

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

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

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

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

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**FINAL HOUSE FLOOR ACTION:** 112 Y's 0 N's **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/CS/HB 185 passed the House on March 6, 2024, as CS/CS/CS/SB 1224 as amended. The Senate concurred in the House Amendment to the Senate bill and subsequently passed the bill as amended on March 6, 2024. The bill includes portions of HB 673, CS/CS/HB 729 and CS/CS/CS/SB 638.

The bill addresses representation in the child welfare system, and domestic violence lethality assessments.

When a child lives in an unsafe home as a victim of abuse, neglect, or abandonment, the Department of Children and Families may take physical custody of the child and initiate the dependency court process. Early in that process, the presiding judge evaluates whether the allegations of wrongdoing are well-founded and decides whether guardian ad litem (GAL) and attorney ad litem (AAL) appointments are necessary. A GAL serves as the child's fiduciary representative in court to speak for the child's best interests. The GAL typically operates as a multidisciplinary team involving a lay volunteer, a staff attorney, and a case manager. An AAL serves as the child's independent legal representative in court to speak for the child's expressed wishes.

The bill requires courts to appoint a GAL in every dependency case. The bill requires the court to appoint a GAL at the earliest possible time, and requires a GAL to represent a child throughout dependency proceedings, including appeals. The bill authorizes a GAL to represent a child in proceedings outside of dependency cases to secure services and benefits that provide for the child's care, safety, and protection.

The bill expands the duties of the Statewide GAL Office (Office) to include developing an AAL training program, recruiting and mentoring AALs, assisting chief judges who maintain AAL registries, and helping dependent children establish a mentorship with at least one supportive adult. The bill also establishes the Fostering Prosperity grant program, subject to legislative appropriation, to help youth achieve self-sufficiency and requires increased involvement by the Office in, and court attention to, ensuring a youth aging out of care has a permanent connection to a caring adult.

A lethality assessment helps law enforcement objectively quantify threats to the life of a victim of domestic violence and prevent domestic violence homicides. The bill requires a law enforcement officer who investigates an alleged incident of domestic violence to administer a lethality assessment and record the score on the police report, or refer the victim to the nearest certified domestic violence center if the victim cannot provide sufficient information for the officer to administer the lethality assessment.

The bill requires the Department of Law Enforcement (FDLE) to develop policies, procedures, and training for a statewide, evidence-based, domestic violence lethality assessment no later than January 1, 2025, and to submit several reports about lethality assessments to the Legislature. The bill requires each law enforcement agency to ensure its officers complete lethality assessment training and certify to FDLE by November 1, 2026, that the agency complies with the lethality assessment training requirements for the sworn personnel.

The bill has an insignificant, negative fiscal impact on state and local governments.

The bill was approved by the Governor on April 10, 2024, ch. 2024-70, L.O.F., and will become effective on July 1, 2024.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

**STORAGE NAME** h0185z1.DOCX

**DATE** 4/11/2024

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **BACKGROUND**

##### **Child Welfare System**

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

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

Florida's dependency system identifies children and families in need of services through reports to the central abuse hotline and child protective investigations. The Department of Children and Families (DCF) works with those families to address the problems endangering children, if possible. DCF's practice model is based on the safety of the child within the home by using in-home services, such as parenting coaching and counseling, to maintain and strengthen that child's natural supports in his or her environment. If the problems are not addressed, the child welfare system finds safe out-of-home placements for these children.

DCF contracts with community-based care lead agencies (CBCs) for case management, out-of-home services, and related services. The outsourced provision of child welfare services is intended to increase local community ownership of service delivery and design. CBCs in turn contract with a number of subcontractors for case management and direct care services to children and their families. DCF remains responsible for a number of child welfare functions, including operating the central abuse hotline, performing child protective investigations, and providing children's legal services.<sup>2</sup> Ultimately, DCF is responsible for program oversight and the overall performance of the child welfare system.<sup>3</sup>

During Fiscal Year 2022-2023, there were a total of 618,916 Florida Abuse Hotline contacts for potential child abuse and neglect, and 35 percent of those contacts were screened in because they met criteria to trigger an investigation or assessment.<sup>4</sup> Ultimately, 10 percent of children who were investigated or assessed were found to be victims of maltreatment.<sup>5</sup>

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

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

<sup>2</sup> S. 409.986, F.S.

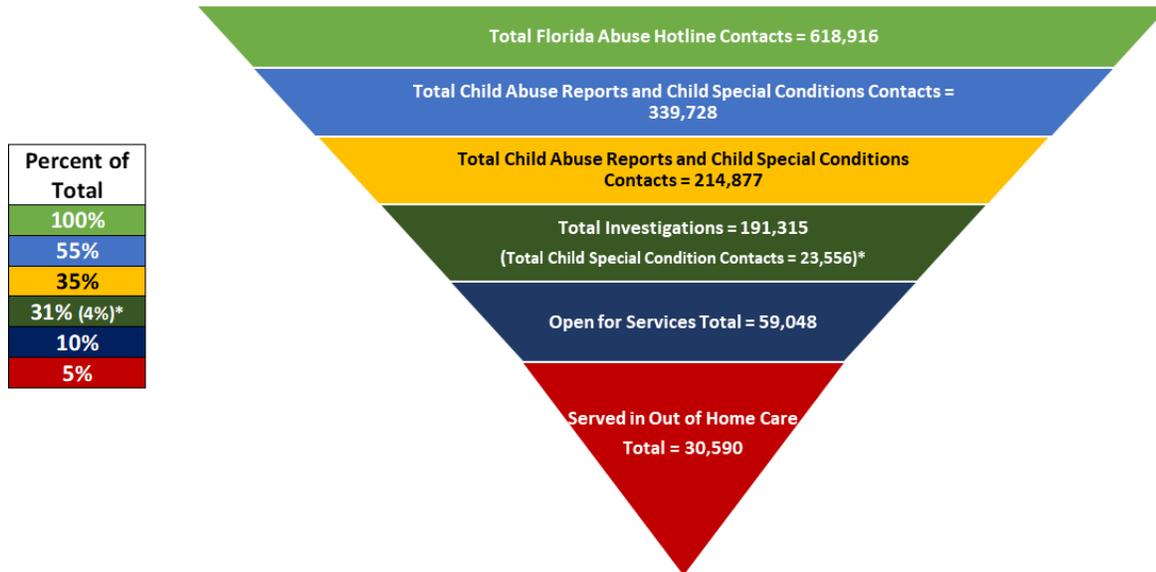
<sup>3</sup> *Id.*

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

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

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

## Florida Child Protection System Overview FY 2022-23



### Dependency Court

#### Dependency Case Process and Parties

When child welfare necessitates that DCF remove a child from the home, a series of dependency court proceedings must occur to adjudicate the child dependent and place that child in out-of-home care. Steps in the dependency process may include:

- A report to the Florida Abuse Hotline.
- A child protective investigation to determine the safety of the child.
- The court finding the child dependent.
- Case planning for the parents to address the problems resulting in their child's dependency.
- Placement in out-of-home care, if necessary.
- Reunification with the child's parent or another option to establish permanency, such as adoption after termination of parental rights.<sup>7</sup>

The Florida Supreme Court's *Florida Rules of Juvenile Procedure* control procedural matters for ch. 39 dependency proceedings unless otherwise provided by law.<sup>8</sup>

Generally, persons with an interest in the outcome of legal action, and who are necessary or proper to a complete resolution of the case, are parties to a legal action.<sup>9</sup>

In ch. 39 dependency cases, the parties are the petitioner, the child who is the subject of the dependency case, the child's parent(s), DCF, and the guardian ad litem or the representative of the guardian ad litem program (if any).<sup>10</sup> Any party to a ch. 39 proceeding who is affected by a court order may appeal to the appropriate appellate court.<sup>11</sup>

### Representation of Children in the Child Welfare System

<sup>7</sup> The state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents accountable for meeting the needs of children. S. 63.022, F.S.

<sup>8</sup> S. 39.013(1), F.S.; Fla. R. Juv. P. 8.000.

<sup>9</sup> See Fla. R. Civ. P. 1.210(a); See Art. I, s. 21, Fla. Const.

<sup>10</sup> S. 39.01(58), F.S.; Fla. R. Juv. P. 8.210(a).

<sup>11</sup> Ss. 39.510(1), 39.815(1), F.S.

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

The principal disability of nonage relates to the power of a minor to contract.<sup>12</sup> At common law, unemancipated children generally lack the legal capacity to enter into binding contractual agreements.<sup>13</sup> A minor's agreements generally are voidable rather than void.<sup>14</sup> When the minor attains the age of majority and ratifies a contract made while a minor, the contract will be treated as valid from inception, and the optional right to disaffirm abandoned.<sup>15</sup>

The disability of non-age is expressly recognized in the Florida Constitution and in statute.<sup>16</sup> Due to the disability of non-age, "an adult person of reasonable judgment and integrity" must conduct any litigation for the minor in judicial proceedings."<sup>17</sup> It follows that unemancipated minors cannot engage legal counsel on their own unless there is a constitutional right or legislative act allowing such engagement.<sup>18</sup>

The U.S. Supreme Court has only found a constitutional right to counsel for minors in delinquency proceedings.<sup>19</sup> The Supreme Court held in *In re Gault* that juveniles need counsel in delinquency proceedings because such actions may result in a loss of liberty, which is comparable in seriousness to a felony prosecution for adults.<sup>20</sup>

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

- If the disability of non-age has been removed under ch. 743, F.S.,<sup>21</sup>
- At the discretion of the judge in domestic relations cases, under s. 61.401, F.S.,
- At the discretion of the judge in a dependency proceeding, under s. 39.4085, F.S.,
- When the child's change of placement from a foster parent is being contested under s. 39.522(3), F.S., or
- If the child is within one of the five categories requiring mandatory appointment in dependency proceedings (discussed further below).<sup>22</sup>

In all other circumstances, "an adult person of reasonable judgment and integrity should conduct the litigation for the minor in judicial proceedings."<sup>23</sup>

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<sup>12</sup> Fla. Jur. 2d FamilyLaw § 252 (Dec. 2023 Update).

<sup>13</sup> *Id.* at § 495.

<sup>14</sup> *Lee v. Thompson*, 124 Fla. 494, 499 (Fla. 1936).

<sup>15</sup> *Id.*

<sup>16</sup> Fla. Const. Art. III, § 11(a)(17); s. 743.01, 07, F.S.

<sup>17</sup> *Garner v. I. E. Schilling Co.*, 174 So. 837, 839 (Fla. 1937).

<sup>18</sup> *Buckner v. Family Services of Central Florida, Inc.*, 876 So.2d 1285 (Fla. 5<sup>th</sup> DCA 2004).

<sup>19</sup> *In re Gault*, 387 U.S. 1, 41 (1967).

<sup>20</sup> *Id.* at p. 36.

<sup>21</sup> A circuit court has jurisdiction to remove the disabilities of nonage of a minor age 16 or older residing in Florida. To do so, the minor's natural guardian, legal guardian, or guardian ad litem must file a petition to remove the child's disability of nonage. S. 743.015, F.S.

<sup>22</sup> S. 39.01305, F.S. Current law requires the dependency court to appoint an attorney for a dependent child who:

- Resides in a skilled nursing facility or is being considered for placement in a skilled nursing home;
- Is prescribed a psychotropic medication but declines assent to the psychotropic medication;
- Has a diagnosis of a developmental disability as defined in s. 393.063, F.S.;
- Is being placed in a residential treatment center or being considered for placement in a residential treatment center; or
- Is a victim of human trafficking as defined in s. 787.06(2)(d), F.S.

<sup>23</sup> *Garner v. I. E. Schilling Co.*, 174 So. 837, 839 (Fla. 1937).

## Child Welfare Best Interest Standard

In Florida, the state government collectively pursues a best interest standard in a ch. 39 dependency proceeding to determine what course of action is in the child's best interest.<sup>24</sup> The term "best interests of a child" generally refers to deliberations undertaken by courts in making decisions about the services, actions, and orders that will best serve a child and who is best suited to care for that child.<sup>25</sup>

The best interest standard contemplates many nuanced factors of each child's physical, mental, emotional, and social well-being to determine each child's best permanency outcome. Possible permanency outcomes include family reunification, out-of-home foster care, permanent guardianship, or adoption. The best interest standard prioritizes a safe and sustainable environment for the child's upbringing and development. Variables of consideration include sibling connections, school continuity, extracurricular activities of importance to the child, and consistent access to necessary health care services. If the child is of a sufficient age and capacity to express a preference, then the child's preference will be considered.<sup>26</sup>

## Child Welfare Representation

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

There are two types of best interest representation: Attorney or Professional<sup>27</sup> and Lay Volunteer.<sup>28</sup>

Expressed wishes or client-directed<sup>29</sup> representation occurs when an attorney is appointed to represent a child's expressed wishes.

Due to the variety of models of representation used nationally, differing structures of child welfare systems among states, designs of studies, and multiplicity of factors impacting the outcomes of children in the child welfare system, research is inconclusive regarding whether one approach is overall more beneficial.<sup>30</sup>

Florida's child representation system authorizes both types of representation.

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<sup>24</sup> See ss. 39.01375, F.S., 39.820(1), F.S.

<sup>25</sup> Office of Program Policy Analysis and Government Accountability (OPPAGA) *Research Memorandum, OPPAGA Review of Florida's Guardian ad Litem Program* (December 2020), <https://www-media.floridabar.org/uploads/2021/03/OPPAGA-Guardian-Ad-Litem-Program.pdf> (last visited Feb. 6, 2024).

<sup>26</sup> S. 39.01375, F.S.

<sup>27</sup> Children in states with this representation model always receive a GAL who is required to be either an attorney or a professional (e.g., professional GAL or mental health counselor). These states may also allow for the appointment of a client-directed attorney at the discretion of the judge or in certain circumstances. See, Office of Program Policy Analysis and Government Accountability (OPPAGA) *Research Memorandum, OPPAGA Review of Florida's Guardian ad Litem Program*, Exhibit 3, (December 2020), <https://www-media.floridabar.org/uploads/2021/03/OPPAGA-Guardian-Ad-Litem-Program.pdf> (last visited Feb. 6, 2024).

<sup>28</sup> Children in states with this representation model always receive a GAL, who is not required to be an attorney. These states may also allow for the appointment of a client-directed attorney at the discretion of the judge or in certain circumstances.

<sup>29</sup> *Supra*, FN 25.

<sup>30</sup> See generally research cited in OPPAGA research memorandum, *id.*, and OPPAGA report 21-07, *Literature Review of Studies on the Effectiveness of Advocacy Models for Children in Dependency*, December 2021, <https://oppaga.fl.gov/Documents/Reports/21-07.pdf> (last visited Feb. 6, 2024). For example, in at least one state, only attorneys are Guardians ad Litem; in other state systems, children may be assigned representation because of their more challenged situation, which makes a study design involving comparisons to children without representation inappropriate. However, OPPAGA reported, "A consistent theme in studies and documents regardless of the advocacy model deployed is the benefits of having strong advocates with in-depth knowledge of social and legal systems." p. ii, *Literature Review*.

## Guardians ad Litem

### *Appointment of Guardians ad Litem*

When the dependency court verifies an allegation of child abuse, abandonment, or neglect and determines the allegation to be well-founded, the presiding judge must appoint a guardian ad litem (GAL) at the earliest possible time to represent the child in a dependency proceeding, unless he or she finds that a GAL is unnecessary.<sup>31</sup> The federal Child Abuse Prevention and Treatment Act (CAPTA) makes CAPTA grants to states contingent on an eligible state plan that addresses specific areas of the child protection system, which must include provisions and procedures requiring a dependency court to appoint a GAL in every case for the purpose of obtaining first-hand knowledge of the child's situation and needs and making recommendations to the court regarding the best interest of the child.<sup>32</sup> One state supreme court opined that this CAPTA requirement means the "guardian ad litem is a fiduciary<sup>33</sup> whose role is to investigate the child's circumstances and to advocate for [his or her] best interests."<sup>34</sup>

The Florida Supreme Court endorses the principle that GALs serve as the child's representative in court to represent the child's best interests.<sup>35</sup> However, Chapter 39 describes the role of the GAL as either representing the child, or representing the child's best interest, depending on the specific section.

In Florida, a court may appoint any of the following to serve as the GAL:<sup>36</sup>

- The Statewide Guardian ad Litem Office (Office), which includes the circuit guardian ad litem programs, a duly certified volunteer, a staff member, a staff attorney, a contract attorney, and a pro bono attorney working on behalf of the Office;
- An attorney; or
- A responsible adult appointed by the dependency court to represent the best interest of a child.

Florida law outlines requirements to serve as a GAL.<sup>37</sup> A person appointed as GAL must be:

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

By court rule, the GAL must fulfill three primary responsibilities. The GAL must:<sup>38</sup>

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

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<sup>31</sup> Ss. 39.402(8)(c)1., 39.822(1), F.S.

<sup>32</sup> 42 U.S.C. §§ 5106a.(b)(1)(A),(b)(2)(B)(xiii); S. 39.822(1), F.S.

<sup>33</sup> Fiduciary representation contemplates a legally cognizable relationship of trust where an intermediary figure advances the interests of a principal for the primary and direct benefit of the principal's designated beneficiary.

<sup>34</sup> *In re Josiah Z.*, 36 Cal.4<sup>th</sup> 664, 679 (Cal. 2005); Florida's CAPTA guardian ad litem program, the Statewide Guardian ad Litem Office, historically promotes the same position in its Standards of Operations handbook. Statewide Guardian ad Litem Office, *Standards of Operation, 2.B. Fiduciary Duty; Avoiding Conflicts of Interest* (last revised Feb. 2023) <https://guardianadlitem.org/wp-content/uploads/2023/02/Guardian-ad-Litem-Standards-Feb-2023-final.pdf> (last visited Mar. 26, 2024); See *Supra*, FN 25 at 4, footnote 18.

<sup>35</sup> *D.H. v. Adept Cmty. Servs.*, 271 So. 3d 870, 879 (Fla. 2018) (citing *C.M. v Dep't of Children & Family Servs.*, 854 So.2d 777, 779 (Fla. 4th DCA 2003)).

<sup>36</sup> S. 39.820(1), F.S.

<sup>37</sup> S. 61.402, F.S.

<sup>38</sup> Fla. R. Juv. P. 8.215(c)(1-3).

The GAL appointment is for the limited purpose of a particular child welfare case, and the GAL is a party to any judicial proceeding from the date of the appointment until the date of discharge. While the GAL generally does not represent the child in any other legal matters, the GAL is not precluded from choosing to represent the child in other matters. In some cases, the GAL may discharge from a case when a child's permanency goal has been established and the child is in a stable placement.<sup>39</sup>

### *Statewide Guardian ad Litem Office*

The Statewide Guardian ad Litem Office (Office) manages a network of volunteer advocates and professional staff representing the best interest of abused, abandoned, and neglected children. The Office within the Justice Administrative Commission (JAC) has oversight responsibilities for and provides technical assistance to all GAL programs located within the judicial circuits.<sup>40</sup>

A Governor-appointed executive director helms the Office.<sup>41</sup> The executive director must have knowledge of dependency law and social service delivery systems available to meet the needs of children who are abused, neglected, or abandoned.<sup>42</sup> As a full-time official appointed to a three-year term, the director must:<sup>43</sup>

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

Since the executive director reports to the Governor, the Governor may remove him or her for cause.<sup>44</sup> Any person appointed to serve as the executive director may be permitted to serve more than one term.<sup>45</sup> The Governor appoints an executive director from a shortlist of at least three eligible applicants submitted by the Guardian Ad Litem Qualifications Committee.<sup>46</sup> This five-person committee solicits applications for the executive director position by statewide advertisement.<sup>47</sup> The Governor may appoint an executive director from the shortlist or may reject nominations and request new nominees.<sup>48</sup>

In Florida, when the court appoints the Office to represent the best interests of the child, the Office assigns the child a GAL multidisciplinary team. The use of a multidisciplinary team (MDT) in child welfare settings is a concept that has been an established practice for over 60 years with hospital-based child protection teams<sup>49</sup> and, more recently, child advocacy centers.<sup>50</sup> Because of the complex nature of child abuse and neglect investigations and family assessments and interventions, MDTs are

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<sup>39</sup> *Supra*, FN 25 at 15, footnote 81.

<sup>40</sup> S. 39.8296(2)(b), F.S.

<sup>41</sup> S. 39.8296(2)(a), F.S.

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

<sup>43</sup> *Id.*; s. 39.8296(2)(b), F.S.

<sup>44</sup> S. 39.8296(2)(a), F.S.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> The Kempe Foundation, *Child Protection Team Celebrates 60 Years*, <http://www.kempe.org/child-protection-team-celebrates-60-years> (last visited Feb. 6, 2024).

<sup>50</sup> The National Children's Alliance, *History of NCA*, <https://www.nationalchildrensalliance.org/history-of-nca/#:~:text=The%20history%20of%20National%20Children's,system%20to%20help%20abused%20children> (last visited Feb. 6, 2024).

used to enhance and improve child protective investigations and responses necessary for children and families to recover and succeed. MDTs are becoming more widely used to involve a variety of individuals, both professional and non-professional, that interact and coordinate their efforts to plan for children and families receiving child welfare services.

Using an MDT approach builds upon existing family-centered approaches to care. The use of a strengths-based, family-centered multidisciplinary process is important in engaging children, youth and families in the development and implementation of their individual case or treatment plans or other related services designed to meet their needs.<sup>51</sup> By sharing decision-making and working together, it is more likely that positive and lasting outcomes will be achieved.<sup>52</sup>

MDTs can help eliminate, or at least reduce, many barriers to effective action, including a lack of understanding by the members of one profession of the objectives, standards, conceptual bases, and ethics of the others; lack of effective communication; confusion over roles and responsibilities; interagency competition; mutual distrust; and institutional relationships that limit interprofessional contact.<sup>53</sup> As a result, a number of states<sup>54</sup> use a MDT team model, also known as a “Child and Family Team”. This model is premised on the notion that children and families have the capacity to resolve their problems if given sufficient support and resources to help them do so.<sup>55</sup>

The MDT approach to representing children is increasingly popular and widely considered a good practice, dramatically improving case outcomes and a child’s experience in foster care. Research shows that MDTs led to quicker case resolution and preserved family connections more often.<sup>56</sup> Children served by an MDT had fewer removals after intervention, fewer adjudications of jurisdiction, and fewer petitions to terminate parental rights.<sup>57</sup> When children were removed from the home, and an MDT was assigned to the cases, they were more likely to be placed with relatives and less likely to be placed in foster care.<sup>58</sup>

Current law provides for the use of MDTs in a number of circumstances, such as:

- Child Protection Teams under s. 39.303, F.S.;
- Child advocacy center multidisciplinary case review teams under s. 39.3035, F.S.;
- Initial placement decisions for a child who is placed in out-of-home care, changes in physical custody after the child is placed in out-of-home care, changes in a child’s educational placement, and any other important, complex decisions in the child’s life for which an MDT would be necessary, under s. 39.4022, F.S.; and
- When a child is suspected of being a victim of human trafficking under ss. 39.524 and 409.1754, F.S.

Since the Office uses the MDT approach to GAL representation, the child typically receives the services of a lay volunteer, a staff advocate (case manager), and a staff attorney. This model has evolved over

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<sup>51</sup> The Kinship Center, *The Importance of the Child and Family Team*, <http://www.kinshipcenter.org/about-kinship-center/news-and-events/breaking-news/the-importance-of-the-child-and-family-team-cft.html> (last visited Feb. 6, 2024).

<sup>52</sup> *Id.*

<sup>53</sup> National Center on Child Abuse and Neglect, U.S. Children’s Bureau, Administration for Children, Youth and Families, Office of Human Development Services, U.S. Department of Health, Education, and Welfare, *Multidisciplinary Teams In Child Abuse And Neglect Programs*, 1978, <https://www.ojp.gov/pdffiles1/Digitization/51625NCJRS.pdf> (last visited Feb. 6, 2024).

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

<sup>55</sup> California Department of Social Services, *About Child and Family Teams*, <https://www.cdss.ca.gov/inforesources/foster-care/child-and-family-teams/about> (last visited Feb. 6, 2024).

<sup>56</sup> Duquette, et al., *Children’s Justice: How to Improve Legal Representation for Children in the Child Welfare System* [NACC E-version, 2021], secs. 12.5 and 13.8, available at [Children’s Justice: How to Improve Legal Representation of Children in the Child Welfare System \(umich.edu\)](https://www.umich.edu/childrens-justice) (last visited Feb. 6, 2024).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

the years from what used to be a volunteer-only approach.<sup>59</sup> The Office employs more than 180 staff attorneys and relies on more than 200 pro bono attorneys volunteering their services.<sup>60</sup>

In FY 2022-23, the Office represented an average of 24,202 children per month and 35,918 total children for the fiscal year.<sup>61</sup> They certified 1,442 new volunteers and retained an average of 8,857 active volunteers each month.<sup>62</sup> For FY 2023-24, the Office received \$58.2 million in general revenue funding plus \$5.0 million in trust funds (grants and donations).<sup>63</sup> At the beginning of FY 2023-24, the Office reported representing 93.4% of children in dependency proceedings.<sup>64</sup>

### Attorneys ad Litem

An attorney ad litem (AAL) is an attorney appointed to provide legal services to a person such as a parent, a child, or an incapacitated person. The AAL has an attorney-client relationship with the person whom the AAL is appointed to represent and owes that person the duties of her undivided loyalty, confidentiality, and competent representation. The AAL is an advocate for the person whom the AAL is appointed to represent and will express the person's wishes to the court or jury. Like other attorneys, including attorneys employed by the Office, AAL's practice is subject to regulation.

### *Practice of Law in Florida*

The Florida Constitution vests the Florida Supreme Court with exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.<sup>65</sup> The Court performs those official functions through two separate arms: the Florida Board of Bar Examiners, which screens, tests, and certifies candidates for admission to the practice, and the Florida Bar, the investigative and prosecutorial authority in the lawyer regulatory practice.<sup>66</sup>

The Supreme Court exercises inherent supervisory power to prohibit the unauthorized practice of law.<sup>67</sup> The unauthorized practice of law covers both lawyers not licensed by the Supreme Court and non-lawyers who lack court authorization to practice law.<sup>68</sup> An example of non-lawyers who obtain court authorization to practice law is qualified law students authorized to represent clients in legal intern programs.<sup>69</sup> Ultimately, the purpose of regulating the practice of law is to protect the public "from incompetent, unethical, or irresponsible representation."<sup>70</sup>

Attorneys are officers of the court.<sup>71</sup> To this end, the Supreme Court – through The Florida Bar – governs the attorney-client relationship by the *Florida Rules of Professional Conduct*.<sup>72</sup>

The client must receive the following services from their attorney:

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<sup>59</sup> *Supra*, FN 25 at 1.

<sup>60</sup> Florida Statewide Guardian ad Litem Office, *About Us*, available at <https://guardianadlitem.org/about/> (last visited Feb. 6, 2024).

<sup>61</sup> Florida Justice Administration Commission, *Agency Long Range Program Plan for Fiscal Year 2024-2025*, p. 15 <http://floridafiscalportal.state.fl.us/Document.aspx?ID=26899&DocType=PDF> (Sept. 29, 2023).

<sup>62</sup> *Id.* at 16.

<sup>63</sup> Ch. 2023-239, Laws of Fla., Specific Appropriations 785-793 "Statewide GAL Office."

<sup>64</sup> Justice Administration Commission, *Long-Range Program Plan, FY 2024-25*, p. 16

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

<sup>65</sup> Art. V, s. 15, Fla. Const.

<sup>66</sup> The Florida Bar, "Frequently Asked Questions." <https://www.floridabar.org/about/faq/> (last visited Feb. 6, 2024).

<sup>67</sup> *The Florida Bar v. Moses*, 380 So.2d 412, 417 (Fla. 1989).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Supra*, FN 67.

<sup>71</sup> *Petition of Florida State Bar Ass'n*, 40 So.2d 902, 907 (Fla. 1949).

<sup>72</sup> The Florida Supreme Court, "Rules Regulating the Florida Bar: Chapter 4 – Rules of Professional Conduct." [https://www-media.floridabar.org/uploads/2024/01/2024\\_07-JAN-Chapter-4-RRTFB-1-8-2023.pdf](https://www-media.floridabar.org/uploads/2024/01/2024_07-JAN-Chapter-4-RRTFB-1-8-2023.pdf) (last visited Feb. 6, 2024).

- *Client-Directed Representation* – the client’s attorney must abide by a client’s decisions concerning the objectives of representation and reasonably consult with the client as to the means by which they are to be pursued.<sup>73</sup>
- *Competent Representation* – legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.<sup>74</sup>
- *Confidentiality* – the client’s attorney must preserve confidentiality unless the client gives informed consent or a specifically listed mandatory or discretionary exception applies.<sup>75</sup>
- *Diligent Representation* – the client’s attorney must act with reasonable diligence and promptness. This rule expects the attorney to keep a controlled workload, to prioritize faithful advocacy, and to carry through to conclusion all matters undertaken for a client.<sup>76</sup>
- *Independence* – the client’s attorney cannot permit the person who recommends, employs, or pays the attorney to render legal services for the client to direct or regulate the lawyer’s professional judgment in rendering such legal services.<sup>77</sup>
- *Prevent or Overcome Conflicts* – An attorney presumptively cannot represent a new client if there is a substantial risk that representing the new client would materially limit the attorney’s responsibilities to a current client.<sup>78</sup> But, even when a conflict of interest exists, it is possible for the attorney overcome this presumption. To do so, four criteria must be met.<sup>79</sup>
  - The attorney reasonably believes that they can provide competent and diligent representation to each affected client;
  - The representation is not prohibited by law;
  - The representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and
  - Each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.

Additionally, the Supreme Court specifically addresses those attorney-client relationships where the client is an organization,<sup>80</sup> when the client is not represented by counsel,<sup>81</sup> and when the client suffers diminished capacity.<sup>82</sup> When a client’s capacity to make adequately considered decisions in connection with legal representation is diminished because of minority, the attorney must maintain a normal attorney-client relationship with the client as much as possible.<sup>83</sup> For example, comments to the Florida Bar rule suggest children as young as five or six years of age are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. The comments to the rule also state that if a legal representative has already been appointed for an incapacitated or minor client, the lawyer should ordinarily look to any appointed legal representative for decisions on behalf of the client.<sup>84</sup>

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

Section 39.01305, F.S., requires the court to appoint attorneys for children subject to ch. 39 proceedings who have one or more statutorily-defined “special needs”. To qualify as a special-needs child, the child must:<sup>85</sup>

<sup>73</sup> *Id.* at Rule 4-1.2(a) Objectives and Scope of Representation – Lawyer to Abide by Client’s Decisions.

<sup>74</sup> *Id.* at Rule 4-1.1 Competence.

<sup>75</sup> *Id.* at Rule 4-1.6 Confidentiality of Information.

<sup>76</sup> *Id.* at Rule 4-1.3 Diligence, Comments.

<sup>77</sup> *Id.* at Rule 4-5.4 Professional Independence of a Lawyer.

<sup>78</sup> The Florida Supreme Court, “Rules Regulating the Florida Bar: Chapter 4 - Rules of Professional Conduct, Rule 4-1.7(a)(2) Conflicts of Interests . [https://www-media.floridabar.org/uploads/2024/01/2024\\_07-JAN-Chapter-4-RRTFB-1-8-2023.pdf](https://www-media.floridabar.org/uploads/2024/01/2024_07-JAN-Chapter-4-RRTFB-1-8-2023.pdf) (last visited Feb. 6, 2024).

<sup>79</sup> *Id.* at Rule 4-1.7(b)(1)-(4).

<sup>80</sup> *Id.* at Rule 4-1.13(a) Organization as Client – Representation of Organization.

<sup>81</sup> *Id.* at Rule 4-4.3 Dealing with Unrepresented Persons.

<sup>82</sup> *Id.* at Rule 4-1.14 Client with Diminished Capacity.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at Comments.

<sup>85</sup> S. 39.01305(3)(a)-(e), F.S.

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

The Legislature appropriates funds for appointments for dependent children with certain special needs. The FY 2023-24 GAA appropriated \$2.1 million in general revenue for attorney representation for children with special needs, plus \$1.2 million in trust funds.<sup>86</sup> Operationally, the JAC manages these funds, contracting with appointed attorneys, whose fees are limited to \$1,450 per child per year, subject to appropriations and to review by the JAC for reasonableness.<sup>87</sup> However, s. 39.01305, F.S., requires the court to ask the Office for a recommendation for an attorney willing to work without additional compensation, or pro bono, prior to the court appointing an attorney on a compensated basis. The pro bono attorney must be available for services within 15 days after the court's request. If, however, the Office does not make a recommendation within 15 days after the court's request, the court may appoint a compensated attorney.

The attorney representing the child under s. 39.01305, F.S., provides the complete range of legal services from removal from the home or initial appointment through all appellate proceedings. With court permission, the attorney is authorized to arrange for supplemental or separate counsel to handle appellate matters.

The court has discretionary authority to appoint attorneys for other dependent children who do not qualify as having special needs.<sup>88</sup>

### Independent Living Programs

When children cannot safely remain at home with parents, Florida's child welfare system finds safe out-of-home placements for children. As of December 2023, 19,334 children and young adults were in out-of-home care in Florida.<sup>89, 90</sup>

Outcomes pursued by the child welfare system include helping children receive appropriate services to meet their educational needs and develop the capacity for independent living and competence as an adult.<sup>91</sup> The DCF Office of Continuing Care (OCC) helps individuals who have aged out of the child welfare system until age 26. OCC provides ongoing support and care coordination needed for young adults to achieve self-sufficiency through food assistance, behavioral health services, housing, Medicaid, educational services, and workforce development.<sup>92</sup>

Studies indicate children who do well despite serious hardship have had at least one stable and committed relationship with a supportive adult.<sup>93</sup> While there are no standardized definitions or measures for well-being, there is general consensus in the literature and among stakeholders regarding common elements, including financial security, obtaining education, securing housing, finding and maintaining stable employment, independence from public assistance, permanent connections and

<sup>86</sup> Ch. 2023-239, Laws of Fla., Specific Appropriation 769 "Legal Representation for Dependent Children with Special Needs."

<sup>87</sup> *Id.*

<sup>88</sup> S. 39.01305(8), F.S.; Fla. R. Juv. P. 8.217(b).

<sup>89</sup> Office of Child and Family Well-Being, *Monthly Trends*, Florida Department of Children and Families, (last updated Jan. 10, 2024) <https://www.myflfamilies.com/ocfw-dashboard> (last visited Jan. 27, 2024).

<sup>90</sup> Ss. 39.4022(6), 39.523(2), F.S.; After a placement assessment to determine the most appropriate out-of-home placement, a child may be placed in licensed care or with a relative or a non-related individual known to the child, termed "fictive kin". Licensed care includes licensed foster parents and group homes or other licensed residential setting.

<sup>91</sup> S. 409.986(2), F.S.

<sup>92</sup> S. 414.56, F.S.

<sup>93</sup> National Scientific Council on the Developing Child (2015). Supportive Relationships and Active Skill-Building Strengthen the Foundations of Resilience: Working Paper No. 13. <https://harvardcenter.wpenignepowered.com/wp-content/uploads/2015/05/The-Science-of-Resilience2.pdf>, (last visited Feb. 6, 2024).

social supports.<sup>94</sup> These relationships buffer children from developmental disruption and help them develop “resilience,” or the set of skills needed to respond to adversity and thrive.

### Hope Florida – A Pathway to Promise

Hope Florida, created by the Executive Office of the First Lady and implemented by DCF, the Department of Elder Affairs, the Agency for Persons with Disabilities, and Department of Juvenile Justice, seeks to establish individualized paths to personal prosperity and economic self-sufficiency for the populations served by these government entities. Hope Florida leverages public-private partnerships to fulfill this goal through volunteer and mentorships opportunities.<sup>95</sup>

Announced in September 2023 by the Executive Office of the First Lady, Hope Florida – A Pathway to Promise is a statewide strategic initiative to assist youth transitioning from foster care to adulthood by connecting them with long-term mentors. To this end, Hope Florida leverages existing resources from OCC and the Statewide Guardian ad Litem Office to connect these young adults with long-term mentors from within the young adults’ communities.<sup>96</sup> As of December 22, 2023, mentors actively served 453 foster youth in their transition from foster care to adulthood.<sup>97</sup>

### Domestic Violence

Domestic violence is any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense by one family or household member against another family or household member that results in physical injury or death.<sup>98</sup>

The Bureau of Justice Statistics within the U.S. Department of Justice publishes an annual criminal victimization report that includes statistics on nonfatal violent crimes and property crimes.<sup>99</sup> For the 2022 reporting period<sup>100</sup>, the Bureau of Justice reports there were 1,370,440 domestic violence

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<sup>94</sup> Office of Program Policy Analysis and Government Accountability (OPPAGA), Independent Living Services-Presentation to the Senate Committee on Children, Families, and Elder Affairs, January 24, 2023, available at [https://oppaga.fl.gov/Documents/Presentations/OPPAGA%20ILS%20Senate%20Presentation\\_final.pdf](https://oppaga.fl.gov/Documents/Presentations/OPPAGA%20ILS%20Senate%20Presentation_final.pdf) (last visited Feb. 6, 2024).

<sup>95</sup> *First Lady Casey DeSantis Announces Hope Florida – A Pathway to Promise, Expanding the Hope Florida Model to Support Youth Aging out of Foster Care*, Executive Office of the Governor, (Sept. 20, 2023) <https://www.flgov.com/2023/09/20/first-lady-casey-desantis-announces-hope-florida-a-pathway-to-promise-expanding-the-hope-florida-model-to-support-youth-aging-out-of-foster-care/> (last visited Mar. 21, 2024); Statewide Guardian ad Litem Office, *Hope Florida*, <https://guardianadlitem.org/hopeflorida/> (last visited Mar. 21, 2024).

<sup>96</sup> *Id.*  
<sup>97</sup> *First Lady Casey DeSantis Strengthens Florida’s Families through Hope Florida, Executive Office of the Governor*, (Dec. 22, 2023) <https://www.flgov.com/2023/12/22/first-lady-casey-desantis-strengthens-floridas-families-through-hope-florida/> (last visited Mar. 21, 2024).

<sup>98</sup> S. 731.28, F.S.; “Family or household member,” means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

<sup>99</sup> Bureau of Justice Statistics, *Criminal Victimization, 2022, U.S. Department of Justice*, p. 18 (Sept. 2023) <https://bjs.ojp.gov/document/cv22.pdf> (last visited Mar. 20, 2024). The Bureau of Justice Statistics National Crime Victimization Survey (NCVS) is an annual data collection carried out by the U.S. Census Bureau. The NCVS is a self-report survey administered annually from January 1 to December 31.

<sup>100</sup> *Id.* Since annual NCVS estimates are based on the number and characteristics of crimes that respondents experienced during the prior 6 months, crimes are classified by the year of the survey and not by the year of the crime.

victimizations<sup>101</sup> in the U.S. – a rate of 4.9 per 1,000 persons aged 12 or older.<sup>102</sup> Of these domestic violence victimizations, only 53.8% were reported to law enforcement.<sup>103</sup>

In 2020, Florida law enforcement agencies received 106,615 reports of domestic violence crime, which led to 63,217 arrests.<sup>104</sup> From the total reports, the relationship of the victims to the offenders varied (e.g., 20,735 spouses,<sup>105</sup> 29,663 co-habitants,<sup>106</sup> and 20,142 others<sup>107</sup>). In 2020, there were 217 domestic violence homicides in Florida.<sup>108</sup>

## Domestic Violence Training and Investigations

The Florida Department of Law Enforcement (FDLE) houses the Criminal Justice Standards and Training Commission (CJSTC). The purpose of CJSTC is “to ensure all citizens of Florida are served by criminal justice officers who are ethical, qualified, and well-trained.”<sup>109</sup> Amongst other primary responsibilities, the CJSTC must:

- Certify, and revoke the certification of, officers, instructors, including agency in-service training instructors, and criminal justice training schools.
- Establish uniform employment standards for the various criminal justice disciplines.
- Establish uniform minimum training standards for the training of officers in the various criminal justice disciplines.
- Establish minimum curricular requirements for criminal justice schools.<sup>110</sup>

Each law enforcement officer must complete a CJSTC-approved basic recruit training program for the officer’s applicable criminal justice discipline, such as handling domestic violence cases.<sup>111</sup> CJSTC basic skills training in the discipline of domestic violence includes, at minimum, six hours of training that must cover the recognition and determination of the primary aggressor in domestic violence cases and the issues involved in child-to-parent cases.<sup>112</sup>

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<sup>101</sup> Bureau of Justice Statistics, *Domestic Violence in the U.S.: Findings from the 2022 National Crime Victimization Survey*, U.S. Department of Justice, (Sept. 2023) [https://bjs.ojp.gov/document/ncvs\\_domesticviolence\\_infographic\\_2022.pdf](https://bjs.ojp.gov/document/ncvs_domesticviolence_infographic_2022.pdf) (last visited Mar. 20, 2024). The Bureau of Justice defines domestic violence as violence committed by an intimate partner (current or former spouse, boyfriend, or girlfriend) or another family member.

<sup>102</sup> *Supra*, FN 99 at 3.

<sup>103</sup> *Supra*, FN 99 at 6. The Bureau of Justice reports that victims may not report a crime for a variety of reasons, including out of a fear of reprisal or getting the offender in trouble, out of a belief that police would not or could not do anything to help, and out of a belief that the crime is a personal issue or too trivial to report.

<sup>104</sup> Florida Department of Law Enforcement, *Crime in Florida: Florida Uniform Crime Report*, <https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence> (last visited Mar. 7, 2024). The Federal Bureau of Investigation stopped collecting summary-based crime data following the 2020 collection cycle. In response, Florida began its transition away from reporting annual summary-based crime data towards reporting annual incident-based crime data. This explains why 2020 data is the most recent comprehensive data available until all law enforcement agencies complete their transition to annual incident-based crime data. Florida Department of Law Enforcement, *Annual State Summary Crime Data Reports*, <https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports> (last visited Mar. 7, 2024).

<sup>105</sup> Florida Department of Law Enforcement, *Domestic Violence, Victim of Offender Relationships*, <https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/Domestic-Violence-Relationships-Chart.aspx> (last visited Mar. 7, 2024). Spouse means the victim and offender are married by law or were previously married. This category includes ex-spouses.

<sup>106</sup> *Id.* Co-habitant means the victim lived with the offender as a married couple without a legal marriage. This category includes former co-habitants.

<sup>107</sup> *Id.* Other means the victim and offender had a child together but were never married and never lived together.

<sup>108</sup> Florida Department of Law Enforcement, *Reported Domestic Violence in Florida: Victim Totals by Offense, 1992-2020*, (last updated May 2021) [https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/04/DV\\_Victim\\_Totals\\_by\\_Offense.aspx](https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/04/DV_Victim_Totals_by_Offense.aspx) (last visited Mar. 20, 2024). FDLE breakdowns domestic violence homicides into two offenses: criminal homicide and manslaughter.

<sup>109</sup> Florida Department of Law Enforcement, *Criminal Justice Standards & Training Commission*, <https://www.fdle.state.fl.us/CJSTC/Commission.aspx> (last visited Mar. 11, 2024).

<sup>110</sup> S. 943.12, F.S.

<sup>111</sup> Ss. 943.13(9), 943.171, F.S.

<sup>112</sup> S. 943.171, F.S.

In the field, current law requires a law enforcement officer who investigates an alleged incident of domestic violence to:

- Help the victim obtain any necessary medical treatment;
- Advise the victim that he or she may receive services from a domestic violence center;
- Give the victim a hard-copy, FDLE notice of the legal rights and remedies available to the victim;
- Complete and file a written police report to document any physical injuries observed, the basis of a decision to arrest two or more parties, the basis of a decision not to arrest anyone, and that the officer provided a copy of the legal rights and remedies notice to the victim;
- Obtain a written statement from the victim and witnesses when possible; and
- Arrest the suspect(s) upon probable cause that the suspect(s) committed an act of domestic violence.<sup>113</sup>

When law enforcement receives complaints from two or more parties, the officers must evaluate each complaint separately to determine whether there is probable cause for arrest.<sup>114</sup>

### **Domestic Violence Lethality Assessments**

A lethality assessment, also known as a danger assessment, helps to determine the level of risk a victim of domestic violence has of being killed by an intimate partner. Specifically, a lethality assessment is an official questionnaire, developed for use by law enforcement officials who respond to domestic violence calls, that employs a weighted system to score a victim's responses to risk factors associated with intimate partner homicide. The goal of the lethality assessment is to help law enforcement objectively quantify threats to a victim's life and prevent domestic violence homicides.<sup>115</sup>

In 39 states, law enforcement officers and other community professionals use an evidence-based lethality assessment protocol created by the Maryland Network Against Domestic Violence (MDADV) in an effort to prevent domestic violence homicides. Developed in partnership with Dr. Jacquelyn Campbell of Johns Hopkins University<sup>116</sup> and with grant funding from the Office on Violence Against Women of the United States Department of Justice, MDADV's Lethality Assessment Program intends to equip first responders with training to identify non-physical risk factors for abuse escalation and to connect victims with services offered by domestic violence centers.<sup>117</sup>

There is no current law in Florida pertaining to the administration of a lethality assessment.

## **EFFECT OF THE BILL**

### **Representation of Children in the Child Welfare System**

#### **Guardians ad Litem**

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<sup>113</sup> S. 741.29, F.S. The Legal Rights and Remedies Notice to Victims must state "If you are a victim of domestic violence, you may ask the state attorney to file a criminal complaint. You also have the right to go to court and file a petition requesting an injunction for protection from domestic violence which may include, but need not be limited to, provisions which restrain the abuser from further acts of abuse; direct the abuser to leave your household; prevent the abuser from entering your residence, school, business, or place of employment; award you custody of minor children; and direct the abuser to pay support to you and minor children if the abuser has a legal obligation to do so."

<sup>114</sup> *Id.*

<sup>115</sup> The Danger Assessment, *What is the Danger Assessment*, Johns Hopkins School of Nursing, <https://www.dangerassessment.org/about.aspx> (last visited Mar. 20, 2024).

<sup>116</sup> Johns Hopkins University School of Nursing, *Faculty Directory: Jacquelyn Campbell, Anna D. Wolf Chair*, <https://nursing.jhu.edu/faculty-research/faculty/directory/jacquelyn-campbell/> (last visited Mar. 11, 2024).

<sup>117</sup> Maryland Network Against Domestic Violence, *Position Paper: Effectiveness of the Lethality Assessment Program*, (June 2022) <https://www.mnadv.org/wp-content/uploads/2021/02/LAP-Effectiveness-Position-Paper.pdf> (last visited Mar. 11, 2024); Maryland Network Against Domestic Violence, *Lethality Assessment Program (LAP) Overview*, <https://www.mnadv.org/lethality-assessment-program/lap-program-overview-2/> (last visited Mar. 11, 2024).

The bill conforms references to a GAL's role in ch. 39, F.S., to specify that the GAL represents the *child*, rather than the child's *best interest*. While both the GAL and the child are separate parties in dependency proceedings, the bill requires the GAL to represent the child according to the best interest standard.

#### *Appointment of Guardians ad Litem*

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

The bill authorizes a child's GAL to represent a child in other judicial proceedings to secure the services and benefits that provide for the care, safety, and protection of the child. It authorizes the school district to involve the GAL of a child who has, or is suspected to have, a disability in any transition planning for that child.

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

#### *Statewide Guardian ad Litem Office*

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

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

The bill eliminates the existing curriculum committee and its input into the GAL training program by giving the Office unilateral authority to regularly update the GAL training program. The bill requires GALs to complete specialized training in the dynamics of child sexual abuse when serving children who have been sexually abused and are subject to proceedings regarding establishing visitation with the child's abuser under s. 39.0139, F.S.

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

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

The bill changes the name of the "Guardian ad Litem Program" to be the "Statewide Guardian ad Litem Office", and requests the Division of Law Revision to prepare a reviser's bill for the 2025 Regular Session to substitute the terms throughout the Florida Statutes.

#### Attorneys ad Litem

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

The bill expands the functions of AALs who represent children adjudicated dependent.

The bill establishes a goal that an AAL has immediate and unlimited access to the children they represent. The bill also authorizes the child's AAL to access all the records in that child's case record and to secure a complete and accurate copy of those records at no cost. The records custodian cannot invoke an exemption to prevent the AAL from accessing the child's case record or fail to facilitate access within a reasonable time to the child's case record. Otherwise, the records custodian faces sanctions and penalties under the public records law, Chapter 119, F.S.

The bill authorizes AALs to request continuances without running afoul of the time limitations governing the schedule of dependency proceedings. The court may grant continuances requested by the AAL after considering the best interests of the child.

The bill eliminates the requirement that the court appoint an AAL before an evidentiary hearing about visitation or contact rights for a parent or caregiver for whom at least probable cause exists that he or she sexually abused a child. However, if the court chooses to appoint an AAL before this type of hearing, the bill requires the AAL to be trained in the dynamics of child sexual abuse. Similarly, the bill eliminates the requirement that the court appoint an AAL for a postdisposition hearing about a change of custody within 7 days after receiving the current caregiver's objection.

The bill requires the dependency court to request parental consent before disclosing the child's medical records, child care records, and educational records to the AAL. If the court cannot secure voluntary parental consent and chooses to override the parent(s) decision because those records are necessary information for the AAL to provide their services, the court will issue a court order that authorizes the AAL to access those records.

If the court appoints an AAL, the bill requires the clerk of the dependency court to inform the AAL of any scheduled judicial review or citizen review panel hearing about the child's case by serving notice and a copy of the motion for a review hearing. If the child is aged 16 or 17 and could foreseeably meet certain statutory requirements to be deemed developmentally disabled<sup>118</sup> or incapacitated<sup>119</sup>, the bill requires the AAL to help DCF, in a face-to-face conference, develop an updated case plan for that child to submit to the court at the review hearing. The bill also requires the clerk to notify the AAL of any appeal filed in the case.

Throughout Ch. 39, F.S. references to a child's appointed legal representation appear to use various terms interchangeably; these terms include "child's attorney", "child's counsel", "attorney ad litem", and "child's attorney ad litem". The bill standardizes the current variances by using "attorney ad litem" throughout the chapter, and establishes a chapter-wide definition.

## **Independent Living Programs**

### Hope Florida – A Pathway to Promise

For youths aged 16 and up who are transitioning out of foster care into independent living, the bill requires the Office to help those children establish a mentorship with at least one supportive adult. And if the child cannot identify a supportive adult, the bill requires the Statewide Guardian ad Litem Office to work with DCF Office of Continuing Care to find at least one supportive adult. The bill requires the child's GAL to document evidence of a formal agreement in the child's court file. In addition, the bill mandates that any case plan that DCF updates to reflect a child's transition to independent living must include a written description of age-appropriate activities for the child's development of relationships, coping skills, and emotional well-being.

### Fostering Prosperity Grants

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<sup>118</sup> See s. 393.12(1), (2), F.S.

<sup>119</sup> See s. 744.331(6), F.S.

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

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

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

## **Domestic Violence**

### **Domestic Violence Training and Investigations**

The bill requires each law enforcement agency to:

- Ensure that all of its sworn personnel have completed lethality assessment training by October 1, 2026.
- Certify to FDLE by November 1, 2026, that the law enforcement agency complies with lethality assessment training requirements.
- Place an officer on inactive status if the officer fails to complete lethality assessment training.

By January 1, 2027, the bill requires FDLE to identify each law enforcement agency that has not complied with the lethality assessment training requirements in a report to the Governor, President of the Senate, and the Speaker of the House of Representatives.

### **Domestic Violence Lethality Assessments**

The bill requires the FDLE to adopt a standard statewide domestic violence lethality assessment instrument (Instrument) and form by January 1, 2025. To this end, FDLE must develop the Instrument and form in consultation with DCF, the Florida Sheriffs Association, the Florida Police Chiefs Association, the Florida Partnership to End Domestic violence, and at least two domestic violence advocacy organizations (Group). In consultation with the Group, FDLE must establish the policies, procedures, and training necessary to implement the instrument.

The bill requires the Group to review the lethality assessment questions enumerated in the bill and to recommend to FDLE whether the Group believes all those questions should make the statewide lethality assessment Instrument and form.

The bill requires a law enforcement officer who investigates an alleged incident of domestic violence to administer a lethality assessment according to the bill's enumerated list of 12 questions. The officer must ask these questions in the same or similar wording and in the same order:

1. Did the aggressor ever use a weapon against you or threaten you with a weapon?
2. Did the aggressor ever threaten to kill you or your children?
3. Do you believe the aggressor will try to kill you?
4. Has the aggressor ever choked you or attempted to choke you?
5. Does the aggressor have a gun or could the aggressor easily obtain a gun?
6. Is the aggressor violently or constantly jealous, or does the aggressor control most of your daily activities?
7. Did you leave or separate from the aggressor after you were living together or married?
8. Is the aggressor unemployed?
9. To the best of your knowledge, has the aggressor ever attempted suicide?
10. Do you have a child whom the aggressor believes is not the aggressor's biological child?

11. Has the aggressor ever followed, spied on, or left threatening message for you?
12. Is there anything else that worries you about your safety and, if so, what worries you?

After the officer administers the lethality assessment, the officer must:

- Notate a score of the lethality assessment on the written police report.
- Advise the victim of the results of the lethality assessment.
- Refer the victim to the nearest locally certified domestic violence center if:
  - The victim answers in the affirmative to at least one of questions numbered 1 – 4,
  - The victim answers in the affirmative to at least four of the questions numbered 5 – 12,
  - The officer believes the victim is in a potentially lethal situation, or
  - The victim cannot provide sufficient information to allow the officer to administer the lethality assessment.
- Protect the confidential location of the domestic violence center.

The bill requires FDLE to submit a report, by January 31, 2025, to the President of the Senate and the Speaker of the House of Representatives that documents the Group’s recommendations and the final version of the Instrument and form. If FDLE excludes any of the lethality assessment questions itemized by the bill from the Instrument and form, FDLE must supplement the report with a statement that the final version of the Instrument and form still constitute an evidence-based lethality assessment.

As an accountability measure, the bill requires FDLE to monitor evidence-based standards for improvements in administering the lethality assessment, and to report any changes in evidence-based standards and any proposed changes to the lethality assessment questions to the President of the Senate and the Speaker of the House of Representatives.

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

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

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

See Fiscal Comments.

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

#### **1. Revenues:**

None.

#### **2. Expenditures:**

FDLE anticipates one full-time Education and Training Specialist at \$91,816 in salary and benefits, expenses, and other costs. FDLE estimates another \$16,100 in training and development costs to implement the required policies, procedures, and training.<sup>120</sup>

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Any impacts on the Office regarding the increase in GAL appointments can be absorbed within existing resources. Additionally, the Office anticipates the potential for increased revenues due to eligibility for federal Title IV-E matching funds upon the approval of the DCF cost allocation plan by the federal government.<sup>121</sup>

The bill has no impact to due process or workload expenditures for the Justice Administrative Commission.<sup>122</sup>

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<sup>120</sup> Florida Department of Law Enforcement, Agency Analysis of 2024 CS/CS/SB 638, pp. 3-5 (Feb. 7, 2024). The lethality assessment language found in CS/CS/CS/SB 1224 was incorporated from CS/CS/SB 638.

<sup>121</sup> *Supra*, FN 61 at 39.

<sup>122</sup> Email from Abram Dale, Senior Management Analyst, Justice Administrative Commission, RE: CS/SB 1224, As Amended (Feb. 6, 2024) on file with the House Appropriations Committee.