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LEGISLATIVE ACTION

Senate

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House

The Committee on Children, Families, and Elder Affairs (Book) recommended the following:

1 **Senate Amendment to Amendment (163466) (with title**
2 **amendment)**

3
4 Delete lines 93 - 444
5 and insert:

6 (b) On or after July 1, 2022, a guardian ad litem:
7 1. Must be appointed by the court at the earliest possible
8 time to represent a child under the following circumstances:
9 a. The child is younger than 10 years of age and is the
10 subject of a dependency proceeding under this chapter or a



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11 related adoption proceeding;

12 b. The child is the subject of a dependency proceeding
13 under this chapter or a related adoption proceeding and the
14 subject of a criminal proceeding;

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

17 d. The child is a dependent child as described in s.
18 39.01305(3).

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

21 (2) On or after July 1, 2022, the court shall discharge the
22 guardian ad litem program, if appointed, within 60 days after
23 such child reaches 10 years of age unless:

24 (a) The child meets a criterion specified in sub-
25 subparagraph (1)(b)1.b., c., or d., or (1)(b)2. and the court
26 orders the guardian ad litem to remain on the case; or

27 (b) The child expresses that he or she wishes to remain
28 with the guardian ad litem and the court determines that the
29 expression is voluntary and knowing.

30 (3) Upon request by a child who is subject to a dependency
31 proceeding under this chapter or a related adoption proceeding,
32 who is 10 years of age or older, and who has a guardian ad litem
33 assigned, or upon any party presenting evidence that there is
34 reasonable cause to suspect the assigned guardian ad litem has a
35 conflict of interest as defined in s. 39.8296(2)(b)9., the court
36 may:

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

38 (b) Unless otherwise provided by law, discharge the child's
39 current guardian ad litem and appoint an attorney for the child



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40 if one is not appointed.

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

46 (5)~~(2)~~ In those cases in which the parents are financially
47 able, the parent or parents of the child shall reimburse the
48 court, in part or in whole, for the cost of provision of
49 guardian ad litem services. Reimbursement to the individual
50 providing guardian ad litem services may ~~shall~~ not be contingent
51 upon successful collection by the court from the parent or
52 parents.

53 (6)~~(3)~~ Upon presentation by a guardian ad litem of a court
54 order appointing the guardian ad litem:

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

63 (b) A person or organization, other than an agency under
64 paragraph (a), shall allow the guardian ad litem to inspect and
65 copy any records related to the best interests of the child who
66 is the subject of the appointment, including, but not limited
67 to, confidential records.

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

74 (7)~~(4)~~ The guardian ad litem or the program representative
75 shall review all disposition recommendations and changes in
76 placements, and must be present at all critical stages of the
77 dependency proceeding or submit a written report of
78 recommendations to the court. Written reports must be filed with
79 the court and served on all parties whose whereabouts are known
80 at least 72 hours before ~~prior to~~ the hearing.

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

83 39.8296 Statewide Guardian Ad Litem Office; legislative
84 findings and intent; creation; appointment of executive
85 director; duties of office.—

86 (2) STATEWIDE GUARDIAN AD LITEM OFFICE.—There is created a
87 Statewide Guardian Ad Litem Office within the Justice
88 Administrative Commission. The Justice Administrative Commission
89 shall provide administrative support and service to the office
90 to the extent requested by the executive director within the
91 available resources of the commission. The Statewide Guardian Ad
92 Litem Office is not subject to control, supervision, or
93 direction by the Justice Administrative Commission in the
94 performance of its duties, but the employees of the office are
95 governed by the classification plan and salary and benefits plan
96 approved by the Justice Administrative Commission.

97 (a) The head of the Statewide Guardian Ad Litem Office is



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

124 (b) The Statewide Guardian Ad Litem Office shall, within
125 available resources, have oversight responsibilities for and
126 provide technical assistance to all guardian ad litem and



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127 attorney ad litem programs located within the judicial circuits.

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

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

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

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

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

153 6. The office shall determine the feasibility or
154 desirability of new concepts of organization, administration,
155 financing, or service delivery designed to preserve the civil



156 and constitutional rights and fulfill other needs of dependent
157 children.

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

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

179 9. The office shall develop guidelines to identify any
180 possible conflicts of interest of a guardian ad litem when he or
181 she is being considered for assignment to a child's case. The
182 office must not assign a guardian ad litem for whom a conflict
183 of interest has been identified to a child's case. For purposes
184 of this subparagraph, the term "conflicts of interest" means the



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185 guardian ad litem:

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

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

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

196 (c) The Statewide Guardian Ad Litem Office shall identify
197 any guardian ad litem who is experiencing an issue with his or
198 her physical or mental health or who appears to present a danger
199 to any child to whom the guardian ad litem is assigned. As soon
200 as possible after identification, the office must remove such
201 guardian ad litem from all assigned cases, terminate his or her
202 volunteer services with the Guardian Ad Litem Program, and
203 disclose such action to the appropriate circuit court.

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

206 39.83 Statewide Office of Child Representation;
207 qualifications, appointment, and duties of executive director
208 and attorney for the child.-

209 (1) STATEWIDE OFFICE OF CHILD REPRESENTATION.-

210 (a) There is created a Statewide Office of Child
211 Representation within the Justice Administrative Commission. The
212 Justice Administrative Commission shall provide administrative
213 support and services to the statewide office as directed by the



214 executive director within the available resources of the
215 commission. The statewide office is not subject to control,
216 supervision, or direction by the Justice Administrative
217 Commission in the performance of its duties, but the employees
218 of the office are governed by the classification plan and salary
219 and benefits plan approved by the Justice Administrative
220 Commission.

221 (b) The head of the Statewide Office of Child
222 Representation is the executive director who must be a member of
223 The Florida Bar in good standing for at least 5 years and have
224 knowledge of dependency law and the social service delivery
225 systems available to meet the needs of children who are abused,
226 neglected, or abandoned. The executive director shall be
227 appointed in accordance with the process, and serve in
228 accordance with the terms and requirements, provided in s.
229 39.8296(2) (a) for the head of the Statewide Guardian Ad Litem
230 Office. The appointment for the initial executive director must
231 be completed by January 1, 2022.

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

237 1. Shall identify the resources required to implement
238 methods of collecting, reporting, and tracking reliable and
239 consistent case data;

240 2. Shall review and collect information relating to offices
241 of child representation and other models of attorney
242 representation of children in other states;



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

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

257 5. Shall develop protocols that must be implemented to
258 assist children who are represented by the Statewide Office of
259 Child Representation, regional offices, or its contracted local
260 agencies in meeting eligibility requirements to receive all
261 available federal funding. This subparagraph may not be
262 construed to mean that the protocols may interfere with zealous
263 and effective representation of the children;

264 6. Shall review the various methods of funding the regional
265 offices, maximize the use of those funding sources to the extent
266 possible, and review the kinds of services being provided by the
267 regional offices;

268 7. Shall determine the feasibility or desirability of new
269 concepts of organization, administration, financing, or service
270 delivery designed to preserve the civil and constitutional
271 rights of, and fulfill other needs of, dependent children 10



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272 years of age and older;

273 8. Shall establish standards and protocols for
274 representation of children with diminished capacity;

275 9. Shall submit to the Governor, the President of the
276 Senate, the Speaker of the House of Representatives, and the
277 Chief Justice of the Supreme Court:

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

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

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

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

292 (e) The office may contract with a local nonprofit agency
293 to provide direct attorney representation to a child if the
294 office determines that the contract is the most efficient method
295 to satisfy its statutory duties and if federal funding has been
296 approved for this purpose. The office must ensure that
297 reimbursement of any Title IV-E funds is properly documented.

298 (2) REGIONAL OFFICES OF CHILD REPRESENTATION.—

299 (a) An office of child representation is created within the
300 area served by each of the five district courts of appeal. The



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301 offices shall commence fulfilling their statutory purpose and
302 duties on July 1, 2022.

303 (b) Each regional office of child representation is
304 assigned to the Justice Administrative Commission for
305 administrative purposes. The commission shall provide
306 administrative support and service to the offices within the
307 available resources of the commission. The offices are not
308 subject to control, supervision, or direction by the commission
309 in the performance of their duties, but the employees of the
310 offices are governed by the classification plan and the salary
311 and benefits plan approved by the commission.

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

323 Section 8. Section 39.831, Florida Statutes, is created to
324 read:

325 39.831 Attorney for the child.—

326 (1) APPOINTMENT.—

327 (a) Attorney for the child:

328 1. Shall be appointed by the court as provided in s.
329 39.01305(3);



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330 2. Shall be appointed by the court for any child who
331 reaches 10 years of age or older on or after July 1, 2022, and
332 who is the subject of a dependency proceeding under this chapter
333 or a related adoption proceeding; or

334 3. May be appointed at the court's discretion upon a
335 finding that circumstances exist which require the appointment.

336 (b) The court shall appoint the Statewide Office of Child
337 Representation unless the child is otherwise represented by
338 counsel.

339 (c) If, at any time during the representation of two or
340 more children in a dependency or related adoption proceeding, a
341 child representation counsel determines that the interests of
342 those clients are so adverse or hostile that they cannot all be
343 counseled by child representation counsel or his or her staff
344 because of a conflict of interest, the child representation
345 counsel shall file a motion to withdraw and move the court to
346 appoint other counsel. Child representation counsel shall not
347 automatically determine the appointment to represent siblings is
348 a conflict of interest. If requested by the Justice
349 Administrative Commission, the child representation counsel
350 shall submit a copy of the motion to the Justice Administrative
351 Commission at the time it is filed with the court. The court
352 shall review and may inquire or conduct a hearing into the
353 adequacy of the child representation counsel's submissions
354 regarding a conflict of interest without requiring the
355 disclosure of any confidential communications. The court shall
356 deny the motion to withdraw if the court finds the grounds for
357 withdraw are insufficient or the asserted conflict is not
358 prejudicial to the client. If the court grants the motion to



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359 withdraw, the court shall appoint one or more private attorneys
360 to represent the person in accordance with the requirements and
361 process provided for in s. 27.40. The clerk of court shall
362 inform the child representation counsel and the commission when
363 the court appoints private counsel.

364 (d) Unless the attorney has agreed to provide pro bono
365 services, an appointed attorney or organization must be
366 adequately compensated as provided in s. 27.5305. All appointed
367 attorneys and organizations, including pro bono attorneys, must
368 be provided with access to funding for expert witnesses,
369 depositions, and other due process costs of litigation. Payment
370 of attorney fees and case-related due process costs are subject
371 to appropriations and review by the Justice Administrative
372 Commission for reasonableness. The Justice Administrative
373 Commission shall contract with attorneys appointed by the court.
374 Attorney fees may not exceed \$1,000 per child per year.

375 (e) In cases in which one or both parents are financially
376 able, the parent or parents, as applicable, of the child shall
377 reimburse the court, in whole or in part, for the cost of
378 services provided under this section; however, reimbursement for
379 services provided by the attorney for the child may not be
380 contingent upon successful collection by the court of
381 reimbursement from the parent or parents.

382 (f) An attorney for the child appointed pursuant to this
383 section shall represent the child only in the dependency
384 proceeding or related adoption proceeding. Once an attorney for
385 the child is appointed, the appointment continues in effect
386 until the attorney for the child is allowed to withdraw or is
387 discharged by the court or until the case is dismissed. An



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388 attorney for the child who is appointed under this section to
389 represent a child shall provide all required legal services in
390 the dependency proceeding or related adoption proceeding from
391 the time of the child's removal

392

393 ===== T I T L E A M E N D M E N T =====

394 And the title is amended as follows:

395 Delete lines 1666 - 1671

396 and insert:

397 attorney for the child; requiring the court to appoint
398 the Statewide Office of Child Representation;
399 providing for the appointment of private counsel when
400 the office has a conflict of interest; requiring an
401 attorney for the child to be compensated and have
402 access to funding for expenses with specified
403 conditions; providing conditions under which a parent
404 is required to reimburse the court for the cost of the
405 attorney; providing for the scope of representation
406 for court-appointed counsel; requiring