

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

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BILL: SB 792

INTRODUCER: Senator Ausley

SUBJECT: Children and Young Adults in Out-of-home Care

DATE: November 29, 2021      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Cox	CF	<b>Pre-meeting</b>
2.			AHS	
3.			AP	

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**I. Summary:**

SB 792 consolidates provisions in current law or rule creating a Foster Children’s Bill of Rights and provides roles and responsibilities for the Department of Children and Families (department), the community-based care lead agencies (CBCs), and other agency staff to follow to ensure that children and young adults in out-of-home care are informed of these rights. The roles and responsibilities for the department, CBCs, and other agency staff provided in the bill, in part, include:

- Requiring the department to operate with the understanding that the rights of children in out-of-home care are vital to their sense of safety, permanence, and well-being;
- Ensuring that stakeholders help children become knowledgeable about their rights; and
- Requiring case managers and other agency staff to inform a child entering out-of-home care, both verbally and in writing, of his or her rights using words and phrasing that is understandable to the child, if the child is of a sufficient age and understanding to receive such instructions and rights.

The bill also authorizes and encourages district school boards to establish educational programs for students ages 5 through 18 years relating to identifying and reporting abuse, abandonment, or neglect and the effects of such abuse, abandonment, or neglect on a child. The district school boards may provide such programs in conjunction with programs and instruction that are already offered or required by the district.

The bill provides that the provisions included in the Foster Children’s Bill of Rights may not be used for any purpose in any civil or administrative action and such provisions do not expand or limit any rights or remedies provided under any other law.

The bill also codifies the role and responsibilities of the Children’s Ombudsman, which has been established within the department to serve as an autonomous entity that receives and resolves, when possible, complaints from children and young adults in out-of-home care related to their

care, placement, or services. Further, the bill specifically prohibits the ombudsman from investigating, challenging, or overturning a court order or decision. The bill provides that the ombudsman must be given:

- Access to any public record of a state or local agency which is necessary to carry out his or her responsibilities; and
- The opportunity to meet or communicate with any child or young adult in his or her placement or other location.

The bill provides general responsibilities for the ombudsman, requires specified data collection, and requires the ombudsman to develop standardized information explaining the rights granted under s. 39.4085, F.S., by January 1, 2023. The standardized information must be developed in consultation with the department, children's advocacy and support groups, and children and young adults who are in, or have previously been in, out-of-home care. The information must be age appropriate, reviewed and updated by the ombudsman annually, and made available through a variety of formats. This information must be used by the department, CBCs, and other agency staff to carry out their responsibilities to inform children and young adults in out-of-home care of their rights.

The bill codifies the department's statewide toll-free telephone number for the children's ombudsman and that the number must be posted on the homepage of the department's website.

The bill requires the department to adopt rules to implement the act.

The fiscal impact of the bill to the department is expected to be negative insignificant. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2022.

## II. Present Situation:

### Dependency Case Process - Overview

The department operates the Florida central abuse hotline (hotline), which accepts reports of known or suspected child abuse,<sup>1</sup> abandonment,<sup>2</sup> or neglect,<sup>3</sup> 24 hours a day, seven days a week.<sup>4</sup> Any person who knows or suspects that a child has been abused, abandoned, or neglected must report such knowledge or suspicion to the hotline.<sup>5</sup> A child protective investigation begins if the hotline determines the allegations meet the statutory definition of abuse, abandonment, or neglect.<sup>6</sup> A child protective investigator investigates the situation either immediately or within 24 hours after the report is received, depending on the nature of the allegation.<sup>7</sup>

If, after conducting an investigation in response to receiving a call to the hotline, the child protective investigator determines that the child is in need of protection and supervision that necessitates removal, the investigator may initiate formal proceedings to remove the child from his or her home. The proceeding, known as a shelter hearing, results in a court determining if

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<sup>1</sup> Section 39.01(2), F.S., defines “abuse” to mean any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired. Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home. Abuse of a child also includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

<sup>2</sup> See s. 39.01(1), F.S., which defines “abandonment”, in part, to mean a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child’s care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. It further defines, “establish or maintain a substantial and positive relationship” to include, but not be limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. The definition specifically provides that marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child.

<sup>3</sup> Section 39.01(50), F.S., defines “neglect” to mean when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child’s physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. Circumstances are not to be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected. Further, a parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian, unless a court orders the following services to be provided, when the health of the child so requires: medical services from a licensed physician, dentist, optometrist, podiatric physician, or other qualified health care provider; or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization. The definition further provides that neglect of a child includes acts or omissions.

<sup>4</sup> See s. 39.101, F.S.

<sup>5</sup> Section 39.201(1), F.S.

<sup>6</sup> See ss. 39.101 and 39.201, F.S.

<sup>7</sup> Section 39.101(2), F.S.

probable cause exists to keep a child in shelter<sup>8</sup> status pending further investigation of the circumstances leading to the detention of a child.<sup>9</sup>

When the department removes a child from the home, a series of dependency court proceedings must occur before a child may be adjudicated dependent.<sup>10</sup> Within 28 days after a child has been sheltered, the court must hold an arraignment hearing on the petition for dependency.<sup>11</sup> If a parent or legal guardian denies an allegation in the petition, the court must hold an adjudicatory hearing within 30 days.<sup>12</sup>

Subsequent to a child being found dependent, a court must hold a disposition hearing to determine a course of treatment and services and placement of the child under protective supervision.<sup>13</sup> The court must first consider placing the child with relatives.<sup>14</sup> If a child cannot safely remain in the original home and no adult relative is available for temporary, legal custody, the child may be placed with an adult willing to care for the child under the protective supervision of the department.<sup>15</sup> Placing the child in the temporary, legal custody of the department invests the department with the rights and responsibilities of a legal custodian.<sup>16</sup>

### ***Sibling Visitation***

When sibling groups are removed from their home, the department or the CBC is required to make reasonable efforts to keep the sibling group together in an out-of-home placement when it is in the best interest of each individual sibling and when a suitable placement is available.<sup>17</sup> When siblings cannot be placed together, particularly those with existing attachments, after conducting a multidisciplinary team staffing<sup>18</sup> that considers all relevant provisions related to sibling placements provided in s. 39.4023, F.S., certain practices are required to be followed to help maintain or strengthen those relationships, including to:

- Maintain allowable visitation and other forms of communication;
- Prioritize placements with kinship caregivers who have personal relationships with each other;
- Prioritize placements that are geographically near each other;
- Encourage frequent visitation and allow siblings to celebrate birthdays, graduations, holidays and other significant events together; and

<sup>8</sup> Section 39.01(78), F.S., defines “shelter” to mean a placement with a relative or a nonrelative, or in a licensed home or facility, for the temporary care of a child who is alleged to be or who has been found to be dependent, pending court disposition before or after adjudication.

<sup>9</sup> Section 39.01(79), F.S.

<sup>10</sup> See s. 39.01(14), F.S., for the definition of “child who is found to be dependent”.

<sup>11</sup> The purpose of an arraignment hearing is for a parent to admit, deny, or consent to findings of dependency that are alleged in the petition for dependency. If any party has requested a demand for early filing, the court must hold the arraignment hearing within 7 days after the date of filing of the petition. Section 39.506(1), F.S.

<sup>12</sup> Section 39.506(1), F.S.

<sup>13</sup> Section 39.521(1), F.S.

<sup>14</sup> Section 39.507(7)(c), F.S.

<sup>15</sup> Section 39.521(3)(c), F.S.

<sup>16</sup> Section 39.521(3)(d), F.S.

<sup>17</sup> Section 39.4024(3)(a), F.S.

<sup>18</sup> See s. 39.4022, F.S., which requires the department or the CBCs to conduct multidisciplinary team staffings that include certain participants to determine the best placement for children that are placed into care under ch. 39, F.S.

- Coordinate the exchange of letters, emails, social media or phone calls when regular in-person contact is not possible.<sup>19</sup>

The department or the CBC must document in writing any decision to separate siblings in the case record face sheet<sup>20</sup> and document the decision in the Florida Safe Families Network (FSFN).<sup>21</sup> Documentation must include any efforts made to keep the siblings together, an assessment of the effects of separation on each child and group as a whole, and a description of the plan for communication or contact between the siblings if the separation of the sibling group occurs.<sup>22</sup>

### ***Provisions related to Dependent Children***

Currently, the provisions of Florida law pertaining to proceedings related to dependent children are contained throughout ch. 39, F.S. Statements of the purposes and intent with regard to child safety and protection found in ch. 39, F.S., include, in part, the provisions that:

- The health and well-being of all children under the care of the state are of paramount concern;
- The child's family ties are preserved and strengthened whenever possible by only removing the child from parental custody when his or her welfare or public safety cannot be otherwise assured;
- Judicial procedures, as well as other procedures to assure due process to children and other parties, are conducted fairly in order to protect constitutional and other legal rights; and
- Children under the jurisdiction of the courts are provided equal treatment with respect to goals, objectives, services, and case plans, without regard to the location of their placement.<sup>23</sup>

Current law also stipulates that all children of this state are afforded general protections to include:

- Protection from abuse, neglect, and exploitation;
- A permanent and stable home;
- A safe and nurturing environment which will preserve a sense of personal dignity and integrity;
- Adequate nutrition, shelter, and clothing;

<sup>19</sup> Section 39.4024(4)(a)1.-6., F.S.

<sup>20</sup> Section 39.00146, F.S., requires that every child under the supervision or in the custody of the department, the department's agents, or providers contracting with the department, including lead agencies and their subcontracted providers, must contain specified relevant information about the child and his or her case that is updated at least once monthly. This document is called the face sheet.

<sup>21</sup> The FSFN system is Florida's implementation of the Statewide and Tribal Automated Child Welfare Information Systems (SACWIS/TACWIS), which is a federally funded data collection system. All states were required to collect and report particular information to the federal government. States had the option of creating a SACWIS model in order to comply with these federal reporting requirements or they may implement an alternative data collection model. This information was then compiled into the Adoption and Foster Care Analysis and Reporting System (AFCARS) and the National Child Abuse and Neglect Data System (NCANDS). Both systems are made publicly available on the Children's Bureau's Child Welfare Outcomes Report Data website. See the National Conference of State Legislatures, *Child Welfare Information Systems*, June 25, 2020, available at <https://www.ncsl.org/research/human-services/child-welfare-information-systems.aspx> (last visited November 29, 2021).

<sup>22</sup> Section 39.4024(6)(c), F.S.

<sup>23</sup> See s. 39.001(1), F.S.

- Effective treatment for physical, social, and emotional needs;
- Equal opportunity and access to education, recreation, and other community resources;
- Access to preventive services;
- An independent, trained advocate, when intervention is necessary, and a skilled guardian or caregiver in a safe environment when alternative placement is necessary; and
- The ability to contact their guardian ad litem<sup>24</sup> or attorney ad litem,<sup>25</sup> if appointed, by having that individual's name entered on all orders of the court.<sup>26</sup>

Pursuant to s. 39.013(2), F.S., the circuit court has exclusive original jurisdiction of all proceedings under ch. 39, F.S., children who may be placed with a licensed child-caring agency, a licensed child-placing agency, or the department, and for the adoption of children whose parental rights have been terminated.<sup>27</sup> Jurisdiction under ch. 39, F.S., attaches when the initial shelter petition, dependency petition, or termination of parental rights petition is filed, or when a child is taken into the custody of the department. The circuit court may assume jurisdiction over any such proceeding regardless of whether the child was in the physical custody of both parents, was in the sole legal or physical custody of only one parent, caregiver, or some other person, or was not in the physical or legal custody of any person when the event or condition occurred that brought the child to the attention of the court.

When the court obtains jurisdiction of any child who has been found to be dependent, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 21 years of age, or 22 years of age if the child has a disability, with a number of exceptions.<sup>28</sup>

Currently, decisions on how to properly care for dependent children and how to assess need for services such as counseling, education, and vocational training are decisions made pursuant to broad authority vested in the department by the Legislature and have been found by the courts to be immune from tort liability under the doctrine of sovereign immunity.<sup>29, 30</sup>

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<sup>24</sup> Section 39.820(1), F.S., defines guardian ad litem as the Statewide Guardian Ad Litem Office, which includes circuit guardian ad litem programs; a duly certified volunteer, a staff member, a staff attorney, a contract attorney, or a pro bono attorney working on behalf of a guardian ad litem; a court-appointed attorney; or a responsible adult who is appointed by the court to represent the best interests of a child in a proceeding as provided for by law, including, but not limited to, this chapter, who is a party to any judicial proceeding as a representative of the child, and who serves until discharged by the court.

<sup>25</sup> See s. 39.01305, F.S., for when an attorney ad litem must be appointed for the child. Additionally, the court may appoint an attorney ad litem to represent any child alleged to be dependent pursuant to Rule 8.217, Fla. R. Juv. Pro.

<sup>26</sup> Section 39.001(3), F.S.

<sup>27</sup> See s. 39.806, F.S., for when a court may terminate a parents rights; *see also* ch. 63, F.S.

<sup>28</sup> Such exceptions are found in s. 39.013(2)(a)-(d), F.S.

<sup>29</sup> See *Department of Health and Rehabilitative Services v. B.J.M.*, 656 So. 2d 906 (Fla. 1995). The Florida Supreme Court held that the decisions of the HRS regarding placement of juveniles and rehabilitative services provided to juveniles constituted performance of discretionary governmental functions and therefore the HRS was immune from tort liability. It should be noted that the Department of Health and Rehabilitative Services (HRS) became the Department of Children and Family Services (DCFS) in 1996. See ch. 1996-403, L.O.F. The department was subsequently renamed the Department of Children and Families (DCF) in 2012. See ch. 2012-84, L.O.F.

<sup>30</sup> Sovereign immunity is a principle under which a government cannot be sued without its consent. Article X, section 13 of the Florida Constitution allows the Legislature to waive this immunity. Section 768.28(1), F.S., is a limited statutory waiver of the immunity conferred under article X, section 13 of the Florida Constitution. Section 768.28(1), F.S., allows for suits in tort against the state and its agencies and subdivisions for damages resulting from the negligence of a government officer, employee, or agent acting in the scope of employment. This liability exists only where a private person would be liable for

### **Statutorily Created Bill of Rights in Florida**

Currently, there are several “Bills of Rights” specified in Florida Statutes. Typically these provisions enunciate certain rights, and in some cases responsibilities, for particular classes of individuals. Some specifically permit a cause of action for violation of the rights, some specifically disallow a remedy, and others are silent. Examples of these bills of rights in statute include, but are not limited to the:

- Florida Patient’s Bill of Rights and Responsibilities.<sup>31</sup>
- The Bill of Rights of Persons with Developmental Disabilities.<sup>32</sup>
- Rights of Mental Health Patients.<sup>33</sup>
- Residents’ Rights for Nursing Homes.<sup>34</sup>
- Residents’ Bill of Rights for Assisted Living Facilities.<sup>35</sup>
- Residents’ Bill of Rights for Adult Family-Care Homes.<sup>36</sup>
- Residents’ Rights in Continuing Care Facilities.<sup>37</sup>

### **Foster Children’s Bill of Rights in Other States**

According to the National Conference of State Legislatures, as of October 2019, a Foster Children’s Bill of Rights has been enacted in 15 states and Puerto Rico.<sup>38</sup> Foster Children Bills of Rights enacted in other states are typically designed to inform foster children of their rights within the child welfare system and are required to be posted in a place where children will see them. Many include provisions requiring foster children to be informed about why they are in foster care and how the dependency process will proceed. Other commonly seen provision of foster children’s bill of rights address participation in extracurricular or community activities; efforts to maintain educational stability; access to guardians ad litem; access to mental, behavioral and physical health care; and access to or communication with siblings and family members.<sup>39</sup>

### **Foster Children’s Ombudsman**

The department created a Florida Children’s Ombudsman position in Fiscal Year 2016-17 with the intent to listen and be a voice for children and youth involved in the child welfare system and

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the same conduct. *See* s. 768.28, F.S., for further provisions governing sovereign immunity; *see also* *City of Pembroke Pines v. Corrections Corp. of America, Inc.*, 274 So. 3d 1105, 1112 (Fla. 4th DCA 2019) (quoting s. 768.28(1), F.S.).

<sup>31</sup> Section 381.026, F.S.

<sup>32</sup> Section 393.13, F.S.

<sup>33</sup> Section 394.459, F.S.

<sup>34</sup> Section 400.022, F.S.

<sup>35</sup> Section 429.28, F.S.

<sup>36</sup> Section 429.85, F.S.

<sup>37</sup> Section 651.083, F.S.

<sup>38</sup> *See* National Conference of State Legislatures, Foster Care Bill of Rights (October 29, 2019), available at <http://www.ncsl.org/research/human-services/foster-care-bill-of-rights.aspx#Children> (last visited November 17, 2021).

Those states include: Arizona, California, Colorado, Delaware, Hawaii, Indiana, Massachusetts, Mississippi, Nevada, New Hampshire, New Jersey, Oregon, Pennsylvania, Rhode Island, and Texas.

<sup>39</sup> *Id.*

this position is still in operation today.<sup>40</sup> The ombudsman receives complaints about placement, care, and services in a manner where the children making such complaints do so without fear of retribution. The ombudsman is a resource to identify and explain relevant policies or procedures to children, young adults, and their caregivers.<sup>41</sup> The department also established a toll-free number for children in the child welfare system to reach the ombudsman that is posted on the department’s website.<sup>42</sup>

The Children’s Ombudsman cannot respond to emergencies or investigate allegations of abuse or neglect, investigate, challenge, or overturn court-ordered decisions or provide legal advice, or investigate complaints about a guardian ad litem.<sup>43</sup>

**Legislative Findings and Declaration of Intent for Goals of Dependent Children**

Current law provides goals for children who are in out-of-home care.<sup>44</sup> The provisions that are enumerated in and referred to as goals in s. 39.4085, F.S., are requirements under other sections of the Florida Constitution, Florida Statutes, or in department rule. For example, a few of those include:

Goal in s. 39.4085, F.S.	Current statute or rule where required
To be involved and incorporated, where appropriate, in the development of the case plan, to have a case plan which will address their specific needs, and to object to any of the provisions of the case plan.	Sections 39.6011 and 39.6013, F.S.  Rules 65C-29.009 and 65C-30.006, F.A.C.
To enjoy regular visitation with their siblings unless the court orders otherwise and to enjoy regular visitation with their parents, unless the court orders otherwise.	Sections 39.4015, 39.402, 39.4024, and 409.1415, F.S.
To be able to raise grievances with the department over the care they are receiving from their caregivers, caseworkers, or other service providers.	Rule 65C-46.003(5), F.A.C.
To be heard by the court, if appropriate, at all review hearings.	Section 39.01(58), F.S.  Rule 8.255, Fla. R. Juv. Pro.  Art. I, s. 21, FLA. CONST.
To have a guardian ad litem appointed to represent, within reason, their best interests	Sections 39.01305 and 39.822, F.S.

<sup>40</sup> The Department of Children and Families, *Agency Analysis for SB 1100 (2021 Regular Session)*, p. 3, February 12, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as “The SB 1100 Agency Analysis”). SB 1100 (2021) is, in part, substantively identical to this bill.

<sup>41</sup> The Department, *Florida Children’s Ombudsman*, available at <https://www.myflfamilies.com/service-programs/child-welfare/childrens-ombudsman.shtml> (last visited November 29, 2021).

<sup>42</sup> *Id.*

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

<sup>44</sup> Section 39.4085, F.S.

<p>and, where appropriate, an attorney ad litem appointed to represent their legal interests; the guardian ad litem and attorney ad litem shall have immediate and unlimited access to the children they represent.</p>	<p>Rule 8.217, Fla. R. Juv. Pro.</p>
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**III. Effect of Proposed Changes:**

**Foster Children’s Bill of Rights**

The bill substantially rewords s. 39.4085, F.S., relating to goals for children in out-of-home care, to create a Foster Children’s Bill of Rights for children who are in, and for young adults who are leaving, out-of-home care.

The bill provides legislative intent and findings, including specifically:

- That the design and delivery of child welfare services should be directed by the principle that the health and safety of children is of paramount concern;
- That the emotional trauma, separation from family, frequent changes in placement and frequent changes in schools and the dependence upon the state to make important life decisions, may lead to feelings of little control over life events in children and you adults in out-of-home care; and
- It is the intent of the Legislature to empower these children and young adults by helping them become better informed on their rights in order to become stronger self-advocates.

The bill codifies and places existing provisions that provide foster youth rights into one section of law, including all of the following:

- To live in a safe, healthful, and comfortable home where he or she is treated with respect and provided with healthy food, appropriate clothing, and adequate storage space for personal use and where the caregiver is aware of and understands the child’s or young adult’s history, needs, and risk factors and respects the child’s preferences for attending religious services and activities.<sup>45</sup>
- To be free from physical, sexual, emotional, or other abuse or corporal punishment, which includes the child’s right to be placed away from other children or young adults who are known to pose a threat of harm.<sup>46</sup>
- To receive medical, dental, vision, and mental health services as needed; to be free of the administration of psychotropic medication or chemical substances unless authorized by a parent or the court; and to be free from being confined in any room, building, or facility unless placed in a residential treatment center by court order.<sup>47</sup>

<sup>45</sup> Sections 39.001(1), 409.1415(2)(b), and 409.175(1) and (5), F.S., currently require children to be placed in safe homes that foster healthy social, emotional, intellectual and physical development, provide food and clothing, and are respectful of the child’s culture, religion, ethnicity, and special physical or psychological needs. Additionally, Rule 65C-45-010, F.A.C., requires that children’s bedrooms have space that allows for personal storage.

<sup>46</sup> Section 39.001(1), F.S., provides for the care, safety and protection of children in out-of-home care. Rule 65C-45-010, F.A.C., also provides that licensed out-of-home caregivers shall not use corporal punishment of any kind.

<sup>47</sup> Section 39.001(1), F.S., provides for the care of children and promotes the health and well-being of children in out-of-home care. Section 39.407(1), (2), and (6), F.S., authorizes the department to have a medical screening performed on a child in out-of-home care and if the child needs medical treatment, requires the department to obtain consent from a parent or get a

- To be able to have contact and visitation with his or her parents, other family members, and fictive kin and to be placed with his or her siblings or, if not placed together with his or her siblings, to have frequent visitation and ongoing contact with his or her siblings, unless prohibited by court order.<sup>48</sup>
- To be able to contact the Florida Children’s Ombudsman, as described in s. 39.4088, F.S., regarding violations of rights; to speak to the ombudsman confidentially; and to be free from threats or punishment for making complaint.<sup>49</sup>
- To maintain a bank account and manage personal income, including any allowance, consistent with his or her age and developmental level, unless prohibited by the case plan, and to be informed about any funds being held in the master trust on behalf of the child.<sup>50</sup>
- To attend school and participate in extracurricular, cultural, and personal enrichment activities consistent with his or her age and developmental level and to have social contact with people outside of the foster care system, such as teachers, church members, mentors, and friends.<sup>51</sup>
- To attend all court hearings and address the court.<sup>52</sup>
- To have fair and equal access to all available services, placement, care, treatment, and benefits and to be free from discrimination on the basis of race, national origin, color, religion, sex, mental or physical disability, age, or pregnancy.<sup>53</sup>

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court order for such treatment. Children in the legal custody of the department may be placed by the department in a residential treatment facility under s. 394.875, F.S. Rule 65C-003(1), (2), and (6), F.A.C., also provides for children in out-of-home care to receive necessary medical, dental, and vision examinations.

<sup>48</sup> Sections 39.001(1), 39.4015(1) and (3), 39.402(8) and (9), 39.4024, 39.509, and 409.1415(2), F.S., all contain requirements for maintaining connections between children in out-of-home care, including sibling groups, and family members. Rules 65C-46.012(7), 65C-30.006(5), and 65C-30.008(2), F.A.C., also provide requirements related to keeping children and their family members connected.

<sup>49</sup> Information on the department’s website related to the children’s ombudsman states that the ombudsman make take complaints about placement, care, or services without fear of retribution. Additionally, Rule 65C-46.003(5), F.A.C., requires child-caring agencies to have a written grievance procedure that allows children in care to make complaints without fear of retaliation.

<sup>50</sup> Section 39.701(3), F.S., requires the department to include in the social study report for judicial reviews written verification that the child has an open bank account or the identification necessary to open a bank account. Additionally, s. 39.701, F.S., requires a full accounting of these funds must be provided if the child has received any social security benefits that are being held in trust for the child and the child must be informed as to how to access those funds. Rule 65C-46.008(15), F.A.C., requires a child-caring agency to provide opportunities for children to learn the value and use of money by providing a monthly allowance and opportunities for earning, spending and saving. The allowance cannot be tied to behavior or chores, cannot be withheld as punishment and cannot be used to purchase personal hygiene articles, school supplies, or other necessities.

<sup>51</sup> Section 39.0016(2)(b). F.S., requires the department to have agreements with district school boards or other local educational entities relating to the education and related services for children known to the department. Those agreements are required to include a requirement that children known to the department are enrolled in school or educational setting that meets the needs of the child. Section 39.4091(3), F.S., requires that each child who comes into care is entitled to participate in age-appropriate extracurricular, enrichment and social activities.

<sup>52</sup> Section 39.01(58), F.S., provides that the definition of the term “party” includes the child. The presence of the child may be excused by the court when his or her presence would not be in the child’s best interest. Additionally, Rule 8.255, Fla. Rule Juvenile Pro., provides that the child has a right to be present at all hearings.

<sup>53</sup> Section 760.01(2), F.S., provides that the general purposes of the Florida Civil Rights Act of 1992 are to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status. Rules 65C-28.009(1), 65C-41.004(1), 65C-42.002(3), and 65C-42.003(5), F.A.C., contain requirements for children and young adults with special conditions to be given access to receive services and opportunities to participate in programs designed to meet their needs.

- To participate in creating and reviewing his or her case plan, to receive information about his or her out-of-home placement and case plan, including being told of changes to the plan, and to have the ability to object to provisions of the case plan if he or she is 14 years of age or older or, if younger, is of an appropriate age and capacity; and to provide assistance in developing a transition plan if he or she is 16 years of age or older.<sup>54</sup>
- To participate in activities that will help develop the necessary life skills to make the transition to independent living and self-sufficiency as adults; and for older youth, to be informed of available independent living services and community resources and how to apply for such services and access resources.<sup>55</sup>
- To be free from removal from an out-of-home placement by the department or a CBC unless the caregiver becomes unable to care for the child, the child achieves permanency, or the move is otherwise in the child's best interest and, if moved, the right to a transition under s. 39.4023, F.S., which respects his or her relationships and personal belongings.<sup>56</sup>
- To have a guardian ad litem appointed to represent his or her best interest and, if appropriate, an attorney appointed to represent his or her legal interests.<sup>57</sup>

The bill also provides roles and responsibilities for the department, the CBCs, and other agency staff related to ensuring that children and young adults in out-of-home care are informed of these rights.

The bill authorizes and encourages district school boards to establish educational programs for students ages 5 through 18 years relating to identifying and reporting abuse, abandonment, or neglect and the effects of such abuse, abandonment, or neglect on a child. The district school boards may provide such programs in conjunction with programs and instruction that are already offered or required by the district.

The bill specifies that provisions of the bill establishing the Foster Children's Bill of Rights may not be used for any purpose in any civil or administrative action and does not expand or limit any rights or remedies provided under any other law.

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<sup>54</sup> Sections 39.6011(3), 39.6013(8), and 39.6035(1), F.S., require a case plan to be developed in a face-to-face conference with the parent of the child, any court-appointed guardian ad litem, and if appropriate, the child, and the temporary custodian of the child. If a case plan is amended, a copy of the amended plan must be provided to the same individuals. During the year after a child reaches 16 years of age, the department and the CBC provider are required to assist the child in developing a transition plan in collaboration with the caregiver and any other individual the child would like to include.

<sup>55</sup> Section 409.14515, F.S., requires the department to assist children who are in out-of-home care in making the transition to independent living and self-sufficiency as adults and requires the department to provide specific training and opportunities. Rule 65C-28.009(1), F.A.C., recognizes that beginning at the age of 13, children in out-of-home care require additional support and coordination necessary to develop the skills to successfully make the transition to adulthood and requires the CBCs to ensure that children and young adults are assessed and provided with age or developmentally appropriate training opportunities to develop independent living skills.

<sup>56</sup> Sections 39.4023(3) and 409.1415(2), F.S., provide that once a caregiver accepts responsibility of caring for a child, the child may be removed from the home of the caregiver only if the caregiver becomes unable to care for the child, the child achieves permanency, or the change is in the child's best interest.

<sup>57</sup> Sections 39.822(1) and 39.01305(3), F.S., require a guardian ad litem to be appointed by the court in any child abuse, abandonment, or neglect judicial proceeding and requires an attorney to be appointed for a dependent child with certain specified special needs.

## Florida Children's Ombudsman

The bill creates s. 39.4088, F.S., relating to the children's ombudsman, to codify and provide duties for an already existing entity within the department which is currently staffed with one position. The ombudsman is required to serve as an autonomous entity for the purpose of providing children and young adults who are placed in out-of-home care with a means to resolve issues related to their care, placement, or services without fear of retribution. The bill requires that the ombudsman have access to any record of a state or local agency which is necessary to carry out his or her responsibilities. Further, the ombudsman is authorized to meet or communicate with any child or young adult in the child or young adult's placement or elsewhere to conduct the ombudsman's official duties.

The bill authorized the ombudsman to attempt to resolve a complaint informally, conduct whatever investigation he or she determines is necessary to resolve a complaint, update the complainant on the progress of the investigation, and notify the complainant of the final outcome. However, the bill provides that the ombudsman is not authorized to investigate, challenge, or overturn court-ordered decisions.

The bill provides general responsibilities for the ombudsman and requires specified data collection on the office, including:

- The number, source, origin, location and nature of all complaint filed;
- The number of calls to the children's ombudsman toll-free number, the number of complaints, the type and source of all complaints, the number of investigations performed by the ombudsman, the trends and issues that arose in the course of investigating complaints, the number of referrals made and the number of pending complaints.

The ombudsman must post of the compiled data on the department's website.

The bill requires the ombudsman to develop standardized information explaining the rights granted under s. 39.4085, F.S., by January 1, 2023. The development must be done in consultation with the department, children's advocacy and support groups, and children and young adults in, or persons previously in, out-of-home care. The standardized information must be age appropriate, reviewed and updated by the ombudsman annually, and be made available through a variety of formats. Further, this information must be used by the department, community-based care lead agencies, and other agency staff to inform children and young adults in out-of-home care of their rights.

The bill requires the department to establish a statewide toll-free telephone number for the ombudsman and make the number available on the department's website homepage.

The bill requires the department to adopt rules to implement ss. 39.4085 and 39.4088, F.S.

The bill provides an effective date of October 1, 2022.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

Unknown.

## C. Government Sector Impact:

The fiscal impact to the department is expected to be negative insignificant. The department submitted an agency analysis for SB 1100 (2021 Regular Session), which, in part, is substantively identical to this bill. The department stated that the provisions of SB 1100 codifying the Children's Ombudsman would require the department to reassess the expectation and responsibilities of the current position. Further, the department stated that the provision of SB 1100 related to the ombudsman would require enhanced qualifications, greater degree requirements, and more in-depth experience.<sup>58</sup>

**VI. Technical Deficiencies:**

None.

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<sup>58</sup> The SB 1100 Agency Analysis, p. 7.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill substantially amends s. 39.4085 of the Florida Statutes.

The bill creates s. 39.4088 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.