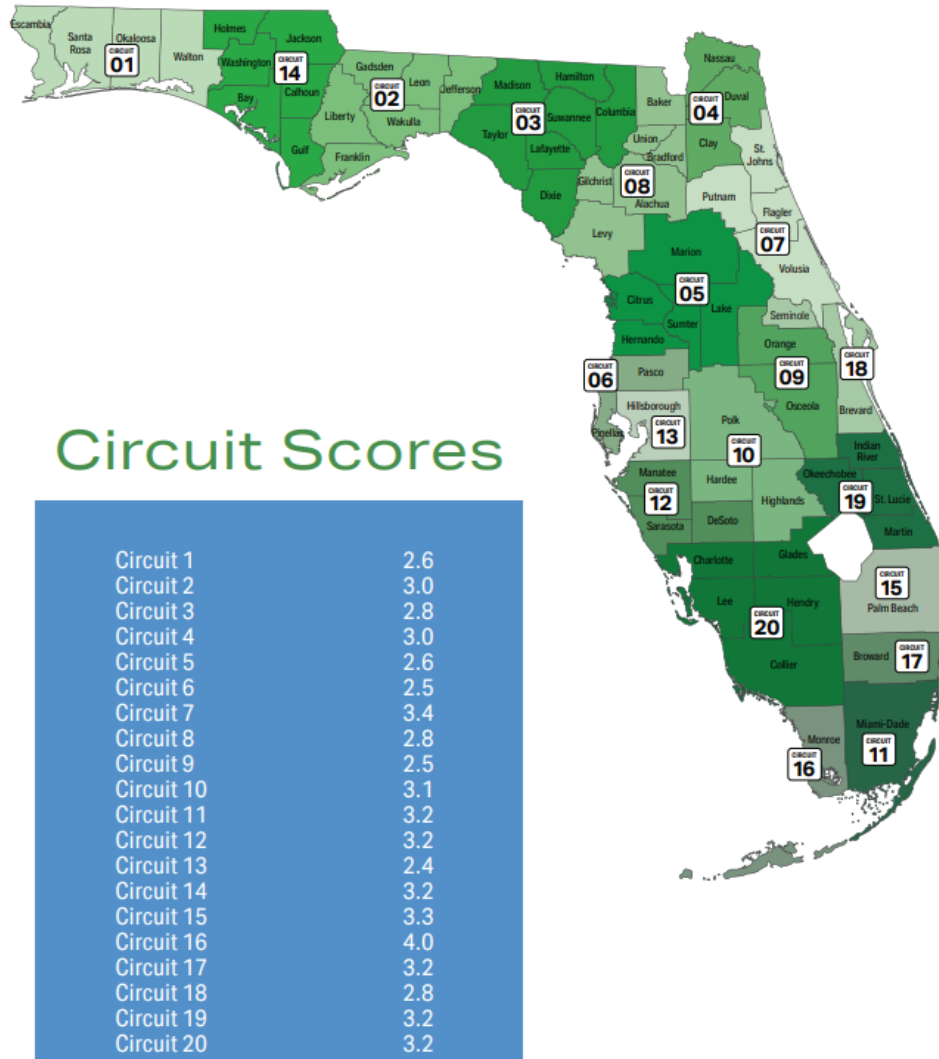
<sup>27</sup> Office of Program Policy Analysis and Government Accountability (OPPAGA), *Independent Living Services - Presentation to the Senate Committee on Children, Families, and Elder Affairs*, January 24, 2023, available at [https://oppaga.fl.gov/Documents/Presentations/OPPAGA%20ILS%20Senate%20Presentation\\_final.pdf](https://oppaga.fl.gov/Documents/Presentations/OPPAGA%20ILS%20Senate%20Presentation_final.pdf) (last visited Feb. 6, 2024).

<sup>28</sup> Florida Department of Children and Families, *Annual Accountability Report on the Health of Florida's Child Welfare System: Fiscal Year 2022-2023*, p. 6 (Dec. 1, 2023) <https://www.myflfamilies.com/sites/default/files/2023-12/Annual%20Accountability%20Report%20on%20the%20Health%20of%20Floridas%20Child%20Welfare%20System%20FY%202022-23.pdf> (last visited Feb. 22, 2024).

<sup>29</sup> *Id.* at p. 3.



is 3.0 out of a possible 5, and 60% of circuits earned a 3.0 or higher.<sup>30</sup> A score over 3.50 indicates the circuit's performance exceeds established standards.<sup>31</sup> A score between 3.00-3.349 indicates the circuit's performance meets established standards.<sup>32</sup> A score of 2.00-2.99 indicated the circuit's performance does not meet established standards.<sup>33</sup> In FY 2022-23, DCF gave 11 of 20 circuits a score of 3.0 or higher, indicating that the circuit's performance exceeds established standards.<sup>34</sup>



<sup>30</sup> *Id.* at p. 2.

<sup>31</sup> *Id.* at p. 7.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at p. 6.

## 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>35</sup> They have more 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>36</sup> These young adults also have a higher need for public assistance and are more likely to experience housing instability and homelessness.<sup>37</sup>

In federal fiscal year 2021, the federal Children's Bureau within the U.S. Department of Health & Human Services reported 46,694 teens and young adults entered foster care in the United States,<sup>38</sup> with 2,167 teens and young adults entering Florida's foster care system.<sup>39</sup> The Children's Bureau also collects information and outcomes on youth and young adults currently or formerly in foster care who received independent living services supported by federal funds.<sup>40</sup> To this end, the Children's Bureau's National Youth in Transition Database (NYTD) representation 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.

DCF will establish its fifth NYTD report (Oct. 2022 – Sept. 2023) that surveys youth in Florida's foster care system beginning on their 17<sup>th</sup> birthday.<sup>41</sup> In the interim, the most recent Florida NYTD available on DCF's website is the 2018 report.<sup>42</sup> In the chart below, the 2018 Florida NYTD documented outcomes related to education, employment, housing, finances and transportation, health and well-being, and connections:<sup>43</sup>

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<sup>35</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 Feb. 6, 2024).

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

<sup>37</sup> *Id.*

<sup>38</sup> Children's Bureau, *The Adoption and Foster Care Analysis and Reporting System (AFCARS) FY 2021 data*, U.S. Department of Health and Human Services, p. 2, June 28, 2022, <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcars-report-29.pdf> (last visited Feb. 6, 2024).

<sup>39</sup> Children's Bureau, *The Adoption and Foster Care Analysis and Reporting System (AFCARS) FY 2021 data: Florida*, U.S. Department of Health and Human Services, p. 1, June 28, 2022, <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcars-tar-fl-2021.pdf> (last visited Feb. 6, 2024).

<sup>40</sup> Children's Bureau, *Data and Statistics: National Youth in Transition Database*, U.S. Department of Health & Human Services, [https://www.acf.hhs.gov/cb/data-research/data-and-statistics-nytd#FL\\_26606](https://www.acf.hhs.gov/cb/data-research/data-and-statistics-nytd#FL_26606) (last visited Feb. 6, 2024).

<sup>41</sup> Florida Department of Children and Families, *Independent Living Services Annual Report*, Office of Child Welfare, Feb. 2023, p. 15 [https://www.myflfamilies.com/sites/default/files/2023-07/Independent\\_Living\\_Services\\_Report\\_2022.pdf](https://www.myflfamilies.com/sites/default/files/2023-07/Independent_Living_Services_Report_2022.pdf) (last visited Feb. 6, 2024).

<sup>42</sup> Florida Department of Children and Families, *Annual Reports for Independent Living*, Child and Family Services, <https://www.myflfamilies.com/services/child-family/independent-living/annual-reports-for-independent-living> (last visited Feb. 6, 2024).

<sup>43</sup> Florida Department of Children and Families, *Florida National Youth in Transition Database, 2018 Survey Data Report*, <https://www.myflfamilies.com/sites/default/files/2023-06/2018%20Florida%20NYTD%20Statewide%20Report%20Final.pdf> (last visited Feb. 6, 2024).



## 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>44</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>

### 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.
- Developing and administering the Step into Success Workforce Education and Internship Pilot Program for foster youth and former foster youth, as required under s. 409.1455, F.S.<sup>45</sup>

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

<sup>45</sup> S. 414.56, F.S.

## Disability of Non-age and Legal Counsel for Minors

The principal disability of nonage relates to the power of a minor to contract.<sup>46</sup> At common law, unemancipated children generally lack the legal capacity to enter into binding contractual agreements.<sup>47</sup> A minor's agreements generally are voidable rather than void.<sup>48</sup> When the minor attains the age of majority and ratifies a contract made while a minor, the contract will be treated as valid from inception, and the optional right to disaffirm abandoned.<sup>49</sup>

The disability of non-age is expressly recognized in the Florida Constitution and in statute.<sup>50</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>51</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>52</sup>

The U.S. Supreme Court has only found a constitutional right to counsel for minors in delinquency proceedings.<sup>53</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>54</sup>

However, in addition to those proceedings governed by the *In re Gault* decision, Florida law authorizes the appointment of legal counsel for minors in certain other situations:

- If the disability of non-age has been removed under ch. 743, F.S.,<sup>55</sup>
- 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.,
- When the child's change of placement from a foster parent is being contested under s. 39.522(3), F.S., or
- If the child is within one of the five categories requiring mandatory appointment in dependency proceedings (discussed further below).<sup>56</sup>

In all other circumstances, "an adult person of reasonable judgment and integrity should conduct the litigation for the minor in judicial proceedings."<sup>57</sup>

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<sup>46</sup> Fla. Jur. 2d Family Law § 252 (Dec. 2023 Update) (Accessed Westlaw Nov. 30, 2023).

<sup>47</sup> *Id.* at § 495.

<sup>48</sup> *Lee v. Thompson*, 124 Fla. 494, 499 (Fla. 1936).

<sup>49</sup> *Id.*

<sup>50</sup> Fla. Const. Art. III, § 11(a)(17); s. 743.01, 07, F.S.

<sup>51</sup> *Garner v. I. E. Schilling Co.*, 174 So. 837, 839 (Fla. 1937).

<sup>52</sup> *Buckner v. Family Services of Central Florida, Inc.*, 876 So.2d 1285 (Fla. 5<sup>th</sup> DCA 2004).

<sup>53</sup> *In re Gault*, 387 U.S. 1, 41 (1967).

<sup>54</sup> *Id.* at p. 36.

<sup>55</sup> A circuit court has jurisdiction to remove the disabilities of nonage of a minor age 16 or older residing in Florida. To do so, the minor's natural guardian, legal guardian, or guardian ad litem must file a petition to remove the child's disability of nonage. S. 743.015, F.S.

<sup>56</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, 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.

<sup>57</sup> *Garner v. I. E. Schilling Co.*, 174 So. 837, 839 (Fla. 1937).

## Best Interest Considerations in the Child Welfare System

In Florida, the state government collectively pursues a best interest standard in a ch. 39 dependency proceeding to determine what course of action is in the child's best interest.<sup>58</sup> 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>59</sup>

The best interest standard contemplates many nuanced factors of each child's physical, mental, emotional, and social well-being to determine each child's best permanency outcome. Possible permanency outcomes include family reunification, out-of-home foster care, permanent guardianship, or adoption. The best interest standard prioritizes a safe and sustainable environment for the child's upbringing and development. Variables of consideration include sibling connections, school continuity, extracurricular activities of importance to the child, and consistent access to necessary health care services. If the child is of a sufficient age and capacity to express a preference, then the child's preference will be considered.<sup>60</sup>

## Representation of Children in the Child Welfare System

The two primary models of child representation in the child welfare system are best interest and expressed wishes.

There are two types of best interest representation: Attorney or Professional<sup>61</sup> and Lay Volunteer.<sup>62</sup>

Expressed wishes or client-directed<sup>63</sup> representation occurs when an attorney is appointed 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>64</sup>

Florida's child representation system authorizes both types of representation. Current law requires best interest representation through guardians ad litem (GALs), who are to be appointed at the earliest possible time in any abuse and neglect proceedings, though not all children in Florida's dependency

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<sup>58</sup> See Ss. 39.01375, F.S., 39.820(1), F.S.

<sup>59</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 Feb. 6, 2024).

<sup>60</sup> S. 39.01375, F.S.

<sup>61</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, Office of Program Policy Analysis and Government Accountability (OPPAGA) Research Memorandum, *OPPAGA Review of Florida's Guardian ad Litem Program*, Exhibit 3, (December 2020), [OPPAGA Review of Florida's Guardian ad Litem Program \(floridabar.org\)](https://www-media.floridabar.org/uploads/2021/03/OPPAGA-Guardian-Ad-Litem-Program.pdf) (last visited Feb. 6, 2024).

<sup>62</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 certain circumstances.

<sup>63</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 Feb. 6, 2024).

<sup>64</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> (last visited Feb. 6, 2024). 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 regardless of the advocacy model deployed is the benefits of having strong advocates with in-depth knowledge of social and legal systems." p. ii, *Literature Review*.

system have GALs.<sup>65</sup> As described previously, certain children in Florida's child welfare system are required to have attorneys, or may be appointed one at the discretion of the court.<sup>66</sup>

### Guardians ad Litem

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 must appoint a guardian ad litem for the child, unless the court determines representation to be unnecessary.<sup>67</sup> The guardian ad litem is a party to any judicial proceeding from the date of the appointment until the date of discharge. The guardian ad litem appointment is for the limited purpose of a particular child welfare case. While the guardian ad litem generally does not represent the child in any other legal matters, they are not precluded from choosing to represent the child in other matters. Once appointed, the guardian ad litem serves as the child's fiduciary<sup>68</sup> representative in court to speak for the child's best interest.

During their appointment, the guardian ad litem must fulfill three primary responsibilities:<sup>69</sup>

- To investigate the case and file a written report with the court that summarizes the GAL's findings, a statement of child's wishes, and the GAL's recommendations;
- To be present at all court hearings unless excused by the court; and
- To represent the interests of the child until the jurisdiction of the court over the child terminates, or until excused by the court.

Florida law outlines requirements to serve as a GAL.<sup>70</sup> A person appointed as GAL 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.

#### *Florida's Statewide GAL Office*

The Statewide GAL Office manages a network of volunteer advocates and professional staff representing the best interest of abused, abandoned, and neglected children. The Statewide GAL Office within the Justice Administrative Commission (JAC) has oversight responsibilities for and provides technical assistance to all guardian ad litem programs located within the judicial circuits.<sup>71</sup>

In Florida, when the court appoints the Statewide GAL Office to represent the best interests of the child, the Office assigns the child a guardian ad litem multidisciplinary team. With this team, the child typically 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>72</sup>

The Statewide GAL Office employs more than 180 staff attorneys and relies on more than 200 pro bono attorneys volunteering their services.<sup>73</sup> In 2021, the GAL served more than 37,000 kids and had more than 13,000 volunteers.<sup>74</sup> Typically, a GAL volunteer represents 1 or 2 children.<sup>75</sup>

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<sup>65</sup> S. 39.822(1), F.S.

<sup>66</sup> S. 39.01305, F.S.

<sup>67</sup> S. 39.402(8)(c)1., F.S.

<sup>68</sup> Fiduciary representation contemplates a legally cognizable relationship of trust where an intermediary figure advances the interests of a principal for the primary and direct benefit of the principal's designated beneficiary.

<sup>69</sup> Fla. R. Juv. P. 8.215(c)(1-3).

<sup>70</sup> S. 61.402, F.S.

<sup>71</sup> S. 39.8296(2)(b), F.S.

<sup>72</sup> *Supra* note 51.

<sup>73</sup> Florida Statewide Guardian ad Litem Office, About Us, available at <https://guardianadlitem.org/about/> (last visited Feb. 6, 2024).

<sup>74</sup> *Id.*

<sup>75</sup> Florida Statewide Guardian Ad Litem Office, Agency Analysis of SB 1920 (2020), p. 4 (Mar. 14, 2021).

Federal and Florida law provide that a GAL must be appointed to represent the child in every case.<sup>76</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>77</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>78</sup>

Under Florida law, a court must appoint a GAL at the earliest possible time to represent the child in a dependency proceeding.<sup>79</sup> The FY 23-24 Long Range Program Plan for the GAL 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>80</sup>
  - 85.2% of children in the dependency system each month.<sup>81</sup>
- 1,671 new volunteers were certified, with a total of 9,342 volunteers active each month on average.<sup>82</sup>

Additionally, the Statewide GAL Program reported representing 93.4% of children at the beginning of FY 2023-24.<sup>83</sup>

In some cases, the GAL may discharge from a case when a child’s permanency goal has been established and the child is in a stable placement.<sup>84</sup>

Chapter 39, F.S., defines “guardian ad litem” 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>85</sup> in a proceeding as provided by law, including ch. 39, F.S., until discharged by the court.<sup>86</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>87</sup> Chapter 39 provisions describe the role of the guardian ad litem as either representing the child, or representing the child’s best interest, depending on the specific section.

### *GAL Program Leadership*

A Governor-appointed executive director helms the Statewide GAL Office.<sup>88</sup> The executive director must have knowledge of dependency law and social service delivery systems available to meet the needs of children who are abused, neglected, or abandoned.<sup>89</sup> As a full-time official appointed to a

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<sup>76</sup> 42 U.S.C. 67 §5106a.(b)(2)(xiii); S. 39.822(1), F.S.

<sup>77</sup> 42 U.S.C. 67 §5106a.(b)(2)(xiii).

<sup>78</sup> *Id.*

<sup>79</sup> S. 39.822(1), F.S.

<sup>80</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 Feb. 6, 2024).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Justice Administration Commission, *Long-Range Program Plan, FY 2024-25*, p. 16

<http://floridafiscalportal.state.fl.us/Document.aspx?ID=26899&DocType=PDF> (last visited Feb. 6, 2024).

<sup>84</sup> OPPAGA Memo at p. 15

<sup>85</sup> *Supra* note 51 at 3.

<sup>86</sup> S. 39.820(1), F.S.

<sup>87</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>88</sup> S. 39.8296(2)(a), F.S.

<sup>89</sup> *Id.*

three-year term, the director has the following eight duties:<sup>90</sup>

- Collect, track, and report reliable and consistent case data.
- Compare and contrast Florida's GAL program with other states.
- Develop statewide performance measures and standards, with local GAL office input.
- Develop head trauma and brain injury recognition and response training for the guardian ad litem program.
- Maximize funding sources and evaluate the services offered in each judicial circuit.
- Exercise awareness and innovation to preserve civil and constitutional rights.
- Promote normalcy and trust between children and the court-appointed volunteer guardian ad litem by allowing the court-appointed volunteer guardian ad litem to transport a child.
- Submit annual reports to the Governor, Senate President, Speaker of the House of Representatives, and Chief Justice of the Supreme Court.

Since the executive director reports to the Governor, the Governor may remove him or her for cause.<sup>91</sup> Any person appointed to serve as the executive director may be permitted to serve more than one term.<sup>92</sup> The Governor appoints an executive director from a shortlist of at least three eligible applicants submitted by the Guardian Ad Litem Qualifications Committee.<sup>93</sup> This five-person committee solicits applications for the executive director position by statewide advertisement.<sup>94</sup> The Governor may appoint an executive director from the shortlist or may reject nominations and request new nominees.<sup>95</sup>

### *GAL Program Appropriations*

For FY 2023-24, the Statewide GAL Office received \$58.2 million in general revenue funding plus \$5.0 million in trust funds (grants and donations).<sup>96</sup> For FY 2022-23, the Statewide GAL Office represented an average of 24,202 children per month and 35,918 total children for the fiscal year.<sup>97</sup> They certified 1,442 new volunteers and retained an average of 8,857 active volunteers each month.<sup>98</sup>

### *GAL Program Direct Support Organization*

Pursuant to authority in s. 39.8298, F.S., the Statewide GAL Office maintains a direct-support organization (DSO) known as the Florida Guardian ad Litem Foundation.<sup>99</sup> The DSO is a Florida nonprofit corporation and operates to fundraise, manage a portfolio of investments in securities, funds, and assets, and spend for the direct or indirect benefit of the Statewide GAL Office.<sup>100</sup> Established by contract, the DSO must operate consistently with the goals and purposes of the Statewide GAL Office.<sup>101</sup> The DSO's board of directors are appointed by, and serve at the pleasure of, the Statewide GAL Office executive director,<sup>102</sup> who also approves the DSO's articles of incorporation, bylaws, and annual budget.<sup>103</sup> If a DSO ceases to exist or if the contract is terminated by the executive director, all moneys and property held in trust revert to the Statewide GAL Office.<sup>104</sup>

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<sup>90</sup> *Id.*; S. 39.8296(2)(b), F.S.

<sup>91</sup> S. 39.8296(2)(a), F.S.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> Ch. 2023-239, Laws of Fla., Specific Appropriations 785-793 "Statewide GAL Office."

<sup>97</sup> Florida Justice Administration Commission, *Agency Long Range Program Plan for Fiscal Year 2024-2025*, Florida Fiscal Portal, p. 15 (Sept. 29, 2023).

<sup>98</sup> *Id.* at 16.

<sup>99</sup> S. 39.8298(1), F.S.; see s. 39.8296(2)(b)5.-6., F.S.; Dennis Moore, *RE: Report of Guardian ad Litem Direct-Support Organization, Florida Statewide Guardian ad Litem Office*, August 15, 2023, <https://guardianadlitem.org/wp-content/uploads/2023/10/DSO-Report-2023.pdf> (last visited Feb. 6, 2024).

<sup>100</sup> S. 39.8298(1)(a)-(b), F.S.

<sup>101</sup> Ss. 39.8298(1)(c) and 39.8298(2), F.S.

<sup>102</sup> S. 39.8298(3), F.S.

<sup>103</sup> S. 39.8298(2)(a)-(c), F.S.

<sup>104</sup> S. 39.8298(2)(c), F.S.



## Attorneys 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 whom the AAL 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 whom the AAL is appointed to represent and will express the person's wishes to the court or jury. Like other attorneys, including attorneys employed by the GAL program, AAL's practice is subject to regulation.

### **The Practice of Law in Florida**

The Florida Constitution vests the Florida Supreme Court with exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.<sup>105</sup> The Court performs those official functions through two separate arms: the Florida Board of Bar Examiners, which screens, tests, and certifies candidates for admission to the practice, and The Florida Bar, the investigative and prosecutorial authority in the lawyer regulatory practice.<sup>106</sup>

The Supreme Court exercises inherent supervisory power to prohibit the unauthorized practice of law.<sup>107</sup> The unauthorized practice of law covers both lawyers not licensed by the Supreme Court and non-lawyers who lack court authorization to practice law.<sup>108</sup> An example of non-lawyers who obtain court authorization to practice law is qualified law students authorized to represent clients in legal intern programs.<sup>109</sup> Ultimately, the purpose of regulating the practice of law is to protect the public "from incompetent, unethical, or irresponsible representation."<sup>110</sup>

Attorneys are officers of the court.<sup>111</sup> To this end, the Supreme Court – through The Florida Bar – governs the attorney-client relationship by the *Florida Rules of Professional Conduct*.<sup>112</sup>

The client must receive the following services from their attorney:

- *Client-Directed Representation* – the client's attorney must abide by a client's decisions concerning the objectives of representation and to reasonably consult with the client as to the means by which they are to be pursued.<sup>113</sup>
- *Competent Representation* – legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.<sup>114</sup>
- *Confidentiality* – the client's attorney must preserve confidentiality unless the client gives informed consent or a specifically listed mandatory or discretionary exception applies.<sup>115</sup>
- *Diligent Representation* – the client's attorney must act with reasonable diligence and promptness. This rule expects the attorney to keep a controlled workload, to prioritize faithful advocacy, and to carry through to conclusion all matters undertaken for a client.<sup>116</sup>
- *Independence* – the client's attorney cannot permit the person who recommends, employs, or pays the attorney to render legal services for the client to direct or regulate the lawyer's professional judgment in rendering such legal services.<sup>117</sup>

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<sup>105</sup> Art. V, s. 15, Fla. Const.

<sup>106</sup> The Florida Bar, "Frequently Asked Questions." <https://www.floridabar.org/about/faq/> (last visited Feb. 6, 2024).

<sup>107</sup> *The Florida Bar v. Moses*, 380 So.2d 412, 417 (Fla. 1989).

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *The Florida Bar v. Moses*, 380 So.2d 412, 417 (Fla. 1989).

<sup>111</sup> *Petition of Florida State Bar Ass'n*, 40 So.2d 902, 907 (Fla. 1949).

<sup>112</sup> The Florida Supreme Court, "Rules Regulating the Florida Bar: Chapter 4 – Rules of Professional Conduct." [https://www-media.floridabar.org/uploads/2024/01/2024\\_07-JAN-Chapter-4-RRTFB-1-8-2023.pdf](https://www-media.floridabar.org/uploads/2024/01/2024_07-JAN-Chapter-4-RRTFB-1-8-2023.pdf) (last visited Feb. 6, 2024).

<sup>113</sup> *Id.* at Rule 4-1.2(a) Objectives and Scope of Representation – Lawyer to Abide by Client's Decisions.

<sup>114</sup> *Id.* at Rule 4-1.1 Competence.

<sup>115</sup> *Id.* at Rule 4-1.6 Confidentiality of Information.

<sup>116</sup> *Id.* at Rule 4-1.3 Diligence, Comments.

<sup>117</sup> *Id.* at Rule 4-5.4 Professional Independence of a Lawyer.

- *Prevent or Overcome Conflicts* – An attorney presumptively cannot represent a new client if there is a substantial risk that representing the new client would materially limit the attorney’s responsibilities to a current client.<sup>118</sup> But, even when a conflict of interest exists, it is possible for the attorney overcome this presumption. To do so, four criteria must be met:<sup>119</sup>
  1. The attorney reasonably believes that they can provide competent and diligent representation to each affected client;
  2. The representation is not prohibited by law;
  3. The representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and
  4. Each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.

Additionally, the Supreme Court specifically addresses those attorney-client relationships where the client is an organization,<sup>120</sup> when the client is not represented by counsel,<sup>121</sup> and when the client suffers diminished capacity.<sup>122</sup> When a client’s capacity to make adequately considered decisions in connection with legal representation is diminished because of minority, the attorney must maintain a normal attorney-client relationship with the client as much as possible.<sup>123</sup> For example, comments to the Florida Bar rule suggest children as young as five or six years of age are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. The comments to the rule also state that if a legal representative has already been appointed for an incapacitated or minor client, the lawyer should ordinarily look to any appointed legal representative for decisions on behalf of the client.<sup>124</sup>

### **Appointment of Attorneys in the Child Welfare System**

Section 39.01305, F.S., requires the court to appoint attorneys for children subject to ch. 39 proceedings who have one or more statutorily-defined “special needs”. To qualify as a special-needs child, the child must:<sup>125</sup>

- Reside in a skilled nursing facility or be considered for placement in a skilled nursing home;
- Be prescribed a psychotropic medication but decline assent to the psychotropic medication;
- Have a diagnosis of a developmental disability as defined in s. 393.063, F.S.;
- Be placed in, or being considered for placement in, a residential treatment center; or
- Be a victim of human trafficking.

The Legislature appropriates funds for appointments for dependent children with certain special needs. The FY 2023-24 GAA appropriated \$2.1 million in general revenue for attorney representation for children with special needs, plus \$1.2 million in trust funds.<sup>126</sup> Operationally, the JAC manages these funds, contracting with appointed attorneys, whose fees are limited to \$1,450 per child per year, subject to appropriations and to review by the JAC for reasonableness.<sup>127</sup> However, s. 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.

<sup>118</sup> The Florida Supreme Court, “Rules Regulating the Florida Bar: Chapter 4 - Rules of Professional Conduct, Rule 4-1.7(a)(2) Conflicts of Interests. [https://www-media.floridabar.org/uploads/2024/01/2024\\_07-JAN-Chapter-4-RRTFB-1-8-2023.pdf](https://www-media.floridabar.org/uploads/2024/01/2024_07-JAN-Chapter-4-RRTFB-1-8-2023.pdf) (last visited Feb. 6, 2024).

<sup>119</sup> *Id.* at Rule 4-1.7(b)(1)-(4).

<sup>120</sup> *Id.* at Rule 4-1.13(a) Organization as Client – Representation of Organization.

<sup>121</sup> *Id.* at Rule 4-4.3 Dealing with Unrepresented Persons.

<sup>122</sup> *Id.* at Rule 4-1.14 Client with Diminished Capacity.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at Comments.

<sup>125</sup> S. 39.01305(3)(a)-(e), F.S.

<sup>126</sup> Ch. 2023-239, Laws of Fla., Specific Appropriation 769 “Legal Representation for Dependent Children with Special Needs.”

<sup>127</sup> *Id.*

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 court has discretionary authority to appoint attorneys for other dependent children who do not qualify as having special needs.<sup>128</sup>

## **Effect of the Bill**

### **Attorneys ad Litem Appointment for Children in the Child Welfare System**

The bill changes all references to “attorneys” for children in the dependency system to “attorneys ad litem”, which under the bill are lawyers with an attorney-client relationship with the child.

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.

### **Guardian ad Litem Role**

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%.

The bill conforms references to a GAL’s role in ch. 39, F.S., 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.

## **Statewide GAL Office**

The bill changes references from the “GAL Program” to the “Statewide GAL Office”.

### 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 (MDT)

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 MDT to represent the child. The bill includes mentors, pro bono attorneys, social workers, and volunteers as part of the MDT.

### Training

The bill:

- Gives the Statewide GAL Office unilateral authority to regularly update the GAL training program by eliminating the existing curriculum committee.
- Requires 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.

## **Transition-Age Youth**

### Case Planning

The bill mandates that any case plan tailored for a transition to independent living must 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 Statewide GAL Office to help those children establish a mentorship with at least one supportive adult. And if the child cannot identify a supportive adult, the bill compels the Statewide GAL Office to work with DCF OCC to find at least one supportive adult. The bill requires documented evidence of a formal agreement in the child’s court file.

### Fostering Prosperity Grants

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.
- SAT/ACT preparation, including one-on-one support and fee waivers for the examinations.
- Pursuing trade careers or paid apprenticeships.

Even if a youth later reunifies with the youth’s parents, the grants remain available for the youth for up to one year.

## Other Provisions

The bill also makes numerous conforming changes to give effect to the substantive provisions of the bill.

The bill 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.

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

### 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; guardian ad litem and attorney ad litem.

**Section 7:** Amending s. 39.01305, F.S., relating to appointment of an attorney for a dependent child.

**Section 8:** Amending s. 39.0132, F.S., relating to oaths, records, and confidential information.

**Section 9:** Amending s. 39.0136, F.S., relating to time limitations; continuances.

**Section 10:** Amending s. 39.01375, F.S., relating to best interest determination for placement.

**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 person with or requesting child custody.

**Section 17:** Amending s. 39.4085, F.S., relating to goals for dependent children; responsibilities; education; Office of the Children's Ombudsman.

**Section 18:** Amending s. 39.502, F.S., relating to notice, process, and service.

**Section 19:** Amending s. 39.522, F.S., relating to postdisposition change of custody.

**Section 20:** Amending s. 39.6012, F.S., relating to case plan tasks; services.

**Section 21:** Creates s. 39.6036, F.S., relating to supportive adults for children transitioning out of foster care.

**Section 22:** Amending s. 39.621, F.S., relating to permanency determination by the court.

**Section 23:** Amending s. 39.6241, F.S., relating to another planned permanent living arrangement.

**Section 24:** Amending s. 39.701, F.S., relating to judicial review.

**Section 25:** Amending s. 39.801, F.S., relating to procedures and jurisdiction; notice; service of process.

**Section 26:** Amending s. 39.807, F.S., relating to right to counsel; guardian ad litem.

**Section 27:** Amending s. 39.808, F.S., relating to advisory hearing; pretrial status conference.

**Section 28:** Amending s. 39.815, F.S., relating to appeals.

**Section 29:** Repealing s. 39.820, F.S., relating to definitions.

**Section 30:** Amending s. 39.821, F.S., relating to qualifications of guardians ad litem.

**Section 31:** Amending s. 39.822, F.S., relating to appointment of guardian ad litem for abused, abandoned, or neglected child.

**Section 32:** Amending s. 39.827, F.S., relating to hearing for appointment of a guardian advocate.

- Section 33:** 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 34:** Amending s. 39.8297, F.S., relating to county funding for guardian ad litem employees.
- Section 35:** Amending s. 414.56, F.S., relating to the Office of Continuing Care of the Department of Children and Families.
- Section 36:** Amending s. 1009.898, F.S., relating to Fostering Prosperity grants.
- Section 37:** Amending s. 29.008, F.S., relating to county funding of court-related functions.
- Section 38:** Amending s. 39.6011, F.S., relating to case plan development.
- Section 39:** Amending s. 40.24, F.S., relating to compensation and reimbursement policy.
- Section 40:** Amending s. 43.16, F.S., relating to Justice Administrative Commission; membership, powers, and duties.
- Section 41:** Amending s. 61.402, F.S., relating to qualifications of guardians ad litem.
- Section 42:** Amending s. 110.205, F.S., relating to career service; exemptions.
- Section 43:** Amending s. 320.08058, F.S., relating to specialty license plates.
- Section 44:** Amending s. 943.053, F.S., relating to dissemination of criminal justice information; fees.
- Section 45:** Amending s. 985.43, F.S., relating to predisposition reports; other evaluations.
- Section 46:** Amending s. 985.441, F.S., relating to commitment.
- Section 47:** Amending s. 985.455, F.S., relating to other dispositional issues.
- Section 48:** Amending s. 985.461, F.S., relating to transition to adulthood.
- Section 49:** Amending s. 985.48, F.S., relating to juvenile sexual offender commitment programs; sexual abuse intervention networks.
- Section 50:** Amending s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment, or neglect.
- Section 51:** Amending s. 39.521, F.S., relating to disposition of hearings; powers of disposition.
- Section 52:** Amending s. 61.13, F.S., relating to support of children; parenting and time-sharing; powers of court.
- Section 53:** Amending s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.
- Section 54:** Amending s. 322.09, F.S., relating to application of minors; responsibility for negligence or misconduct of minor.
- Section 55:** Amending s. 394.495, F.S., relating to child and adolescent mental health system of care; programs and services.
- Section 56:** Amending s. 627.746, F.S., relating to coverage for minors who have a learner's driver license; additional premium prohibited.
- Section 57:** Amending s. 934.255, F.S., relating to subpoenas in investigations of sexual offenses.
- Section 58:** Amending s. 960.065, F.S., relating to eligibility for awards.
- Section 59:** Creating an unnumbered section of law.
- Section 60:** Providing an effective date of July 1, 2024.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.



**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

Any impacts on the Statewide Guardian ad Litem program regarding the increase in GAL appointments and Fostering Prosperity grant program can be absorbed within existing resources. Additionally, the Statewide Guardian ad Litem Office anticipates the potential for increased revenues due to eligibility for federal Title IV-E matching funds upon the approval of the DCF cost allocation plan by the federal government.<sup>129</sup>

The bill has no impact to due process or workload expenditures for the JAC.<sup>130</sup>

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

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

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On December 6, 2023, the Children, Families, and Seniors Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Creates a conforming change to s. 414.56, F.S., DCF Office of Continuing Care, in accordance with the bill's creation of s. 39.6036, F.S., supportive adults for children transitioning out of foster care.
- Creates a reciprocal responsibility for the Office of Continuing Care to work with the Statewide GAL Office to help children aging out of foster care make a lasting connection with a supportive adult.

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<sup>129</sup> *Supra* note 84, at 39.

<sup>130</sup> Email from Abram Dale, Senior Management Analyst, Justice Administrative Commission, RE: CS/SB 1224, As Amended (Feb. 6, 2024).

On February 8, 2024, the Appropriations Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Removed the proposed changes to s. 39.013, F.S., relating to the appointment of an attorney ad litem.
- Removed changes to ss. 39.01305 and 39.8298, F.S., related to representation for children with special needs and state direct-support organizations, to maintain current law.
- Made technical conforming changes to the name of the Statewide Guardian ad Litem Office.
- Renamed the Pathway to Prosperity grant program to “Fostering Prosperity,” increases the amount of time that a Fostering Prosperity grant is available to a youth aging out of care from 6 months to 1 year, and provides rulemaking authority to the State Board of Education to implement the program.

This analysis is drafted to the committee substitute as passed by the Appropriations Committee.