

Tab 1	SB 444 by Perry (CO-INTRODUCERS) Book; (Identical to H 00379) Lewd or Lascivious Molestation				
237014	A	S	CF, Perry	Delete L.27 - 32:	01/10 01:40 PM
Tab 2	SB 478 by Brodeur (CO-INTRODUCERS) Perry; Suicide Prevention				
396566	D	S	CF, Brodeur	Delete everything after	01/10 01:40 PM
Tab 3	CS/SB 566 by HP, Gruters; (Similar to H 00343) Mental Health Professional Licensure				
Tab 4	SB 756 by Diaz; Public Records/Human Trafficking Victims				
560544	A	S	CF, Diaz	Delete L.15 - 42:	01/10 01:41 PM
Tab 5	SB 772 by Diaz (CO-INTRODUCERS) Perry; Vulnerable Victims and Witnesses				
578698	A	S	CF, Diaz	Delete L.184 - 215:	01/10 01:41 PM
Tab 6	SB 912 by Brodeur; (Identical to H 01301) Community-based Care Lead Agency Expenditures				
Tab 7	SB 934 by Gruters; (Similar to H 00699) Public Records/Homelessness Counts and Information Systems				
Tab 8	SB 948 by Book; Child Welfare				

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS

Senator Garcia, Chair
Senator Book, Vice Chair

MEETING DATE: Tuesday, January 11, 2022

TIME: 1:30—3:30 p.m.

PLACE: *Mallory Horne Committee Room, 37 Senate Building*

MEMBERS: Senator Garcia, Chair; Senator Book, Vice Chair; Senators Albritton, Brodeur, Harrell, Rouson, Torres, and Wright

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 444 Perry (Identical H 379, Compare S 878)	Lewd or Lascivious Molestation; Specifying what constitutes the crime of lewd or lascivious molestation upon a person 16 years of age or older, etc. CJ 11/30/2021 Favorable CF 01/11/2022 RC	
2	SB 478 Brodeur	Suicide Prevention; Directing the Statewide Office for Suicide Prevention within the Department of Children and Families to conduct a study for specified purposes; specifying requirements for the study; requiring the office to submit the report to the Legislature and the Secretary of Children and Families by a specified date, etc. CF 01/11/2022 AHS AP	
3	CS/SB 566 Health Policy / Gruters (Similar H 343, Compare H 693, S 768)	Mental Health Professional Licensure; Revising licensure requirements for clinical social workers, marriage and family therapists, and mental health counselors, etc. HP 12/02/2021 Fav/CS CF 01/11/2022 RC	
4	SB 756 Diaz	Public Records/Human Trafficking Victims; Providing that the personal identifying information of a victim of human trafficking in a petition for human trafficking victim expunction and in all pleadings and documents related to the petition is confidential and exempt from public records requirements; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. CF 11/30/2021 Temporarily Postponed CF 01/11/2022 GO RC	

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Tuesday, January 11, 2022, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	SB 772 Diaz	Vulnerable Victims and Witnesses; Revising the standard for orders to protect certain testifying victims and witnesses; prohibiting depositions of certain victims and witnesses in certain proceedings without a showing of good cause; requiring the court to appoint a guardian ad litem or other advocate for the deponent under certain circumstances; revising the applicability of provisions relating to human trafficking victims seeking expunction of certain records, etc. CF 01/11/2022 JU RC	
6	SB 912 Brodeur	Community-based Care Lead Agency Expenditures; Specifying a total compensation limit from state-appropriated funds for certain employees of community-based care lead agencies; revising persons to whom the limit applies; requiring the Department of Children and Families to include a certain provision in contracts with a community-based care lead agency; revising persons of whom the department must publish certain compensation information, etc. CF 01/11/2022 AHS AP	
7	SB 934 Gruters (Similar H 699)	Public Records/Homelessness Counts and Information Systems; Providing an exemption from public records requirements for individual identifying information contained in certain homelessness counts and information systems; providing for retroactive application of the exemption; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 01/11/2022 GO RC	

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Tuesday, January 11, 2022, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 948 Book	Child Welfare; Specifying circumstances under which a court is required or authorized, on or after a specified date, to appoint a guardian ad litem in certain proceedings; renaming the Guardian Ad Litem Qualifications Committee as the Child Well-Being Qualifications Committee; requiring the Statewide Guardian Ad Litem Office to develop guidelines to identify conflicts of interest of guardians ad litem; creating the Statewide Office of Child Representation within the Justice Administrative Commission; specifying when the court is required or authorized to appoint an attorney for the child, etc. CF 01/11/2022 ACJ AP	

Other Related Meeting Documents

By Senator Perry

8-00371-22

2022444__

1 A bill to be entitled
 2 An act relating to lewd or lascivious molestation;
 3 creating s. 800.06, F.S.; specifying what constitutes
 4 the crime of lewd or lascivious molestation upon a
 5 person 16 years of age or older; providing criminal
 6 penalties; providing an effective date.
 7
 8 Be It Enacted by the Legislature of the State of Florida:
 9
 10 Section 1. Section 800.06, Florida Statutes, is created to
 11 read:
 12 800.06 Lewd or lascivious molestation committed upon
 13 persons 16 years of age or older.-
 14 (1) A person commits the crime of lewd or lascivious
 15 molestation upon a person 16 years of age or older when he or
 16 she:
 17 (a) Intentionally touches a person 16 years of age or
 18 older:
 19 1. Against his or her will; and
 20 2. In a lewd or lascivious manner, on the breasts,
 21 genitals, genital area, or buttocks, or on the clothing covering
 22 them; or
 23 (b) Forces a person 16 years of age or older to touch the
 24 perpetrator, in a lewd or lascivious manner, on the breasts,
 25 genitals, genital area, or buttocks, or on the clothing covering
 26 them.
 27 (2) (a) A person who violates subsection (1) commits a
 28 misdemeanor of the first degree, punishable as provided in s.
 29 775.082 or s. 775.083.

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

8-00371-22

2022444__

30 (b) A person who commits a second or subsequent violation
 31 of subsection (1) commits a felony of the third degree,
 32 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 33 Section 2. This act shall take effect October 1, 2022.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

By Senator Brodeur

9-00532-22

2022478__

A bill to be entitled

An act relating to suicide prevention; directing the Statewide Office for Suicide Prevention within the Department of Children and Families to conduct a study for specified purposes; specifying requirements for the study; requiring the office to submit the report to the Legislature and the Secretary of Children and Families by a specified date; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) In order to assess the adequacy of the current infrastructure of Florida's National Suicide Prevention Lifeline (NSPL) system and other components of the state's behavioral health crisis system and to inform the Legislature on how best to provide appropriate and sustainable funding for such purposes, the Statewide Office for Suicide Prevention within the Department of Children and Families shall conduct a study that, at a minimum, includes the following:

(a) An overview of the current infrastructure of the NSPL system within this state.

(b) An analysis of the current capacity of other crisis response services available throughout the state, including services provided by mobile response teams and centralized receiving facilities. The analysis must include information on the geographic area and the total population served by each mobile response team along with the average response time to each call made to a mobile response team; the number of calls

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

9-00532-22

2022478__

that a mobile response team was unable to respond to due to staff limitations, travel distance, or other factors; and the veteran status and age groups of individuals served by mobile response teams.

(c) Proposed strategies to improve linkages between the NSPL infrastructure and crisis response services throughout the state.

(d) In consultation with the Department of Children and Families, identified available mental health block grant funds that can be used to support the NSPL and crisis response infrastructure within this state, including any available funding through opioid settlements or through the American Rescue Plan Act, Pub. L. No. 117-2, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, or other federal legislation.

(e) In consultation with the Agency for Health Care Administration, identified sources of funding available through the Medicaid program specifically for crisis response services, including funding that may be available through seeking approval of a section 1115 waiver submitted to the Centers for Medicare and Medicaid Services.

(f) Proposed strategies to ensure that managing entities continue to work with community stakeholders throughout the state in furtherance of supporting the NSPL system and other crisis response services.

(2) By July 1, 2023, the office shall submit a report detailing the findings of the study to the President of the Senate, the Speaker of the House of Representatives, the chairs of the appropriations committees of the Legislature, the chairs

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

9-00532-22

2022478

59 of the committees of the Legislature having jurisdiction over
60 behavioral health care services, and the Secretary of Children
61 and Families.

62 Section 2. This act shall take effect July 1, 2022.

By the Committee on Health Policy; and Senator Gruters

588-01609-22

2022566c1

A bill to be entitled

An act relating to mental health professional licensure; amending s. 491.005, F.S.; revising licensure requirements for clinical social workers, marriage and family therapists, and mental health counselors; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1), (3), and (4) of section 491.005, Florida Statutes, are amended to read:

491.005 Licensure by examination.—

(1) CLINICAL SOCIAL WORK.—Upon verification of documentation and payment of a fee not to exceed \$200, as set by board rule, ~~plus the actual per applicant cost to the department for purchase of the examination from the American Association of State Social Worker's Boards or a similar national organization,~~ the department shall issue a license as a clinical social worker to an applicant whom ~~who~~ the board certifies has met all of the following criteria:

(a) ~~Has~~ Submitted an application and paid the appropriate fee.

(b)1. ~~Has~~ Received a doctoral degree in social work from a graduate school of social work which at the time the applicant graduated was accredited by an accrediting agency recognized by the United States Department of Education or ~~has~~ received a master's degree in social work from a graduate school of social work which at the time the applicant graduated:

a. Was accredited by the Council on Social Work Education;

588-01609-22

2022566c1

b. Was accredited by the Canadian Association of Schools of Social Work; or

c. Has been determined to have been a program equivalent to programs approved by the Council on Social Work Education by the Foreign Equivalency Determination Service of the Council on Social Work Education. An applicant who graduated from a program at a university or college outside of the United States or Canada must present documentation of the equivalency determination from the council in order to qualify.

2. The applicant's graduate program ~~must have~~ emphasized direct clinical patient or client health care services, including, but not limited to, coursework in clinical social work, psychiatric social work, medical social work, social casework, psychotherapy, or group therapy. The applicant's graduate program must have included all of the following coursework:

a. A supervised field placement which was part of the applicant's advanced concentration in direct practice, during which the applicant provided clinical services directly to clients.

b. Completion of 24 semester hours or 32 quarter hours in theory of human behavior and practice methods as courses in clinically oriented services, including a minimum of one course in psychopathology, and no more than one course in research, taken in a school of social work accredited or approved pursuant to subparagraph 1.

3. If the course title which appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant provided ~~shall be required to provide~~

588-01609-22

2022566c1

additional documentation, including, but not limited to, a syllabus or catalog description published for the course.

(c) ~~Completed Has had~~ at least 2 years of clinical social work experience, which took place subsequent to completion of a graduate degree in social work at an institution meeting the accreditation requirements of this section, under the supervision of a licensed clinical social worker or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If the applicant's graduate program was not a program which emphasized direct clinical patient or client health care services as described in subparagraph (b)2., the supervised experience requirement must take place after the applicant has completed a minimum of 15 semester hours or 22 quarter hours of the coursework required. A doctoral internship may be applied toward the clinical social work experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting.

(d) ~~Has Passed a theory and practice examination designated by board rule provided by the department for this purpose.~~

(e) ~~Has Demonstrated~~, in a manner designated by board rule of the board, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

(3) MARRIAGE AND FAMILY THERAPY.—Upon verification of documentation and payment of a fee not to exceed \$200, as set by board rule, ~~plus the actual cost of the purchase of the~~

588-01609-22

2022566c1

~~examination from the Association of Marital and Family Therapy Regulatory Board, or similar national organization,~~ the department shall issue a license as a marriage and family therapist to an applicant who the board certifies has met all of the following criteria:

(a) ~~Has~~ Submitted an application and paid the appropriate fee.

(b) 1. Attained one of the following:

a. A minimum of a master's degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education.

b. A minimum of a master's degree with a major emphasis in marriage and family therapy or a closely related field from a university program accredited by the Council on Accreditation of Counseling and Related Educational Programs and graduate courses approved by the board.

c. ~~Has~~ A minimum of a master's degree with an major emphasis in marriage and family therapy or a closely related field, with a degree conferred before September 1, 2027, from an institutionally accredited college or university ~~from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education or from a Florida university program accredited by the Council for Accreditation of Counseling and Related Educational Programs~~ and graduate courses approved by the board ~~of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling.~~

2. If the course title that appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant provided shall provide additional

588-01609-22

2022566c1

documentation, including, but not limited to, a syllabus or catalog description published for the course. The required master's degree must have been received in an institution of higher education that, at the time the applicant graduated, was fully accredited by an institutional ~~a regional~~ accrediting body recognized by the Council for Higher Education Accreditation or its successor organization ~~Commission on Recognition of Postsecondary Accreditation~~ or was publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada, or an institution of higher education located outside the United States and Canada which, at the time the applicant was enrolled and at the time the applicant graduated, maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by an institutional ~~a regional~~ accrediting body recognized by the Council for Higher Education Accreditation or its successor organization ~~Commission on Recognition of Postsecondary Accreditation~~. Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as professional marriage and family therapists or psychotherapists. The applicant has the burden of establishing that the requirements of this provision have been met, and the board shall require documentation, such as an evaluation by a foreign equivalency determination service, as evidence that the applicant's graduate degree program and education were equivalent to an accredited program in this country. An

588-01609-22

2022566c1

applicant with a master's degree from a program that did not emphasize marriage and family therapy may complete the coursework requirement in a training institution fully accredited by the Commission on Accreditation for Marriage and Family Therapy Education recognized by the United States Department of Education.

(c) Completed ~~Has had~~ at least 2 years of clinical experience during which 50 percent of the applicant's clients were receiving marriage and family therapy services, which must be at the post-master's level under the supervision of a licensed marriage and family therapist with at least 5 years of experience, or the equivalent, who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If a graduate has a master's degree with a major emphasis in marriage and family therapy or a closely related field which did not include all of the coursework required by paragraph (b), credit for the post-master's level clinical experience may not commence until the applicant has completed a minimum of 10 of the courses required by paragraph (b), as determined by the board, and at least 6 semester hours or 9 quarter hours of the course credits must have been completed in the area of marriage and family systems, theories, or techniques. Within the 2 years of required experience, the applicant shall provide direct individual, group, or family therapy and counseling to cases including those involving unmarried dyads, married couples, separating and divorcing couples, and family groups that include children. A doctoral internship may be applied toward the

588-01609-22

2022566c1

clinical experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting.

(d) ~~Has~~ Passed a theory and practice examination designated by board rule ~~provided by the department~~.

(e) ~~Has~~ Demonstrated, in a manner designated by board rule, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

For the purposes of dual licensure, the department shall license as a marriage and family therapist any person who meets the requirements of s. 491.0057. Fees for dual licensure may not exceed those stated in this subsection.

(4) MENTAL HEALTH COUNSELING.—Upon verification of documentation and payment of a fee not to exceed \$200, as set by board rule, ~~plus the actual per applicant cost of purchase of the examination from the National Board for Certified Counselors or its successor organization,~~ the department shall issue a license as a mental health counselor to an applicant who the board certifies has met all of the following criteria:

(a) ~~Has~~ Submitted an application and paid the appropriate fee.

(b)1. Attained ~~Has~~ a minimum of an earned master's degree from a mental health counseling program accredited by the Council for the Accreditation of Counseling and Related Educational Programs which consists of at least 60 semester hours or 80 quarter hours of clinical and didactic instruction, including a course in human sexuality and a course in substance

588-01609-22

2022566c1

abuse. If the master's degree is earned from a program related to the practice of mental health counseling which is not accredited by the Council for the Accreditation of Counseling and Related Educational Programs, then the coursework and practicum, internship, or fieldwork must consist of at least 60 semester hours or 80 quarter hours and meet all of the following requirements:

a. Thirty-three semester hours or 44 quarter hours of graduate coursework, which must include a minimum of 3 semester hours or 4 quarter hours of graduate-level coursework in each of the following 11 content areas: counseling theories and practice; human growth and development; diagnosis and treatment of psychopathology; human sexuality; group theories and practice; individual evaluation and assessment; career and lifestyle assessment; research and program evaluation; social and cultural foundations; substance abuse; and legal, ethical, and professional standards issues in the practice of mental health counseling. Courses in research, thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.

b. A minimum of 3 semester hours or 4 quarter hours of graduate-level coursework addressing diagnostic processes, including differential diagnosis and the use of the current diagnostic tools, such as the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. The graduate program must have emphasized the common core curricular experience.

c. The equivalent, as determined by the board, of at least 700 hours of university-sponsored supervised clinical practicum,

588-01609-22 2022566c1

internship, or field experience that includes at least 280 hours of direct client services, as required in the accrediting standards of the Council for Accreditation of Counseling and Related Educational Programs for mental health counseling programs. This experience may not be used to satisfy the post-master's clinical experience requirement.

2. ~~Has~~ Provided additional documentation if a course title that appears on the applicant's transcript does not clearly identify the content of the coursework. The documentation must include, but is not limited to, a syllabus or catalog description published for the course.

Education and training in mental health counseling must have been received in an institution of higher education that, at the time the applicant graduated, was fully accredited by an institutional ~~a regional~~ accrediting body recognized by the Council for Higher Education Accreditation or its successor organization or was publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada, or an institution of higher education located outside the United States and Canada which, at the time the applicant was enrolled and at the time the applicant graduated, maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by an institutional ~~a regional~~ accrediting body recognized by the Council for Higher Education Accreditation or its successor organization. Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country

588-01609-22 2022566c1

in which it is located as an institution or program to train students to practice as mental health counselors. The applicant has the burden of establishing that the requirements of this provision have been met, and the board shall require documentation, such as an evaluation by a foreign equivalency determination service, as evidence that the applicant's graduate degree program and education were equivalent to an accredited program in this country. Beginning July 1, 2025, an applicant must have a master's degree from a program that is accredited by the Council for Accreditation of Counseling and Related Educational Programs, the Masters in Psychology and Counseling Accreditation Council, or an equivalent accrediting body which consists of at least 60 semester hours or 80 quarter hours to apply for licensure under this paragraph.

(c) Completed ~~Has had~~ at least 2 years of clinical experience in mental health counseling, which must be at the post-master's level under the supervision of a licensed mental health counselor or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before commencing practice. If a graduate has a master's degree with a major related to the practice of mental health counseling which did not include all the coursework required under sub-subparagraphs (b)1.a. and b., credit for the post-master's level clinical experience may not commence until the applicant has completed a minimum of seven of the courses required under sub-subparagraphs (b)1.a. and b., as determined by the board, one of which must be a course in psychopathology or abnormal

588-01609-22

2022566c1

psychology. A doctoral internship may be applied toward the clinical experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting.

(d) ~~Has~~ Passed a theory and practice examination designated by board rule ~~provided by the department for this purpose.~~

(e) ~~Has~~ Demonstrated, in a manner designated by board rule, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

Section 2. This act shall take effect upon becoming a law.

By Senator Diaz

36-00320A-22

2022772__

A bill to be entitled

An act relating to vulnerable victims and witnesses; amending s. 92.55, F.S.; revising the standard for orders to protect certain testifying victims and witnesses; prohibiting depositions of certain victims and witnesses in certain proceedings without a showing of good cause; authorizing the court to allow such depositions under certain circumstances; revising factors to be considered by a court in a motion seeking to protect a victim or witness; revising provisions related to available relief; requiring the court to appoint a guardian ad litem or other advocate for the deponent under certain circumstances; authorizing the court to request the aid of an interpreter; requiring the court to make specific findings of fact on the record for certain orders and rulings; making technical changes; amending s. 943.0583, F.S.; revising the applicability of provisions relating to human trafficking victims seeking expunction of certain records; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 92.55, Florida Statutes, is amended to read:

92.55 Judicial or other proceedings involving certain victims and witnesses ~~victim or witness under the age of 18, a person who has an intellectual disability, or a sexual offense~~

Page 1 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

36-00320A-22

2022772__

~~victim or witness~~; special protections; use of therapy animals or facility dogs.—

(1) For purposes of this section, the term:

(a) "Facility dog" means a dog that has been trained, evaluated, and certified as a facility dog pursuant to industry standards and provides unobtrusive emotional support to children and adults in facility settings.

~~(c)-(a)~~ "Sexual offense victim or witness" means a person who was under the age of 18 when he or she was the victim of or a witness to a sexual offense.

(b) "Sexual offense" means any offense specified in s. 775.21(4)(a)1. or s. 943.0435(1)(h)1.a.(I).

(d) "Therapy animal" means an animal that has been trained, evaluated, and certified as a therapy animal pursuant to industry standards by an organization that certifies animals as appropriate to provide animal therapy.

(2) Upon motion of any party; ~~r~~ upon motion of a parent, guardian, attorney, guardian ad litem, or other advocate appointed by the court ~~under s. 914.17~~ for a victim or witness under the age of 18, a person who has an intellectual disability, or a sexual offense victim or witness; ~~r~~ or upon its own motion, the court may enter any order necessary to protect the ~~person victim or witness~~ in any judicial proceeding or other official proceeding from ~~moderate severe~~ emotional or mental harm ~~due to the presence of the defendant if the victim or witness is required to testify in open court~~. Such orders must relate to the taking of testimony and include, but are not limited to:

(a) Interviewing or the taking of depositions as part of a

Page 2 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

36-00320A-22

2022772

civil or criminal proceeding.

(b) Examination and cross-examination for the purpose of qualifying as a witness or testifying in any proceeding.

(c) The use of testimony taken outside of the courtroom, including proceedings under ss. 92.53 and 92.54.

(3) (a) Depositions are not allowed, except upon a showing of good cause, of victims or witnesses younger than the age of 18, persons who have intellectual disabilities, or sexual offense victims or witnesses in proceedings involving any of the following:

1. Abuse, abandonment, or neglect of children under chapter 39.

2. Any offense constituting domestic violence as defined in s. 741.28.

3. Murder under s. 782.04.

4. Manslaughter under s. 782.07.

5. Aggravated cyberstalking under s. 784.048.

6. Kidnapping under s. 787.01.

7. False imprisonment under s. 787.02.

8. Human trafficking under s. 787.06.

9. Sexual battery under s. 794.011.

10. Lewd or lascivious offenses under s. 825.1025.

11. Child abuse or neglect of a child under s. 827.03.

12. Use of a child in a sexual performance under s. 827.071.

13. Computer pornography under s. 847.0135 or the transmission of pornography by electronic device or equipment under s. 847.0137.

(b) Upon written motion and written findings that a

36-00320A-22

2022772

deposition is necessary to assist a trial, that the evidence sought is not reasonably available by any other means, and that the probative value of the testimony outweighs the potential detriment to the person to be deposed, the court may authorize the taking of a deposition and may order protections deemed necessary, including those provided in this section.

(4) (3) In ruling upon a the motion filed under this section, the court may shall consider:

(a) The age of the victim or witness. child,

(b) The nature of the offense or act,

(c) The complexity of the issues involved.

(d) The relationship of the victim or witness child to the parties in the case or to the defendant in a criminal action,

(e) The degree of emotional or mental harm trauma that will result to the child as a consequence of the examination, interview, or testimony. defendant's presence, and

(f) The functional capacity of the victim or witness if he or she has an intellectual disability.

(g) The age of the sexual offense victim or witness when the sexual offense occurred.

(h) Any other fact that the court deems relevant,

~~(b) The age of the person who has an intellectual disability, the functional capacity of such person, the nature of the offenses or act, the relationship of the person to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the person as a consequence of the defendant's presence, and any other fact that the court deems relevant; or~~

~~(c) The age of the sexual offense victim or witness when the~~

36-00320A-22

2022772

~~sexual offense occurred, the relationship of the sexual offense victim or witness to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the sexual offense victim or witness as a consequence of the defendant's presence, and any other fact that the court deems relevant.~~

~~(5)(4)~~ In addition to such other relief provided by law, the court may enter orders it deems just and appropriate for the protection of limiting the number of times that a child, a person who has an intellectual disability, or a sexual offense victim or witness, including limiting the number of times a victim or witness may be interviewed, limiting the length and scope of a deposition, requiring a deposition to be taken only by written questions, requiring a deposition to be in the presence of a trial judge or magistrate, sealing the tape or transcript of a deposition until further order of the court, allowing use of a therapy animal or facility dog prohibiting depositions of the victim or witness, requiring the submission of questions before the examination of the victim or witness, setting the place and conditions for interviewing the victim or witness or for conducting any other proceeding, or permitting or prohibiting the attendance of any person at any proceeding. The court shall enter any order necessary to protect the rights of all parties, including the defendant in any criminal action.

(6) Section 794.022 applies to depositions taken pursuant to this section. If a deposition is taken pursuant to this section, the court must appoint a guardian ad litem or other advocate pursuant to s. 914.17 to represent the deponent for the purposes of the deposition if the deponent does not already have

36-00320A-22

2022772

counsel.

(7) The court, on its own motion or that of any party, may request the aid of an interpreter, as provided in s. 90.606, to aid the parties in formulating methods of questioning the person who has an intellectual disability or the sexual offense victim or witness and in interpreting his or her answers during proceedings conducted under this section.

(8) The court shall make specific findings of fact on the record as to the basis for its orders and rulings under this section

~~(5) The court may set any other conditions it finds just and appropriate when taking the testimony of a victim or witness under the age of 18, a person who has an intellectual disability, or a sexual offense victim or witness, including the use of a therapy animal or facility dog, in any proceeding involving a sexual offense or child abuse, abandonment, or neglect.~~

~~(a) When deciding whether to permit a victim or witness under the age of 18, a person who has an intellectual disability, or a sexual offense victim or witness to testify with the assistance of a therapy animal or facility dog, the court shall consider the age of the child victim or witness, the age of the sexual offense victim or witness at the time the sexual offense occurred, the interests of the child victim or witness or sexual offense victim or witness, the rights of the parties to the litigation, and any other relevant factor that would facilitate the testimony by the victim or witness under the age of 18, person who has an intellectual disability, or sexual offense victim or witness.~~

36-00320A-22

2022772__

175 ~~(b) For purposes of this subsection the term:~~
 176 1. "Facility dog" means a dog that has been trained,
 177 evaluated, and certified as a facility dog pursuant to industry
 178 standards and provides unobtrusive emotional support to children
 179 ~~and adults in facility settings.~~
 180 2. "Therapy animal" means an animal that has been trained,
 181 evaluated, and certified as a therapy animal pursuant to
 182 industry standards by an organization that certifies animals as
 183 appropriate to provide animal therapy.
 184 Section 2. Subsection (3) of section 943.0583, Florida
 185 Statutes, is amended to read:
 186 943.0583 Human trafficking victim expunction.—
 187 (3) A person who is a victim of human trafficking may
 188 petition for the expunction of a criminal history record
 189 resulting from the arrest or filing of charges for one or more
 190 offenses committed or reported to have been committed while the
 191 person was a victim of human trafficking, which offense was
 192 committed or reported to have been committed as a part of the
 193 human trafficking scheme of which the person was a victim or at
 194 the direction of an operator of the scheme, including, but not
 195 limited to, violations under chapters 796 and 847, without
 196 regard to the disposition of the arrest or of any charges.
 197 However, this section does not apply to any offense listed in s.
 198 775.084(1)(b)1. if the defendant was found guilty of, or pled
 199 guilty or nolo contendere to, any such offense. Determination of
 200 the petition under this section should be by a preponderance of
 201 the evidence. A conviction expunged under this section is deemed
 202 to have been vacated due to a substantive defect in the
 203 underlying criminal proceedings. If a person is adjudicated not

Page 7 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

36-00320A-22

2022772__

204 guilty by reason of insanity or is found to be incompetent to
 205 stand trial for any such charge, the expunction of the criminal
 206 history record may not prevent the entry of the judgment or
 207 finding in state and national databases for use in determining
 208 eligibility to purchase or possess a firearm or to carry a
 209 concealed firearm, as authorized in s. 790.065(2)(a)4.c. and 18
 210 U.S.C. s. 922(t), nor shall it prevent any governmental agency
 211 that is authorized by state or federal law to determine
 212 eligibility to purchase or possess a firearm or to carry a
 213 concealed firearm from accessing or using the record of the
 214 judgment or finding in the course of such agency's official
 215 duties.
 216 Section 3. This act shall take effect upon becoming a law.

Page 8 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

By Senator Brodeur

9-01023A-22

2022912__

A bill to be entitled

An act relating to community-based care lead agency expenditures; amending s. 409.992, F.S.; defining terms; specifying a total compensation limit from state-appropriated funds for certain employees of community-based care lead agencies; revising persons to whom the limit applies; requiring the Department of Children and Families to include a certain provision in contracts with a community-based care lead agency; amending s. 409.996, F.S.; revising persons of whom the department must publish certain compensation information; defining the term "total compensation"; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 409.992, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

409.992 Lead agency expenditures.—

(3)(a) As used in this subsection, the term:

1. "Community-based care lead agency employee" means an executive staff member of a community-based care lead agency, including, but not limited to, the chief executive officer, chief financial officer, or chief operating officer.

2. "Incentive payment" means a financial or nonmonetary reward given to a person to recognize his or her performance results or to motivate him or her to exceed performance standards, rather than for time worked.

9-01023A-22

2022912__

3. "Total compensation" includes direct and indirect salary, including base salary; bonuses; incentive payments; cashed-in leave; cash equivalents; severance pay; retirement benefits; deferred compensation; real property gifts; any other payout, such as additional leave, information technology equipment, leased vehicles, or car allowances; access to private donations or foundation funding or expense accounts; taxable group-term life insurance coverage; supplemental paid time off; or any other items that could be considered perquisites or accruals of deferred amounts.

(b) Notwithstanding any other ~~provision of~~ law, a community-based care lead agency ~~administrative~~ employee may not receive total compensation from state-appropriated funds, including state-appropriated federal funds, as a result of employment with one or more community-based care lead agencies, a community-based care lead agency and a managing entity, or a community-based care lead agency and another state agency a salary, whether base pay or base pay combined with any bonus or incentive payments, in excess of 150 percent of the annual salary paid to the secretary of the Department of Children and Families from state-appropriated funds, including state-appropriated federal funds.

(c) This subsection does not prohibit any party from providing cash that is not from appropriated state funds to a community-based care lead agency ~~administrative~~ employee.

(5) Upon the execution of a new contract or in any amendment to an existing contract with a community-based care lead agency, the department shall include a provision for the limitation on compensation specified in subsection (3).

9-01023A-22

2022912__

Section 2. Subsection (4) of section 409.996, Florida Statutes, is amended to read:

409.996 Duties of the Department of Children and Families.—
The department shall contract for the delivery, administration, or management of care for children in the child protection and child welfare system. In doing so, the department retains responsibility for the quality of contracted services and programs and shall ensure that, at a minimum, services are delivered in accordance with applicable federal and state statutes and regulations and the performance standards and metrics specified in the strategic plan created under s. 20.19(1).

(4)(a) The department shall collect and publish on its website, and annually update, all of the following information for each lead agency under contract with the department:

1. All compensation earned or awarded, whether paid or accrued, regardless of contingency, by position, for any employee, and any other person who is compensated through a contract for services whose services include those commonly associated with a chief executive, chief administrator, or other chief officer of a business or corporation, who receives total compensation from state-appropriated funds in excess of 150 percent of the annual salary paid to the secretary of the department. For purposes of this paragraph, the term "employee" has the same meaning as in s. 448.095, and the term "total compensation" has the same meaning as in s. 409.992(3)(a).

2. All findings of the review under subsection (3).

(b) The department shall collect and publish on its website, and update monthly, the information required under s.

Page 3 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

9-01023A-22

2022912__

409.988(1)(k).

Section 3. This act shall take effect July 1, 2022.

Page 4 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

By Senator Book

32-00909-22

2022948__

1 A bill to be entitled
 2 An act relating to child welfare; amending s. 39.01,
 3 F.S.; defining the term "attorney for the child";
 4 amending ss. 39.013 and 39.01305, F.S.; conforming
 5 provisions to changes made by the act; renaming part
 6 XI of ch. 39, F.S., as "Guardians Ad Litem, Guardian
 7 Advocates, and Attorney for the Child"; amending s.
 8 39.822, F.S.; conforming provisions to changes made by
 9 the act; specifying circumstances under which a court
 10 is required or authorized, on or after a specified
 11 date, to appoint a guardian ad litem in certain
 12 proceedings; authorizing the court, under certain
 13 circumstances, to maintain a guardian ad litem's
 14 appointment notwithstanding the appointment of an
 15 attorney for the child; authorizing the court to order
 16 that a new guardian ad litem be assigned for a child
 17 or to discharge a guardian ad litem and appoint an
 18 attorney for the child under specified circumstances;
 19 amending s. 39.8296, F.S.; renaming the Guardian Ad
 20 Litem Qualifications Committee as the Child Well-Being
 21 Qualifications Committee; specifying a procedure and a
 22 requirement for subsequent terms served by the
 23 Statewide Guardian Ad Litem Office's executive
 24 director; requiring the office to develop guidelines
 25 to identify conflicts of interest of guardians ad
 26 litem; prohibiting the office from assigning such
 27 guardians; defining the term "conflict of interest";
 28 requiring the office to identify any guardian ad litem
 29 who is experiencing health issues and who appears to

Page 1 of 63

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-00909-22

2022948__

30 present a danger to the child to whom the guardian ad
 31 litem is assigned; requiring the office to remove such
 32 guardians from assigned cases, terminate their direct
 33 child contact volunteer services, and disclose such
 34 actions to the circuit court; authorizing the office
 35 to permit such guardians ad litem to perform certain
 36 work if certain conditions are met; creating s. 39.83,
 37 F.S.; creating the Statewide Office of Child
 38 Representation within the Justice Administrative
 39 Commission; requiring the commission to provide
 40 administrative support and services to the statewide
 41 office; providing that the statewide office is not
 42 subject to control, supervision, or direction by the
 43 commission; providing that employees of the statewide
 44 office are governed by the classification plan and
 45 salary and benefits plan approved by the commission;
 46 providing that the head of the statewide office is the
 47 executive director; providing the process for
 48 appointment; requiring that the initial executive
 49 director be appointed by a specified date; providing
 50 responsibilities of the office; providing a
 51 requirement for the Department of Children and
 52 Families or community-based care lead agency;
 53 authorizing the office to contract with local
 54 nonprofit agencies under certain conditions;
 55 specifying requirements for the local nonprofit
 56 agencies and for contracts between the office and such
 57 agencies; creating a regional office of child
 58 representation within the boundaries of each of the

Page 2 of 63

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-00909-22

2022948__

59 five district courts of appeal; requiring the regional
 60 offices to commence fulfilling their purpose and
 61 duties on a specified date; prescribing qualifications
 62 for child representation counsel; creating s. 39.831,
 63 F.S.; specifying when the court is required or
 64 authorized to appoint an attorney for the child;
 65 requiring the court to appoint the Statewide Office of
 66 Child Representation unless the child is otherwise
 67 represented by counsel; specifying requirements for
 68 the scope of representation of an attorney for the
 69 child; authorizing certain staff to attend certain
 70 hearings rather than the attorney; requiring that
 71 court orders appointing an attorney for the child be
 72 in writing; providing for the appointment of private
 73 counsel when the office has a conflict of interest;
 74 requiring an attorney for the child to be compensated
 75 and have access to funding for expenses with specified
 76 conditions; providing conditions under which a parent
 77 is required to reimburse the court for the cost of the
 78 attorney; requiring agencies, persons, and
 79 organizations to allow an attorney for the child to
 80 inspect and copy certain records; defining the term
 81 "records"; providing requirements for an attorney for
 82 the child relating to hearings; requiring the
 83 department to develop procedures to request that a
 84 court appoint an attorney for the child; authorizing
 85 the department to adopt rules; amending ss. 28.345,
 86 29.007, 39.001, 39.00145, 39.0132, 39.0139, 39.202,
 87 39.302, 39.402, 39.407, 39.4085, 39.502, 39.521,

Page 3 of 63

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-00909-22

2022948__

88 39.6011, 39.6012, 39.6251, 39.701, 39.702, 39.801,
 89 39.802, 39.808, 39.810, 39.811, 39.812, 43.16, 63.085,
 90 322.09, 394.495, 627.746, 768.28, 934.255, and
 91 960.065, F.S.; conforming cross-references and
 92 provisions to changes made by the act; providing an
 93 effective date.

94
 95 Be It Enacted by the Legislature of the State of Florida:

96
 97 Section 1. Present subsections (8) through (87) of section
 98 39.01, Florida Statutes, are redesignated as subsections (9)
 99 through (88), respectively, a new subsection (8) is added to
 100 that section, and present subsections (9) and (36) of that
 101 section are amended, to read:

102 39.01 Definitions.—When used in this chapter, unless the
 103 context otherwise requires:

104 (8) "Attorney for the child" means an attorney providing
 105 direct representation to the child, which may include the
 106 appointment of the Statewide Office of Child Representation, an
 107 attorney provided by an entity contracted through the Statewide
 108 Office of Child Representation to provide direct representation,
 109 any private court-appointed counsel compensated pursuant to s.
 110 27.5304, any privately retained counsel or pro bono counsel, or
 111 any other attorney appointed to represent the child under this
 112 chapter.

113 (10)(9) "Caregiver" means the parent, legal custodian,
 114 permanent guardian, adult household member, or other person
 115 responsible for a child's welfare as defined in subsection (55)
 116 (54).

Page 4 of 63

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-00909-22

2022948__

~~(37)(36)~~ "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect in which the person allegedly perpetrating the child abuse or neglect is an employee of a public or private school, public or private day care center, residential home, institution, facility, or agency or any other person at such institution responsible for the child's welfare as defined in subsection ~~(55)~~ (54).

Section 2. Subsection (13) is added to section 39.013, Florida Statutes, to read:

39.013 Procedures and jurisdiction; right to counsel.—

(13) The court shall appoint an attorney for the child pursuant to s. 39.831.

Section 3. Subsections (4) and (5) of section 39.01305, Florida Statutes, are amended to read:

39.01305 Appointment of an attorney for a dependent child with certain special needs.—

~~(4)(a) The appointment of an attorney for the child under this section shall be made in accordance with s. 39.831. Before a court may appoint an attorney, who may be compensated pursuant to this section, the court must request a recommendation from the Statewide Guardian Ad Litem Office for an attorney who is willing to represent a child without additional compensation. If such an attorney is available within 15 days after the court's request, the court must appoint that attorney. However, the court may appoint a compensated attorney within the 15-day period if the Statewide Guardian Ad Litem Office informs the court that it will not be able to recommend an attorney within that time period.~~

~~(b) After an attorney is appointed, the appointment~~

Page 5 of 63

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-00909-22

2022948__

~~continues in effect until the attorney is allowed to withdraw or is discharged by the court or until the case is dismissed. An attorney who is appointed under this section to represent the child shall provide the complete range of legal services, from the removal from home or from the initial appointment through all available appellate proceedings. With the permission of the court, the attorney for the dependent child may arrange for supplemental or separate counsel to represent the child in appellate proceedings. A court order appointing an attorney under this section must be in writing.~~

~~(5) Unless the attorney has agreed to provide pro bono services, an appointed attorney or organization must be adequately compensated. All appointed attorneys and organizations, including pro bono attorneys, must be provided with access to funding for expert witnesses, depositions, and other due process costs of litigation. Payment of attorney fees and case-related due process costs are subject to appropriations and review by the Justice Administrative Commission for reasonableness. The Justice Administrative Commission shall contract with attorneys appointed by the court. Attorney fees may not exceed \$1,000 per child per year.~~

Section 4. Part XI of chapter 39, Florida Statutes, entitled "GUARDIANS AD LITEM AND GUARDIAN ADVOCATES," is renamed "GUARDIANS AD LITEM, GUARDIAN ADVOCATES, AND ATTORNEY FOR THE CHILD."

Section 5. Section 39.822, Florida Statutes, is amended to read:

39.822 Appointment of guardian ad litem for abused, abandoned, or neglected child.—

Page 6 of 63

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-00909-22

2022948__

(1) (a) Before July 1, 2023, a guardian ad litem ~~must shall~~ be appointed by the court at the earliest possible time to represent a ~~the~~ child in any child abuse, abandonment, or neglect judicial proceeding, whether civil or criminal.

(b) On or after July 1, 2023, a guardian ad litem:

1. Must be appointed by the court at the earliest possible time to represent a child under the following circumstances:

a. The child remains in his or her home or a nonlicensed placement under the protective supervision of the department;

b. The child is the subject of a dependency proceeding under this chapter and the subject of a criminal proceeding;

c. The child is the subject of a termination of parental rights proceeding under part X of this chapter; or

d. The child is a dependent child as described in s. 39.01305(3) .

2. May be appointed at the court's discretion upon a finding that circumstances exist that require the appointment.

(2) If a child appointed a guardian ad litem when placed under the protective supervision of the department as required under sub-subparagraph (1) (b) 1.a. is subsequently appointed an attorney for the child pursuant to s. 39.831, the court may maintain the appointment of the guardian ad litem notwithstanding the appointment of an attorney for the child.

(3) Upon request by a child who is the subject of a dependency proceeding under this chapter and who has a guardian ad litem assigned, or upon any party presenting evidence that there is reasonable cause to suspect the assigned guardian ad litem has a conflict of interest as defined in s. 39.8296(2) (b) 9., the court may:

Page 7 of 63

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-00909-22

2022948__

(a) Order that a new guardian ad litem be assigned; or

(b) Unless otherwise provided by law, discharge the child's current guardian ad litem and appoint an attorney for the child if one is not appointed.

(4) Any person participating in a civil or criminal judicial proceeding resulting from such appointment shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed.

(5) (2) In those cases in which the parents are financially able, the parent or parents of the child shall reimburse the court, in part or in whole, for the cost of provision of guardian ad litem services. Reimbursement to the individual providing guardian ad litem services ~~may shall~~ not be contingent upon successful collection by the court from the parent or parents.

(6) (3) Upon presentation by a guardian ad litem of a court order appointing the guardian ad litem:

(a) An agency, as defined in chapter 119, shall allow the guardian ad litem to inspect and copy records related to the best interests of the child who is the subject of the appointment, including, but not limited to, records made confidential or exempt from s. 119.07(1) or s. 24(a), Art. I of the State Constitution. The guardian ad litem shall maintain the confidential or exempt status of any records shared by an agency under this paragraph.

(b) A person or organization, other than an agency under paragraph (a), shall allow the guardian ad litem to inspect and copy any records related to the best interests of the child who

Page 8 of 63

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-00909-22

2022948

is the subject of the appointment, including, but not limited to, confidential records.

For the purposes of this subsection, the term "records related to the best interests of the child" includes, but is not limited to, medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records.

(7)~~(4)~~ The guardian ad litem or the program representative shall review all disposition recommendations and changes in placements, and must be present at all critical stages of the dependency proceeding or submit a written report of recommendations to the court. Written reports must be filed with the court and served on all parties whose whereabouts are known at least 72 hours before ~~prior to~~ the hearing.

Section 6. Subsection (2) of section 39.8296, Florida Statutes, is amended to read:

39.8296 Statewide Guardian Ad Litem Office; legislative findings and intent; creation; appointment of executive director; duties of office.—

(2) STATEWIDE GUARDIAN AD LITEM OFFICE.—There is created a Statewide Guardian Ad Litem Office within the Justice Administrative Commission. The Justice Administrative Commission shall provide administrative support and service to the office to the extent requested by the executive director within the available resources of the commission. The Statewide Guardian Ad Litem Office is not subject to control, supervision, or direction by the Justice Administrative Commission in the performance of its duties, but the employees of the office are

32-00909-22

2022948

governed by the classification plan and salary and benefits plan approved by the Justice Administrative Commission.

(a) The head of the Statewide Guardian Ad Litem Office is the executive director, who shall be appointed by the Governor from a list of a minimum of three eligible applicants submitted by the Child Well-Being ~~a Guardian Ad Litem~~ Qualifications Committee. The Child Well-Being ~~Guardian Ad Litem~~ Qualifications Committee shall be composed of five persons, two persons appointed by the Governor, two persons appointed by the Chief Justice of the Supreme Court, and one person appointed by the Statewide Guardian Ad Litem Association. The committee shall provide for statewide advertisement and the receiving of applications for the position of executive director. The Governor shall appoint an executive director from among the recommendations, or the Governor may reject the nominations and request the submission of new nominees. The executive director must have knowledge in dependency law and knowledge of social service delivery systems available to meet the needs of children who are abused, neglected, or abandoned. The executive director shall serve on a full-time basis and shall personally, or through representatives of the office, carry out the purposes and functions of the Statewide Guardian Ad Litem Office in accordance with state and federal law. The executive director shall report to the Governor. The executive director shall serve a 3-year term, subject to removal for cause by the Governor. Any person appointed to serve as the executive director may be reappointed ~~permitted~~ to serve more than one term in accordance with the process provided for in this paragraph. Every second or subsequent appointment shall be for a term of 3 years.

32-00909-22

2022948__

(b) The Statewide Guardian Ad Litem Office shall, within available resources, have oversight responsibilities for and provide technical assistance to all guardian ad litem and attorney ad litem programs located within the judicial circuits.

1. The office shall identify the resources required to implement methods of collecting, reporting, and tracking reliable and consistent case data.

2. The office shall review the current guardian ad litem programs in Florida and other states.

3. The office, in consultation with local guardian ad litem offices, shall develop statewide performance measures and standards.

4. The office shall develop a guardian ad litem training program, which shall include, but is not limited to, training on the recognition of and responses to head trauma and brain injury in a child under 6 years of age. The office shall establish a curriculum committee to develop the training program specified in this subparagraph. The curriculum committee shall include, but not be limited to, dependency judges, directors of circuit guardian ad litem programs, active certified guardians ad litem, a mental health professional who specializes in the treatment of children, a member of a child advocacy group, a representative of a domestic violence advocacy group, an individual with a degree in social work, and a social worker experienced in working with victims and perpetrators of child abuse.

5. The office shall review the various methods of funding guardian ad litem programs, maximize the use of those funding sources to the extent possible, and review the kinds of services being provided by circuit guardian ad litem programs.

Page 11 of 63

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-00909-22

2022948__

6. The office shall determine the feasibility or desirability of new concepts of organization, administration, financing, or service delivery designed to preserve the civil and constitutional rights and fulfill other needs of dependent children.

7. In an effort to promote normalcy and establish trust between a court-appointed volunteer guardian ad litem and a child alleged to be abused, abandoned, or neglected under this chapter, a guardian ad litem may transport a child. However, a guardian ad litem volunteer may not be required or directed by the program or a court to transport a child.

8. The office shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court an interim report describing the progress of the office in meeting the goals as described in this section. The office shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court a proposed plan including alternatives for meeting the state's guardian ad litem and attorney ad litem needs. This plan may include recommendations for less than the entire state, may include a phase-in system, and shall include estimates of the cost of each of the alternatives. Each year the office shall provide a status report and provide further recommendations to address the need for guardian ad litem services and related issues.

9. The office shall develop guidelines to identify any possible conflicts of interest of a guardian ad litem when he or she is being considered for assignment to a child's case. The

Page 12 of 63

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-00909-22 2022948__

office may not assign to a child's case a guardian ad litem for whom a conflict of interest has been identified. For purposes of this subparagraph, the term "conflict of interest" means the guardian ad litem:

a. Has a personal relationship that could influence a recommendation regarding a child whom he or she is serving as a guardian ad litem;

b. Is in a position to derive a personal benefit from his or her role as a guardian ad litem; or

c. Has a particular factor or circumstance, including personal bias or prejudice against a protected class of the child or the child's family, which prevents or substantially impairs his or her ability to fairly and fully discharge the duties of the guardian ad litem.

(c) The Statewide Guardian Ad Litem Office shall identify any guardian ad litem who is experiencing an issue with his or her physical or mental health and who appears to present a danger to any child to whom the guardian ad litem is assigned. As soon as possible after identification, the office must remove such guardian ad litem from all assigned cases, terminate his or her direct child contact volunteer services with the Guardian Ad Litem Program, and disclose such action to the appropriate circuit court. The office may permit a guardian ad litem with physical or mental health issues identified in accordance with this paragraph to work in the office without direct child contact if such issues do not negatively affect his or her ability to perform any required work duties and do not pose a risk of harm to any children represented by the program. A guardian ad litem who has caused harm to any child during the

32-00909-22 2022948__

course of his or her appointment may not be employed or permitted to volunteer for the program.

Section 7. Section 39.83, Florida Statutes, is created to read:

39.83 Statewide Office of Child Representation; qualifications, appointment, and duties of executive director and attorney for the child.-

(1) STATEWIDE OFFICE OF CHILD REPRESENTATION.-

(a) There is created the Statewide Office of Child Representation within the Justice Administrative Commission. The Justice Administrative Commission shall provide administrative support and services to the statewide office as directed by the executive director within the available resources of the commission. The statewide office is not subject to control, supervision, or direction by the Justice Administrative Commission in the performance of its duties, but the employees of the statewide office are governed by the classification plan and salary and benefits plan approved by the Justice Administrative Commission.

(b) The head of the Statewide Office of Child Representation is the executive director, who must be a member of The Florida Bar in good standing for at least 5 years and have knowledge of dependency law and the social service delivery systems available to meet the needs of children who are abused, neglected, or abandoned. The executive director shall be appointed in accordance with the process, and serve in accordance with the terms and requirements, provided in s. 39.8296(2) (a) for the head of the Statewide Guardian Ad Litem Office. The appointment for the initial executive director must

32-00909-22

2022948__

be completed by January 1, 2023.

(c) The Statewide Office of Child Representation, within available resources of the Justice Administrative Commission, is responsible for oversight of, and for providing technical assistance to, all offices of child representation in this state. The statewide office shall do all of the following:

1. Identify the resources required to implement methods of collecting, reporting, and tracking reliable and consistent case data.

2. Review and collect information relating to offices of child representation and other models of attorney representation of children in other states.

3. In consultation with the regional offices of child representation established under subsection (2), develop statewide performance measures and standards.

4. Develop a training program for each attorney for the child. To that end, the statewide office shall establish a curriculum committee composed of members including, but not limited to, a dependency judge, a director of circuit guardian ad litem programs, an active certified guardian ad litem, a mental health professional who specializes in the treatment of children, a member of a child advocacy group, a representative of a domestic violence advocacy group, an individual with at least a Master of Social Work degree, and a social worker experienced in working with victims and perpetrators of child abuse.

5. Develop protocols that must be implemented to assist children who are represented by the Statewide Office of Child Representation, regional offices, or its contracted local

32-00909-22

2022948__

agencies in meeting eligibility requirements to receive all available federal funding. This subparagraph may not be construed to mean that the protocols may interfere with zealous and effective representation of the children.

6. Review the various methods of funding the regional offices, maximize the use of those funding sources to the extent possible, and review the kinds of services being provided by the regional offices.

7. Determine the feasibility or desirability of new concepts of organization, administration, financing, or service delivery designed to preserve the civil and constitutional rights of, and fulfill other needs of, dependent children.

8. Establish standards and protocols for representation of children with diminished capacity.

9. Retain responsibility for the quality of contracted services and ensure that, at a minimum, services are delivered in accordance with applicable federal and state statutes and regulations.

10. Submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court:

a. An interim report describing the progress of the statewide office in meeting the responsibilities described in this paragraph.

b. A proposed plan that includes alternatives for meeting the representation needs of children in this state. The plan may include recommendations for implementation in only a portion of this state or phased-in statewide implementation and must include an estimate of the cost of each such alternative.

32-00909-22

2022948

c. An annual status report that includes any additional recommendations for addressing the representation needs of children in this state and related issues.

(d) The department or community-based care lead agency shall take any steps necessary to obtain all available federal funding and maintain compliance with eligibility requirements.

(e) The statewide office may contract with a local nonprofit agency to provide direct attorney representation to a child, including, but not limited to, representation in the dependency proceeding in accordance with s. 39.831, if the office determines that the contract is the most efficient method to satisfy its statutory duties and if federal funding has been approved for this purpose or the local agency is required in the contract to seek such approval. The office shall ensure that reimbursement of any Title IV-E funds is properly documented.

1. A local nonprofit agency under contract with the statewide office shall:

a. Provide competent representation to all children to whom the agency is appointed, including complying with the protocols and standards developed by the statewide office with respect to its representation;

b. Ensure that any documentation required for reimbursement of any Title IV-E funds is provided to the statewide office on a monthly basis;

c. Provide accurate and timely information necessary for the statewide office to provide oversight and comply with its requirements under this section;

d. Ensure that all staff comply with mandatory training as required by the statewide office; and

32-00909-22

2022948

e. Comply with federal and state statutory requirements and provisions as required under the contract.

2. A contract established between the statewide office and any local nonprofit agency must be funded by a grant of general revenue, other applicable state funds, or applicable federal funding sources. Unless otherwise provided by law, this paragraph does not preclude such an agency from raising funds by other means. The contract must provide for:

a. The distribution of funds and method of payment by the statewide office to the local nonprofit agency; and

b. In addition to funding for the provision of services, the payment of a reasonable administrative cost by the department to the local nonprofit agency.

(2) REGIONAL OFFICES OF CHILD REPRESENTATION.—An office of child representation is created within the area served by each of the five district courts of appeal. These regional offices shall commence fulfilling their statutory purpose and duties on July 1, 2023.

(3) CHILD REPRESENTATION COUNSEL; DUTIES.—The child representation counsel shall serve on a full-time basis and may not engage in the private practice of law while holding office. Each assistant child representation counsel shall give priority and preference to his or her duties as assistant child representation counsel and may not otherwise engage in the practice of dependency law. However, a part-time child representation counsel may practice dependency law for private payment so long as the representation does not result in a legal or ethical conflict of interest with a case in which the office of child representation is providing representation.

32-00909-22

2022948

523 Section 8. Section 39.831, Florida Statutes, is created to
524 read:

525 39.831 Attorney for the child.—

526 (1) APPOINTMENT.—

527 (a) An attorney for the child:

528 1. Shall be appointed by the court as provided in s.

529 39.01305(3);

530 2. Shall be appointed by the court for any child who is
531 placed in out-of-home licensed care on or after July 1, 2023,
532 and who is the subject of a dependency proceeding under this
533 chapter; or

534 3. May be appointed at the court's discretion to represent
535 a child who is the subject of a dependency proceeding, upon a
536 finding that circumstances exist which require the appointment.

537 (b) The court appointing an attorney for the child under
538 paragraph (a) shall appoint the Statewide Office of Child
539 Representation unless the child is otherwise represented by
540 counsel.

541 (c) An attorney for the child appointed pursuant to this
542 section shall represent the child only in the dependency
543 proceeding, which may include representation in fair hearings
544 and appellate proceedings directly related to matters needing
545 resolution for the child to achieve permanency. The Statewide
546 Office of Child Representation or local nonprofit agency
547 appointed to represent a child in the dependency proceeding
548 shall provide representation in fair hearings within the
549 resources allotted for representation in the dependency
550 proceeding. When appropriate, trained staff of the Statewide
551 Office of Child Representation or local nonprofit agency may

32-00909-22

2022948

552 attend the fair hearings rather than the appointed attorney. For
553 purposes of this paragraph, trained staff may include, but are
554 not limited to, social workers, case managers, education
555 advocates, or health care advocates.

556 (d) Notwithstanding the basis on which an attorney for the
557 child is appointed under paragraph (a), the appointment of the
558 attorney for the child continues in effect until the attorney
559 for the child is allowed to withdraw or is discharged by the
560 court or until the case is dismissed. An attorney for the child
561 who is appointed under this section to represent a child shall
562 provide all required legal services in the dependency proceeding
563 or fair hearings provided for in this section from the time of
564 the child's removal from home or of the attorney for the child's
565 initial appointment through all appellate proceedings. With the
566 permission of the court, the appointed attorney for the child
567 may arrange for supplemental or separate counsel to represent
568 the child in appellate proceedings. A court order appointing an
569 attorney for the child under this section must be in writing.

570 (e) If, at any time during the representation of two or
571 more children in a dependency proceeding, a child representation
572 counsel determines that the interests of those clients are so
573 adverse or hostile that they cannot all be counseled by child
574 representation counsel or his or her staff because of a conflict
575 of interest, the child representation counsel shall file a
576 motion to withdraw and move the court to appoint other counsel.
577 Child representation counsel may not automatically determine
578 that the appointment to represent siblings is a conflict of
579 interest. If requested by the Justice Administrative Commission,
580 the child representation counsel shall submit a copy of the

32-00909-22

2022948

581 motion to the Justice Administrative Commission at the time it
 582 is filed with the court. The court shall review and may inquire
 583 or conduct a hearing into the adequacy of the child
 584 representation counsel's submissions regarding a conflict of
 585 interest without requiring the disclosure of any confidential
 586 communications. The court shall deny the motion to withdraw if
 587 the court finds the grounds for withdrawal are insufficient or
 588 the asserted conflict is not prejudicial to the client. If the
 589 court grants the motion to withdraw, the court shall appoint one
 590 or more private attorneys to represent the person in accordance
 591 with the requirements and process provided for in s. 27.40. The
 592 clerk of the court shall inform the child representation counsel
 593 and the commission when the court appoints private counsel.

594 (f) Unless the attorney has agreed to provide pro bono
 595 services, an appointed attorney or organization must be
 596 adequately compensated as provided in s. 27.5304. All appointed
 597 attorneys and organizations, including pro bono attorneys, must
 598 be provided with access to funding for expert witnesses,
 599 depositions, and other due process costs of litigation. Payments
 600 of attorney fees and case-related due process costs are subject
 601 to appropriations and review by the Justice Administrative
 602 Commission for reasonableness. The Justice Administrative
 603 Commission shall contract with attorneys appointed by the court.
 604 Attorney fees may not exceed \$1,000 per child per year.

605 (g) In cases in which one or both parents are financially
 606 able, the parent or parents, as applicable, of the child shall
 607 reimburse the court, in whole or in part, for the cost of
 608 services provided under this section; however, reimbursement for
 609 services provided by the attorney for the child may not be

32-00909-22

2022948

610 contingent upon successful collection by the court of
 611 reimbursement from the parent or parents.

612 (2) ACCESS TO RECORDS.—Upon presentation of a court order
 613 appointing an attorney for the child:

614 (a) An agency as defined in chapter 119 must allow the
 615 attorney for the child to inspect and copy records related to
 616 the child who is the subject of the appointment, including, but
 617 not limited to, records made confidential or exempt from s.
 618 119.07(1) or s. 24(a), Art. I of the State Constitution. The
 619 attorney for the child shall maintain the confidential or exempt
 620 status of any records shared by an agency under this paragraph.

621 (b) A person or an organization, other than an agency under
 622 paragraph (a), must allow the attorney for the child to inspect
 623 and copy any records related to the child who is the subject of
 624 the appointment, including, but not limited to, confidential
 625 records.

626
 627 For the purposes of this subsection, the term "records"
 628 includes, but is not limited to, medical, mental health,
 629 substance abuse, child care, education, law enforcement, court,
 630 social services, and financial records.

631 (3) COURT HEARINGS.—The attorney for the child shall review
 632 all disposition recommendations and changes in placements and
 633 file all appropriate motions on behalf of the child at least 72
 634 hours before the hearing.

635 (4) PROCEDURES.—The department shall develop procedures to
 636 request that a court appoint an attorney for the child.

637 (5) RULEMAKING.—The department may adopt rules to implement
 638 this section.

32-00909-22

2022948

Section 9. Subsection (1) of section 28.345, Florida Statutes, is amended to read:

28.345 State access to records; exemption from court-related fees and charges.—

(1) Notwithstanding any other ~~provision of~~ law, the clerk of the circuit court shall, upon request, provide access to public records without charge to the state attorney, public defender, guardian ad litem, public guardian, ~~attorney ad litem,~~ criminal conflict and civil regional counsel, and court-appointed attorney for the child and private court-appointed counsel paid by the state, and to authorized staff acting on their behalf. The clerk of court may provide the requested public record in an electronic format in lieu of a paper format if the requesting entity is capable of accessing such public record electronically.

Section 10. Section 29.007, Florida Statutes, is amended to read:

29.007 Court-appointed counsel.—For purposes of implementing s. 14, Art. V of the State Constitution, the elements of court-appointed counsel to be provided from state revenues appropriated by general law are as follows:

(1) Private attorneys appointed by the court to handle cases where the defendant is indigent and cannot be represented by the public defender or the office of criminal conflict and civil regional counsel.

(2) When the office of criminal conflict and civil regional counsel has a conflict of interest, private attorneys appointed by the court to represent indigents or other classes of litigants in civil proceedings requiring court-appointed counsel

32-00909-22

2022948

in accordance with state and federal constitutional guarantees and federal and state statutes.

(3) When the Statewide Office of Child Representation or a local nonprofit agency with which the statewide office has contracted has a conflict of interest, private attorneys appointed by the court to represent indigents or other classes of litigants in civil proceedings requiring court-appointed counsel in accordance with federal and state statutes.

(4) Reasonable court reporting and transcription services necessary to meet constitutional or statutory requirements, including the cost of transcribing and copying depositions of witnesses and the cost of foreign language and sign-language interpreters and translators.

(5)~~(4)~~ Witnesses, including expert witnesses, summoned to appear for an investigation, preliminary hearing, or trial in a case when the witnesses are summoned on behalf of an indigent, and any other expert witnesses approved by the court.

(6)~~(5)~~ Mental health professionals appointed pursuant to s. 394.473 and required in a court hearing involving an indigent, mental health professionals appointed pursuant to s. 916.115(2) and required in a court hearing involving an indigent, and any other mental health professionals required by law for the full adjudication of any civil case involving an indigent person.

(7)~~(6)~~ Reasonable pretrial consultation fees and costs.

(8)~~(7)~~ Travel expenses reimbursable under s. 112.061 reasonably necessary in the performance of constitutional and statutory responsibilities.

Subsections ~~(3)~~, (4), (5), (6), ~~and (7)~~, and (8) apply when

32-00909-22

2022948__

697 court-appointed counsel is appointed; when the court determines
 698 that the litigant is indigent for costs; or when the litigant is
 699 acting pro se and the court determines that the litigant is
 700 indigent for costs at the trial or appellate level. This section
 701 applies in any situation in which the court appoints counsel to
 702 protect a litigant's due process rights. The Justice
 703 Administrative Commission shall approve uniform contract forms
 704 for use in processing payments for due process services under
 705 this section. In each case in which a private attorney
 706 represents a person determined by the court to be indigent for
 707 costs, the attorney shall execute the commission's contract for
 708 private attorneys representing persons determined to be indigent
 709 for costs.

710 Section 11. Paragraph (j) of subsection (3) and paragraph
 711 (a) of subsection (10) of section 39.001, Florida Statutes, are
 712 amended to read:

713 39.001 Purposes and intent; personnel standards and
 714 screening.—

715 (3) GENERAL PROTECTIONS FOR CHILDREN.—It is a purpose of
 716 the Legislature that the children of this state be provided with
 717 the following protections:

718 (j) The ability to contact their guardian ad litem or
 719 attorney for the child ~~attorney ad litem~~, if appointed, by
 720 having that individual's name entered on all orders of the
 721 court.

722 (10) PLAN FOR COMPREHENSIVE APPROACH.—

723 (a) The office shall develop a state plan for the promotion
 724 of adoption, support of adoptive families, and prevention of
 725 abuse, abandonment, and neglect of children. The Department of

32-00909-22

2022948__

726 Children and Families, the Department of Corrections, the
 727 Department of Education, the Department of Health, the
 728 Department of Juvenile Justice, the Department of Law
 729 Enforcement, and the Agency for Persons with Disabilities shall
 730 participate and fully cooperate in the development of the state
 731 plan at both the state and local levels. Furthermore,
 732 appropriate local agencies and organizations shall be provided
 733 an opportunity to participate in the development of the state
 734 plan at the local level. Appropriate local groups and
 735 organizations shall include, but not be limited to, community
 736 mental health centers; guardian ad litem programs for children
 737 under the circuit court; child representation counsel regional
 738 offices; the school boards of the local school districts; the
 739 Florida local advocacy councils; community-based care lead
 740 agencies; private or public organizations or programs with
 741 recognized expertise in working with child abuse prevention
 742 programs for children and families; private or public
 743 organizations or programs with recognized expertise in working
 744 with children who are sexually abused, physically abused,
 745 emotionally abused, abandoned, or neglected and with expertise
 746 in working with the families of such children; private or public
 747 programs or organizations with expertise in maternal and infant
 748 health care; multidisciplinary Child Protection Teams; child day
 749 care centers; law enforcement agencies; and the circuit courts,
 750 when guardian ad litem programs and attorney for the child are
 751 not available in the local area. The state plan to be provided
 752 to the Legislature and the Governor shall include, as a minimum,
 753 the information required of the various groups in paragraph (b).

754 Section 12. Subsections (2) and (4) of section 39.00145,

32-00909-22

2022948__

Florida Statutes, are amended to read:

39.00145 Records concerning children.—

(2) Notwithstanding any other provision of this chapter, all records in a child's case record must be made available for inspection, upon request, to the child who is the subject of the case record and to the child's caregiver, guardian ad litem, or attorney for the child ~~attorney~~.

(a) A complete and accurate copy of any record in a child's case record must be provided, upon request and at no cost, to the child who is the subject of the case record and to the child's caregiver or ~~guardian ad litem~~, or the attorney for the child.

(b) The department shall release the information in a manner and setting that are appropriate to the age and maturity of the child and the nature of the information being released, which may include the release of information in a therapeutic setting, if appropriate. This paragraph does not deny the child access to his or her records.

(c) If a child or the child's caregiver, guardian ad litem, or attorney for the child ~~attorney~~ requests access to the child's case record, any person or entity that fails to provide any record in the case record under assertion of a claim of exemption from the public records requirements of chapter 119, or fails to provide access within a reasonable time, is subject to sanctions and penalties under s. 119.10.

(d) For the purposes of this subsection, the term "caregiver" is limited to parents, legal custodians, permanent guardians, or foster parents; employees of a residential home, institution, facility, or agency at which the child resides; and

32-00909-22

2022948__

other individuals legally responsible for a child's welfare in a residential setting.

(4) Notwithstanding any other ~~provision of law~~, all state and local agencies and programs that provide services to children or that are responsible for a child's safety, including the Department of Juvenile Justice, the Department of Health, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Education, the Department of Revenue, the school districts, the Statewide Guardian Ad Litem Office, the Statewide Office of Child Representation, and any provider contracting with such agencies, may share with each other confidential records or information that are confidential or exempt from disclosure under chapter 119 if the records or information are reasonably necessary to ensure access to appropriate services for the child, including child support enforcement services, or for the safety of the child. However:

(a) Records or information made confidential by federal law may not be shared.

(b) This subsection does not apply to information concerning clients and records of certified domestic violence centers, which are confidential under s. 39.908 and privileged under s. 90.5036.

Section 13. Subsections (3) and (4) of section 39.0132, Florida Statutes, are amended to read:

39.0132 Oaths, records, and confidential information.—

(3) The clerk shall keep all court records required by this chapter separate from other records of the circuit court. All court records required by this chapter shall not be open to

32-00909-22

2022948

inspection by the public. All records shall be inspected only upon order of the court by persons deemed by the court to have a proper interest therein, except that, subject to the provisions of s. 63.162, a child and the parents of the child and their attorneys, guardian ad litem, attorney for the child, law enforcement agencies, and the department and its designees shall always have the right to inspect and copy any official record pertaining to the child. The Justice Administrative Commission may inspect court dockets required by this chapter as necessary to audit compensation of court-appointed attorneys. If the docket is insufficient for purposes of the audit, the commission may petition the court for additional documentation as necessary and appropriate. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, under whatever conditions upon their use and disposition the court may deem proper, and may punish by contempt proceedings any violation of those conditions.

(4)(a)1. All information obtained pursuant to this part in the discharge of official duty by any judge, employee of the court, authorized agent of the department, correctional probation officer, or law enforcement agent is confidential and exempt from s. 119.07(1) and may not be disclosed to anyone other than the authorized personnel of the court, the department and its designees, correctional probation officers, law enforcement agents, guardian ad litem, attorney for the child, and others entitled under this chapter to receive that information, except upon order of the court.

2.a. The following information held by a guardian ad litem

Page 29 of 63

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-00909-22

2022948

is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(I) Medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records.

(II) Any other information maintained by a guardian ad litem which is identified as confidential information under this chapter.

b. Such confidential and exempt information may not be disclosed to anyone other than the authorized personnel of the court, the department and its designees, correctional probation officers, law enforcement agents, guardians ad litem, and others entitled under this chapter to receive that information, except upon order of the court.

(b) The department shall disclose to the school superintendent the presence of any child in the care and custody or under the jurisdiction or supervision of the department who has a known history of criminal sexual behavior with other juveniles; is an alleged juvenile sex offender, as defined in s. 39.01; or has pled guilty or nolo contendere to, or has been found to have committed, a violation of chapter 794, chapter 796, chapter 800, s. 827.071, or s. 847.0133, regardless of adjudication. Any employee of a district school board who knowingly and willfully discloses such information to an unauthorized person commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 14. Paragraphs (a) and (b) of subsection (4) of section 39.0139, Florida Statutes, are amended to read:

39.0139 Visitation or other contact; restrictions.—

Page 30 of 63

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-00909-22

2022948

871 (4) HEARINGS.—A person who meets any of the criteria set
 872 forth in paragraph (3)(a) who seeks to begin or resume contact
 873 with the child victim shall have the right to an evidentiary
 874 hearing to determine whether contact is appropriate.

875 (a) ~~Before~~ Prior to the hearing, the court shall appoint an
 876 attorney for the child ~~an attorney ad litem~~ or a guardian ad
 877 litem, as appropriate, for the child if one has not already been
 878 appointed. Any attorney for the child ~~attorney ad litem~~ or
 879 guardian ad litem appointed shall have special training in the
 880 dynamics of child sexual abuse.

881 (b) At the hearing, the court may receive and rely upon any
 882 relevant and material evidence submitted to the extent of its
 883 probative value, including written and oral reports or
 884 recommendations from the Child Protection Team, the child's
 885 therapist, or the child's guardian ad litem, ~~or the child's~~
 886 ~~attorney ad litem~~, even if these reports, recommendations, and
 887 evidence may not be admissible under the rules of evidence.

888 Section 15. Paragraphs (k) and (t) of subsection (2) of
 889 section 39.202, Florida Statutes, are amended to read:

890 39.202 Confidentiality of reports and records in cases of
 891 child abuse or neglect; exception.—

892 (2) Except as provided in subsection (4), access to such
 893 records, excluding the name of, or other identifying information
 894 with respect to, the reporter which shall be released only as
 895 provided in subsection (5), shall be granted only to the
 896 following persons, officials, and agencies:

897 (k) Any appropriate official of a Florida advocacy council
 898 investigating a report of known or suspected child abuse,
 899 abandonment, or neglect; the Auditor General or the Office of

32-00909-22

2022948

900 Program Policy Analysis and Government Accountability for the
 901 purpose of conducting audits or examinations pursuant to law; or
 902 the child's guardian ad litem or attorney for the child.

903 (t) Persons with whom the department is seeking to place
 904 the child or to whom placement has been granted, including
 905 foster parents for whom an approved home study has been
 906 conducted, the designee of a licensed child-caring agency as
 907 defined in s. 39.01 ~~s. 39.01(41)~~, an approved relative or
 908 nonrelative with whom a child is placed pursuant to s. 39.402,
 909 preadoptive parents for whom a favorable preliminary adoptive
 910 home study has been conducted, adoptive parents, or an adoption
 911 entity acting on behalf of preadoptive or adoptive parents.

912 Section 16. Subsection (1) of section 39.302, Florida
 913 Statutes, is amended to read:

914 39.302 Protective investigations of institutional child
 915 abuse, abandonment, or neglect.—

916 (1) The department shall conduct a child protective
 917 investigation of each report of institutional child abuse,
 918 abandonment, or neglect. Upon receipt of a report that alleges
 919 that an employee or agent of the department, or any other entity
 920 or person covered by s. 39.01(37) or (55) ~~s. 39.01(36) or (54)~~,
 921 acting in an official capacity, has committed an act of child
 922 abuse, abandonment, or neglect, the department shall initiate a
 923 child protective investigation within the timeframe established
 924 under s. 39.101(2) and notify the appropriate state attorney,
 925 law enforcement agency, and licensing agency, which shall
 926 immediately conduct a joint investigation, unless independent
 927 investigations are more feasible. When conducting investigations
 928 or having face-to-face interviews with the child, investigation

32-00909-22

2022948__

visits shall be unannounced unless it is determined by the department or its agent that unannounced visits threaten the safety of the child. If a facility is exempt from licensing, the department shall inform the owner or operator of the facility of the report. Each agency conducting a joint investigation is entitled to full access to the information gathered by the department in the course of the investigation. A protective investigation must include an interview with the child's parent or legal guardian. The department shall make a full written report to the state attorney within 3 business days after making the oral report. A criminal investigation shall be coordinated, whenever possible, with the child protective investigation of the department. Any interested person who has information regarding the offenses described in this subsection may forward a statement to the state attorney as to whether prosecution is warranted and appropriate. Within 15 days after the completion of the investigation, the state attorney shall report the findings to the department and shall include in the report a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.

Section 17. Paragraph (c) of subsection (8) and paragraph (a) of subsection (14) of section 39.402, Florida Statutes, are amended to read:

39.402 Placement in a shelter.—

(8)

(c) At the shelter hearing, the court shall:

1. Appoint a guardian ad litem to represent the best interest of the child or an attorney for the child to provide direct representation as provided in part XI of this chapter,

32-00909-22

2022948__

unless the court finds that such representation is unnecessary;

2. Inform the parents or legal custodians of their right to counsel to represent them at the shelter hearing and at each subsequent hearing or proceeding, and the right of the parents to appointed counsel, pursuant to the procedures set forth in s. 39.013;

3. Give the parents or legal custodians an opportunity to be heard and to present evidence; and

4. Inquire of those present at the shelter hearing as to the identity and location of the legal father. In determining who the legal father of the child may be, the court shall inquire under oath of those present at the shelter hearing whether they have any of the following information:

a. Whether the mother of the child was married at the probable time of conception of the child or at the time of birth of the child.

b. Whether the mother was cohabiting with a male at the probable time of conception of the child.

c. Whether the mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father.

d. Whether the mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.

e. Whether any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother resided at the time of or since conception of the child or in which the child has resided or resides.

f. Whether a man is named on the birth certificate of the

32-00909-22

2022948__

child pursuant to s. 382.013(2).

g. Whether a man has been determined by a court order to be the father of the child.

h. Whether a man has been determined to be the father of the child by the Department of Revenue as provided in s. 409.256.

(14) The time limitations in this section do not include:

(a) Periods of delay resulting from a continuance granted at the request or with the consent of the attorney for the child ~~or the child's counsel or the child's~~ guardian ad litem, if one has been appointed by the court, or, if the child is of sufficient capacity to express reasonable consent, at the request or with the consent of the attorney for the child ~~child's attorney or the child's~~ guardian ad litem, ~~if one has been appointed by the court,~~ and the child.

Section 18. Paragraphs (e) and (f) of subsection (3) and subsection (6) of section 39.407, Florida Statutes, are amended to read:

39.407 Medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.—

(3)

(e)1. If the child's prescribing physician or psychiatric nurse, as defined in s. 394.455, certifies in the signed medical report required in paragraph (c) that delay in providing a prescribed psychotropic medication would more likely than not cause significant harm to the child, the medication may be provided in advance of the issuance of a court order. In such event, the medical report must provide the specific reasons why

32-00909-22

2022948__

the child may experience significant harm and the nature and the extent of the potential harm. The department must submit a motion seeking continuation of the medication and the physician's or psychiatric nurse's medical report to the court, the child's guardian ad litem or attorney for the child, and all other parties within 3 working days after the department commences providing the medication to the child. The department shall seek the order at the next regularly scheduled court hearing required under this chapter, or within 30 days after the date of the prescription, whichever occurs sooner. If any party objects to the department's motion, the court shall hold a hearing within 7 days.

2. Psychotropic medications may be administered in advance of a court order in hospitals, crisis stabilization units, and in statewide inpatient psychiatric programs. Within 3 working days after the medication is begun, the department must seek court authorization as described in paragraph (c).

(f)1. The department shall fully inform the court of the child's medical and behavioral status as part of the social services report prepared for each judicial review hearing held for a child for whom psychotropic medication has been prescribed or provided under this subsection. As a part of the information provided to the court, the department shall furnish copies of all pertinent medical records concerning the child which have been generated since the previous hearing. On its own motion or on good cause shown by any party, including any guardian ad litem, or the child attorney, or attorney ad litem who has been ~~appointed to represent the child or the child's interests,~~ the court may review the status more frequently than required in

32-00909-22

2022948__

1045 this subsection.

1046 2. The court may, in the best interests of the child, order
1047 the department to obtain a medical opinion addressing whether
1048 the continued use of the medication under the circumstances is
1049 safe and medically appropriate.

1050 (6) Children who are in the legal custody of the department
1051 may be placed by the department, without prior approval of the
1052 court, in a residential treatment center licensed under s.
1053 394.875 or a hospital licensed under chapter 395 for residential
1054 mental health treatment only pursuant to this section or may be
1055 placed by the court in accordance with an order of involuntary
1056 examination or involuntary placement entered pursuant to s.
1057 394.463 or s. 394.467. All children placed in a residential
1058 treatment program under this subsection must be appointed ~~have a~~
1059 guardian ad litem and an attorney for the child appointed.

1060 (a) As used in this subsection, the term:

1061 1. "Residential treatment" means placement for observation,
1062 diagnosis, or treatment of an emotional disturbance in a
1063 residential treatment center licensed under s. 394.875 or a
1064 hospital licensed under chapter 395.

1065 2. "Least restrictive alternative" means the treatment and
1066 conditions of treatment that, separately and in combination, are
1067 no more intrusive or restrictive of freedom than reasonably
1068 necessary to achieve a substantial therapeutic benefit or to
1069 protect the child or adolescent or others from physical injury.

1070 3. "Suitable for residential treatment" or "suitability"
1071 means a determination concerning a child or adolescent with an
1072 emotional disturbance as defined in s. 394.492(5) or a serious
1073 emotional disturbance as defined in s. 394.492(6) that each of

32-00909-22

2022948__

1074 the following criteria is met:

1075 a. The child requires residential treatment.

1076 b. The child is in need of a residential treatment program
1077 and is expected to benefit from mental health treatment.

1078 c. An appropriate, less restrictive alternative to
1079 residential treatment is unavailable.

1080 (b) Whenever the department believes that a child in its
1081 legal custody is emotionally disturbed and may need residential
1082 treatment, an examination and suitability assessment must be
1083 conducted by a qualified evaluator who is appointed by the
1084 Agency for Health Care Administration. This suitability
1085 assessment must be completed before the placement of the child
1086 in a residential treatment center for emotionally disturbed
1087 children and adolescents or a hospital. The qualified evaluator
1088 must be a psychiatrist or a psychologist licensed in Florida who
1089 has at least 3 years of experience in the diagnosis and
1090 treatment of serious emotional disturbances in children and
1091 adolescents and who has no actual or perceived conflict of
1092 interest with any inpatient facility or residential treatment
1093 center or program.

1094 (c) Before a child is admitted under this subsection, the
1095 child shall be assessed for suitability for residential
1096 treatment by a qualified evaluator who has conducted a personal
1097 examination and assessment of the child and has made written
1098 findings that:

1099 1. The child appears to have an emotional disturbance
1100 serious enough to require residential treatment and is
1101 reasonably likely to benefit from the treatment.

1102 2. The child has been provided with a clinically

32-00909-22

2022948__

appropriate explanation of the nature and purpose of the treatment.

3. All available modalities of treatment less restrictive than residential treatment have been considered, and a less restrictive alternative that would offer comparable benefits to the child is unavailable.

A copy of the written findings of the evaluation and suitability assessment must be provided to the department, to the guardian ad litem and attorney for the child, and, if the child is a member of a Medicaid managed care plan, to the plan that is financially responsible for the child's care in residential treatment, all of whom must be provided with the opportunity to discuss the findings with the evaluator.

(d) Immediately upon placing a child in a residential treatment program under this section, the department must notify the guardian ad litem, the attorney for the child, and the court having jurisdiction over the child and must provide the guardian ad litem, the attorney for the child, and the court with a copy of the assessment by the qualified evaluator.

(e) Within 10 days after the admission of a child to a residential treatment program, the director of the residential treatment program or the director's designee must ensure that an individualized plan of treatment has been prepared by the program and has been explained to the child, to the department, ~~and~~ to the guardian ad litem, and to the attorney for the child, and submitted to the department. The child must be involved in the preparation of the plan to the maximum feasible extent consistent with his or her ability to understand and

32-00909-22

2022948__

participate, and the guardian ad litem, the attorney for the child, and the child's foster parents must be involved to the maximum extent consistent with the child's treatment needs. The plan must include a preliminary plan for residential treatment and aftercare upon completion of residential treatment. The plan must include specific behavioral and emotional goals against which the success of the residential treatment may be measured. A copy of the plan must be provided to the child, to the guardian ad litem, to the attorney for the child, and to the department.

(f) Within 30 days after admission, the residential treatment program must review the appropriateness and suitability of the child's placement in the program. The residential treatment program must determine whether the child is receiving benefit toward the treatment goals and whether the child could be treated in a less restrictive treatment program. The residential treatment program shall prepare a written report of its findings and submit the report to the guardian ad litem, to the attorney for the child, and to the department. The department must submit the report to the court. The report must include a discharge plan for the child. The residential treatment program must continue to evaluate the child's treatment progress every 30 days thereafter and must include its findings in a written report submitted to the department. The department may not reimburse a facility until the facility has submitted every written report that is due.

(g)1. The department must submit, at the beginning of each month, to the court having jurisdiction over the child, a written report regarding the child's progress toward achieving

32-00909-22

2022948__

the goals specified in the individualized plan of treatment.

2. The court must conduct a hearing to review the status of the child's residential treatment plan no later than 60 days after the child's admission to the residential treatment program. An independent review of the child's progress toward achieving the goals and objectives of the treatment plan must be completed by a qualified evaluator and submitted to the court before its 60-day review.

3. For any child in residential treatment at the time a judicial review is held pursuant to s. 39.701, the child's continued placement in residential treatment must be a subject of the judicial review.

4. If at any time the court determines that the child is not suitable for continued residential treatment, the court shall order the department to place the child in the least restrictive setting that is best suited to meet his or her needs.

(h) After the initial 60-day review, the court must conduct a review of the child's residential treatment plan every 90 days.

(i) The department must adopt rules for implementing timeframes for the completion of suitability assessments by qualified evaluators and a procedure that includes timeframes for completing the 60-day independent review by the qualified evaluators of the child's progress toward achieving the goals and objectives of the treatment plan which review must be submitted to the court. The Agency for Health Care Administration must adopt rules for the registration of qualified evaluators, the procedure for selecting the evaluators

32-00909-22

2022948__

to conduct the reviews required under this section, and a reasonable, cost-efficient fee schedule for qualified evaluators.

Section 19. Paragraphs (t) and (u) of subsection (1) of section 39.4085, Florida Statutes, are amended to read:

39.4085 Goals for dependent children; responsibilities; education.—

(1) The Legislature finds that the design and delivery of child welfare services should be directed by the principle that the health and safety of children, including the freedom from abuse, abandonment, or neglect, is of paramount concern and, therefore, establishes the following goals for children in shelter or foster care:

(t) To have a guardian ad litem appointed to represent, within reason, their best interests; and, as appropriate, have an attorney for the child and, ~~if appropriate, an attorney ad litem~~ appointed to represent their legal interests. The guardian ad litem and attorney for the child ~~ad litem~~ shall have immediate and unlimited access to the children they represent.

(u) To have all their records available for review by their guardian ad litem or attorney for the child, as applicable, and ~~attorney ad litem~~ if they deem such review necessary.

This subsection establishes goals and not rights. This subsection does not require the delivery of any particular service or level of service in excess of existing appropriations. A person does not have a cause of action against the state or any of its subdivisions, agencies, contractors, subcontractors, or agents, based upon the adoption of or failure

32-00909-22

2022948

to provide adequate funding for the achievement of these goals by the Legislature. This subsection does not require the expenditure of funds to meet the goals established in this subsection except those funds specifically appropriated for such purpose.

Section 20. Subsections (8), (12), (13), (14), and (17) of section 39.502, Florida Statutes, are amended to read:

39.502 Notice, process, and service.—

(8) It is not necessary to the validity of a proceeding covered by this part that the parents be present if their identity or residence is unknown after a diligent search has been made, but in this event the petitioner shall file an affidavit of diligent search prepared by the person who made the search and inquiry, and the court may appoint a guardian ad litem for the child or an attorney for the child, as appropriate.

(12) All process and orders issued by the court shall be served or executed as other process and orders of the circuit court and, in addition, may be served or executed by authorized agents of the department or the guardian ad litem or attorney for the child, as applicable.

(13) Subpoenas may be served within this ~~the~~ state by any person over 18 years of age who is not a party to the proceeding and, in addition, may be served by authorized agents of the department or the guardian ad litem or attorney for the child, as applicable.

(14) No fee shall be paid for service of any process or other papers by an agent of the department or the guardian ad litem or attorney for the child, as applicable. If any process,

32-00909-22

2022948

orders, or any other papers are served or executed by any sheriff, the sheriff's fees shall be paid by the county.

(17) The parent or legal custodian of the child, the attorney for the department, the guardian ad litem or attorney for the child, as applicable, the foster or preadoptive parents, and all other parties and participants shall be given reasonable notice of all proceedings and hearings provided for under this part. All foster or preadoptive parents must be provided with at least 72 hours' notice, verbally or in writing, of all proceedings or hearings relating to children in their care or children they are seeking to adopt to ensure the ability to provide input to the court.

Section 21. Paragraphs (c) and (e) of subsection (1) of section 39.521, Florida Statutes, are amended to read:

39.521 Disposition hearings; powers of disposition.—

(1) A disposition hearing shall be conducted by the court, if the court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing, or if the parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition, have failed to appear for the arraignment hearing after proper notice, or have not been located despite a diligent search having been conducted.

(c) When any child is adjudicated by a court to be dependent, the court having jurisdiction of the child has the power by order to:

1. Require the parent and, when appropriate, the legal guardian or the child to participate in treatment and services identified as necessary. The court may require the person who

32-00909-22

2022948

1277 has custody or who is requesting custody of the child to submit
 1278 to a mental health or substance abuse disorder assessment or
 1279 evaluation. The order may be made only upon good cause shown and
 1280 pursuant to notice and procedural requirements provided under
 1281 the Florida Rules of Juvenile Procedure. The mental health
 1282 assessment or evaluation must be administered by a qualified
 1283 professional as defined in s. 39.01, and the substance abuse
 1284 assessment or evaluation must be administered by a qualified
 1285 professional as defined in s. 397.311. The court may also
 1286 require such person to participate in and comply with treatment
 1287 and services identified as necessary, including, when
 1288 appropriate and available, participation in and compliance with
 1289 a mental health court program established under chapter 394 or a
 1290 treatment-based drug court program established under s. 397.334.
 1291 Adjudication of a child as dependent based upon evidence of harm
 1292 as defined in s. 39.01(35)(g) ~~s. 39.01(34)(g)~~ demonstrates good
 1293 cause, and the court shall require the parent whose actions
 1294 caused the harm to submit to a substance abuse disorder
 1295 assessment or evaluation and to participate and comply with
 1296 treatment and services identified in the assessment or
 1297 evaluation as being necessary. In addition to supervision by the
 1298 department, the court, including the mental health court program
 1299 or the treatment-based drug court program, may oversee the
 1300 progress and compliance with treatment by a person who has
 1301 custody or is requesting custody of the child. The court may
 1302 impose appropriate available sanctions for noncompliance upon a
 1303 person who has custody or is requesting custody of the child or
 1304 make a finding of noncompliance for consideration in determining
 1305 whether an alternative placement of the child is in the child's

Page 45 of 63

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-00909-22

2022948

1306 best interests. Any order entered under this subparagraph may be
 1307 made only upon good cause shown. This subparagraph does not
 1308 authorize placement of a child with a person seeking custody of
 1309 the child, other than the child's parent or legal custodian, who
 1310 requires mental health or substance abuse disorder treatment.

1311 2. Require, if the court deems necessary, the parties to
 1312 participate in dependency mediation.

1313 3. Require placement of the child either under the
 1314 protective supervision of an authorized agent of the department
 1315 in the home of one or both of the child's parents or in the home
 1316 of a relative of the child or another adult approved by the
 1317 court, or in the custody of the department. Protective
 1318 supervision continues until the court terminates it or until the
 1319 child reaches the age of 18, whichever date is first. Protective
 1320 supervision shall be terminated by the court whenever the court
 1321 determines that permanency has been achieved for the child,
 1322 whether with a parent, another relative, or a legal custodian,
 1323 and that protective supervision is no longer needed. The
 1324 termination of supervision may be with or without retaining
 1325 jurisdiction, at the court's discretion, and shall in either
 1326 case be considered a permanency option for the child. The order
 1327 terminating supervision by the department must set forth the
 1328 powers of the custodian of the child and include the powers
 1329 ordinarily granted to a guardian of the person of a minor unless
 1330 otherwise specified. Upon the court's termination of supervision
 1331 by the department, further judicial reviews are not required if
 1332 permanency has been established for the child.

1333 4. Determine whether the child has a strong attachment to
 1334 the prospective permanent guardian and whether such guardian has

Page 46 of 63

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-00909-22

2022948__

a strong commitment to permanently caring for the child.

(e) The court shall, in its written order of disposition, include all of the following:

1. The placement or custody of the child.
2. Special conditions of placement and visitation.
3. Evaluation, counseling, treatment activities, and other actions to be taken by the parties, if ordered.
4. The persons or entities responsible for supervising or monitoring services to the child and parent.
5. Continuation or discharge of the guardian ad litem or attorney for the child if appointed, as appropriate.
6. The date, time, and location of the next scheduled review hearing, which must occur within the earlier of:
 - a. Ninety days after the disposition hearing;
 - b. Ninety days after the court accepts the case plan;
 - c. Six months after the date of the last review hearing; or
 - d. Six months after the date of the child's removal from his or her home, if no review hearing has been held since the child's removal from the home.
7. If the child is in an out-of-home placement, child support to be paid by the parents, or the guardian of the child's estate if possessed of assets which under law may be disbursed for the care, support, and maintenance of the child. The court may exercise jurisdiction over all child support matters, shall adjudicate the financial obligation, including health insurance, of the child's parents or guardian, and shall enforce the financial obligation as provided in chapter 61. The state's child support enforcement agency shall enforce child support orders under this section in the same manner as child

32-00909-22

2022948__

support orders under chapter 61. Placement of the child shall not be contingent upon issuance of a support order.

8.a. If the court does not commit the child to the temporary legal custody of an adult relative, legal custodian, or other adult approved by the court, the disposition order must include the reasons for such a decision and shall include a determination as to whether diligent efforts were made by the department to locate an adult relative, legal custodian, or other adult willing to care for the child in order to present that placement option to the court instead of placement with the department.

b. If no suitable relative is found and the child is placed with the department or a legal custodian or other adult approved by the court, both the department and the court shall consider transferring temporary legal custody to an adult relative approved by the court at a later date, but neither the department nor the court is obligated to so place the child if it is in the child's best interest to remain in the current placement.

For the purposes of this section, "diligent efforts to locate an adult relative" means a search similar to the diligent search for a parent, but without the continuing obligation to search after an initial adequate search is completed.

9. Other requirements necessary to protect the health, safety, and well-being of the child, to preserve the stability of the child's child care, early education program, or any other educational placement, and to promote family preservation or reunification whenever possible.

32-00909-22

2022948

1393 Section 22. Paragraph (a) of subsection (1) of section
1394 39.6011, Florida Statutes, is amended to read:

1395 39.6011 Case plan development.—

1396 (1) The department shall prepare a draft of the case plan
1397 for each child receiving services under this chapter. A parent
1398 of a child may not be threatened or coerced with the loss of
1399 custody or parental rights for failing to admit in the case plan
1400 of abusing, neglecting, or abandoning a child. Participating in
1401 the development of a case plan is not an admission to any
1402 allegation of abuse, abandonment, or neglect, and it is not a
1403 consent to a finding of dependency or termination of parental
1404 rights. The case plan shall be developed subject to the
1405 following requirements:

1406 (a) The case plan must be developed in a face-to-face
1407 conference with the parent of the child, any court-appointed
1408 guardian ad litem or attorney for the child, and, if
1409 appropriate, the child and the temporary custodian of the child.

1410 Section 23. Paragraph (c) of subsection (1) of section
1411 39.6012, Florida Statutes, is amended to read:

1412 39.6012 Case plan tasks; services.—

1413 (1) The services to be provided to the parent and the tasks
1414 that must be completed are subject to the following:

1415 (c) If there is evidence of harm as defined in s.
1416 39.01(35)(g) ~~s. 39.01(34)(g)~~, the case plan must include as a
1417 required task for the parent whose actions caused the harm that
1418 the parent submit to a substance abuse disorder assessment or
1419 evaluation and participate and comply with treatment and
1420 services identified in the assessment or evaluation as being
1421 necessary.

32-00909-22

2022948

1422 Section 24. Subsection (8) of section 39.6251, Florida
1423 Statutes, is amended to read:

1424 39.6251 Continuing care for young adults.—

1425 (8) During the time that a young adult is in care, the
1426 court shall maintain jurisdiction to ensure that the department
1427 and the lead agencies are providing services and coordinate
1428 with, and maintain oversight of, other agencies involved in
1429 implementing the young adult's case plan, individual education
1430 plan, and transition plan. The court shall review the status of
1431 the young adult at least every 6 months and hold a permanency
1432 review hearing at least annually. If the young adult is
1433 appointed a guardian under chapter 744 or a guardian advocate
1434 under s. 393.12, at the permanency review hearing the court
1435 shall review the necessity of continuing the guardianship and
1436 whether restoration of guardianship proceedings are needed when
1437 the young adult reaches 22 years of age. The court may appoint
1438 an attorney for the child ~~a guardian ad litem~~ or continue the
1439 appointment of a guardian ad litem or an attorney for the child,
1440 as applicable, with the young adult's consent. The young adult
1441 or any other party to the dependency case may request an
1442 additional hearing or review.

1443 Section 25. Paragraph (b) of subsection (1) and paragraph
1444 (b) of subsection (2) of section 39.701, Florida Statutes, are
1445 amended to read:

1446 39.701 Judicial review.—

1447 (1) GENERAL PROVISIONS.—

1448 (b)1. The court shall retain jurisdiction over a child
1449 returned to his or her parents for a minimum period of 6 months
1450 following the reunification, but, at that time, based on a

32-00909-22

2022948

report of the social service agency and the guardian ad litem or
attorney for the child, if one has been appointed, and any other
relevant factors, the court shall make a determination as to
whether supervision by the department and the court's
jurisdiction shall continue or be terminated.

2. Notwithstanding subparagraph 1., the court must retain
jurisdiction over a child if the child is placed in the home
with a parent or caregiver with an in-home safety plan and such
safety plan remains necessary for the child to reside safely in
the home.

(2) REVIEW HEARINGS FOR CHILDREN YOUNGER THAN 18 YEARS OF
AGE.—

(b) *Submission and distribution of reports.*—

1. A copy of the social service agency's written report and
the written report of the guardian ad litem, and a report of the
attorney for the child, if he or she has prepared one, must be
served on all parties whose whereabouts are known; to the foster
parents or legal custodians; and to the citizen review panel, at
least 72 hours before the judicial review hearing or citizen
review panel hearing. The requirement for providing parents with
a copy of the written report does not apply to those parents who
have voluntarily surrendered their child for adoption or who
have had their parental rights to the child terminated.

2. In a case in which the child has been permanently placed
with the social service agency, the agency shall furnish to the
court a written report concerning the progress being made to
place the child for adoption. If the child cannot be placed for
adoption, a report on the progress made by the child towards
alternative permanency goals or placements, including, but not

32-00909-22

2022948

limited to, guardianship, long-term custody, long-term licensed
custody, or independent living, must be submitted to the court.
The report must be submitted to the court at least 72 hours
before each scheduled judicial review.

3. In addition to or in lieu of any written statement
provided to the court, the foster parent or legal custodian, or
any preadoptive parent, shall be given the opportunity to
address the court with any information relevant to the best
interests of the child at any judicial review hearing.

Section 26. Paragraph (g) of subsection (5) of section
39.702, Florida Statutes, is amended to read:

39.702 Citizen review panels.—

(5) The independent not-for-profit agency authorized to
administer each citizen review panel shall:

(g) Establish policies to ensure adequate communication
with the parent, the foster parent or legal custodian, the
guardian ad litem or attorney for the child, and any other
person deemed appropriate.

Section 27. Paragraph (a) of subsection (3) and subsections
(5), (6), and (7) of section 39.801, Florida Statutes, are
amended to read:

39.801 Procedures and jurisdiction; notice; service of
process.—

(3) Before the court may terminate parental rights, in
addition to the other requirements set forth in this part, the
following requirements must be met:

(a) Notice of the date, time, and place of the advisory
hearing for the petition to terminate parental rights and a copy
of the petition must be personally served upon the following

32-00909-22

2022948__

persons, specifically notifying them that a petition has been filed:

1. The parents of the child.
2. The legal custodians of the child.
3. If the parents who would be entitled to notice are dead or unknown, a living relative of the child, unless upon diligent search and inquiry no such relative can be found.
4. Any person who has physical custody of the child.
5. Any grandparent entitled to priority for adoption under s. 63.0425.
6. Any prospective parent who has been identified under s. 39.503 or s. 39.803, unless a court order has been entered pursuant to s. 39.503(4) or (9) or s. 39.803(4) or (9) which indicates no further notice is required. Except as otherwise provided in this section, if there is not a legal father, notice of the petition for termination of parental rights must be provided to any known prospective father who is identified under oath before the court or who is identified by a diligent search of the Florida Putative Father Registry. Service of the notice of the petition for termination of parental rights is not required if the prospective father executes an affidavit of nonpaternity or a consent to termination of his parental rights which is accepted by the court after notice and opportunity to be heard by all parties to address the best interests of the child in accepting such affidavit.
7. The guardian ad litem for the child or the representative of the guardian ad litem program, if the program has been appointed.
8. The attorney for the child, if appointed.

Page 53 of 63

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-00909-22

2022948__

The document containing the notice to respond or appear must contain, in type at least as large as the type in the balance of the document, the following or substantially similar language: "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS NOTICE."

(5) All process and orders issued by the court must be served or executed as other process and orders of the circuit court and, in addition, may be served or executed by authorized agents of the department, ~~or~~ the guardian ad litem, or the attorney for the child.

(6) Subpoenas may be served within this ~~the~~ state by any person over 18 years of age who is not a party to the proceeding and, in addition, may be served or executed by authorized agents of the department, ~~or~~ of the guardian ad litem, or of the attorney for the child.

(7) A fee may not be paid for service of any process or other papers by an agent of the department, ~~or~~ the guardian ad litem, or the attorney for the child. If any process, orders, or other papers are served or executed by any sheriff, the sheriff's fees must be paid by the county.

Section 28. Subsection (1) of section 39.802, Florida Statutes, is amended to read:

39.802 Petition for termination of parental rights; filing; elements.—

Page 54 of 63

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-00909-22

2022948__

1567 (1) All proceedings seeking an adjudication to terminate
 1568 parental rights pursuant to this chapter must be initiated by
 1569 the filing of an original petition by the department, the
 1570 guardian ad litem, the attorney for the child, or any other
 1571 person who has knowledge of the facts alleged or is informed of
 1572 them and believes that they are true.

1573 Section 29. Subsection (2) of section 39.808, Florida
 1574 Statutes, is amended to read:

1575 39.808 Advisory hearing; pretrial status conference.—

1576 (2) At the hearing the court shall inform the parties of
 1577 their rights under s. 39.807, shall appoint counsel for the
 1578 parties in accordance with legal requirements, and shall appoint
 1579 a guardian ad litem or an attorney for the child as provided for
 1580 in s. 39.831 to represent the interests of the child if one has
 1581 not already been appointed.

1582 Section 30. Subsection (11) of section 39.810, Florida
 1583 Statutes, is amended to read:

1584 39.810 Manifest best interests of the child.—In a hearing
 1585 on a petition for termination of parental rights, the court
 1586 shall consider the manifest best interests of the child. This
 1587 consideration shall not include a comparison between the
 1588 attributes of the parents and those of any persons providing a
 1589 present or potential placement for the child. For the purpose of
 1590 determining the manifest best interests of the child, the court
 1591 shall consider and evaluate all relevant factors, including, but
 1592 not limited to:

1593 (11) The recommendations for the child provided by the
 1594 child's guardian ad litem ~~or legal representative~~.

1595 Section 31. Subsection (9) of section 39.811, Florida

Page 55 of 63

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-00909-22

2022948__

1596 Statutes, is amended to read:

1597 39.811 Powers of disposition; order of disposition.—

1598 (9) After termination of parental rights, the court shall
 1599 retain jurisdiction over any child for whom custody is given to
 1600 a social service agency until the child is adopted. The court
 1601 shall review the status of the child's placement and the
 1602 progress being made toward permanent adoptive placement. As part
 1603 of this continuing jurisdiction, for good cause shown by the
 1604 attorney for the child or guardian ad litem for the child, the
 1605 court may review the appropriateness of the adoptive placement
 1606 of the child.

1607 Section 32. Subsection (4) of section 39.812, Florida
 1608 Statutes, is amended to read:

1609 39.812 Postdisposition relief; petition for adoption.—

1610 (4) The court shall retain jurisdiction over any child
 1611 placed in the custody of the department until the child is
 1612 adopted. After custody of a child for subsequent adoption has
 1613 been given to the department, the court has jurisdiction for the
 1614 purpose of reviewing the status of the child and the progress
 1615 being made toward permanent adoptive placement. As part of this
 1616 continuing jurisdiction, for good cause shown by the attorney
 1617 for the child or guardian ad litem for the child, the court may
 1618 review the appropriateness of the adoptive placement of the
 1619 child. When a licensed foster parent or court-ordered custodian
 1620 has applied to adopt a child who has resided with the foster
 1621 parent or custodian for at least 6 months and who has previously
 1622 been permanently committed to the legal custody of the
 1623 department and the department does not grant the application to
 1624 adopt, the department may not, in the absence of a prior court

Page 56 of 63

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-00909-22

2022948__

1625 order authorizing it to do so, remove the child from the foster
1626 home or custodian, except when:

1627 (a) There is probable cause to believe that the child is at
1628 imminent risk of abuse or neglect;

1629 (b) Thirty days have expired following written notice to
1630 the foster parent or custodian of the denial of the application
1631 to adopt, within which period no formal challenge of the
1632 department's decision has been filed; or

1633 (c) The foster parent or custodian agrees to the child's
1634 removal.

1635 Section 33. Subsections (5), (6), and (7) of section 43.16,
1636 Florida Statutes, are amended to read:

1637 43.16 Justice Administrative Commission; membership, powers
1638 and duties.—

1639 (5) The duties of the commission shall include, but not be
1640 limited to, the following:

1641 (a) The maintenance of a central state office for
1642 administrative services and assistance when possible to and on
1643 behalf of the state attorneys and public defenders of Florida,
1644 the capital collateral regional counsel of Florida, the criminal
1645 conflict and civil regional counsel, ~~and~~ the Guardian Ad Litem
1646 Program, and the Statewide Office of Child Representation.

1647 (b) Each state attorney, public defender, ~~and~~ criminal
1648 conflict and civil regional counsel, ~~and~~ the Guardian Ad Litem
1649 Program, and the Statewide Office of Child Representation shall
1650 continue to prepare necessary budgets, vouchers that represent
1651 valid claims for reimbursement by the state for authorized
1652 expenses, and other things incidental to the proper
1653 administrative operation of the office, such as revenue

32-00909-22

2022948__

1654 transmittals to the Chief Financial Officer and automated
1655 systems plans, but will forward such items to the commission for
1656 recording and submission to the proper state officer. However,
1657 when requested by a state attorney, a public defender, a
1658 criminal conflict and civil regional counsel, ~~or~~ the Guardian Ad
1659 Litem Program, or the Statewide Office of Child Representation,
1660 the commission will either assist in the preparation of budget
1661 requests, voucher schedules, and other forms and reports or
1662 accomplish the entire project involved.

1663 (6) The commission, each state attorney, each public
1664 defender, the criminal conflict and civil regional counsel, the
1665 capital collateral regional counsel, ~~and~~ the Guardian Ad Litem
1666 Program, and the Statewide Office of Child Representation shall
1667 establish and maintain internal controls designed to:

1668 (a) Prevent and detect fraud, waste, and abuse as defined
1669 in s. 11.45(1).

1670 (b) Promote and encourage compliance with applicable laws,
1671 rules, contracts, grant agreements, and best practices.

1672 (c) Support economical and efficient operations.

1673 (d) Ensure reliability of financial records and reports.

1674 (e) Safeguard assets.

1675 (7) The provisions contained in this section shall be
1676 supplemental to those of chapter 27, relating to state
1677 attorneys, public defenders, criminal conflict and civil
1678 regional counsel, and capital collateral regional counsel; to
1679 those of chapter 39, relating to the Guardian Ad Litem Program
1680 and the Statewide Office of Child Representation; or to other
1681 laws pertaining hereto.

1682 Section 34. Paragraph (a) of subsection (2) of section

32-00909-22

2022948__

63.085, Florida Statutes, is amended to read:

63.085 Disclosure by adoption entity.—

(2) DISCLOSURE TO ADOPTIVE PARENTS.—

(a) At the time that an adoption entity is responsible for selecting prospective adoptive parents for a born or unborn child whose parents are seeking to place the child for adoption or whose rights were terminated pursuant to chapter 39, the adoption entity must provide the prospective adoptive parents with information concerning the background of the child to the extent such information is disclosed to the adoption entity by the parents, legal custodian, or the department. This subsection applies only if the adoption entity identifies the prospective adoptive parents and supervises the placement of the child in the prospective adoptive parents' home. If any information cannot be disclosed because the records custodian failed or refused to produce the background information, the adoption entity has a duty to provide the information if it becomes available. An individual or entity contacted by an adoption entity to obtain the background information must release the requested information to the adoption entity without the necessity of a subpoena or a court order. In all cases, the prospective adoptive parents must receive all available information by the date of the final hearing on the petition for adoption. The information to be disclosed includes:

1. A family social and medical history form completed pursuant to s. 63.162(6).

2. The biological mother's medical records documenting her prenatal care and the birth and delivery of the child.

3. A complete set of the child's medical records

32-00909-22

2022948__

documenting all medical treatment and care since the child's birth and before placement.

4. All mental health, psychological, and psychiatric records, reports, and evaluations concerning the child before placement.

5. The child's educational records, including all records concerning any special education needs of the child before placement.

6. Records documenting all incidents that required the department to provide services to the child, including all orders of adjudication of dependency or termination of parental rights issued pursuant to chapter 39, any case plans drafted to address the child's needs, all protective services investigations identifying the child as a victim, and all guardian ad litem reports or attorney for the child reports filed with the court concerning the child.

7. Written information concerning the availability of adoption subsidies for the child, if applicable.

Section 35. Subsection (4) of section 322.09, Florida Statutes, is amended to read:

322.09 Application of minors; responsibility for negligence or misconduct of minor.—

(4) Notwithstanding subsections (1) and (2), if a caregiver of a minor who is under the age of 18 years and is in out-of-home care as defined in s. 39.01(56) ~~s. 39.01(55)~~, an authorized representative of a residential group home at which such a minor resides, the caseworker at the agency at which the state has placed the minor, or a guardian ad litem specifically authorized by the minor's caregiver to sign for a learner's driver license

32-00909-22

2022948__

signs the minor's application for a learner's driver license, that caregiver, group home representative, caseworker, or guardian ad litem does not assume any obligation or become liable for any damages caused by the negligence or willful misconduct of the minor by reason of having signed the application. Before signing the application, the caseworker, authorized group home representative, or guardian ad litem shall notify the caregiver or other responsible party of his or her intent to sign and verify the application.

Section 36. Paragraph (p) of subsection (4) of section 394.495, Florida Statutes, is amended to read:

394.495 Child and adolescent mental health system of care; programs and services.—

(4) The array of services may include, but is not limited to:

(p) Trauma-informed services for children who have suffered sexual exploitation as defined in s. 39.01(78)(g) ~~s. 39.01(77)(g)~~.

Section 37. Section 627.746, Florida Statutes, is amended to read:

627.746 Coverage for minors who have a learner's driver license; additional premium prohibited.—An insurer that issues an insurance policy on a private passenger motor vehicle to a named insured who is a caregiver of a minor who is under the age of 18 years and is in out-of-home care as defined in s. 39.01(56) ~~s. 39.01(55)~~ may not charge an additional premium for coverage of the minor while the minor is operating the insured vehicle, for the period of time that the minor has a learner's driver license, until such time as the minor obtains a driver

32-00909-22

2022948__

license.

Section 38. Paragraph (b) of subsection (9) of section 768.28, Florida Statutes, is amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; civil liability for damages caused during a riot; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(9)

(b) As used in this subsection, the term:

1. "Employee" includes any volunteer firefighter.

2. "Officer, employee, or agent" includes, but is not limited to, any health care provider when providing services pursuant to s. 766.1115; any nonprofit independent college or university located and chartered in this state which owns or operates an accredited medical school, and its employees or agents, when providing patient services pursuant to paragraph (10)(f); any public defender or her or his employee or agent, including an assistant public defender or an investigator; and any member of a Child Protection Team, as defined in s. 39.01 ~~s. 39.01(13)~~, when carrying out her or his duties as a team member under the control, direction, and supervision of the state or any of its agencies or subdivisions.

Section 39. Paragraph (c) of subsection (1) of section 934.255, Florida Statutes, is amended to read:

934.255 Subpoenas in investigations of sexual offenses.—

(1) As used in this section, the term:

(c) "Sexual abuse of a child" means a criminal offense based on any conduct described in s. 39.01(78) ~~s. 39.01(77)~~.

Section 40. Subsection (5) of section 960.065, Florida

32-00909-22

2022948__

1799 Statutes, is amended to read:

1800 960.065 Eligibility for awards.—

1801 (5) A person is not ineligible for an award pursuant to
1802 paragraph (2) (a), paragraph (2) (b), or paragraph (2) (c) if that
1803 person is a victim of sexual exploitation of a child as defined
1804 in s. 39.01(78)(g) ~~s. 39.01(77)(g)~~.

1805 Section 41. This act shall take effect July 1, 2022.



FLORIDA STATEWIDE GUARDIAN AD LITEM OFFICE



Dennis W. Moore
Interim Executive Director

STATEWIDE GUARDIAN AD LITEM OFFICE BILL ANALYSIS

DATE: January 8, 2022

HOUSE BILL NUMBER:

CONTACT: Deborah Lacombe
Special Counsel
(850) 922-7213

SPONSOR:

SENATE BILL NUMBER: 948

SPONSOR: Senator Book

Overview: Currently, when abused and neglected children are involved in dependency court proceedings, they are represented by guardians ad litem. A guardian ad litem (“GAL”) is a special guardian appointed by the court to prosecute or defend, on behalf of an infant or incompetent, in a suit to which he is a party, and such guardian is considered an officer of the court to represent the interest of the infant or incompetent in the litigation.¹

Section 39.822, Florida Statutes, provides: “A guardian ad litem shall be appointed by the court at the earliest possible time to represent the child in any child abuse, abandonment, or neglect judicial proceeding, whether civil or criminal.” The Statewide Guardian ad Litem Office (“GAL”), currently represents approximately 25,600 children using a multi-disciplinary team including an attorney to advocate for the child’s best interests, including their legal interests. GALs also investigate the case and must report information, provide recommendations, and relay the child’s wishes to the court.

SB 948 proposes changing the current system of legal representation Florida provides to abused and neglected children in dependency proceedings from guardian ad litem representation using a best interests standard to attorney representation using an attorney-client/child-directed standard. The bill revises section 39.822 to limit GAL required appointment to specified circumstances, such as when a child remains at home or is in a nonlicensed placement under protective supervision, or the court’s discretion. Children in out-of-home care would no longer be required to have a GAL appointed. Instead, these children would be appointed an “attorney for the child” who provides “direct representation”. (Because the term “direct representation” is not defined, for purposes of this analysis it is assumed that the attorney for the child would serve in a traditional attorney-client relationship, where the child-client determines the goals of the representation, and maintains the attorney-client privilege and confidentiality with the child.) Additionally, the bill contemplates appointment of both an attorney and a GAL under certain circumstances, such as when a child is the subject of a termination of parental rights proceeding.

¹ *Kossar v. State*, 13 Misc. 2d 941, 943 (N.Y. Ct. CL 1958).

The bill proposes creation of a new Office of Child Representation (“OCR”) within the Justice Administrative Commission (“JAC”) to provide attorneys for children or to contract with entities that will. The bill outlines the operation and organization for the OCR, which parallels the statute for the GAL Statewide Office in existing 39.8296.

The bill changes references to “attorneys ad litem” to “attorneys for children” and inserts the later term throughout Chapter 39. The term “ad litem” provides a limitation on the scope of the appointment. The suffix “ad litem” is a Latin phrase meaning “for the suit” or “for purposes of the suit.”² However, the bill limits the scope of the appointment to the “dependency proceeding” in section 39.831, as such, the scope of the appointment is not altered by this change.

Revising section 39.802 to permit the child’s attorney to file a termination of parental rights petition in the name of the child, is a substantive public policy change. Currently, a child is listed as an individual that could file a TPR petition in section 39.802, but a child could not file such a petition without adult assistance (next friend or GAL). By giving all children in out-of-home care attorneys and then adding the attorney to the list of individuals in section 39.802, any child could direct his or her OCR attorney to file a petition to terminate his or her parent’s rights and that petition would be litigated.

SB 948 also revises section 39.8296 impacting guardian ad litem operations, including with regard to conflicts of interests and the Governor’s appointment of the Executive Director for the Statewide GAL Office.

The bill is effective July 1, 2022 and the proposed system for representation of children is to be put into effect July 1, 2023.

I. Present Situation:

Dependency proceedings exist to protect and care for abused and neglected children. If a child is removed from his or her parent’s custody due to abuse, abandonment or neglect, the Department of Children and Families (“DCF”) files a shelter petition and the child comes under the jurisdiction of the dependency court.³ In such situations, the state exercises its power to protect children under the states’ responsibility as *parens patriae*⁴ codified by the Legislature in Chapter 39, Florida Statutes. Once the state has removed the child, the child is in the custody of the state, and the dependency judge stands in the shoes of the parent, acting in the protective and provisional role of “in loco parentis” for the child.⁵

The dependency court’s obligation to protect the child’s rights and interests makes it different from other courtrooms where judges are neutral arbiters of the disputes between parties. The Florida Constitution recognizes the states’ duty to act as *parens patriae* and provides that matters related to juveniles are equity proceedings.⁶ Unlike other court proceedings, the judge must actively protect the safety and well-being of the child, and make certain determinations based on

² *D.H. v. Adept Cmty. Servs.*, 271 So. 3d 870, 879 (Fla. 2018).

³ Some children are not removed and the court obtains jurisdiction through a non-shelter petition.

⁴ See *In Interest of Ivey*, 319 So. 2d 53, 58 (Fla. 1st DCA 1975); *Gibbs v. Titlelman*, 39 F.Supp. 38, 54 (E.D. Pa. 1973), *rev’d on other grounds*, 502 F.2d 1107 (3d Cir. 1974); *Fontain v. Ravenel*, 58 U.S. 369, 392-93 (1894)(Taney, J. concurring)(citations omitted).

⁵ See *Buckner v. Fam. Servs. of Central Fla.*, 876 So. 2d 1285, 1288 (Fla. 5th DCA 2004).

⁶ Fla. Const., Art. V, § 20(c)(3).

best interests.”⁷ In Florida's system, “[i]t is the dependency court which has been charged under Florida law with protecting the rights and interests of dependent children.”⁸ Adversarial litigation is not the driver of judicial decisions in dependency proceedings because the court has the affirmative duty to act in the child’s best interests without pleas, motions or requests from the parties.

Florida’s GAL Program provides legal representation to children using a best interests standard. Federal and state law expressly require appointment of a trained guardian ad litem to represent the child and outline two components of that representation: the GAL must obtain a first-hand clear understanding of the situation and needs of the child, and the GAL must make reports and recommendations to the court in the child’s best interests. Section 39.820(1) establishes the GAL as the child’s representative in the dependency action who serves until discharged by the court.⁹

Guardians ad litem represent people without capacity, like children, and protect their interests. The role of a GAL has been described by the Florida Supreme Court in the following manner:

When a child is a party to a legal action and lacks a qualified "representative, such as a guardian or other like fiduciary," the court in which that action is proceeding "shall appoint a guardian ad litem." Fla. R. Civ. P. 1.210(b). The suffix "ad litem" is a Latin phrase meaning "for the suit" or "for purposes of the suit." Ad litem, Black's Law Dictionary (9th ed. 2009). Florida law defines "guardian ad litem" in greater detail as "a person who is appointed by the court . . . in which a particular legal matter is pending to **represent a ward in that proceeding.**" § 744.102(10), Fla. Stat. (2006) (emphasis added).¹⁰

At common law, children cannot engage attorneys in an attorney-client relationship due to the disability of nonage. Therefore, children must be represented by an adult of reasonable judgment and integrity to represent the child’s legal interest in court proceedings, a guardian, guardian ad litem or next friend. A guardian ad litem is a special guardian appointed by the court to prosecute or defend, on behalf of an infant or incompetent, in a suit to which he is a party, and such guardian is considered an officer of the court to represent the interest of the infant or incompetent in the litigation.”¹¹ “Thus, a [Child Abuse Prevention and Treatment Act (“CAPTA”)] guardian ad litem is a fiduciary whose role is to investigate the child's circumstances and advocate for her best interests.”¹²

Under any of these circumstances, the adult acting as the minor’s representative will normally retain counsel for legal representation in the judicial proceedings. When an attorney is retained for these purposes the attorney owes a duty of care to both the appointed adult as well as the primary or intended beneficiary of the appointment.¹³

⁷ *In the Interest of D.B.*, 385 So. 2d 83, 90 (Fla. 1980) (To accurately characterize the proceeding involved, it should be recognized that juvenile dependency proceedings and juvenile delinquency proceedings have distinct and separate purposes. Dependency proceedings exist to protect and care for the child that has been neglected, abused, or abandoned. Delinquency proceedings, on the other hand, exist to remove children from the adult criminal justice system and punish them in a manner more suitable and appropriate for children.).

⁸ *Buckner*, 876 So. 2d at 1287.

⁹ Because the definition of “guardian ad litem” includes the Statewide GAL Office, general references to “guardian ad litem” throughout Chapter 39 include the entire GAL Program, its volunteers, staff, and pro bono attorneys.

¹⁰ *D.H.v. Adept Cmty. Servs.*, 271 So. 3d 870, 879 (Fla. 2018) (citations omitted).

¹¹ *Kossar v. State*, 13 Misc. 2d 941, 943, 179 N.Y.S.2d 71, 74 (N.Y. Ct. Cl. 1958).

¹² *In re Josiah Z.*, 36 Cal. 4th 664, 679, 115 P. 3d 1133, 1141 (2005), as modified (Aug. 10, 2005).

¹³ *Op. Att’y Gen. Fla.* 96-94 (1996).

Because every child is assigned an attorney, the GAL Program's advocacy includes representation of children's legal interests. The GAL Attorney owes a duty of care to the child as the beneficiary of the Program's representation. The GAL Attorney provides independent legal representation for the child through the GAL. This relationship can be analogized to situations where a trustee represents a corporation and that trustee employs an attorney. Another example is where a child has a cause of action (maybe in a car accident) and the parent employs an attorney to represent the child. There is no attorney-client relationship between the GAL Attorney and the child, but representation of the child's interests is the sole purpose of the advocacy.

Representing the child encompasses protecting their rights, needs and best interests.¹⁴ Pursuant to the implementing regulations of CAPTA, states are required to ensure appointment of a guardian ad litem who will "represent and protect the rights and best interests of the child."¹⁵ Florida law requires this to be done at the earliest possible time in abuse and neglect proceedings.¹⁶ Florida Statutes and the Rules of Juvenile Procedure provide guidance as to what it means to advocate for the interests of the child:

- Section 39.4085 lists goals for children in shelter or foster care, which include, among other things, "individual dignity, liberty, pursuit of happiness, and the protection of their civil and legal rights as persons in the custody of the state."
- Section 39.822 directs the GAL to review all disposition orders and changes in placement, and to be present at all stages of the proceedings or file a written report with the court containing the GAL's recommendations.
- Numerous statutes require the GAL to file reports with the court at judicial review hearings and in TPR proceedings.¹⁷
- GAL is also required to file a report to the court when placement in residential treatment center is being considered under Juvenile Rule 8.350(a)(3).
- The GAL makes recommendations at various points in the case that must be considered in making certain decisions, for example whether TPR is in the child's best interests, or if the child's placement should be changed.¹⁸
- GALs are required to report the wishes of the child in addition to best interests recommendations.¹⁹

Florida's GAL Program uses a multi-disciplinary team to represent children with a trained volunteer, board certified child advocacy manager and GAL Program Attorney. While the Program was once comprised exclusively of lay volunteers, it has been significantly professionalized by the addition of GAL Program Attorneys and Child Advocate Managers who, along with a trained and certified volunteer, function as a multi-disciplinary team.

The multi-disciplinary team was first recognized as the best approach to representing the legal interests of children in dependency proceedings in a study of the effectiveness of legal representation through guardians ad litem and court appointed special advocates commissioned by the United States Congress in 1988. The GAL model conforms to more recently promulgated guidance for child representation established by the National Quality Improvement Center on the

¹⁴ 45 C.F.R. § 1340.14(g) (2004) and 55 Fed. Reg. 27639 (July 5, 1990); § 39.8296(2)(b)6.

¹⁵ 45 C.F.R. § 1340.14(g) (2004), 55 Fed. Reg. 27639 (July 5, 1990).

¹⁶ § 39.822(1), F.S.

¹⁷ §§ 39.701, 39.807; *see also* § 39.0139, F.S.

¹⁸ §§ 39.621, 39.807, 39.810, 39.822; *see also* § 39.0139, F.S.

¹⁹ § 39.807(2) and GAL Standards of Operation.

Representation of Children in the Child Welfare System. The basic premise of the QIC model is that “[a]ll children subject to court proceedings involving allegations of child abuse and neglect should have legal representation as long as the court’s jurisdiction continues.” Under the QIC, “the definition of a ‘child’s representative’ (CR) includes an individual lawyer providing legal representation to the child *as well as an office, which could be multidisciplinary, that is providing legal representation to the child.*” (emphasis added). Further, the QIC recognized best interests for the child: “Whether the lawyer takes his or her direction from the *child or makes a best interest judgment as to what the goals of the litigation should be*, once the goals are determined the lawyer is expected to aggressively fulfill the duties and obligations set forth here.”²⁰

GAL’s inclusion of trained community volunteers on its multi-disciplinary team allows for efficiencies and unique community engagement for children. The GAL Program has thousands of volunteers statewide. The value of the contribution of GAL volunteers to individual children is well-documented and cannot be overstated. Volunteers provide a safe and stable adult for children and therefore help promote resilience and healing which will benefit them throughout their lifetime. There are an unlimited number of anecdotal stories of a volunteer improving the lives of children, whether it is shepherding them through a change of placement, being the only person to attend a school event, paying for a sports camp or driving them to one, traveling multiple hours each way for visits, becoming a placement, and even adopting them. Volunteers also benefit children by creating community awareness of the needs of abused and neglected children.

On average, GAL Volunteers represent between 1 and 2 children and therefore the perspective on the child’s situation is individualized. Within the dependency case GAL volunteers provide high quality information to judges because of the amount of time they can spend with the children and on information gathering.

GAL Child Advocate Managers (“CAMs”) provide their knowledge of and experience in child welfare systems to guide GAL volunteers on procedures and available resources. They can help volunteers navigate the system and help solve complex problems. Having CAMs ensures that volunteer GALs are not reinventing the wheel in every case and increases efficiency.

CAMs ensure consistency of representation. If a GAL volunteer cannot attend a court hearing or meeting/staffing, the CAM can step in. If a volunteer cannot be assigned, a CAM can serve as the GAL (a staff advocate). Additionally, CAMs are responsible for coordinating advocacy for children who are placed outside their home circuits which ensures judges still receive first-hand information about children, even if they are outside their jurisdiction.

GAL Program Attorneys are responsible for protecting the child’s rights and legal interests as detailed in federal and state law. They identify and manage the legal issues, appear at all court proceedings on behalf of the child and attend out-of-court proceedings when necessary or beneficial. The Program Attorney explains the law and provides advice and counsel to the volunteers, CAMs, and children who have the capacity to understand. GAL Attorneys focus on expediting permanency for children in accordance with statutory timeframes. GAL Attorneys initiate and appear at administrative hearings regarding the denial of services for the child. The Program appeals decisions that are not favorable to the child’s safety, welfare and best interests, and can initiate TPR proceedings when appropriate or move to compel DCF to do so.

²⁰ See, QIC Best Practice Model of Child Representation, found at:
<http://www.improvechildrep.org/DemonstrationProjects/QICChildRepBestPracticeModel.aspx>

GALs are obligated by law to gather and provide information to the court. For decades, both federal and state law have required GALs to provide independent information to the court. Imposing this duty on the child's representative provides judges with information from an entity that is independent of the child welfare agency and an assessment of the case from the child's perspective. Federal guidance indicates that giving judges comprehensive information helps children find permanency sooner: "In order for a judge to make the best possible decisions for a family, it is critical that he or she receive the most accurate and complete information possible from and about all parties. Incomplete or inaccurate information renders judicial decision-making more difficult and may result in delays, increases in the length of time children and youth spend in care, additional costs to state or tribal government, and less beneficial decisions." ACYF-CB-IM-17-02 (Issuance date: January 17, 2017).

Judges have inherent authority to appoint attorneys ad litem, and section 39.01305 requires appointment of an attorney if a child has certain special needs. A dependency judge has inherent authority to appoint an attorney ad litem for the child in any case at any time. This authority is also codified in the Juvenile Rules of Procedure, Rule 8.217. Parties to the case can also request that a judge appoint an attorney ad litem for the child, including the child's GAL.

Additionally, existing law requires appointment of attorneys for children with special needs in section 39.01305 if the child:

- currently lives in, or is being considered for placement in a skilled nursing facility or residential treatment center;
- is prescribed a psychotropic medication but does not assent to take it;
- has a developmental disability as defined in s. 393.063, F.S.; or
- is a victim of human trafficking.

The difference between an "attorney ad litem" and an "attorney for the dependent child" appointed pursuant to section 39.01305, is substantive. The suffix "ad litem" is a Latin phrase meaning "for the suit" or "for purposes of the suit." An "attorney ad litem" is, by definition, limited to working within the dependency case, whereas an attorney appointed under section 39.01305 is not limited to representation of the child in only the dependency proceedings.

Currently, such attorneys are appointed from a registry maintained in each judicial circuit, which is the usual way the state provides representation to indigent people. The chief judge in the circuit determines the criteria attorneys must meet to be on the registry. Attorneys are paid by contract pursuant to the provisions of section 27.40 and 27.5304.

When a judge appoints an attorney or attorney ad litem to represent a child in a traditional-attorney client relationship, the Rules Regulating The Florida Bar apply. As with adult clients the child-client directs the representation and is expected to determine the objectives of the representation. The attorney is not allowed to advocate for what he or she feels is in the child's best interests or substitute his or her judgment for that of the child.²¹ The attorney has an ethical obligation to counsel the child, but if the child rejects the attorney's counsel, the attorney must still represent the child's position.

²¹ See, *J.W. v. Dep't of Child Saf.*, No. 2 CA-JV 2021-0027, 2021 Ariz. App. LEXIS 179 (Ct. App. Oct. 4, 2021). "[J.W.]'s counsel was not free to substitute her judgment for that of [J.W.] as she was not appointed guardian ad litem for [him]. Having abrogated her professional and ethical responsibilities to [J.W.], . . . the Court puts little stock [*10] in what counsel deems to be in her [client's] best interests."

Under a client directed model, attorneys may not seek protective action to “protect the client from what the lawyer believes are errors in judgment.”(CRC FN 37 - ABA Comm. on Prof'l Ethics, Formal Op. 96-404, at 3 (1996). *See also* Restatement (Third) of the Law Governing Lawyers § 24 cmt. c (2000) (lawyers should not view as proof of diminished capacity client's insistence on position that lawyer considers unwise).

Rule 4-1.6(a) of the Rules Regulating The Florida Bar states that a lawyer must not reveal information relating to the representation unless the client gives informed consent. Two exceptions to this rule when a lawyer is required to breach confidentiality are: if it is necessary to prevent a client from committing a crime, or to “prevent a death or substantial bodily harm to another.” Rule 4-1.6(c) states that “A lawyer may reveal confidential information to the extent the lawyer reasonably believes necessary . . . to serve the client’s interest unless it is information the client specifically requires not to be disclosed.”

The attorney-client relationship includes the attorney-client privilege, so that an attorney could not be compelled by a court or anyone else to override the child’s wish to keep something secret. The privilege that exists between the child and an AAL or attorney may not be breached simply because the child is abused or neglected and in dependency court. In *R.L.R. v. State*, 116 So. 2d 570, 574 (Fla. 3d DCA 2013), a court found no “dependency exception” in a case where a dependent child on runaway expressly prohibited the attorney from disclosing the child’s location, and noting that even where the client may be a danger to himself, there was no exception to attorney-client privilege.

The legal representation provided by GALs and attorneys for children/attorneys ad litem is summarized below:

	Florida GAL Program	Child’s Attorney or Attorney ad Litem
Give children a voice in court	✓	✓
Identify and advocate for child’s legal interests	✓	✓
File pleadings and motions	✓	✓
Present child’s wishes to the court	✓	✓
Counsel children; explain the process and their rights	✓	✓
Prepare children to testify	✓	✓
Advocate and provide recommendations consistent with child’s best interests	✓	
Obligated to investigate and provide information to judge	✓	
Can testify regarding facts and first-hand impressions of case	✓	
Advocate for objectives established by child (represents child’s position)		✓
Obligated to keep information confidential (unless child consents to share)		✓
Maintain attorney-client privilege with the child		✓

II. Effect of Proposed Changes:

Section 1 of the bill creates a definition of “attorney for the child” to mean “an attorney providing direct representation to the child.” Attorney for the child may include the following according to the definition:

- The appointment of the Statewide Office of Child Representation,
- Any private court-appointed counsel compensated pursuant to s. 27.5304,
- Any privately retained counsel or pro bono counsel, or
- Any other attorney appointed to represent the child under this chapter.

The definition references specific categories of appointments that may be included within its meaning. The definition provides that “any other attorney who represents a child” in this chapter may also fall within the meaning of this definition. This terminology could be interpreted to include attorneys ad litem as well as GAL attorneys.

The definition says the attorney provides “direct representation to the child.” The GAL Program has not identified this term in Chapter 39 or in Black’s Dictionary. There is one reference to “direct representation” in The Rules Regulating the Florida Bar that was not instructive.²² For purposes of this analysis the GAL Program will assume the attorney will function in a traditional attorney-client relationship as defined under The Rules Regulating The Florida Bar, in which the attorney would be directed by the child, and observe the attorney-client privilege and confidentiality.

The bill inserts the term “attorney for the child” throughout Chapter 39 and substitutes it for references to “attorney ad litem”. The substantive effect of eliminating the term “ad litem” is to require attorneys identified in this definition to represent the child for all purposes under the Rules Regulating The Florida Bar. However, because section 8 of the bill requires attorneys appointed under that section shall represent the child only in the dependency proceeding, (which may include representation in fair hearings and appellate proceedings directly related to matters needing resolution for the child to achieve permanency), attorneys for children will be limited to representation in the dependency proceeding and the two other proceedings expressly identified.

Section 2 of the bill creates section 39.013(13) to require the court to appoint an attorney for the child pursuant to s. 39.831.

Section 3 of the bill deletes current provisions of section 39.01305 appointing attorneys for dependent children with certain special needs using a registry and replaces this language with a requirement that appointment be made in accordance with s. 39.831.

Section 4 changes the title of Part XI of Chapter 39 to include reference to attorney for the child.

Section 5 revises the guardian ad litem appointment statute to indicate the mandatory nature of the appointment and for grammatical accuracy by changing the terminology “shall” to “must”.

The bill renumbers section 39.822 and adds specific provisions requiring compliance with the revised appointment provisions by July 1, 2023.

²² See Rule 12-1.3, Activities for an Emeritus Lawyer, Comment (This rule recognizes that an emeritus lawyer may accept an appointment or assignment from a state or federal judge seeking pro bono assistance for litigant or persons appearing before the judge through a supervising legal aid organization, including but not limited to: direct representation; limited representation; or service as either an attorney ad litem or a guardian ad litem.).

The revisions delete the mandatory appointment of GALs for all children and specify four specific circumstances under which a GAL must be appointed to represent a child:

1. the child remains in his or her home or a nonlicensed placement under the protective supervision of the department;
2. the child is the subject of a dependency proceeding under this chapter and the subject of a criminal proceeding;
3. the child is the subject of a termination of parental rights proceeding under part X; or
4. the child is a dependent child as described in s. 39.01305(3), F.S.

The bill provides children may be appointed at the court's discretion upon a finding that circumstances exist that require the appointment. The bill permits courts to maintain the appointment of the GAL if an attorney for the child is appointed.

The effect of the proposed changes is to end Florida's long standing policy of providing legal representation to all children using a best interests model. SB 948 proposes a model based (primarily) on placement of the child. Children in out of home care will no longer be appointed GALs unless they meet the limited circumstances specified and will not have an advocate for their best interests. The bill allows judges discretion to appoint GALs but only after findings are made that "circumstances exist that require appointment." Instead, the vast majority of children (those in out-of-home care) will receive legal representation in a traditional attorney-client relationship.

As noted previously, attorneys do not have an obligation to gather and report information as GALs do, so children in out-of-home care will have no one in the case responsible for providing independent information or recommendations to the court. Further, an attorney for the child could be affirmatively prohibited from sharing information because of attorney-client privilege and confidentiality if that was the child client's direction. Even in cases where an attorney is not asked by the child to withhold information, appointing attorneys instead of GALs will result in courts receiving less information as compared to an advocate with an obligation to conduct an independent investigation.

Another consequence of the proposal for many children in foster care is that they will be without a GAL who is often a consistent and trusted adult in their lives. Stable and positive relationships between children in foster care and caring adults should be nurtured, preserved, and viewed as networks rather than as a set of sequential, linear connections.²³

Additionally, without a statutory requirement to appoint a GAL for every child in dependency court, Florida would be out of compliance with federal law. CAPTA requires an appropriately trained GAL be appointed to "obtain first-hand, a clear understanding of the situation and needs of the child; and to make recommendations to the court concerning the best interest of the child."²⁴ Though CAPTA provides that the GAL may be an attorney, an OCR attorney is not obligated to provide reports and recommendations on best interests.

Also in section 5, amended s. 39.822(3) allows the court to remove the child's guardian ad litem and order assignment of a new guardian ad litem, or discharge the GAL and appoint an attorney for the child in two circumstances. First, a GAL will be removed if requested by the child or, second, if any party presents evidence that there is "reasonable cause to suspect" the assigned

²³ <https://www.iriss.org.uk/resources/insights/supporting-positive-relationships-children-young-people-experience-care>

²⁴ 42 U.S.C. 5106(b)(2)(B)(xiii), Child Abuse Prevention and Treatment Act ("CAPTA").

guardian ad litem has a conflict of interest as defined in section 39.8296(2)(b)9., F.S., discussed below. The bill does not specify whether a hearing must be held or provide a process for refuting evidence of reasonable cause to suspect a conflict of interest.

Section 6 of the bill makes revisions to section 39.8296(2)(a), F.S., to change the name of the Guardian ad Litem Qualifications Committee to the Child Well-Being Committee. This Committee will choose the candidates from which the Governor must select the Statewide Guardian ad Litem Office Executive Director as well as the Executive Director of the new Statewide Office of Child Representation, per new section 39.83(1)(b).

Additional revisions made to section 39.8296(2)(a) limit the Governor's current authority to reappoint the Executive Director of the Statewide Guardian ad Litem Office. SB 948 requires the Governor to reconvene the Qualifications Committee and choose from the three nominees that committee recommends. The bill does not specify that the serving Executive Director must be one of the nominees, which may allow the Qualifications Committee to effectively end the term of a serving Executive Director by not nominating him or her.

Paragraph 9., is inserted in section 39.8296(2)(b), directing the Statewide Guardian ad Litem Office to develop guidelines to identify possible conflicts of interest of a GAL when he or she is being considered for assignment to a child's case. The revisions define "conflict of interest" to mean a GAL:

- has a personal relationship that could influence a recommendation regarding the child to whom the GAL is assigned,
- is in a position to derive a benefit from his or her role as a GAL,
- or has a particular factor or circumstance, including bias or prejudice against a protected class of the child or the child's family, which prevents or substantially impairs his or her ability to fairly and fully discharge the duties of a GAL.

Pursuant to section 39.820(1), F.S., the volunteer, child advocate manager, staff attorney and/or pro bono attorney meet the definition of guardian ad litem and the guidelines for screening for such conflicts would apply to each person for every case. Current section 39.821 requires a Level 2 background screening of GALs prior to being certified and the GAL Standards of Operation contain a variety of provisions to assess the fitness of GALs to serve children.

The effect of proposed 39.8296(2)(b) is to provide specific legislative direction to the GAL Program as to what constitutes a conflict of interest and new requirements for monitoring GALs. Currently GAL's Standard 7.D. Conflict of Interest provides:

The GAL Program shall not accept appointment to a case where the Program has an impermissible conflict of interest and shall seek discharge if an impermissible conflict of interest arises after appointment. An impermissible conflict of interest between the GAL Program and a child or children will be found if the GAL Program has a duty, or the appearance of a duty, to another that may prevent the GAL Program from being fully able to represent the child to whom the Program is appointed. If an individual GAL Volunteer or staff member has a conflict, this may be resolved by assigning another individual from the Program in the discretion of the Circuit Director.

The Standard employs the test commonly used for a fiduciary and a beneficiary. It contains Comments providing additional guidance on how and when to notify judges of a conflict and how

to proceed. The current GAL Program Standards of Operation 3., Code of Conduct, also require that GALs not practice, condone, facilitate, or participate in any form of discrimination, including but not limited to discrimination on the basis of race, color, gender, sexual orientation, gender identity, age, religion, ethnicity, marital status, or mental or physical handicap. Additionally, the current Standards require that GALs not accept a fee for services as a GAL appointed through the Program, nor solicit funds or gifts for personal benefit.

Paragraph (9)(c) of the bill states the Statewide GAL Office “shall identify” any GAL who is experiencing an issue with his or her physical or mental health and who appears to present a danger to any child to whom the GAL is assigned.

In light of a GAL’s fiduciary duty to act in the best interests of the child, any action “presenting a danger to any child” is antithetical to GAL representation. Under current policies and procedures GALs who violate their fiduciary duty generally or the Standards of Operation are subject to discipline or removal. It is unclear, however, what the consequence is of creating an affirmative duty for the Statewide GAL Office to scrutinize the “physical or mental health.” SB 948 may require many volunteers and some employees to submit to medical and/or psychological examination by an expert in order to determine if an issue is present.²⁵

The bill directs the Office to remove the GAL from all assigned cases, terminate the services of the GAL if he or she is a volunteer and disclose the action taken to the court. The revision does not require termination of the GAL if he or she is an employee, however, it has the potential to prevent a person with a disability or serious physical or mental health condition to remain as a volunteer with the Office even if there may be other things the volunteer can do to for the Program than function as a GAL. The new language specifies that a GAL who has caused harm to any child during the course of his or her appointment may not be employed or permitted to volunteer for the Program.

The bill does not enact a similar requirement for staff or pro bono attorneys appointed to represent children in the new Statewide Office of the Child Representation or Regional Office of Child Representation under new section 39.83, F.S. created by this bill. This distinction could give rise disparate treatment claims under Title VII, of the Civil Rights Act of 1964 and the Florida Civil Rights Act of 1992.²⁶ The requirement to inquire or investigate physical and mental conditions raises compliance issues associated with the both Title I and Title II of the Americans with Disabilities Act.

Section 7 creates section 39.83, F.S., the Statewide Office of Child Representation (OCR) and provides for the qualifications, appointment and duties of the OCR executive director. The OCR is placed within the Justice Administrative Commission (JAC) and the JAC is directed to provide administrative support within its available resources to the OCR, as directed by the executive director of the OCR.

Section 39.83(1)(c), establishes responsibilities of the OCR. The OCR is responsible for oversight of, and for providing technical assistance to, all the offices of child representation in the state, “within available resources of the Justice Administrative Commission.” This language appears to give the OCR authority to use the resources of the JAC, which would be a change, as the JAC

²⁵ See, section 39.820(1), F.S.

²⁶ Section 760.01, F.S.

typically provides administrative assistance to entities housed within it that have separately appropriated resources.

According to proposed 39.83(1)(c), the OCR shall do all of the following:

- identify resources required to implement methods of collecting, tracking and reporting reliable case data.
- review and collect information relating to offices of child representation and other models of attorney representation of children in other states.
- develop statewide performance measures and standards.
- develop a training program for each attorney for the child using a curriculum committee with members specified in statute.
- develop protocols that must be implemented to assist children who are represented by the OCR in meeting eligibility requirements to receive all available federal funding. This subparagraph specifies that such protocols may not interfere with zealous and effective representation of the children.
- review the various methods of funding the regional offices, maximize the use of those funding sources to the extent possible, and review the kinds of services being provided by the regional offices.
- determine the feasibility or desirability of new concepts of organization, administration, financing, or service delivery designed to preserve the civil and constitutional rights of, and fulfill other needs of, dependent children.
- establish standards and protocols for representation of children with diminished capacity.
- retain responsibility for the quality of contracted services and ensure that, at a minimum, services are delivered in accordance with applicable federal and state statutes and regulations.
- Submit an interim report to the Governor, President of the Senate, Speaker of the House of Representatives, and the Chief Justice of the Supreme Court, and annual reports thereafter.

Subsection (1)(d) requires DCF or CBC lead agencies to take any steps necessary to obtain all available federal funding and maintain compliance with eligibility requirements.

Subsection (1)(e) allows the statewide office to contract with local nonprofit agencies to provide representation to children (“direct representation”) and outlines requirements that local non-profit agencies must observe. Requirements include but are not limited to an obligation to require “competent representation.” Also in this subsection, the bill provides that contracts between the OCR and local nonprofit agencies “must be funded by a grant of general revenue, other applicable state funds, or applicable federal funding sources. Unless otherwise provided by law, this paragraph does not preclude such an agency from raising funds by other means.”

Subsection (2) creates regional offices of child representation in each of the five district courts of appeal and requires that the offices commence fulfilling their statutory duties by July 1, 2023. Subsection (3) describes the duties of the Child Representation Counsel and part-time child representation counsel as it relates to the ability to practice law while serving.

Section 8 creates section 39.831 to provide for appointment of an attorney for the child. The statute specifies that an attorney for the child:

1. Shall be appointed by the court as provided in s. 39.01305(3);

2. Shall be appointed by the court for any child who is placed in out-of-home licensed care on or after July 1, 2023 and who is the subject of a dependency proceeding under chapter 39; or
3. May be appointed at the court's discretion upon a finding that circumstances exist which require the appointment.

The bill requires that the OCR be appointed unless the child is otherwise represented by counsel.

Subsection (1)(c) requires that an attorney for the child appointed pursuant to section 39.831 shall represent the child only in the dependency proceeding which may include fair hearings and appellate proceedings “directly relate to matters needing resolution for the child to achieve permanency.” Such representation must be provided within the resources allotted for representation within the dependency proceeding according to the bill. It is unclear whether this language intends for attorneys who provide representation for children under contract will be obligated to represent the child in these additional proceedings for the same payment negotiated for a dependency case only.

However, subsection (1)(c) says that OCR can allow non-attorneys to represent the child at the fair hearings instead of the attorney, including but not limited to “trained staff” such as social workers, case managers, education advocates, or health care advocates.

Subsection (1)(d) provides that “notwithstanding the basis on which an attorney for the child is appointed under paragraph (a),” once an attorney is appointed, the appointment continues until one of three things happens: the attorney is allowed to withdraw, the attorney is discharged, or the case is dismissed. The attorney shall provide “all required legal services” from removal or initial appointment through all appellate proceedings. The appointed attorney may seek permission from the court to have supplemental counsel to represent the child in appellate proceedings. If an attorney is appointed under this subsection, the order must be in writing.

Subsection (1)(e) provides legislative direction for attorneys regarding conflicts of interest, specifying that “if at any time during the case the child representation counsel determines that the representation of two or more children are so adverse or hostile that they cannot all be counseled by the child representation counsel because of a conflict of interest, counsel shall file a motion to withdraw and move the court to appoint other counsel.” Representation of siblings is not automatically a conflict of interest under the proposed statutory language. The bill does not specify whether this would be for all children in the case or if the attorney has the authority to determine whether representation of one or more children could be continued.

The court shall review and may inquire or conduct a hearing into the adequacy of submissions regarding conflicts of interest without requiring the disclosure of confidential communications. The court is required to deny the motion if the court finds the grounds for withdrawal are insufficient or the asserted conflict is not prejudicial for the client.

This is a different standard than has been established by the Supreme Court in the Rules Regulating The Florida Bar.²⁷ It is unclear how the establishment of statutory conflict of interest rules for attorneys will be reconciled with current provisions of the Rules Regulating The Florida Bar or the authority of the Judicial Branch to govern the practice of law.

²⁷ See, Rule 4-1.7, Conflict of Interest; Current Clients

If the court grants the motion to withdraw, the court shall appoint one or more private attorneys to represent the person in accordance with s. 27.40. The clerk of court is directed to inform the child representation counsel and the JAC when the court appoints private counsel. While the JAC may request that OCR submit a copy of the motion “at the time it is filed with the court,” it is unclear how JAC would have notice in order to make such a request, in light of the clerk’s obligation to notify JAC after the appointment.

Section 39.831(1)(f) establishes that attorneys must be adequately compensated as provided in section 27.5304, unless they have agreed to serve pro bono. All attorneys and organizations representing children, including pro bono attorneys, are given access to funding for witnesses, depositions and other due process costs of litigation on behalf of the child. Payments for such expenses are subject to review by the JAC. This subsection also proposes that the rate for contract attorneys may not exceed \$1,000 per child per year.

Subsection 39.831(1)(g) provides that when the child’s parents are financially able, they shall reimburse the court for services provided under section 39.831. This language mirrors existing language in section 39.822(1), requiring reimbursement by parents for a child’s guardian ad litem representation.

Subsection (2) provides statutory authority for a child’s attorney to access records related to the child, including confidential records, upon presentation of an order of appointment.

Subsection (3) requires the child’s attorney to review disposition motions in the case and all changes of placement. Additionally, the section requires that all motions be filed at least 72 hours before the hearing. The effect of this section would be to establish a different standard for the attorney for the child with regard to filing motions. Fla. R. Juv. P. 8.235 permits motions to be made orally and contains no specific requirements for notice whereas this section requires filing of motions within a set timeframe.

Subsection (4) and (5) direct the department to develop procedures to request that a court appoint an attorney for the child and adopt rules to implement section 39.831.

Section 9 adds court-appointed attorney for the child to the list of individuals and entities entitled to public records without charge under section 28.345. This change in terminology has the effect of changing the substantive meaning of this provision by narrowing the category of “private court-appointed counsel paid by the state” from attorneys in any court proceeding to only include attorneys representing children.

Section 10 amends section 29.007 to expand the list of elements of court appointed counsel to be provided from state revenues appropriated by general law to include private attorneys appointed when OCR or one of its contracted local nonprofit agencies has a conflict of interest.

Section 11 changes the term “attorney ad litem” to attorney for the child in section 39.011(3)(j). In subsection (10)(a) “child representation counsel regional offices” and “attorney for the child” are added to the list of local groups that participate in the department’s state and local plans.

Section 12 changes references from “attorney” to “attorney for the child” in section 39.00145 and adds “the Statewide Office of Child Representation” to the list of entities that may share confidential information.

Section 13 adds “attorney for the child” to the list of individuals and entities that have access to confidential court records in Section 39.0132(3) and (4)(a)1.

Section 14 changes the term “attorney ad litem” to attorney for the child in section 39.0139 and makes grammatical changes. Additionally, the child’s attorney ad litem is deleted from the list of individuals and entities that could provide a written or oral report that a court might rely on in a hearing under the Keeping Children Safe Act.

Section 15 adds attorney for the child to list of individuals who can receive the name of a reporter of child abuse under section 39.202 and corrects a cross-reference.

Section 16 amends section 39.302 to correct a cross-reference.

Section 17 amends section 39.402(8) to reflect the proposed policy wherein a court appoints either a guardian ad litem or an attorney to represent a child in accordance with part XI of Chapter 39. In subsection (14) of that section, “attorney for the child” is substituted in lieu of references to the child’s counsel or child’s attorney.

Section 18 amends section 39.407 to require that any motion by the department to continue psychotropic medication be provided to the attorney for the child. The child’s attorney is added to provision of those sections where the GAL is authorized to act on behalf of the child and where the GAL would be receiving documents or notice. In section 39.407(3)(e), the bill allows “the child” to request that the court review the status of the case more frequently than required.

Section 19 amends section 39.4085 to change the term “attorney ad litem” to attorney for the child.

Section 20 amends section 39.502 to provide for appointment of an attorney for the child as an alternative to a guardian ad litem for the child in circumstances when a child’s parents cannot be located after diligent search. Attorneys for the child are also authorized to serve process and orders of the court and serve subpoenas. Section 39.502(1) is amended to provide that no fee shall be paid for service of process or other papers for an attorney for the child. Subsection (17) provides that the attorney for the child is entitled to reasonable notice of all proceedings.

Section 21 amends section 39.521 to correct a cross-reference and allow for continuation or discharge of the attorney for the child in the court’s written order of disposition.

Section 22 changes section 39.6011 to add the term “attorney for the child” to the list of individuals who must be included in the face-to-face conference to develop the case plan.

Section 23 corrects a cross-reference.

Section 24 amends section 39.6251, Continuing Care for Young Adults. The bill strikes the term “guardian ad litem” and substitutes attorney for the child in the provision which allows the court to appoint an individual or entity to represent children who are the subject of guardianship proceedings under Chapter 744. The effect of this will be to restrict the judge’s ability to make a new appointment of a GAL, and only allow continuation of GAL representation for young adults choosing to continue under the jurisdiction of the dependency court.

It is unclear how the representation of young adults from ages 18-22 under this section is to be accomplished by attorneys who represent “the child,” a term which by its definition would limit representation to individuals under the age of 18.

Section 25 amends section 39.701(1) to allow the attorney for the child to submit a report when the court makes its determination of whether the department’s supervision of a child should be continued during the six month period after reunification. The statute does not specify what the report from the attorney for the child might include. Section 25 also amends subsection (2) of that provision to add attorney for the child to the list of individuals who receive a copy of the JRSSR.

Section 26 amends section 39.702 to require citizen review panels to establish policies to ensure adequate communication with the attorney for the child.

Section 27 amends section 39.801(3) to require notice of a TPR advisory hearing to the attorney for the child, if appointed. Subsections (5) and (6) are amended to add attorney for the child to provisions allowing service of process and subpoenas. Subsection (7) adds language exempting the attorney for the child from paying a fee for service of process.

Section 28 amends section 39.802 to add the attorney for the child to the list of individuals who can file a termination of parental rights. Currently, a child is listed as an individual that could file a TPR petition in section 39.802. However, under current law, a child could not file such a petition without adult assistance (next friend or GAL). By giving all children in out-of-home care attorneys and then adding the attorney to the list of individuals in section 39.802, any child could direct his or her OCR attorney to file a petition to terminate his or her parent’s rights and that petition would be litigated.

Section 29 amends section 39.808 to provide for appointment for an attorney at a TPR advisory hearing in accordance with section 39.831.

Section 30 amends section 39.810 to delete recommendations from the child’s “legal representative” from the list of factors to be considered in the court’s determination as to whether TPR is in the child’s manifest best interests.

Section 31 amends section 39.811 to authorize a court to review the appropriateness of a child’s adoptive placement upon good cause shown by the attorney for the child.

Section 32 amends section 39.812 to authorize a court to review the appropriateness of a child’s adoptive placement upon good cause shown by the attorney for the child.

Section 33 amends section 43.16 to add the “Statewide Office of Child Representation” to the list of entities the Justice Administrative Commission is obligated to serve and requires the office to perform budgetary and administrative actions currently required by other entities served by the JAC.

Section 34 amends section 63.085 to require that any reports filed in the Chapter 39 proceeding by the attorney for the child be provided in the disclosure to adoptive parents.

Section 35 amends section 322.09 to correct a cross-reference.

Section 36 amends section 394.495 to correct a cross-reference.

Section 37 amends section 627.746 to correct a cross-reference.

Section 38 amends section 768.28 to correct a cross-reference.

Section 39 amends section 934.255 to correct a cross-reference.

Section 40 amends section 960.065 to correct a cross-reference.

Section 41 establishes the effective date for the bill as July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The Office of Child Representation is created within the Justice Administrative Commission. It is unknown whether creating a new office in the JAC could create responsibilities for counties.

B. Public Records/Open Meetings Issues:

The bill adds the term “attorney for the child” to several provisions in Chapter 39 creating public records exemptions and authorizing access to certain records made confidential and exempt.

C. Trust Funds Restrictions: None.

D. Other Constitutional Issues:

The bill enables a child to direct OCR attorneys to file a petition to terminate parental rights at the direction of the child which raises constitutional issues related to the fundamental rights of parents.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues: None

B. Private Sector Impact:

Additional attorneys may be needed by the proposed OCR to represent children as conflict counsel generally and for children within sibling groups who have interests that diverge or who do not agree or have interests that diverge which will require a child’s attorney to seek discharge.

New section 39.831(1)(c) requires that in cases where one or both parents are financially able, the parents of the child shall reimburse the court for attorney services though reimbursement to the attorney may not be contingent upon successful collection by the court of reimbursement from the parents. This similar to current law in 39.822(2), which is not generally used given the fact that most parents in dependency proceedings are indigent. Nevertheless, including the provision in this new section creates the possibility that parents will be responsible for reimbursing the costs of attorney representation for children.

C. Government Sector Impact:

According to DCF data,²⁸ as of 9/30/21, there were 34,881 children receiving child welfare services. Of those, 10,282 were in in-home care, 22,450 were in out-of-home care, and 2,149 were receiving prevention-based family support services. Under the structure for legal representation proposed in SB 948, the GAL Program would be required to represent a minimum of 10,282 children. The GAL Program cannot estimate how many children the Program would represent as a result of discretionary appointments. The number of children that GAL would represent will change based on changing placements, whether and when a TPR petition is filed in the case, if children meet criteria under section 39.01305 and/or whether they are involved in a criminal proceeding. Using the same data, it can be estimated that a minimum of 22,450 would be appointed attorneys through OCR.

For FY 2022-2023, GAL anticipates insignificant impact to operations as the current system for legal representation in Chapter 39 will be in effect until July 1, 2023. After July 1, 2023, the impact of the bill on the GAL Program is indeterminate. It is unknown whether GAL will be allowed to remain on the cases for the children it represents on July 1, and how the identification of conflicts of interest will impact initial assignment of attorneys and/or retention of GALs.

With respect to the changes made in section 39.8296(2)(b)9. specifically, the Statewide GAL Office can develop guidelines and policies within existing resources. However, the GAL Program is unclear on whether implementing the requirement to affirmatively identify individuals with physical or mental health issues will create a fiscal impact and will need to seek clarification on implementation of this provision.

With regard to the OCR's provision of representation, there are too many variables with regard to the structure of the Office and the potential conflicts of interest that the GAL Program cannot offer an opinion on the impact. In addition to the number of children eligible for appointment the impact will be determined by considerations such as:

- the number of children each attorney would represent;
- due process costs;
- the structure for oversight of attorneys and staff;
- the ratio of support staff to attorneys, including whether paralegals or other professionals would be funded;
- the number of physical offices, if any, and associated equipment;
- technology;
- legal resources;
- administrative support (i.e., purchasing, human resources); and
- an allocation for private attorneys to serve as conflict counsel.

VII. Other:

As explained throughout this analysis, the question presented by SB 948 is whether Florida should change its existing system of legal representation for abused and neglected children from a guardian advocating for the child's best interests with an obligation to provide information to the court, to an attorney advocating for what the child wants with no duty to provide information to the court (and who can be prevented from doing so by the child-client). In accordance with the Program's responsibility in section 39.8296 to provide information regarding the need for guardian ad litem representation and other issues, the Program offers the following:

²⁸ Florida's Child Welfare Statistics At-a-Glance, myflfamilies.com/programs/childwelfare/dashboard/ Last visited 01/07/21.

- The GAL Program respectfully submits that Florida's existing system for representing children in dependency court provides the greatest benefit for children, families and operation of dependency proceedings. Because Florida's GAL Program represents children through a multi-disciplinary team with trained GALs including an attorney, children have representation, including representation of their legal interests.
- Best interests representation is developmentally appropriate and can give voice to both the best interests of the child and the child's expressed wishes.
- Based on experience, the GAL Program believes the vast majority of children do not have the age, cognitive ability, or maturity to direct their own attorneys, or that such representation would be in their best interests.
- Guardian ad Litem best interest representation is consistent with the unique structure and goals of dependency court proceedings, where children and their parents are, in most cases, seeking to be reunited, the court stands in the shoes of the parent, and the best interests of children are a central feature of the proceeding.
- The bill will result in judges receiving less information about cases because GALs have an obligation to report and make recommendations to the court that attorneys do not have. This will be exacerbated in some cases by the existence of a right to confidentiality and attorney-client privilege, which neither judges nor parties will be able to pierce - even if it is suspected that a child is acting against his or her own safety and interests. Giving judges less information will likely negatively impact judicial decision-making and outcomes for children.
- In Florida, GAL representation provides benefits to children that attorney representation will not, including but not limited to individualized attention from a safe and stable adult (GAL Volunteer) to support the child through the dependency proceeding, which can minimize trauma and support resilience.
- While some children benefit from client-directed representation, it is the experience of the GAL Program that this is most efficiently accomplished by allowing judges to identify these children on a case by case basis, allowing the dependency judge to decide if the child will benefit from having an attorney and is able to direct counsel.
- The GAL Program is unaware of evidence proving that children directing their own attorneys have better outcomes than children with attorneys representing best interests.

Justice Administrative Commission



**2022 Legislative Session
Bill Analysis for SB 948
December 17, 2021**

BILL INFORMATION

BILL NUMBER: Senate Bill 948

BILL NAME: *An Act Relating to Child Welfare*

BILL SPONSOR: Senator Lauren Book

EFFECTIVE DATE: July 1, 2022

COMMITTEES OF REFERENCE:

Referred to Children, Families, and Elder Affairs; Appropriations Subcommittee on Criminal and Civil Justice; Appropriations.

CURRENT COMMITTEE:

None as of November 30, 2021.

IDENTICAL BILLS:

None

SIMILAR BILLS:

None identified as of November 30, 2021.

PREVIOUS RELATED LEGISLATION:

[Senate Bill 1920 \(2021\)](#) – Died in Appropriations.

Is this bill part of an agency package?

No

JAC'S SUMMARY POLICY ANALYSIS

Currently, the State's interests in dependency proceedings are represented by attorneys of the Florida Department of Children and Families (DCF). Each parent involved in such proceedings has a statutory right to counsel and may have a right to state-funded court-appointed counsel if found to be indigent pursuant to s. 39.013, F.S. Additionally, in dependency proceedings, children are represented by the Statewide Guardian ad Litem Program through program attorneys, child advocate managers, and volunteer guardians ad litem.¹ The Statewide Guardian ad Litem Program (GAL) has oversight responsibilities and provides technical assistance to all guardian ad litem programs located within the judicial circuits. SB 948 would provide an "Attorney for the child" in dependency proceedings under certain specified circumstances. These include: special needs

¹ GAL's vision is to "be a powerful and effective voice advocating for the best interests of Florida's abused, abandoned and neglected children and be recognized and respected as a partnership of community advocates and professional staff." See <http://guardianadlitem.org/about-us/>. Moreover, GAL's Standards of Operation denote that the program's attorneys are to protect and further the child's best interests. The GAL is a fiduciary representative of each child, and representation of the child's best interests, including the child's legal interests, is the sole purpose of the advocacy. See, Standards of Operations, Standard 2, available at <https://guardianadlitem.org/wp-content/uploads/2020/05/GAL-Standards-Rev.-4.30.2020-FINAL.pdf>.

children under s. 39.01305, F.S.; children who are placed in out-of-home licensed care on or after July 1, 2023, and who are the subject of a dependency proceeding; and at the court's discretion, upon a finding of circumstances that require appointment.

The appointment of counsel proposed by SB 948 can be described as *direct* representation of the child. Because children typically do not have the means to afford counsel, this would create the right to state-funded direct representation by an attorney for every child placed in out-of-home licensed care and is the subject of a dependency proceeding. SB 948 becomes effective July 1, 2022, with the right to state-funded direct representation going into effect on July 1, 2023.

SB 948 would create a Statewide Office of Child Representation (Statewide Office) and five associated regional offices of child representation to provide legal representation to children in dependency proceedings. As amended by the bill, s. 39.01(8), F.S., defines "attorney for the child" as providing direct representation to the child, including:

- Appointment of the Office of Child Representation;
- An attorney provided by an entity contracted through the Office of Child Representation;
- Any private court-appointed counsel compensated pursuant to s. 27.5304, F.S.;
- Any privately retained counsel or pro bono counsel; or
- Any other attorney appointed to represent the child under Ch. 39, F.S.

The Statewide Office would be housed within JAC for administrative purposes. Accordingly, JAC will need to provide administrative services and support to the Statewide Office in a fashion similar to those services provided to the other judicial-related offices administratively served by JAC. This will require additional staff and resources to provide services in the areas of accounting, budget, financial services, human resources, operations, online support, and information technology, as well as associated executive services. Because these new appointments of counsel would involve different types of legal representation, JAC staff would need to research and implement a variety of different systems to provide administrative services. Consequently, SB 948 will have significant fiscal and operational impacts on the State of Florida and the Justice Administrative Commission.

Additionally, JAC would be responsible for reviewing and processing bills for attorney fees and related costs from attorneys and related due process services vendors (court reporters, investigators, experts, etc.) pursuant to s. 29.007(2), F.S., when the regional offices of child representation cannot provide an attorney to represent a child due to a conflict. JAC would also be responsible for reviewing and processing an increased number of invoices for these services and costs, as well as for the services of related due process vendor services in those cases. Thus, JAC will require increased resources and staff to review and process legal and due process vendor invoices for legal services provided to children in dependency cases.

Please consider this analysis as responsive to your request on behalf of JAC "proper" and not the judicial-related offices (JROs) administratively served by JAC. JROs include the Offices of State Attorney, Public Defender, Criminal Conflict and Civil Regional Counsel, Capital Collateral Regional Counsel, and the GAL. Please note that the JROs will be copied on this reply as a courtesy.

SUBSTANTIVE BILL ANALYSIS FOR JAC IMPACT

1. HISTORICAL AND PRESENT SITUATION:

Created in 1965, JAC provides administrative services to the offices of State Attorney, Public Defender, Criminal Conflict and Civil Regional Counsel, Capital Collateral Regional Counsel, and the GAL— 49 JROs. Services provided by JAC are primarily in the areas of accounting, budget, financial services, and human resources, as well as other services. JAC also provides compliance and financial review of billings for legal services by private court-appointed attorneys representing indigent persons and associated due process vendors throughout the state for payment with state funds. Accordingly, JAC is currently the third largest processor of invoices among state agencies.

Currently, children in dependency proceedings are represented through the GAL under the oversight of the Statewide GAL Program as provided in various provisions of Ch. 39, F.S., including s. 39.8296, F.S. Children with certain special needs, as defined in s. 39.01305, F.S., have the right to appointment of private counsel if a *pro bono* attorney is not available. JAC provides administrative support to the GAL and processes billings for payment from attorneys appointed to represent children pursuant to s. 39.01305, F.S., as well as the billings from related due process vendors.

EFFECT OF THIS BILL:

The bill amends various provisions of Ch. 39, F.S., to create a right to direct representation by an attorney for children under certain specified circumstances, creates the Statewide Office and five regional offices of child representation, and amends the duties and responsibilities of the GAL. The bill will have a significant impact on JAC, as described below.

Section 1: The amendments as currently drafted impact JAC in that the newly-created definition of “attorney for the child” includes “private court-appointed counsel compensated pursuant to s. 27.5304” for which JAC would be responsible for reviewing and processing billings for state payment.

Section 2: By providing for court appointment of an attorney for the child pursuant to the newly created s. 39.831, the amendments as currently drafted impact JAC as discussed in Section 8, below.

Section 3: Once the Statewide Office becomes operational, new appointments for children with special needs will be made in the first instance to the Statewide Office, with private court-appointed attorneys only being appointed in the event of a conflict. This will reduce JAC’s processing of invoices from private court-appointed attorneys and associated due process vendors for the initial appointments in these cases. However, given that the proposed amendments afford representation to each child involved in a dependency proceeding who is in out-of-home licensed care and that private court-appointed counsel is to be appointed when the Statewide Office has a conflict of interest, JAC will then be responsible for auditing, verifying, and processing invoices for private court-appointed

counsel and due process vendors providing legal services to each child represented after a determination of conflict.

Section 4: The amendments as currently drafted do not impact JAC.

Section 5: The amendments as currently drafted do not impact JAC directly insofar as they reference appointment under the GAL. However, the amendments may impact JAC insofar as JAC administratively supports the GAL.

Section 6: The amendments as currently drafted do not impact JAC directly insofar as they reference the duties of the GAL. However, the amendments may impact JAC insofar as JAC administratively supports the GAL.

Section 7: Creates s. 39.83, F.S., entitled Statewide Office and five regional offices of child representation. The Statewide Office, within the available resources of JAC, would provide technical assistance and oversight to the five regional offices of child representation. The amendments as currently drafted impact JAC. However, it is unclear whether JAC would be required to administratively serve the regional offices of child representation in that the Lines 408-15 of Section 7 state:

The Statewide Office of Child Representation, within available resources of the Justice Administrative Commission, is responsible for oversight of, and for providing technical assistance to, all offices of child representation in this state.

The reference to JAC's resources suggests JAC would provide administrative assistance to the Statewide Office and the five regional offices.

The above-cited language appears to be inconsistent with JAC's statutory role to provide administrative services to the Statewide Office while directing that the Statewide Office is not subject to the control, supervision, or direction of JAC per Section 7, Lines 386-396.

This language would make JAC responsible for providing resources related to oversight and technical assistance to the regional offices. The Statewide Office would constitute a separate entity for budget purposes and the funds necessary for the Statewide Office to oversee and provide technical assistance to the regional offices would be appropriated to the Statewide Office, rather than JAC. Therefore, this reference to JAC should be deleted:

(c) The Statewide Office of Child Representation, ~~within available resources of the Justice Administrative Commission,~~ is responsible for oversight of, and for providing technical assistance to, all offices of child representation in this state.

Additionally, as drafted, s. 39.831, F.S., mandates appointment of counsel. However, the language proposed in s. 39.83, F.S., indicates the Statewide Office may propose a limited jurisdiction or phased-in model:

A proposed plan that includes alternatives for meeting the representation needs of children in this state. The plan may include recommendations for implementation in only a portion of this state or phased-in statewide implementation and must include an estimate of the cost of each such alternative.

If implementation is ultimately limited to certain jurisdictions or is phased-in, the proposed mandatory language would be inconsistent with such implementation.

Contracting with Third Parties to Provide Representation

Section 7, Lines 471- 478, provide that the Statewide Office may contract with third parties to provide representation:

The statewide office may contract with a local nonprofit agency to provide direct attorney representation to a child, including, but not limited to, representation in the dependency proceeding in accordance with s. 39.831, if the office determines that the contract is the most efficient method to satisfy its statutory duties and if federal funding has been approved for this purpose or the local agency is required in the contract to seek such approval.

Further, when defining the duties of Child Representation Counsel, Section 7, Lines 512-522, provide:

The child representation counsel shall serve on a full-time basis and may not engage in the private practice of law while holding office. Each assistant child representation counsel shall give priority and preference to his or her duties as assistant child representation counsel and may not otherwise engage in the practice of dependency law. However, a part-time child representation counsel may practice dependency law for private payment so long as the representation does not result in a legal or ethical conflict of interest with a case in which the office of child representation is providing representation.

Pursuant to the United States Department of the Treasury, Internal Revenue Service Closing Agreement on Final Determination Covering Specific Matters Regarding Worker Classification (Form 14491), dated November 14, 2017, between the Florida Department of Financial Services and the IRS, it was agreed that:

Beginning January 1, 2019, and for all periods thereafter, court reporters, interpreters, Public Defender, Guardian Ad Litem and Regional Counsel attorneys, mediators and others shown on the attached list and persons performing equivalent duties regardless of taxpayer's job titles will be treated as employees for all federal employment tax purposes.

(Emphasis added.) The above statement prohibits State of Florida agencies and entities from hiring and classifying workers as independent contractors (referred to as persons on the attached list) when the worker performs duties equivalent to state employees. Authorizing the Office of Child Representation to contract with a nonprofit to direct attorneys to represent children in dependency proceedings when the statute also authorizes state employees of the offices of Child Representation to perform the same duties may violate this Agreement and potentially subject the State of Florida to an IRS Worker Classification Audit and future liabilities. As a result of this Agreement, the offices of the Public Defenders, Criminal and Civil Conflict Regional Counsel, and the Guardian Ad Litem discontinued hiring independent contractors to perform equivalent duties performed by their employees when an increase in workload required a temporary response.

Cost of Establishing Offices of Child Representation

There would be significant costs associated with establishing the Statewide Office of Child Representation and the five Regional Offices of Child Representation. These costs would include the costs to create, staff, and otherwise setup these offices to provide representation for children by July 1, 2023, as required by SB 948. The costs would include non-recurring initial costs to establish the six new offices as well as recurring costs associated with operation of these offices. In addition to employing attorneys to provide direct representation for the child, these offices will require necessary infrastructure and support staff.

SB 948 creates a new right to appointed attorneys for children in out-of-home licensed care effective July 1, 2023, and discretion for the courts to appoint an attorney when circumstances exist which require the appointment. Per the Department of Children and Families, there were a total of 22,275 children in out-of-home care with 11,676 children in licensed foster care; 1,497 children in group care; 202 in residential treatment centers; and 825 children in other care as of November 30, 2021.² Absent some form of phased-in implementation as suggested in Section 7, Lines 460-64, the Statewide Office will need to be fully operational to accept appointments to at least 10,000 children on July 1, 2023.

When the Legislature created the five Offices of Criminal Conflict and Civil Regional Counsel in 2007, these offices were created as a cost-savings measure related to an existing right to appointed counsel. Prior to 2007, appointment of attorneys for indigent criminal defendants functioned primarily under a two-tier model involving the offices of the public defender and private court-appointed counsel. The 2007 amendments created a three-tiered indigent criminal defense system as implemented in s. 27.40, F.S. When the new offices were created, they were able to go into operation gradually as existing cases largely remained with existing appointed counsel and new cases were appointed to the newly created Regional Counsels once they became operational.

Section 8: Creates s. 39.831, F.S., which mandates the appointment of an attorney to provide direct representation for any child effective July 1, 2023, as follows:

² <https://www.myflfamilies.com/programs/childwelfare/dashboard/c-in-ooh.shtml> (last visited December 17, 2021).

- A child with special needs eligible for appointment of counsel under s. 39.01305(3), F.S.;
- A child in out-of-home licensed care and who is the subject of a dependency proceeding; and
- A child who is the subject of a dependency proceeding, upon a judicial finding that circumstances exist which require the appointment.

The amendment directs that, unless the child is already represented by counsel, the court shall appoint the Statewide Office. The amendment specifies the scope of representation to include representation in fair hearings and allows for the retention of separate counsel to represent the child in appellate proceedings.

The amendments create a procedure for the Statewide Office to move to withdraw from representation based upon a conflict of interest. If the court finds the grounds sufficient, the court shall appoint one or more private attorneys to represent the child pursuant to s. 27.40, F.S.

Section 8, Lines 605-11, directs that financially able parents shall reimburse the court for the cost of services provided. However, the provision does not address the manner in which the amount would be determined, how reimbursement is made, or which state entity is responsible for enforcement. Compare s. 57.082, F.S. (directing that an indigent person seeking appointment of counsel in dependency proceedings pay an application fee of \$50 and providing that the clerk of court is responsible for enrolling the person in a payment program pursuant to s. 28.246, F.S., if the fee remains unpaid when the court appoints counsel).

The amendments as currently drafted impact JAC as discussed in the Estimated Fiscal Impact on JAC section on pp. 11-13, below. In particular, the fees and costs associated with representation of children by private court-appointed counsel will be a substantial, but currently indeterminate amount, that will depend on the number of attorney appointments made and the percentage of cases where the Statewide Office or its contracted provider have a conflict precluding representation of a child or children in the proceeding. Because many dependency cases involve multiple children and conflicts may arise for attorneys representing siblings with different interests, the number of conflict appointments and corresponding due process costs will create a substantial fiscal impact on JAC for reviewing, verifying and processing the payments for attorney fees and associated due process costs for those conflict cases.

Ambiguous References to Appointed Attorney in proposed s. 39.831, F.S.

Some of the language contained in proposed s. 39.831, F.S., does not distinguish between representation by the Statewide Office or a contracted provider and representation by private court-appointed counsel. Many of the provisions should only apply to private court-appointed counsel. These include the following:

- Section 8, Lines 565-68, creates a requirement that an appointed attorney obtain permission of the court to arrange for supplemental or separate counsel to represent the child in appellate proceedings. Permission of the court would not be required for a child represented by the office of child representation or its contracted provider.
- Section 8, Lines 594-604, provides that the appointed attorney or organization must be adequately compensated pursuant to s. 27.5304, F.S.; that billings for attorney fees and case-related expenses are subject to review by JAC; and that JAC shall contract with attorneys appointed by the court. The language also directs that attorney fees may not exceed \$1,000 per child per year. These provisions would only be applicable to private court-appointed attorneys and not to attorneys employed or contracted by the Statewide Office.

JAC would suggest that provisions only applicable to private court-appointed attorney use the phrase “private court-appointed attorney” rather than “appointed attorney” to avoid confusion between provisions applicable to all attorneys appointed to represent a child and those provisions only applicable to private court-appointed attorneys.

Rates and Costs Pursuant to this Proposal

Other than providing that attorney fees cannot exceed \$1,000 per child per year in Section 8, Line 604, SB 948 contains no references to rates for state payment of costs associated with the representation of children in dependency proceedings by private court-appointed counsel in the event the offices of child representation cannot provide representation. The legislature would need to set flat fees for child representation annually in accordance with s. 27.5304(1), F.S., and due process costs rates in accordance with s. 27.425, F.S.

Potential Disparity in Flat Fee Payments for Private Court-Appointed Attorneys

Under SB 948, the statutory limitation for payment of attorney fees for private attorneys appointed to represent children is set at \$1,000 per child per year per Section 8, Line 604. This is the same statutory limit under existing law for attorneys appointed to represent children with special needs per s. 39.01305(5), F.S. Assuming the flat fee for representation was set at the same rate as the statutory limit of \$1,000 per child per year, this would create a disparity in the flat fees paid to attorneys appointed to represent parents and attorneys appointed to represent children in dependency cases.

Under s. 27.5304(6), F.S., the statutory limit for attorneys appointed to represent parents in dependency proceedings and termination of parental rights proceedings is set at \$800 to \$1,000 for the first year and \$200 for each year thereafter. The current flat fees for parent representation are as follows: (1) dependency proceedings—\$800 for the first year and \$200 each year thereafter and (2) termination of parental rights proceedings—\$1,000 for the first year and \$200 each year thereafter. See Ch. 2021-36, § 4, Specific Appropriation 745, L.O.F. These flat fees have remained unchanged since 2008. See Ch. 2008-152, § 4, Specific Appropriation 819, L.O.F.

Section 9: The amendments as currently drafted significantly impact JAC as they delete private court-appointed counsel's authorization to obtain records from the clerk of the court without charge. This deletion appears to be a scrivener's error in that the amendments sought to remove "attorney ad litem" from the statute and add "court-appointed attorney for the child." The language striking "private court-appointed counsel paid by the state" includes all private court-appointed attorneys, such as lawyers appointed to represent criminal defendants. Such a deletion would represent an additional cost for records that JAC would have to process and pay for private court-appointed counsel.

It appears this was an unintentional change made to facilitate access to records for private attorneys appointed to represent children. This deletion would have a substantial fiscal impact on JAC because other private court-appointed attorneys, such as attorneys appointed to represent criminal defendants, would no longer have access to clerk of court records (such as the court file) without being charged for those records. If that occurred, JAC would become liable to reimburse private court-appointed attorneys costs to obtain records from the clerk of court associated with their representation of indigent defendants.

Rather than adding "court-appointed attorney for the child," another approach would be to add "the office of child representation or a local nonprofit agency with which the Statewide Office has contracted" to the list of entities entitled to records without charge from the clerk of court.

Section 10: The amendments as currently drafted impact JAC by adding a new requirement to provide private court-appointed counsel to an increased number of children from state revenues when the new Statewide Office has a conflict of interest. However, the language of the new provision appears to be inconsistent with Section 8 of the bill because indigency is not a prerequisite for appointment of an attorney for the child under proposed s. 39.831, F.S. Although financially-able parents would be liable to reimburse the court for the cost of services, an attorney would be appointed to represent the child irrespective of the indigency of the child or the parents. JAC suggests the following language for s. 29.007(3), F.S., to promote consistency between the two proposed revisions:

When the Statewide Office of Child Representation or a local nonprofit agency with which the statewide office has contracted has a conflict of interest, private attorneys appointed by the court to represent a child in accordance with s. 39.831.

Section 11 through 32: The amendments as currently drafted do not additionally impact JAC in that they are primarily amendments to various statutory provisions to facilitate "attorney for the child" representation or other technical amendments.

Section 33: The amendments as currently drafted impact JAC as discussed herein insofar as the Statewide Office is added to the entities administratively served by JAC.

Sections 34 through 40: The amendments as currently drafted do not additionally impact JAC in that they primarily constitute amendments to various statutory provisions to facilitate “attorney for the child” representation or other technical amendments.

Section 41: This section specifies that the act shall take effect July 1, 2022, although the right to appointed counsel would not go into effect until July 1, 2023.

ESTIMATED FISCAL IMPACT ON JAC:

SB 948 would have a substantial fiscal impact on JAC through an increased workload to serve the new Statewide Office and to process invoices for payment for an increased number of private court-appointed attorneys and due process vendor invoices for appointments where the Statewide Office has a conflict precluding representation of a child. The additional support and services required by JAC will necessitate an indeterminate number of employees and additional resources to provide the necessary services in areas such as accounting, budget, financial services, human resources, operations, online support, information technology, and associated executive services.

SB 948 creates a new right to direct representation by an attorney for “any child who is placed in out-of-home licensed care on or after July 1, 2023, and who is the subject of a dependency proceeding,” and for any child who is the subject of a dependency proceeding, when the court finds that circumstances exist that require such appointment. Additionally, the bill provides for representation by private court-appointed attorneys when the Statewide Office has a conflict of interest. JAC would be liable to audit, verify, and process invoices for attorney fees and costs for those private court-appointed attorneys under the proposed ss. 29.007(3) and 39.831(1), F.S. JAC also would be responsible for reviewing and processing an unknown number of invoices for these services, as well as related due process vendor services (i.e., court reporters, investigators, and experts) for each of these appointments. Many dependency cases involve more than one child, each of which could require a separate private court-appointed attorney and due process providers depending on whether there is a conflict of interest precluding representation.

Under SB 948, the Statewide Office would become primarily responsible for providing representation of special needs children effective July 1, 2023, if the child is not otherwise represented by counsel. This would likely reduce the amount needed to pay for fees and costs for the initial appointment of private court-appointed counsel under s. 39.01305, F.S., for new appointments arising on or after July 1, 2023.

Although estimates regarding the number of children that would be appointed an attorney under these amendments have not been provided, JAC estimated the impact of a similar bill (CS/SB 1920), proposed during the 2021 Legislative Session:

To handle the increased workload caused by administratively serving the Statewide Office of Child Representation and the five Regional Offices of Child Representation, JAC would require a minimum of four and three-quarters (4 3/4) additional FTEs as follows:

One-half FTE in Executive
One FTE in Human Resources
One FTE in Accounting
One-half FTE in Financial Services
One FTE in Information Technology
One 3/4 FTE in Budget

....

To handle the increased workload associated with the additional [private] court-appointed contracts and billings, JAC would need a minimum of three FTEs, as follows:

One FTE in Court-Appointed Audit (a blend of a flat fee auditor and hourly/due process auditor)
Two FTEs in Legal (one attorney and one court-appointed paralegal)

....

JAC would need \$594,183 in General Revenue funding to support the seven and three-quarter (7.75) FTEs necessary to address the additional workload. In addition, JAC would need funding to cover the costs of private court-appointed attorneys where the Offices of Child Representation have a conflict precluding representation. Depending on various factors, the amount necessary for payments of attorney fees and costs could be \$1,100,000 to \$5,500,000 depending on the percentage of conflict cases.

Proposed JAC 2021 Legislative Session Revised Bill Analysis for CS/SB 1920 at 5-6 (April 2, 2021) (not filed).

The scope of appointed counsel for children under CS/SB 1920 was different (children 10 years of age or older). Nonetheless, the potential fiscal impact of SB 948 on JAC will be greater because SB 948 provides a right to counsel for more children which will increase the potential for more appointments of private court-appointed counsel due to conflicts of interests.

JAC's bill analysis last year was based on approximately 11,714 children ten years of age or older being entitled to the appointment of an attorney. The number of children in out of home licensed care may be comparable. According to statistics from the Department of Children and Families, there are 22,275 children in out-of-home care with 11,676 children in licensed foster care; 1,497 children in group care; 202 in residential treatment centers; and 825 children in other care as of November 30, 2021.³ The appointment of an attorney for each child in the licensed out-of-home care will also increase the amount of expenditures for attorney fees and due process services incurred dependency cases whether incurred through attorneys employed through the Statewide Office; attorneys employed by

³<https://www.myflfamilies.com/programs/childwelfare/dashboard/c-in-ooH.shtml> (last visited December 17, 2021).

an entity contracting with the Statewide Office, or private court-appointed and *pro bono* attorneys.

ESTIMATED POLICY IMPACT ON JAC

2. LEGAL ISSUES

- a. Does the proposed legislation raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, and impairment of contracts)?
Indeterminate

- b. Is the proposed legislation likely to generate litigation, and, if so, from what interest groups or parties? **Indeterminate**

- c. Other: **See below.**

3. COMMENTS: None.