Tab 1	**SB 306** by **Harrell**; (Similar to H 00327) Placement of Surrendered Newborn Infants					
160226	D	S		CF, Harrell	Delete everything after	01/29 01:02 PM
~~530466~~	A	S	WD	CF, Harrell	Delete L.64 - 71.	01/29 12:08 PM
~~802344~~	A	S	WD	CF, Harrell	Delete L.157 - 194:	01/29 12:08 PM

Tab 2	**CS/SB 556** by **BI, Rouson**; (Similar to H 00515) Protection of Specified Adults

Tab 3	**SB 790** by **Yarborough (CO-INTRODUCERS) Osgood, Perry**; (Similar to CS/H 00775) Surrendered Infants

Tab 4	**SB 1224** by **Burton**; (Similar to CS/H 00185) Dependent Children					
238806	A	S		CF, Burton	Delete L.504 - 2056:	01/29 03:51 PM

Tab 5	**SB 1340** by **Harrell**; (Identical to H 01169) Coordinated Systems of Care for Children					
813362	A	S		CF, Harrell	Delete L.20 - 72:	01/29 01:04 PM

Tab 6	**SB 1432** by **Book**; Commercial Sexual Exploitation of Children					
352090	A	S		CF, Book	Delete L.31 - 45:	01/29 01:04 PM

Tab 7	**SB 1784** by **Grall**; (Similar to CS/H 07021) Mental Health and Substance Abuse

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS
Senator Garcia, Chair
Senator Thompson, Vice Chair

MEETING DATE: Tuesday, January 30, 2024
TIME: 1:00—3:00 p.m.
PLACE: *Mallory Horne Committee Room,* 37 Senate Building

MEMBERS: Senator Garcia, Chair; Senator Thompson, Vice Chair; Senators Avila, Baxley, Book, Bradley, and Rouson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 306** Harrell (Similar H 327)	Placement of Surrendered Newborn Infants; Defining the term "community-based care lead agency"; requiring community-based care lead agencies to establish and maintain a specified registry; revising the entity responsible for surrendered infants from licensed child-placing agencies to community-based care lead agencies; providing requirements for the hospital once they take physical custody of a surrendered newborn infant, etc. CF 12/13/2023 Temporarily Postponed CF 01/30/2024 JU FP	
2	**CS/SB 556** Banking and Insurance / Rouson (Similar H 515)	Protection of Specified Adults; Authorizing financial institutions, under certain circumstances, to delay a disbursement or transaction from an account of a specified adult; specifying that a delay on a disbursement or transaction expires on a certain date; authorizing the financial institution to extend the delay under certain circumstances; authorizing a court of competent jurisdiction to shorten or extend the delay, etc. BI 01/16/2024 Fav/CS CF 01/30/2024 RC	
3	**SB 790** Yarborough (Similar CS/H 775)	Surrendered Infants; Changing the term "newborn infant" to "infant"; increasing the age at which a child is considered an infant; authorizing a parent to leave an infant with medical staff or a licensed health care professional at a hospital after the delivery of the infant, upon the parent giving a certain notification; authorizing a parent to surrender an infant by calling 911 to request that an emergency medical services provider meet the surrendering parent at a specified location, etc. HP 01/16/2024 Favorable CF 01/30/2024 RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 1224** Burton (Similar CS/H 185)	Dependent Children; Requiring the Statewide Guardian ad Litem Office and circuit guardian ad litem offices to participate in the development of a certain state plan; requiring the court to appoint a guardian ad litem for a child at the earliest possible time; revising provisions relating to the appointment of an attorney ad litem for certain children; requiring parents to consent to provide certain information to the guardian ad litem and attorney ad litem; requiring a court to give a guardian ad litem an opportunity to address the court in certain proceedings; requiring a court to appoint a guardian ad litem to represent a child in certain proceedings, etc. CF 01/30/2024 ACJ FP	
5	**SB 1340** Harrell (Identical H 1169)	Coordinated Systems of Care for Children; Defining the term “care coordination”; providing requirements for care coordinators; requiring certain school districts to adhere to a specified mental health and treatment support system for certain children, to address certain recommendations, and meet specified performance outcomes; requiring certain school districts to have a care coordinator provided by a managing entity placed in such districts for certain purposes, etc. CF 01/30/2024 AED FP	
6	**SB 1432** Book	Commercial Sexual Exploitation of Children; Requiring the Department of Children and Families to include individual-level child placement assessment data in its annual report to the Legislature on the commercial sexual exploitation of children; requiring the department to provide the Legislature with individual-level child placement assessment data in a certain format, etc. CF 01/30/2024 AHS FP	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 1784** Grall (Similar H 7021, Compare S 1626)	Mental Health and Substance Abuse; Providing an exception to background screening requirements for certain licensed physicians and nurses; authorizing the state to establish that a transfer evaluation was performed by providing the court with a copy of the evaluation before the close of the state's case in chief; revising the criteria for ordering a person for involuntary inpatient placement; revising eligibility requirements for children's crisis stabilization unit/juvenile addictions receiving facility services; authorizing the court or a law enforcement agency to waive or prohibit any service of process fees for petitioners determined to be indigent, etc. CF 01/30/2024 FP	

Other Related Meeting Documents

By Senator Harrell

31-00293-24 2024306__

A bill to be entitled

An act relating to placement of surrendered newborn infants; amending s. 63.032, F.S.; defining the term "community-based care lead agency"; amending s. 63.039, F.S.; requiring community-based care lead agencies to establish and maintain a specified registry; requiring that certain information be removed from the registry under certain circumstances; prohibiting the community-based care lead agency from transferring certain costs to prospective adoptive parents; conforming provisions to changes made by the act; amending s. 63.0423, F.S.; revising the entity responsible for surrendered infants from licensed child-placing agencies to community-based care lead agencies; requiring community-based care lead agencies to seek an order for emergency custody of a surrendered infant; requiring community-based care lead agencies to place a surrendered infant with certain prospective adoptive parents; providing requirements that apply if an appropriate prospective adoptive parent is not found in the registry; conforming provisions to changes made by the act; amending s. 383.50, F.S.; defining the term "community-based care lead agency"; providing requirements for the hospital once they take physical custody of a surrendered newborn infant; conforming provisions to changes made by the act; amending s. 39.201, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Present subsections (8) through (19) of section 63.032, Florida Statutes, are redesignated as subsections (9) through (20), respectively, and a new subsection (8) is added to that section, to read:

63.032 Definitions.—As used in this chapter, the term:

(8) "Community-based care lead agency" or "lead agency" has the same meaning as in s. 409.986(3).

Section 2. Present subsections (3), (4), and (5) of section 63.039, Florida Statutes, are redesignated as subsections (4), (5), and (6), respectively, a new subsection (3) is added to that section, and paragraph (b) of present subsection (5) of that section is amended, to read:

63.039 Duties ~~Duty~~ of adoption entity; ~~to~~ prospective adoptive parents of infants registries; sanctions.—

(3)(a) Each community-based care lead agency shall establish and maintain a registry of prospective adoptive parents of infants with the names, addresses, telephone numbers, and e-mail addresses of prospective adoptive parents who have received a favorable preliminary home study under s. 63.092 and have indicated the desire to be a prospective adoptive parent of a newborn infant surrendered under s. 383.50. The community-based care lead agency must remove the information of a prospective adoptive parent from the registry when the favorable preliminary home study for such prospective adoptive parent is no longer valid as provided in s. 63.092(3) or the prospective adoptive parent asks to be removed from the registry.

(b) The community-based care lead agency may not transfer the cost of establishing and maintaining the registry created pursuant to this subsection to a prospective adoptive parent through the cost of the home study or the cost of adoption of a newborn infant under this section.

(6)~~(5)~~ Within 30 days after the entry of an order of the court finding sanctionable conduct on the part of an adoption entity, the clerk of the court must forward to:

(b) The Department of Children and Families any order that imposes sanctions under this section against a community-based care lead ~~licensed child-placing~~ agency or a community-based care lead ~~child-placing~~ agency ~~licensed~~ in another state which ~~that~~ is qualified by the department.

Section 3. Subsections (1) through (4) and (10) of section 63.0423, Florida Statutes, are amended to read:

63.0423 Procedures with respect to surrendered infants.—

(1) Upon entry of final judgment terminating parental rights, a community-based care lead ~~licensed child-placing~~ agency that takes physical custody of an infant surrendered at a hospital, emergency medical services station, or fire station pursuant to s. 383.50 assumes responsibility for the medical and other costs associated with the emergency services and care of the surrendered infant from the time the community-based care lead ~~licensed child-placing~~ agency takes physical custody of the surrendered infant.

(2) Upon taking physical custody of a newborn infant surrendered pursuant to s. 383.50, the community-based care lead ~~licensed child-placing~~ agency shall immediately seek an order from the circuit court for emergency custody of the surrendered

infant. The emergency custody order remains ~~shall remain~~ in effect until the court orders preliminary approval of placement of the surrendered infant in a ~~the~~ prospective home, at which time the prospective adoptive parent becomes the guardian of the surrendered infant ~~parents become guardians~~ pending termination of parental rights and finalization of adoption or until the court orders otherwise. The guardianship of the prospective adoptive parent is ~~parents shall remain~~ subject to the right of the community-based care lead ~~licensed child-placing~~ agency to remove the surrendered infant from the placement during the pendency of the proceedings if such removal is deemed by the community-based care lead ~~licensed child-placing~~ agency to be in the best interests of the child. The community-based care lead ~~licensed child-placing~~ agency shall ~~may~~ immediately seek to place the surrendered infant in a prospective adoptive home with a prospective adoptive parent from the registry maintained by the community-based care lead agency under s. 63.039. If the registry does not contain the name of an appropriate prospective adoptive parent, the community-based care lead agency must contact another community-based care lead agency and attempt to place the surrendered infant with a prospective adoptive parent from that lead agency's registry.

(3) The community-based care lead ~~licensed child-placing~~ agency that takes physical custody of the surrendered infant shall, within 24 hours thereafter, request assistance from law enforcement officials to investigate and determine, through the Missing Children Information Clearinghouse, the National Center for Missing and Exploited Children, and any other national and state resources, whether the surrendered infant is a missing

child.

(4) The parent who surrenders the infant in accordance with s. 383.50 is presumed to have consented to termination of parental rights, and express consent is not required. Except when there is actual or suspected child abuse or neglect, the community-based care lead ~~licensed child-placing~~ agency may ~~shall~~ not attempt to pursue, search for, or notify that parent as provided in s. 63.088 and chapter 49. For purposes of s. 383.50 and this section, an infant who tests positive for illegal drugs, narcotic prescription drugs, alcohol, or other substances, but shows no other signs of child abuse or neglect, must ~~shall~~ be placed in the custody of a community-based care lead ~~licensed child-placing~~ agency. Such a placement does not eliminate the reporting requirement under s. 383.50(7). When the department is contacted regarding an infant properly surrendered under this section and s. 383.50, the department shall provide instruction to contact a community-based care lead ~~licensed child-placing~~ agency and may not take custody of the infant unless reasonable efforts to contact a community-based care lead ~~licensed child-placing~~ agency to accept the infant have not been successful.

(10) Except to the extent expressly provided in this section, proceedings initiated by a community-based care lead ~~licensed child-placing~~ agency for the termination of parental rights and subsequent adoption of a newborn left at a hospital, emergency medical services station, or fire station in accordance with s. 383.50 must ~~shall~~ be conducted pursuant to this chapter.

Section 4. Subsections (1) and (7) of section 383.50,

Florida Statutes, are amended to read:

383.50 Treatment of surrendered newborn infant.—

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

(a) "Community-based care lead agency" has the same meaning as in s. 409.986(3).

(b) "Newborn infant" means a child who a licensed physician reasonably believes is approximately 7 days old or younger at the time the child is left at a hospital, emergency medical services station, or fire station.

(7) Upon admitting a newborn infant under this section, the hospital shall immediately contact the ~~a~~ local community-based care lead ~~licensed child-placing~~ agency ~~or alternatively contact the statewide central abuse hotline for the name of a licensed child-placing agency~~ for purposes of transferring physical custody of the newborn infant. The hospital shall notify the community-based care lead ~~licensed child-placing~~ agency that a newborn infant has been left with the hospital and approximately when the community-based care lead ~~licensed child-placing~~ agency can take physical custody of the child. In cases where there is actual or suspected child abuse or neglect, the hospital or any of its licensed health care professionals shall report the actual or suspected child abuse or neglect in accordance with ss. 39.201 and 395.1023 in lieu of contacting the local community-based care lead ~~a licensed child-placing~~ agency.

Section 5. Paragraph (e) of subsection (3) of section 39.201, Florida Statutes, is amended to read:

39.201 Required reports of child abuse, abandonment, or neglect, sexual abuse of a child, and juvenile sexual abuse; required reports of death; reports involving a child who has

exhibited inappropriate sexual behavior.—

(3) ADDITIONAL CIRCUMSTANCES RELATED TO REPORTS.—

(e) *Surrendered newborn infants.*—

1. The central abuse hotline must receive reports involving surrendered newborn infants as described in s. 383.50.

2.a. A report may not be considered a report of child abuse, abandonment, or neglect solely because the infant has been left at a hospital, emergency medical services station, or fire station under s. 383.50.

b. If the report involving a surrendered newborn infant does not include indications of child abuse, abandonment, or neglect other than that necessarily entailed in the infant having been left at a hospital, emergency medical services station, or fire station, the central abuse hotline must provide to the person making the report the name of a local community-based care lead ~~an eligible licensed child-placing~~ agency that is required to accept physical custody of and to place surrendered newborn infants. The department shall provide names of eligible community-based care lead ~~licensed child-placing~~ agencies on a rotating basis.

3. If the report includes indications of child abuse, abandonment, or neglect beyond that necessarily entailed in the infant having been left at a hospital, emergency medical services station, or fire station, the report must be considered as a report of child abuse, abandonment, or neglect and, notwithstanding chapter 383, is subject to s. 39.395 and all other relevant provisions of this chapter.

Section 6. This act shall take effect July 1, 2024.

2024 AGENCY LEGISLATIVE BILL ANALYSIS
Department of Children and Families

BILL INFORMATION	
BILL NUMBER:	SB 306
BILL TITLE:	Placement of Surrendered Newborn Infants
BILL SPONSOR:	Senator Harrell
EFFECTIVE DATE:	July 1, 2024

COMMITTEES OF REFERENCE
1) Children, Families & Elder Affairs
2) Judiciary Committee
3) Fiscal Committee
4)
5)

CURRENT COMMITTEE
Children, Families & Seniors Subcommittee

SIMILAR BILLS	
BILL NUMBER:	HB 327
SPONSOR:	Representative Abbott

PREVIOUS LEGISLATION	
BILL NUMBER:	SB 1306
SPONSOR:	Senator Harrell
YEAR:	2023
LAST ACTION:	Died in Judiciary

IDENTICAL BILLS	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No.

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	12/9/2023 For further information, please contact Sam Kerce at (850) 488-9410.
LEAD AGENCY ANALYST:	Vanessa Snoddy, Office of Licensing
ADDITIONAL ANALYST(S):	Yanin Schaffer, Office of Licensing, Valerie Proctor, Office of Child and Family Well Being Courtney Smith, Office of Licensing
LEGAL ANALYST:	Laura Battaglia, General Counsel
FISCAL ANALYST:	Holly Merrick, Office of Budget Services

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill requires Community-Based Care Lead Agencies (Lead Agency) to establish and maintain a registry of prospective adoptive parents who have a favorable preliminary home study and indicate the desire to adopt a surrendered newborn infant. The bill also streamlines the procedural process when handling placements of surrendered newborn infants. The lead agency must remove any prospective adoptive parent from the registry when their preliminary home study is no longer valid. The bill prevents a lead agency from passing the costs associated with establishing and maintaining the registry on to prospective adoptive parents. Lead agency will be required to immediately place a surrendered infant with an identified prospective adoptive parent or to seek an order from the circuit court for emergency custody of the child when a prospective adoptive parent from the registry is not available. As part of the emergency custody order, the court must require the lead agency to make all reasonable efforts to identify an appropriate prospective adoptive parent as soon as practicable. The bill provides for an effective date of July 1, 2024.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

When a newborn infant is surrendered to a fire station, emergency medical service or hospital, if there is no suspected child abuse, the hospital may contact Florida's Abuse Hotline or Florida's Adoption Information Center to obtain a listing of licensed child placing agencies. The hospital will then transfer physical custody of the surrendered newborn to a child placing agency. The child placing agency will then match the child to one of their prospective adoptive parents who have an approved adoption home study or a family that has a pending adoption home study. The surrendered newborn may then be physically placed with the prospective adoptive parent upon completion of a preliminary adoption home study. The child placing agency provides oversight and support until the adoption is finalized.

There are currently 64 licensed child-placing agencies that complete private adoptions.

Section 1., s. 63.032, F.S., Definitions.

Section 63.032, F.S., provides definitions for terms related to the adoption proceedings covered within the section.

Section 2., s. 63.039, F.S., Duty of adoption entity to prospective adoptive parents; sanctions.

Section 63.167, F.S., requires the state's contracted Adoption Information Center to maintain a list of licensed child-placing agencies eligible and willing to take custody of newborn infants left at a hospital, pursuant to s. 383.50, F.S. The names and contact information for the licensed child-placing agencies on the list are required to be provided on a rotating basis to the statewide central abuse hotline.

The Department of Children and Families (Department) and Community Based Care Lead Agencies (CBC) refer to the Adoption Information Center any family who has indicated their desire to be a prospective adoptive parent only for newborn infants surrendered under s. 383.50, F.S. The Adoption Information Center then refers the family to a licensed child placing agency that completes private adoptions, to have their home study completed. These licensed child placing agencies do not handle children who have been committed to the Department through a dependency proceeding.

Section 3., s. 63.0423, F.S., Procedures with respect to surrendered infants.

Section 63.0423(1), F.S., outlines that when the final judgment of a termination of parental rights occurs, and the child-placing agency takes custody of the infant pursuant to s. 383.50, F.S., the licensed child-placing agency assumes responsibility for the medical and other costs associated with the emergency services of the surrendered infant.

Section 63.0423(2), F.S., outlines that the licensed child-placing agency shall immediately seek an order from the circuit court for emergency custody of the surrendered infant. The emergency custody order shall remain in effect until the court approves the preliminary placement of the surrendered infant in the prospective home. Once the placement is approved by the court, the prospective adoptive parents become guardians pending termination of parental rights and finalization of adoption or until the court orders otherwise. The guardianship of the prospective adoptive parents shall remain subject to the right of the licensed child-placing agency to remove the surrendered infant from the placement while the proceeding is pending, if such removal is deemed by the licensed child-

placing agency to be in the best interests of the child. The licensed child-placing agency may immediately seek to place the surrendered infant in a prospective adoptive home.

Section 4., s. 383.50, F.S., Treatment of surrendered newborn infant.
Section 383.50, F.S., outlines the treatment of surrendered infants who are left at a hospital, emergency medical service statement or fire station and there is no suspected child abuse. If a newborn is left at a hospital, the hospital must immediately contact a local licensed child-placing agency or the statewide central abuse hotline for the name of a licensed child-placing agency for the purpose of transferring physical custody of the infant.

Section 5., s. 39.201, F.S., Mandatory reporting
Section 39.201, F.S., outlines the requirements for reporting child abuse, abandonment, or neglect, sexual abuse of a child. Florida's abuse hotline must receive reports involving surrendered newborn infants. If there are no indications of child abuse, abandonment, or neglect, the hotline must provide the person making the call with the name of licensed child placing agencies that are required to accept physical custody of and to place surrendered newborn infants. The hotline must generate a report if there are concerns for child abuse, abandonment, or neglect when indications are beyond the infant being left at a hospital, emergency medical services station, or fire station under s. 383.50, F.S.

2. **EFFECT OF THE BILL:**
Section 1., s. 63.032, F.S., Definitions.
Section 63.032, F.S., is amended to include the term "Community-based care lead agency" or "lead agency" and clarifies that these terms are to have the same meaning as the definition cited in s. 409.986(3), F.S.

Section 2., s. 63.039, F.S., Duty of adoption entity to prospective adoptive parents; sanctions.
Section 63.039, F.S., is amended to remove licensed child-placing agencies as the responsible entity and require the lead agency to be the sole agency responsible for surrendered newborn infants under s. 383.50, F.S.

Section 63.039, F.S., is amended to direct a lead agency to establish and maintain a registry of prospective adoptive parents who have a favorable preliminary home study pursuant to s. 63.092, F.S., and have also indicated a desire to only adopt a newborn infant surrendered under s. 383.50, F.S. The agency must remove any prospective adoptive parent from the registry when their preliminary home study is no longer valid pursuant to 63.092(3), F.S.

Section 63.039, F.S., is amended to prevent a lead agency from passing the costs associated with establishing and maintaining the registry on to prospective adoptive parents.

Section 63.039, F.S., is amended to allow for a lead agency to be sanctioned and removes the ability to sanction licensed child placing agencies in other states.

Section 3., s. 63.0423, F.S., Procedures with respect to surrendered infants.
Section 63.0423, F.S., is amended to require the lead agencies to be the sole agency responsible for surrendered newborn infants under s. 383.50, F.S. It further requires the lead agency to absorb the cost for the medical and other costs associated with the emergency services and care of the surrendered infant from the time the agency takes physical custody.

Section 63.0423, F.S., is amended to require a lead agency to immediately seek an order from the circuit court for emergency custody of the surrendered infant. A lead agency places a surrendered infant with an identified prospective adoptive parent from the registry maintained by the lead agency. If there is no prospective adoptive parent available on the lead agency's registry, the lead agency must contact another lead agency and attempt to place the surrendered infant with a prospective adoptive parent from that lead agency's registry.

Section 4., s. 383.50, F.S., Treatment of surrendered newborn infant.
Section 383.50, F.S., is amended to include the term "community-based care lead agency" and clarifies that the term is to have the same meaning as the definition cited in s. 409.986(3), F.S.

Section 383.50, F.S., is amended to match the requirements of lead agencies contemplated in the amended sections of s. 63.039, F.S. and s. 63.0423, F.S.

Section 383.50, F.S., is amended to require the hospital to contact the lead agency to transfer physical custody of the child. In addition, the amendment removes the alternate option for hospitals to contact the statewide central abuse hotline for the name and contact information of a lead agency.

Section 5., s. 39.201, F.S., Mandatory reporting
Section 39.201, F.S., is amended to require the central abuse hotline to provide the person reporting on a surrendered newborn infant with the name of a local lead agency that is required to accept the physical custody and place the surrendered newborn infants.

3. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?

If yes, explain:	N/A
What is the expected impact to the agency's core mission?	N/A
Rule(s) impacted (provide references to F.A.C., etc.):	65C-15

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

List any known proponents and opponents:	Unknown
Provide a summary of the proponents' and opponents' positions:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

6. ARE THERE ANY GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL?

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Appointee Term:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. WHAT IS THE FISCAL IMPACT TO LOCAL GOVERNMENT?

Revenues:	N/A
Expenditures:	N/A
Does the legislation increase local taxes or fees?	N/A
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

2. WHAT IS THE FISCAL IMPACT TO STATE GOVERNMENT?

<table>
<tr><td>Revenues:</td><td>N/A</td></tr>
<tr><td>Expenditures:</td><td>Section 63.039, F.S., requires lead agencies to establish and maintain an adoptive parent infant registry for surrendered newborn infants. It is unclear if each CBC would maintain their own registry or if there would instead be a statewide system created. The projected fiscal to create one statewide system is $563,250. If each CBC must create their own registry, the cost is indeterminate.

<table>
<tr><td></td><td>Staff</td><td>Hourly Rate</td><td>Hours</td><td>Total</td></tr>
<tr><td>Project Manager</td><td>1</td><td>$120.00</td><td>500</td><td>$60,000.00</td></tr>
<tr><td>Business Analyst</td><td>1</td><td>$90.00</td><td>750</td><td>$67,500.00</td></tr>
<tr><td>System Architect</td><td>1</td><td>$115.00</td><td>250</td><td>$28,750.00</td></tr>
<tr><td>Database Administrator</td><td>1</td><td>$115.00</td><td>250</td><td>$28,750.00</td></tr>
<tr><td>System Developer</td><td>1</td><td>$105.00</td><td>1000</td><td>$105,000.00</td></tr>
<tr><td>System Integrators</td><td>1</td><td>$105.00</td><td>250</td><td>$26,250.00</td></tr>
<tr><td colspan="4">Application development cost:</td><td>$316,250.00</td></tr>
<tr><td colspan="4">Infrastructure, Security & Cloud service cost:</td><td>$127,000.00</td></tr>
<tr><td colspan="4">Annual M & O (FTE & Infrastructure):</td><td>$120,000.00</td></tr>
<tr><td colspan="4"></td><td>$563,250.00</td></tr>
</table></td></tr>
<tr><td>Does the legislation contain a State Government appropriation?</td><td>N/A</td></tr>
<tr><td>If yes, was this appropriated last year?</td><td>N/A</td></tr>
</table>

3. WHAT IS THE FISCAL IMPACT TO THE PRIVATE SECTOR?

<table>
<tr><td>Revenues:</td><td></td></tr>
<tr><td>Expenditures:</td><td>Surrendered newborns are not considered abandoned or in the dependency system and therefore federal Title IV-E funding is not available for this population.

Section 63.0423, F.S., requires the lead agency to assume responsibility for the medical and other costs associated with the emergency services and care of the surrendered infant. This section further requires the lead agency to initiate court proceedings and finalize adoptions.

While the total fiscal impact is indeterminate, below are items for consideration.</td></tr>
</table>

	Staffing: Employees may be needed to complete court proceedings, home studies, supervision, and provide post adoption services. While CBCs currently handle dependency system adoptions, they do not handle private adoptions. The surrendered newborns would be considered non dependency and CBCs may need additional staff to take on this new function. • The attorneys that handle dependency adoptions for the CBCs are DCF employees. Additional attorneys who specialize in the private adoption space may be needed. • CBCs currently has adoptions staff and case managers that are focused on children in the dependency system and are funded through Title IV-E federal dollars. Additional staff would be needed to focus on the private adoption as to not overlap with federal funding requirements.
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?

Does the bill increase taxes, fees or fines?	N/A
Does the bill decrease taxes, fees or fines?	N/A
What is the impact of the increase or decrease?	N/A
Bill Section Number:	N/A

TECHNOLOGY IMPACT

Does the legislation impact the agency's technology systems (i.e., IT support, licensing software, data storage, etc.)?	N/A
If yes, describe the anticipated impact to the agency including any fiscal impact.	N/A

FEDERAL IMPACT

Does the legislation have a federal impact (i.e. federal compliance, federal funding, federal agency involvement, etc.)?	N/A

If yes, describe the anticipated impact including any fiscal impact.	N/A

ADDITIONAL COMMENTS

Section 2 Line 69-70: Florida is the only state that has community-based care lead agencies. Other states have licensed child placing agencies as they do not privatize. The term licensed child-placing agency should be maintained to allow for child placing agencies in other states to be sanctioned, as appropriate.

Section 4 Line 157-159: removing the language for an alternate method to obtaining a backup name and contact information or an after-hour number could result in a delayed response from the lead agency during after hour calls.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments and recommended action:	A community-based care lead agency is required to be licensed as a child-placing agency under s. 409.988, F.S. While a lead agency can work with children not within the child welfare system, but at risk of entering the child welfare system under s. 409.988(1)(a)1a2, F.S., which surrendered newborns may be, the Department's regulation surrounding placement or adoption of a surrendered newborn would be limited to licensure of the lead agency as a child-placing agency unless the newborn enters the child welfare system due to verified allegations of abuse, abandonment, or neglect. Any funding that a lead agency receives through a contract with the Department for child welfare services could not be utilized to carry out any lead agency functions under this bill.

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.)

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

BILL:	SB 306
INTRODUCER:	Senator Harrell
SUBJECT:	Placement of Surrendered Newborn Infants
DATE:	January 29, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rao	Tuszynski	CF	**Pre-meeting**
2.			JU	
3.			FP	

I. Summary:

Florida law allows a parent who is unwilling or unable to care for their newborn infant to safely relinquish the infant at a specified, safe, location without fear of criminal liability. The "safe haven law" allows parents to anonymously surrender a newborn infant at a hospital, fire station, or emergency medical services station and grants the parent immunity from criminal prosecution unless there is actual or suspected child abuse or neglect.

The Department of Children and Families' central abuse hotline must receive reports involving surrendered newborn infants and provide the reporter with the name of a local licensed child-placing agency for transfer of custody and placement responsibility if the report does not indicate child abuse, abandonment, or neglect.

SB 306 shifts the responsibility of custody and placement of a surrendered newborn infant from a child-placing agency to a community-based care lead agency (CBC). The bill requires each CBC to create and maintain a registry of prospective adoptive parents who have received a favorable home study and are willing to adopt a surrendered newborn infant. Each CBC is required to utilize its registry during the placement of a newborn infant and reference other CBC registries to locate alternative adoptive placements when it is in the best interest of the child.

The bill has no fiscal impact on state government and an indeterminate, but likely, insignificant fiscal impact on the private sector. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

Safe Haven Laws

Every state legislature has enacted laws to address infant abandonment and endangerment in response to a reported increase in the abandonment of infants in unsafe locations, such as public restrooms or trash receptacles. Beginning with Texas in 1999, states have enacted safe haven laws as an incentive for mothers in crisis to safely relinquish their babies at designated locations where the babies are protected and provided with care until a permanent home is found.[1]

Although policy choices vary among states, safe haven laws generally allow the parent, or an agent of the parent, to remain anonymous and shielded from criminal liability, unless there is evidence of abuse or neglect. Most states designate hospitals, emergency medical service providers, health care facilities, and fire stations as a safe haven.[2] Forty-three states authorize emergency services personnel to accept an infant or allow relinquishment through the 911 emergency system.[3] Laws in nine states allow a parent to voluntarily deliver the infant to a newborn safety device that meets certain safety standards.[4]

According to the nonprofit organization National Safe Haven Alliance, almost 5,000 safe haven relinquishments have occurred since 1999.[5]

Florida Safe Haven Law

The Legislature enacted Florida's safe haven law in 2000. The law created s. 383.50, F.S., and authorized the surrender of a newborn infant at a hospital or fire station. In 2001, the Legislature amended s. 383.50, F.S., to authorize emergency medical services stations (EMS), in addition to hospitals and fire stations, to receive surrendered newborn infants.[6]

Current law authorizes a parent to surrender a newborn infant up to seven days old at a hospital, fire station, or emergency medical services station. The law expressly grants a parent surrendering a newborn infant the right to anonymity and to not be pursued or followed unless a

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[1] U.S. Department of Health and Human Services Administration for Families, Children's Bureau, Child Welfare Information Gateway, *Infant Safe Haven Laws,* 2022, available at https://www.childwelfare.gov/pubPDFs/safehaven.pdf (last viewed Jan. 25, 2024).

[2] *Id. See also* Guttmacher Institute, *Infant Abandonment,* available at https://www.guttmacher.org/state-policy/explore/infant-abandonment (last visited Jan. 25, 2024).

[3] *Id.* Ten states allow for emergency medical personnel responding to 911 calls to accept an infant (Connecticut, Idaho, Illinois, Indiana, Iowa, Louisiana, Minnesota, New Hampshire, Vermont, and Wisconsin).

[4] *Id.* Arkansas, Indiana, Kentucky, Louisiana, Maine, Missouri, Ohio, Oklahoma, and Pennsylvania. Newborn safety devices may also be called "baby boxes." Safe Haven Baby Boxes are also found in Florida, New Mexico, Tennessee, Mississippi, North Carolina, Iowa, and West Virginia. *See* Safe Haven Baby Boxes, *Locations,* available at https://www.shbb.org/location (last visited Jan. 25, 2024).

[5] National Safe Haven Alliance, *2022 Impact Report,* available at https://www.nationalsafehavenalliance.org/our-cause (last visited Nov. 21, 2023).

[6] Chapter 2000-188, Laws of Fla.; Chapter 2001-52, Laws of Fla.

parent seeks to reclaim the newborn infant.[7] The law also grants a surrendering parent immunity from criminal prosecution unless there is actual or suspected child abuse or neglect.[8]

Since 2000, approximately 376 newborns have been surrendered at safe haven locations in Florida. In that time, 64 infants are known to have been unsafely abandoned.[9]

Procedures for Surrendered Newborn Infants

Florida's safe haven law outlines procedures for what happens after a newborn is surrendered. The law requires hospitals, fire stations, and emergency medical services stations that are staffed with full-time firefighters or emergency medical technicians to accept any newborn infant left with a firefighter or emergency medical technician so that the newborn infant can receive any necessary immediate medical treatment, including transport to a hospital.[10] Upon admitting a surrendered newborn infant, the hospital must provide all necessary emergency services and care for the surrendered newborn infant and immediately contact a local licensed child-placing agency[11] or the Department of Children and Families' (DCF) statewide central abuse hotline (Hotline) for the name of a local licensed child-placing agency and transfer custody of the surrendered newborn infant to the child-placing agency.[12]

A child-placing agency that takes physical custody of a surrendered newborn infant pursuant to s. 383.50, F.S., must:

- Request assistance from law enforcement to investigate whether the infant is a missing child within 24 hours of taking custody of the infant.[13]
- Immediately seek an order for emergency custody of the infant.[14] The emergency order stays in effect until the court approves of a placement in a prospective adoptive home, at which time the prospective adoptive parent becomes the guardian of the infant pending termination of parental rights and finalization of adoption.[15] The child-placing agency may remove the infant from the prospective adoptive if removal is in the child's best interest.[16]

[7] Section 383.50(5), F.S.
[8] Section 383.50, F.S.
[9] A Safe Haven for Newborns, *Safe Haven for Newborns, Truly Making a Difference*, available at https://asafehavenfornewborns.com/what-we-do/safe-haven-statistics/#:~:text=376%20newborns%20not%20abandoned%20in%20Florida%2C%20left%20at,were%20helped%20to%20successfully%20regain%20their%20parental%20rights (last visited Jan. 25, 2024).
[10] Section 383.50, F.S.
[11] Section 39.01(42), F.S, defines "licensed child-placing agency" as a person, society, association, or institution licensed by the DCF to care for, receive, or board children and to place children in a licensed child-caring institution or a foster or adoptive home.
[12] Sections 395.50(4) and 395.50(7), F.S.
[13] Section 63.0423(3), F.S.
[14] Section 63.0423(2), F.S.
[15] *Id.*
[16] *Id.*

Florida's Child Welfare System

The DCF contracts with local non-profit agencies, known as community-based care lead agencies (CBCs), to provide child welfare services for children in the community. There are 17 CBCs statewide that provide services throughout Florida's 20 judicial circuits.[17] The CBCs are responsible for providing adoption services for children in the foster care system by facilitating services for prospective adoptive families and conducting adoptive home studies.

A child-placing agency is an entity that receives a child and arranges for the child's placement in a family foster home, residential child-caring agency, or adoptive home.[18] The DCF Office of Quality and Innovation (Office) is responsible for licensing child-placing agencies.[19] The Office annually inspects all licensed child-placing agencies and investigates complaints.[20]

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 63.032, F.S., to add the definition of "community-based care lead agency" or "lead agency" to Ch. 63, F.S., to conform with the changes made throughout the bill that shifts the duties from licensed child-placing agencies to community-based care lead agencies (CBCs). This change will increase the responsibilities of CBCs related to a surrendered newborn infant and reduce those responsibilities for licensed child-placing agencies.

Section 2 of the bill amends s. 63.069, F.S., to require each CBC to establish and maintain a registry of prospective adoptive parents that have passed a home study under s. 63.092, F.S., and have indicated a desire to adopt a surrendered newborn infant. The bill requires the registries to include the names, addresses, telephone numbers, and email addresses of prospective adoptive parents and requires the CBCs to keep this contact information until their home study is no longer valid, or they request removal from the registry.

The bill prohibits a CBC from transferring the cost of establishing and maintaining the registry to prospective adoptive parents through the cost of the home study or the cost of the adoption.

The bill requires the clerk of court to forward to DCF any order that imposes sanctions related to the CBCs, rather than child-placing agencies.

Section 3 of the bill amends s. 63.0423, F.S., by shifting the entity responsible for surrendered newborn infants from licensed child-placing agencies to CBCs. The bill requires CBCs, rather than licensed child-placing agencies, to:

- Assume responsibility for the medical and other costs associated with the emergency services and care of the surrendered newborn infant from the time the CBC takes physical custody of the surrendered newborn infant.

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[17] The Department of Children and Families, *Lead Agency Information,* available at: https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/lead-agency-information (last visited Jan. 25, 2024).
[18] Section 39.01(42), F.S
[19] The Department of Children and Families, *Child-Placing Agency Licensing,* available at: https://www.myflfamilies.com/services/licensing/child-placing-agency-licensing (last visited Jan. 25, 2024).
[20] Rule 65C-15, F.A.C.

- Immediately seek an order from the circuit court for emergency custody of the surrendered newborn infant.
- Request assistance from law enforcement officials to determine if the surrendered newborn infant is a missing child within 24 hours after taking physical custody of the surrendered newborn infant.
- Conduct the proceedings for the termination of parental rights and subsequent adoption of a surrendered newborn infant left at a hospital, emergency medical services station, or fire station.

The bill requires CBCs to utilize the registry of prospective adoptive parents to determine a placement for a surrendered newborn infant and allows the CBC to move a surrendered newborn infant to another placement if the removal is deemed to be in the best interest of the child. If a CBC cannot find a prospective adoptive placement for the surrendered newborn infant on its registry, the bill requires the CBC to contact another CBC and attempt to place the infant with a prospective adoptive parent on that CBC's registry.

The bill prohibits CBCs from attempting to pursue, search for, or notify the parent who surrenders the newborn infant, unless there is actual or suspected child abuse or neglect.

The bill prohibits the DCF from assuming custody of the surrendered newborn infant without reasonable efforts to contact a CBC to accept the infant.

Section 4 of the bill amends s. 383.50, F.S., to require hospitals to immediately contact the local CBC to transfer physical custody of a surrendered newborn infant, rather than a licensed child-placing agency or the Hotline.

Section 5 of the bill amends s. 39.201, F.S., to reflect the shift in the entity responsible for a surrendered newborn infant after the Hotline receives a report of a surrendered newborn infant. If the report does not indicate child abuse, abandonment, or neglect, the bill requires the Hotline to provide the person making the report with the name of a local CBC that is required to accept physical custody of and to place surrendered newborn infants, rather than a licensed child-placing agency.

The bill requires DCF to provide names of eligible CBCs on a rotating basis.

Section 6 provides an effective date of July 1, 2024.

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:

Community-Based Care Lead Agencies
Because the number of potential surrendered newborn infants is unknown, there is an indeterminate, but likely insignificant, negative fiscal impact on CBCs. The bill requires a CBC to establish and maintain a registry of prospective adoptive parents and requires the CBC to perform all duties related to a surrendered newborn infant, to include placement, care, and adoption. However, numbers of surrendered newborn infants are extremely low; only 376 in the past 24 years.[21]

Child-Placing Agencies
There is also an indeterminate, but likely insignificant, negative fiscal impact on child placing agencies that currently receive, place, and perform surrendered newborn infant adoptions. The bill removes all duties related to a surrendered newborn infant from these private entities. These child-placing agencies will no longer be able to bill for or receive income from prospective adoptive placements. However, numbers of surrendered newborn infants are extremely low; only 376 in the past 24 years.[22]

C. Government Sector Impact:

None. Surrendered newborn infants are not considered abandoned or dependent children under Ch. 39, F.S., therefore child welfare specific funding received through contract with the DCF and federal Title IV-E dollars are not able to be used to implement the requirements of this bill.[23]

[21] *Supra* note 9.
[22] *Id*.
[23] The Department of Children and Families, *SB 306 Agency Bill Analysis* (December 9, 2023), pp. 5-7 (on file with the Senate Committee on Children, Families, and Elder Affairs).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends ss. 63.032, 63.039, 63.0423, 383.50, and 39.201 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.

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LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present subsections (8) through (19) of section 63.032, Florida Statutes, are redesignated as subsections (9) through (20), respectively, and a new subsection (8) is added to that section, to read:

63.032 Definitions.—As used in this chapter, the term:

(8) "Community-based care lead agency" or "lead agency" has

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the same meaning as in s. 409.986(3).

Section 2. Present subsections (1) through (10) of section 63.0432, Florida Statutes, are redesignated as subsections (2) through (11), respectively, and a new subsection (1) is added to that section, and redesignated subsection (3) is amended to read:

63.0423 Procedures with respect to surrendered newborn infants; prospective adoptive parents of surrendered newborn infant registry.—

(1)(a) Each community-based care lead agency shall establish and maintain a registry of prospective adoptive parents of surrendered newborn infants with the name, address, telephone number, and e-mail address of the prospective adoptive parent who has received a favorable preliminary home study under s. 63.092 and has indicated the desire to be a prospective adoptive parent of a surrendered newborn infant under s. 383.50. The registry must also maintain any known licensed child-placing agency representing the prospective adoptive parent. The community-based care lead agency must remove the information of a prospective adoptive parent from the registry when the favorable preliminary home study for such prospective adoptive parent is no longer valid as provided in s. 63.092(3) or the prospective adoptive parent asks to be removed from the registry.

(b) If requested, the community-based care lead agency must provide the following to interested prospective adoptive parents of surrendered newborn infants:

1. Information and education on the private adoption process; and

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2. Referrals to local licensed child-placing agencies that perform surrendered newborn infant adoptions.

(c) The community-based care lead agency may not transfer the cost of establishing and maintaining the registry created pursuant to this subsection to a prospective adoptive parent.

(d) The community-based care lead agency registry must maintain a rotating list of licensed child-placing agencies that are willing to take physical custody of surrendered newborn infants and perform all duties required under this section.

(e) Licensed child-placing agencies that are named by the community-based care lead agency and take custody of surrendered newborn infants under this section must report the following to the community-based care lead agency within 30 days of the final adoption order:

1. The length of time between taking physical custody of the surrendered newborn infant and the issuance of a final adoption order.

2. Whether the named prospective adoptive parent from the registry adopted the surrendered newborn infant.

3. The affidavit of and order approving expenses and receipts under s. 63.132.

(3) ~~(2)~~ Upon taking physical custody of a newborn infant surrendered pursuant to s. 383.50, the licensed child-placing agency named by the community-based care lead agency shall immediately seek an order from the circuit court for emergency custody of the surrendered infant. The emergency custody order remains ~~shall remain~~ in effect until the court orders preliminary approval of placement of the surrendered infant in a ~~the~~ prospective home, at which time the prospective adoptive

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parent becomes the guardian of the surrendered infant ~~parents become guardians~~ pending termination of parental rights and finalization of adoption or until the court orders otherwise. The guardianship of the prospective adoptive parent is ~~parents shall remain~~ subject to the right of the licensed child-placing agency to remove the surrendered infant from the placement during the pendency of the proceedings if such removal is deemed by the licensed child-placing agency to be in the best interests of the child. The licensed child-placing agency shall ~~may~~ immediately seek to place the surrendered infant in a prospective adoptive home with the next prospective adoptive parent from the surrendered newborn infant registry maintained by the community-based care lead agency under this section. If the registry does not contain the name of an appropriate prospective adoptive parent, the community-based care lead agency must contact another community-based care lead agency and attempt to place the surrendered infant with a prospective adoptive parent from that lead agency's registry.

(5)~~(4)~~ The parent who surrenders the infant in accordance with s. 383.50 is presumed to have consented to termination of parental rights, and express consent is not required. Except when there is actual or suspected child abuse or neglect, the community-based care lead agency or licensed child-placing agency may ~~shall~~ not attempt to pursue, search for, or notify that parent as provided in s. 63.088 and chapter 49. For purposes of s. 383.50 and this section, an infant who tests positive for illegal drugs, narcotic prescription drugs, alcohol, or other substances, but shows no other signs of child abuse or neglect, must ~~shall~~ be placed in the custody of a

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licensed child-placing agency named by the community-based care lead agency. Such a placement does not eliminate the reporting requirement under s. 383.50(7). When the department is contacted regarding an infant properly surrendered under this section and s. 383.50, the department shall provide instruction to contact a community-based care lead ~~licensed child-placing~~ agency and may not take custody of the infant unless reasonable efforts to contact a licensed child-placing agency named by the community-based care lead agency to accept the infant have not been successful.

Section 3. Subsections (1) and (7) of section 383.50, Florida Statutes, are amended to read:

383.50 Treatment of surrendered newborn infant.—

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

(a) "Community-based care lead agency" has the same meaning as in s. 409.986(3).

(b) "Newborn infant" means a child who a licensed physician reasonably believes is approximately 7 days old or younger at the time the child is left at a hospital, emergency medical services station, or fire station.

(7) Upon admitting a newborn infant under this section, the hospital shall immediately contact the ~~a~~ local community-based care lead ~~licensed child-placing~~ agency or alternatively contact the statewide central abuse hotline for the community-based care lead agency contact information. ~~name of a licensed child-placing agency~~ For purposes of transferring physical custody of the newborn infant, ~~.~~ the hospital shall notify the community-based care lead ~~licensed child-placing~~ agency that a newborn infant has been left with the hospital and approximately when

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the licensed child-placing agency named by the community-based care lead agency from the registry can take physical custody of the child. In cases where there is actual or suspected child abuse or neglect, the hospital or any of its licensed health care professionals shall report the actual or suspected child abuse or neglect in accordance with ss. 39.201 and 395.1023 in lieu of contacting the local community-based care lead ~~a licensed child-placing~~ agency.

Section 4. Paragraph (e) of subsection (3) of section 39.201, Florida Statutes, is amended to read:

39.201 Required reports of child abuse, abandonment, or neglect, sexual abuse of a child, and juvenile sexual abuse; required reports of death; reports involving a child who has exhibited inappropriate sexual behavior.—

(3) ADDITIONAL CIRCUMSTANCES RELATED TO REPORTS.—

(e) *Surrendered newborn infants.*—

1. The central abuse hotline must receive reports involving surrendered newborn infants as described in s. 383.50.

2.a. A report may not be considered a report of child abuse, abandonment, or neglect solely because the infant has been left at a hospital, emergency medical services station, or fire station under s. 383.50.

b. If the report involving a surrendered newborn infant does not include indications of child abuse, abandonment, or neglect other than that necessarily entailed in the infant having been left at a hospital, emergency medical services station, or fire station, the central abuse hotline must provide to the person making the report the name of a local community-based care lead ~~an eligible licensed child-placing~~ agency that

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is required to choose a licensed child-placing agency from the registry to accept physical custody of and to place surrendered newborn infants. ~~The department shall provide names of eligible licensed child-placing agencies on a rotating basis.~~

3. If the report includes indications of child abuse, abandonment, or neglect beyond that necessarily entailed in the infant having been left at a hospital, emergency medical services station, or fire station, the report must be considered as a report of child abuse, abandonment, or neglect and, notwithstanding chapter 383, is subject to s. 39.395 and all other relevant provisions of this chapter.

Section 5. This act shall take effect July 1, 2024.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to placement of surrendered newborn infants; amending s. 63.032, F.S.; defining the term "community-based care lead agency"; amending s. 63.0423, F.S.; requiring community-based care lead agencies to establish and maintain a specified registry; requiring that certain information be removed from the registry under certain circumstances; requiring certain information be provided to interested prospective adoptive parents; prohibiting the community-based care lead agency from transferring certain costs to prospective adoptive parents;

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requiring the specified registry to maintain a list of licensed child-placing agencies; requiring licensed child-placing agencies that take custody of surrendered newborn infants to report certain information; requiring licensed child-placing agencies to place a surrendered infant with certain prospective adoptive parents; providing requirements that apply if an appropriate prospective adoptive parent is not found in the registry; conforming provisions to changes made by the act; amending s. 383.50, F.S.; defining the term "community-based care lead agency"; providing requirements for the hospital once they take physical custody of a surrendered newborn infant; conforming provisions to changes made by the act; amending s. 39.201, F.S.; conforming provisions to changes made by the act; providing an effective date.

530466

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/29/2024	.	
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	.	
	.	

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

Senate Amendment (with directory amendment)

Delete lines 64 - 71.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:
Delete lines 43 - 44
and insert:
that section, to read:

802344

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/29/2024	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 157 - 194
and insert:
care lead ~~licensed child-placing~~ agency or alternatively contact the statewide central abuse hotline for the community-based care lead agency contact information ~~name of a licensed child-placing agency~~ for purposes of transferring physical custody of the newborn infant. The hospital shall notify the community-based care lead ~~licensed child-placing~~ agency that a

802344

newborn infant has been left with the hospital and approximately when the community-based care lead ~~licensed child-placing~~ agency can take physical custody of the child. In cases where there is actual or suspected child abuse or neglect, the hospital or any of its licensed health care professionals shall report the actual or suspected child abuse or neglect in accordance with ss. 39.201 and 395.1023 in lieu of contacting the local community-based care lead ~~a licensed child-placing~~ agency.

Section 5. Paragraph (e) of subsection (3) of section 39.201, Florida Statutes, is amended to read:

39.201 Required reports of child abuse, abandonment, or neglect, sexual abuse of a child, and juvenile sexual abuse; required reports of death; reports involving a child who has exhibited inappropriate sexual behavior.—

(3) ADDITIONAL CIRCUMSTANCES RELATED TO REPORTS.—

(e) *Surrendered newborn infants.*—

1. The central abuse hotline must receive reports involving surrendered newborn infants as described in s. 383.50.

2.a. A report may not be considered a report of child abuse, abandonment, or neglect solely because the infant has been left at a hospital, emergency medical services station, or fire station under s. 383.50.

b. If the report involving a surrendered newborn infant does not include indications of child abuse, abandonment, or neglect other than that necessarily entailed in the infant having been left at a hospital, emergency medical services station, or fire station, the central abuse hotline must provide to the person making the report the name of the local community-based care lead agency ~~an eligible licensed child-placing agency~~

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that is required to accept physical custody of and to place surrendered newborn infants. ~~The department shall provide names of eligible licensed child-placing agencies on a rotating basis.~~

By the Committee on Banking and Insurance; and Senator Rouson

597-02150-24 2024556c1

A bill to be entitled

An act relating to protection of specified adults; creating s. 415.10341, F.S.; defining terms; providing legislative findings and intent; authorizing financial institutions, under certain circumstances, to delay a disbursement or transaction from an account of a specified adult; specifying that a delay on a disbursement or transaction expires on a certain date; authorizing the financial institution to extend the delay under certain circumstances; authorizing a court of competent jurisdiction to shorten or extend the delay; providing construction; granting financial institutions immunity from certain liability; providing construction; requiring financial institutions to take certain actions before placing a delay on a disbursement or transaction; providing construction; providing an effective date.

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

Section 1. Section 415.10341, Florida Statutes, is created to read:

415.10341 Protection of specified adults.—

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

(a) "Financial exploitation" means the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of a specified adult; or any act or omission by a person, including through the use of a power of attorney, guardianship, or conservatorship of a specified adult,

to:

1. Obtain control over the specified adult's money, assets, or property through deception, intimidation, or undue influence to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property; or

2. Divert the specified adult's money, assets, or property to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property.

(b) "Financial institution" means a state financial institution or a federal financial institution as those terms are defined under s. 655.005(1).

(c) "Specified adult" means a natural person 65 years of age or older, or a vulnerable adult as defined in s. 415.102.

(d) "Trusted contact" means a natural person 18 years of age or older whom the account owner has expressly identified and recorded in a financial institution's books and records as the person who may be contacted about the account.

(2) The Legislature finds that many persons in this state, because of age or disability, are at increased risk of financial exploitation and loss of their assets, funds, investments, and investment accounts. The Legislature further finds that specified adults in this state are at a statistically higher risk of being targeted for financial exploitation, regardless of diminished capacity or other disability, because of their accumulation of substantial assets and wealth compared to younger age groups. In enacting this section, the Legislature recognizes the freedom of specified adults to manage their assets, make investment choices, and spend their funds, and intends that such rights may not be infringed absent a

reasonable belief of financial exploitation as provided in this section. The Legislature therefore intends to provide for the prevention of financial exploitation of such persons. The Legislature intends to encourage the constructive involvement of financial institutions that take action based upon the reasonable belief that specified adults who have accounts with such financial institutions have been or are the subject of financial exploitation, and to provide financial institutions and their employees immunity from liability for taking actions as authorized herein. The Legislature intends to balance the rights of specified adults to direct and control their assets, funds, and investments and to exercise their constitutional rights consistent with due process with the need to provide financial institutions the ability to place narrow, time-limited restrictions on these rights in an effort to decrease specified adults' risk of loss due to abuse, neglect, or financial exploitation.

(3) If a financial institution reports suspected financial exploitation of a specified adult pursuant to s. 415.1034, it may delay a disbursement or transaction from an account of a specified adult or an account for which a specified adult is a beneficiary or beneficial owner if all of the following apply:

(a) The financial institution immediately initiates an internal review of the facts and circumstances that caused an employee of the financial institution to report suspected financial exploitation.

(b) Not later than 3 business days after the date on which the delay was first placed, the financial institution:

1. Notifies in writing all parties authorized to transact

business on the account and any trusted contact on the account, using the contact information provided for the account, with the exception of any party an employee of the financial institution reasonably believes has engaged in, is engaging in, has attempted to engage in, or will attempt to engage in the suspected financial exploitation of the specified adult. The notice, which may be provided electronically, must provide the reason for the delay.

2. Creates and maintains for at least 5 years from the date of the delayed disbursement or transaction a written or electronic record of the delayed disbursement or transaction that includes, at minimum, the following information:

a. The date on which the delay was first placed.

b. The name and address of the specified adult.

c. The business location of the financial institution.

d. The name and title of the employee who reported suspected financial exploitation of the specified adult pursuant to s. 415.1034.

e. The facts and circumstances that caused the employee to report suspected financial exploitation.

(4) A delay on a disbursement or transaction under subsection (3) expires 15 business days after the date on which the delay was first placed. However, the financial institution may extend the delay for up to 30 additional business days if the financial institution’s review of the available facts and circumstances continues to support the reasonable belief that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted. The length of the delay may be shortened or extended at any time by a court

of competent jurisdiction. This subsection does not prevent a financial institution from terminating a delay after communication with the parties authorized to transact business on the account and any trusted contact on the account.

(5) A financial institution that acts in good faith and exercises reasonable care to comply with this section is immune from any administrative or civil liability that might otherwise arise from such delay in a disbursement or transaction in accordance with this section. This subsection does not supersede or diminish any immunity granted elsewhere in this chapter.

(6) Before placing a delay on a disbursement or transaction pursuant to this section, a financial institution must do all of the following:

(a) Develop training policies or programs reasonably designed to educate employees on issues pertaining to financial exploitation of specified adults.

(b) Conduct training for all employees as soon as reasonably practicable and maintain a written record of all trainings conducted. With respect to an individual who begins employment with a covered financial institution after July 1, 2024, such training must be conducted within 1 year after the date on which the individual becomes employed by or affiliated or associated with the covered financial institution.

(c) Develop, maintain, and enforce written procedures regarding the manner in which suspected financial exploitation is reviewed internally, including, if applicable, the manner in which suspected financial exploitation is required to be reported to supervisory personnel.

(7) Absent a reasonable belief of financial exploitation as

provided in this section, this section does not otherwise alter a financial institution's obligations to all parties authorized to transact business on an account and any trusted contact named on such account.

(8) This section does not create new rights for or impose new obligations on a financial institution under other applicable law.

Section 2. This act shall take effect July 1, 2024.

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.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL:	CS/SB 556
INTRODUCER:	Banking and Insurance and Senator Rouson
SUBJECT:	Protection of Specified Adults
DATE:	January 29, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Hall	Tuszynski	CF	**Pre-meeting**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 556 provides additional protections for specified adults (age 65 years or older) and vulnerable adults who have accounts with financial institutions and may be victims of suspected financial exploitation. A vulnerable adult is a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. The bill allows financial institutions to delay disbursements or transactions of funds from an account of a specified adult or a vulnerable adult under the following conditions:

- A financial institution reasonably believes that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted in connection with the disbursement or transaction.
- Not later than 3 business days after the date on which the delay was first placed, the financial institution provides written notice to all parties authorized to transact business on the account and any trusted contact on the account, using the contact information provided on the account, unless the employee of the financial institution believes that any of the parties are involved in the suspected exploitation.
- Not later than 3 business days after the date on which the delay was first placed, a state-chartered financial institution notifies the Office of Financial Regulation of the delay.
- The financial institution immediately initiates an internal review of the facts and circumstances that caused the employee to reasonably believe that the financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted.

A delay in a disbursement or transaction expires in 15 business days, and may be extended for an additional 30 business days. A court of competent jurisdiction may shorten or extend the length of any delay.

The bill grants immunity from any administrative or civil liability that might otherwise arise from a delay in a disbursement or transaction to any financial institution who in good faith and exercising reasonable care complies with the provisions of s. 415.10341, F.S. The bill does not alter the obligation of a financial institution to comply with instructions from a client absent a reasonable belief of financial exploitation. The bill does not create new rights or obligations of a financial institution under other applicable laws or rules. The bill does not limit the right of a financial institution to refuse to place a delay on a transaction or disbursement under other laws or rules or under a customer agreement.

The bill takes effect July 1, 2024.

II. Present Situation:

Demographics of Florida's Older Adults

In 2021, an estimated 21 percent (4,498,198 out of 21,477,737) of Florida's population was age 65 or older.[1] Florida's population of individuals age 65 or older, as of April 1, 2022, was 4,782,219.[2]

Financial Exploitation of Older Adults

Older adults are targets for financial exploitation due to their income and accumulated life-long savings, in addition to the possibility that they may face declining cognitive or physical abilities, isolation from family and friends, lack of familiarity or comfort with technology, and reliance on others for their physical well-being, financial management, and social interaction.[3] According to the U.S. Department of Justice, elder abuse, which includes elderly financial exploitation among other forms of abuse, affects at least 10 percent of older adults each year in the United States.[4]

The monetary amount of losses is difficult to ascertain. A 2023 report estimated the cost of elder financial exploitation in the United State at $269.5 billion in 2022.[5] The amount of elder fraud losses in Florida is estimated to be $15.43 billion.[6] However, the amount of reported loss in Florida is about $657 million. Many victims fail to report exploitation because of shame and

[1] GAO-21-90, ELDER JUSTICE: HHS Could Do More to Encourage State Reporting on the Costs of Financial Exploitation KFF, Population Distribution by Age | KFF (2021) (last visited Jan. 24, 2024).
[2] University of Florida, Bureau of Economic and Business Research, Florida Population Projections, Bulletin 196, (Oct. 2023).
[3] See Department of Justice, Office of Public Affairs, "Associate Attorney General Vanita Gupta Delivers Remarks at the Elder Justice Coordinating Council Meeting," (December 7, 2021); see also "Associate Deputy Attorney General Paul R. Perkins Delivers Remarks at the ABA/ABA Financial Crimes Enforcement Conference," (December 9, 2020).
[4] About Elder Abuse | EJI | Department of Justice (last visited Sep. 28, 2023).
[5] The United States of Elder Fraud – How Prevalent is Elder Financial Abuse in Each State? (June 15, 2023). The United States of Elder Fraud - How Prevalent is Elder Financial Abuse in Each State? - Comparitech (last visited Jan. 24, 2024).
[6] *Id.*

embarrassment. The tendency to not report may also be related to the perpetrator being a friend or family member of the victim.[7]

Some of the most common forms of financial exploitation reported to state adult protective services include:

- Theft. Involves assets taken without knowledge, consent or authorization; may include taking of cash, valuables, medications other personal property.
- Fraud. Involves acts of dishonestly by persons entrusted to manage assets but appropriate assets for unintended uses; may include falsification of records, forgeries, unauthorized check-writing, and Ponzi-type financial schemes.
- Real Estate. Involves unauthorized sales, transfers or changes to a property title; may include unauthorized or invalid changes to an estate documents.
- Contractor. Includes building contractors or handymen who receive a payment for building repairs, but fail to initiate or complete project; may include invalid liens by contractors
- Lottery Scams. Involves payments (or transfer of funds) to collect unclaimed property or "prizes" from lotteries or sweepstakes.[8]

The Internet Crime Complaint Center (IC3) within the Federal Bureau of Investigations, receives and tracks thousands of complaints daily, reported by victims of fraud, their family members, and law enforcement officers. The 2022 annual Elder Fraud Report[9] provides a summary of complaints submitted by or on behalf of victims aged 60 and over. Some of the findings include:

- Over 88,000 victims over the age of 60 reported losses of $3.1 billion to the IC3. This represents an 84 percent increase in losses over losses reported in 2021.
- The average loss per victim was $35,101. There were 5,456 victims who lost more than $100,000 each.
- Florida accounted for 8,480 out of the 88,000 total victims. Florida victims incurred over $328 million in losses.

In 2013, the Financial Crimes Enforcement Network (FinCEN), which receives and maintains the database of suspicious activity reports (SARs),[10] introduced electronic SAR filing with a designated category for "elder financial exploitation."[11] Recent analysis of SARs related to elder financial exploitation has revealed the following:

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[7] AARP, The Scope of Elder Financial Exploitation: What it Costs Victims (2023), available at: https://www.aarp.org/content/dam/aarp/money/scams-and-fraud/2023/true-cost-elder-financial-exploitation.doi.10.26419-2Fppi.00194.001.pdf (last visited Jan. 24, 2024).

[8] National Adult Protective Services Association, What is Financial Exploitation? available at: Financial Exploitation – NAPSA (napsa-now.org) (last visited Jan. 24, 2024).

[9] FBI IC3 Elder Fraud Report (2022), https://www.ic3.gov/Media/PDF/AnnualReport/2022_IC3ElderFraudReport.pdf (last visited Jan. 24, 2024).

[10] A financial institution is required to file a Suspicious Activity Report (SAR) with the Financial Crimes Enforcement Network (FinCEN) if it knows, suspects, or has reason to suspect a transaction conducted or attempted by, at, or through the financial institution involves funds derived from illegal activity, or attempts to disguise funds derived from illegal activity; is designed to evade regulations promulgated under the BSA; lacks a business or apparent lawful purpose; or involves the use of the financial institution to facilitate criminal activity, including elder financial exploitation. *See* 31 CFR ss. 1020.320, 1021.320, 1022.320, 1023.320, 1024.320, 1025.320, 1026.320, 1029.320, and 1030.320.

[11] Consumer Financial Protection Bureau, *Suspicious Activity Reports on Elder Financial Exploitation: Issues and Trends*, 3 (Feb. 2019), available at: https://files.consumerfinance.gov/f/documents/cfpb_suspicious-activity-reports-elder-financial-exploitation_report.pdf (last visited Jan. 24, 2024).

- Among the SARs that reported a loss to an older adult, the average amount lost was $34,200; in 7 percent of these SARs, the loss exceeded $100,000.[12]
- One-third of the individuals who lost money were ages 80 and older, and adults ages 70 to 79 had the highest average monetary loss ($45,300).[13]
- Where an individual has incurred an actual loss, the amount of loss reflects substantial financial hardship for elders: The median suspicious activity amount from one sample of scam-related SARs was $6,105, and for theft-related SARs it was $15,964. These amounts represent 16 and 41 percent, respectively, of the median income of $38,515 for households maintained by individuals 65 and over in 2015 (as reported by the U.S. Census Bureau).[14]
- The total number of SAR filings and total suspicious activity amounts increased 20 percent and 30 percent, respectively, each year during the period studied (October 2013 – August 2019).[15]

Elderly financial exploitation schemes generally involve either theft or scams.[16] Suspicious activity report narratives indicate that financial exploitation most often involves money transfer scams conducted through money services businesses (MSBs) and theft perpetrated through depository, securities, and futures institutions.[17]

Financial Exploitation and the Role of Financial Institutions

Financial institutions can play a key role in detecting, responding to, and preventing elderly financial exploitation.[18] Financial institutions are often well-positioned to detect when older account holders have been targeted or victimized. In recognition of this, FinCEN issued an Advisory to Financial Institutions on Filing Suspicious Activity Reports Regarding Elder Financial Exploitation (advisory).[19] The advisory provided potential "red flag" indicators and instructions on how to report exploitation activity through Suspicious Activity Reports (SARs). Once such threats have been detected, financial institutions should report to law enforcement and the state or local Adult Protective Service agency. In 2013, eight federal regulatory agencies issued interagency guidance clarifying that reporting suspected financial abuse of older adults to appropriate authorities does not generally violate the privacy provisions of the Gramm-Leach-Bliley Act.

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[12] *Id*. at 4.
[13] *Id*.
[14] FinCen, *Financial Trend Analysis: Elders Face Increased Financial Threat from Domestic and Foreign Actors*, 7 (Dec. 2019), available at: https://www.fincen.gov/sites/default/files/shared/FinCEN%20Financial%20Trend%20Analysis%20Elders_FINAL%20508.pdf (last visited Jan. 24, 2024).
[15] *Id*. at 1.
[16] See FinCEN Financial Trend Analysis (FTA), "Elders Face Increased Financial Threat from Domestic and Foreign Actors," (December 2019), available at: Financial Trend Analysis (fincen.gov) (Dec. 2019) (last visited Jan. 24, 2024).
[17] *Id*.
[18] See, Consumer Financial Protection Bureau (CFPB), Advisory for financial institutions on preventing and responding to elder financial exploitation (March 2016), available at http://files.consumerfinance.gov/f/201603_cfpb_advisory-for-financial-institutions-on-preventing-and-responding-to-elder-financial-exploitation.pdf (last visited Jan. 24, 2024); and, CFPB, Recommendations and report for financial institutions on preventing and responding to elder financial exploitation (March 2016), available at 201603_cfpb_recommendations-and-report-for-financial-institutions-on-preventing-and-responding-to-elder-financial-exploitation.pdf (consumerfinance.gov) (last visited Jan. 24, 2024).
[19] See, FinCEN, FIN-2011-A003, Advisory to Financial Institutions on Filing Suspicious Activity Reports Regarding Elder Financial Exploitation (Feb. 22, 2011), available at INTELLIGENCE REPORT (fincen.gov) (last visited Jan. 24, 2024).

Mandatory Reporting of Abuse or Exploitation of Vulnerable Adults in Florida

The Adult Protective Services Act (ch. 415, F.S.) defines abuse as any willful act or threatened act by a relative, caregiver, or household member, which harms or is likely to harm a vulnerable adult's physical, mental, or emotional health.[20] The Adult Protective Services program is located within the Department of Children and Families (department), and is responsible for investigating allegations of abuse, neglect or exploitation, as provided in the Adult Protective Services Act (act).[21] Section 415.1034, F.S., requires any person who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited to report suspected abuse to the central abuse hotline immediately. Any person reporting or that participates in a judicial proceeding is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from any civil or criminal liability that otherwise might be incurred or imposed.[22]

For purposes of the act, the following terms apply:

- A "vulnerable adult" is a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.[23]
- "Exploitation" means a person who:[24]
  - Stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or
  - Knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult.
- "Exploitation" may include, but is not limited to:[25]
  - Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property;
  - Unauthorized taking of personal assets;
  - Misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or
  - Intentional or negligent failure to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance.

[20] Section 415.102, F.S.
[21] Sections 415.101-415.113, F.S.
[22] Section 415.1036, F.S.
[23] *See* s. 415.102(28), F.S.
[24] *See* s. 415.102(8), F.S.
[25] *Id.*

Once a person reports to the central abuse hotline,[26] the department must initiate a protective investigation within 24 hours.[27] If a caregiver refuses to allow the department to begin a protective investigation or interferes with the investigation, the department can contact the appropriate law enforcement agency for assistance. If, during the course of the investigation, the department has reason to believe that the abuse, neglect, or exploitation is perpetrated by a second party, the appropriate law enforcement agency and state attorney must be notified. The department shall make a preliminary written report to the law enforcement agencies within 5 working days after the oral report and complete the investigation within 60 days.[28]

Florida's Law on the Protection of Vulnerable Investors[29]

In 2020, legislation was enacted in Florida to protect vulnerable investors.[30] The law allows a dealer or investment adviser to delay a disbursement or transaction of funds or securities from the account of a specified adult or an account for which a specified adult is a beneficiary or beneficial owner if the dealer or investment adviser reasonably believes that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted in connection with the disbursement or transaction. A specified adult is an individual who is age 65 or older or who meets the definition of "vulnerable adult" under the act.

The suspected financial exploitation must be immediately reported to the Florida Abuse Hotline if so required by the act. Not later than three business days after placing a delay, the dealer or investment adviser must notify all parties authorized to transact business on the account as well as any designated trusted contact, unless such person is believed to be engaged in the suspected financial exploitation. Not later than three business days after placing or extending a delay, the dealer or investment adviser must notify the Office of Financial Regulation of the delay or extension.

A delay expires in 15 business days but may be terminated sooner. The dealer or investment adviser may extend the delay for up to an additional 10 business days. The length of the hold may be shortened or extended by a court of competent jurisdiction. A dealer or investment adviser must annually conduct training that is reasonably designed to educate its associated persons on issues pertaining to financial exploitation. A dealer, an investment adviser, or an associated person who in good faith and exercising reasonable care complies with the bill is immune from any administrative or civil liability that might otherwise arise from a delay in a disbursement or transaction.

Regulation of Financial Institutions

The Florida Office of Financial Regulation (OFR) is responsible for all activities of the Financial Services Commission relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry.[31] The OFR has three divisions: the

[26] Section 415.103, F.S.
[27] Section 415.104, F.S.
[28] *Id.*
[29] Section 517.34, F.S.
[30] Ch. 2020-157, Laws of Fla.
[31] Section 20.121(3)(a)2., F.S.

Division of Consumer Finance, the Division of Financial Institutions (DFI), and the Division of Securities.

Florida law defines the term "financial institution" broadly; the term includes "state and federal savings or thrift associations, banks, savings banks, trust companies, international bank agencies, international banking corporations, international branches, international representative offices, international administrative offices, international trust entities, international trust company representative offices, qualified limited service affiliates, credit unions, agreement corporations operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. and Edge Act corporations organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq."[32]

Dual Regulatory System

Banks and credit unions in the United States are chartered and regulated under a dual regulatory system. These depository institutions may elect to have a national charter and a federal primary regulator, or they may choose to be chartered and regulated by the state in which they are headquartered. OFR's DFI provides general supervision over all Florida-chartered financial institutions, along with their subsidiaries and service corporations.[33] DFI is tasked with the administration of the financial institutions codes,[34] which apply to all Florida state-authorized or state-chartered financial institutions and to the enforcement of all laws relating to Florida state-authorized or state-chartered financial institutions.[35]

As a result of the dual regulatory system, the OFR does not have absolute regulatory authority over every financial institution operating in Florida. Florida-chartered depository institutions (banks and credit unions) are chartered by the OFR, but are additionally required to obtain deposit insurance,[36] and thus are also subject to examination and regulation by federal regulatory authorities. While the Federal Reserve serves as the primary federal regulator of a state bank which has elected to become a member bank of the Federal Reserve System,[37] the FDIC remains the primary federal regulator for non-member state-banks and remains authorized to make special examination of any insured bank when necessary. Likewise, state-chartered credit unions are subject to examination and regulation by the National Credit Union Administration (NCUA).[38] Thus, federal supervisors play an important role in ensuring and protecting the financial stability of financial institutions operating in Florida.

OFR is required to conduct an examination of the condition of each state financial institution "at least every 18 months," but is authorized to conduct more frequent examinations based on the risk profile of the financial institution, prior examination results, or significant changes in the institutions or its operations. The examination process is risk-focused and covers all aspects of prudent management practices, including: governance, board and management oversight, identification, and reporting of complaints and regulation pertaining to discrimination. The

[32] Section 655.005(1)(i), F.S.
[33] Section 655.012(1), F.S.
[34] Sections 655.001(1) and 655.012(1), F.S.
[35] *Id*.
[36] Section 658.38, F.S.
[37] 12 U.S.C. s. 248.
[38] Section 657.033, F.S.; 12 U.S.C. s. 1784.

examinations predominantly evaluate the strength of the Capital, Asset Quality, Management, Earnings, Liquidity, and Sensitivity to Market Risk (CAMELS) of the financial institution, however, examiners evaluate compliance with Florida law, including confidentiality rules, as well.

National banks are chartered pursuant to the National Bank Act and supervised by the Office of the Comptroller of the Currency (OCC).[39] National banks are required to be members of the Federal Reserve System; state banks may apply for membership.[40] The Federal Reserve system is the primary federal regulator of state member banks, and also serves as the primary regulator of bank holding companies and financial holding companies.[41] Federally-chartered credit unions are chartered and supervised by the National Credit Union Administration (NCUA).[42] Both state- and federally-chartered credit unions must obtain insurance of their accounts and are subject to examination by the NCUA.[43]

Access to the Books and Records of a Financial Institution

Section 655.059, F.S., governs access to the books and records of a financial institution. Access to books and records is strictly limited. Books and records are expressly confidential, and may only be made available for inspection and examination to certain persons and government entities, including:

- The OFR and its duly authorized representatives;
- Any person duly authorized to act for the financial institution;
- Any federal or state instrumentality or agency authorized to inspect or examine the books and records of an insured financial institution;
- The home country supervisor of an international banking corporation or international trust entity, under certain conditions;
- To the extent the books and records pertain to their own accounts or the determination of their voting rights, depositors, borrowers, members, and stockholders have the right to inspect; and
- To any person otherwise authorized by the board of directors.

Books and records may also be made available for inspection pursuant to a subpoena, under the following circumstances:

- As compelled by a court of competent jurisdiction;
- As compelled by a legislative subpoena; and
- To any federal or state law enforcement or prosecutorial instrumentality authorized to investigate criminal activity.

A person who willfully violates of these confidentiality rules is guilty of a felony of the third degree, punishable as provided in sections 775.082, 775.083, and 775.084, F.S.

[39] 12 U.S.C. s. 481.
[40] 12 U.S.C. s. 208.3 and 222.
[41] 12 U.S.C. s. 248.
[42] *See* 12 U.S.C. s. 1751, et. seq.
[43] Section 657.033, F.S.; 12 U.S.C. s. 1784.

Federal Right to Privacy Act (RFPA)

Pursuant to RFPA,[44] a federal government authority generally must seek a subpoena to access such books and records, and may only request financial records pursuant to a formal written request under certain conditions, one of which includes serving a copy of the request upon the customer.[45]

2018 Federal Safe Senior Act

The federal Safe Senior Act[46] provides immunity for covered financial institutions from suit for disclosure of financial exploitation of senior citizens.

For purposes of the act, the term ''exploitation'' means the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or a fiduciary, that:

- Uses the resources of a senior citizen for monetary or personal benefit, profit, or gain; or
- Results in depriving a senior citizen of rightful access to or use of benefits, resources, belongings, or assets.

The act defines the term, "covered agency," to include:

- A state financial regulatory agency, including a state securities or law enforcement authority and a state insurance regulator;
- Each of the Federal agencies represented in the membership of the Financial Institutions Examination Council established under section 1004 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3303);[47]
- A securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3);
- The Securities and Exchange Commission;
- A law enforcement agency; or
- A state or local agency responsible for administering adult protective service laws.

The term, "covered financial institution" means:

- A credit union;[48]
- A depository institution;[49]
- An investment adviser;
- A broker-dealer;
- An insurance company;
- An insurance agency; or

[44] 12 U.S.C. s. 3401 et seq.
[45] See 12 U.S.C. s. 3408.
[46] Public Law 115-174 (May 24, 2018); 132 STAT. 1336.
[47] This would include the Federal Reserve, Consumer Financial Protection Bureau, National Credit Union Association, Office of the Comptroller of the Currency.
[48] The term ''credit union'' has the meaning given the term in section 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301).
[49] The term ''depository institution'' has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

- A transfer agent.

The federal Safe Senior Act offers a safe harbor from liability for specified individuals or covered financial institutions in any civil or administrative proceedings for disclosing the suspected information regarding the suspected exploitation of a senior citizen to a covered agency, such as a state adult protective services agency, regulators, or law enforcement. A senior citizen for purposes of the act is an individual age 65 years or older. The civil and administrative immunity established by the act is provided on the condition that specified individuals[50] receive specified training on how to identify and report exploitative activity against seniors before making a report, and reports of suspected exploitation are made "in good faith" and "with reasonable care."

Further, the act provides that a covered financial institution shall not be liable, including any civil or administrative proceeding, for a disclosure made by specified individuals if the following conditions are met:

- The individual was employed by, or, in the case of a registered representative, insurance producer, or investment adviser representative, affiliated or associated with, the covered financial institution at the time of the disclosure; and
- Before the time of the disclosure, such individual received the training.

However, the civil or administrative immunity provided by this act may not be construed to limit the liability of an individual or a covered financial institution in a civil action for any act, omission, or fraud that is not a disclosure described in the provision relating to the immunity from suit for individuals.

Training

A covered financial institution or a third party selected by a covered financial institution may provide the training described in the act to each officer or employee of, or registered representative, insurance producer, or investment adviser representative affiliated or associated with the covered financial institution who:

- Is specified in the act;
- May come into contact with a senior citizen as a regular part of the professional duties of the individual; or
- May review or approve the financial documents, records, or transactions of a senior citizen in connection with providing financial services to a senior citizen.

The act provides that the training described above must be provided as soon as reasonably practicable; and with respect to an individual who begins employment, or becomes affiliated or associated with a covered financial institution after the date of enactment of this act, not later than one year after the date on which the individual becomes employed by, or affiliated or associated with, the covered financial institution in a position described in the act.

[50] The employee served as a supervisor or in a compliance or legal function (including as a Bank Secrecy Act officer) for, or, in the case of a registered representative, investment adviser representative, or insurance producer, was affiliated or associated with, a covered financial institution.

Record Retention

The act requires a covered financial institution to maintain a record of each individual who is employed by, or affiliated or associated with, the covered financial institution in a position described in the act; and has completed the training described in the act. Upon request, the covered financial institution must provide a record described in the act to a covered agency with examination authority over the covered financial institution.

Relationship to State Law

The act provides that nothing in the act may be construed to preempt or limit any provision of state law, except only to the extent that the immunity described in the act provides a greater level of protection against liability to an individual described in the act or to a covered financial institution described in the act than is provided under state law.

III. Effect of Proposed Changes:

Section 1 creates s. 415.10341, F.S. The section creates definitions and a voluntary process for financial institutions to delay disbursements or transactions if they reasonably suspect, and report, the financial exploitation of specified adults, i.e., adults aged 65 years or older and vulnerable adults.

The term, "financial exploitation," means the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of a specified adult, or any act or omission by a person, including through the use of a power of attorney, guardianship, or conservatorship, to divert or obtain control over the specified adult's money, assets, or property through deception, intimidation, or undue influence to deprive the specified adult of the ownership, use, benefit, or possession of their money, assets, or property. The term "financial institution" means the same as that term is defined within ch. 655, F.S. "Specified adult" means a natural person 65 years of age or older, or a vulnerable adult as that term is defined in s. 415.102, F.S. The term "trusted contact" mean a natural person 18 years of age or older whom an account holder has expressly identified and recorded in a financial institution's books and records as the person who may be contacted about the account.

Subsection (2) provides a statement of legislative findings and intent. Stated findings include:

- There are many Floridians that are at increased risk of financial exploitation due to their age or disability;
- Specified adults are at a statistically higher risk of being targeted for financial exploitation due to their accumulation of substantial assets and wealth compared to younger age groups; and
- Specified adults have the freedom and right to manage their assets, make investment choices, and spend their funds. Such rights may not be infringed upon absent a reasonable belief of financial exploitation.

The Legislative intent of the legislation includes:

- Preventing financial exploitation;
- Encouraging the constructive involvement of financial institutions;

- Providing immunity from liability for financial institutions and their employees who take action as authorized by the act; and
- Balancing the rights of specified adults to direct and control their assets, funds, and investments and to exercise their constitutional rights consistent with due process against the need to give financial institutions the ability to place narrow, time-limited restrictions on those rights in order to decrease the risk of loss due to abuse, neglect, or financial exploitation.

Subsection (3) authorizes a financial institution that reports suspected financial exploitation of a specified adult to delay a disbursement or transaction if certain criteria are met, and requires the financial institution to make and keep certain records related to the delay.

Subsection (4) creates timeframes for the delay of disbursements or transactions. Delays expire after 15 business days, but may be extended by an additional 30 business days if the financial institution's review of the available facts and circumstances continues to support the reasonable belief of financial exploitation. A court of competent jurisdiction may shorten or extend these timeframes.

Subsection (5) eliminates civil or administrative liability for a financial institution that acts in good faith and exercises reasonable care to comply with the bill.

Subsection (6) creates eligibility requirements that financial institutions must meet prior to delaying a disbursement or transaction under the bill. These requirements include:
- Developing training policies or programs reasonably designed to educate employees on issues pertaining to financial exploitation of specified adults;
- Conducting training for all employees as soon as reasonably practicable and maintaining a written record of all trainings conducted. With respect to an individual who begins employment with a covered financial institution after July 1, 2024, such training must be conducted within 1 year after the person becomes employed.
- Developing, maintaining, and enforcing written procedures regarding the manner in which suspected financial exploitation is reviewed internally, including, if applicable, the manner in which suspected financial exploitation is required to be reported to supervisory personnel.

Subsection (7) clarifies that absent a reasonable belief of financial exploitation, the bill does not otherwise alter a financial institution's obligations to all parties authorized to transact business on an account, and any trusted contact named on such account.

Subsection (8) clarifies that the bill does not create new rights or impose new obligations on a financial institution under other applicable law.

Section 2 provides an effective date of July 1, 2024.

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:

The ability of a financial institution to place a delay on a disbursement or transaction, may decrease losses to account holders who are financially preyed upon because such a delay may prevent the money from ever getting into the hands of the bad actor. Once the bad actor receives the money, it is difficult, or in some cases impossible, to ever recover the money.

The bill may result in increased training and compliance costs for financial institutions.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 415.10341 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.)

CS by Banking and Insurance on January 16, 2024
The CS provides the following changes:

- Allows a financial institution to extend a delay on a disbursement or transaction for an additional 30 days instead of 10 days.
- Revises eligibility requirements, relating to the frequency of training of employees, that financial institutions must meet prior to delaying a disbursement or transaction.
- Eliminates provisions relating to records of financial institutions available for review since state and federal law already address access to these records.

B. Amendments:

None.

By Senator Yarborough

4-00535A-24 2024790__

A bill to be entitled

An act relating to surrendered infants; amending s. 383.50, F.S.; changing the term "newborn infant" to "infant"; increasing the age at which a child is considered an infant; authorizing a parent to leave an infant with medical staff or a licensed health care professional at a hospital after the delivery of the infant, upon the parent giving a certain notification; authorizing a parent to surrender an infant by calling 911 to request that an emergency medical services provider meet the surrendering parent at a specified location; requiring the surrendering parent to stay with the infant until the emergency medical services provider arrives to take custody of the infant; amending ss. 39.01, 39.201, 63.0423, 63.167, 383.51, 827.035, and 827.10, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 383.50, Florida Statutes, is amended to read:

383.50 Treatment of surrendered ~~newborn~~ infant.—

(1) As used in this section, the term "~~newborn~~ infant" means a child who a licensed physician reasonably believes is approximately 30 ~~7~~ days old or younger at the time the child is left at a hospital, an emergency medical services station, or a fire station.

(2) There is a presumption that the parent who leaves the

~~newborn~~ infant in accordance with this section intended to leave the ~~newborn~~ infant and consented to termination of parental rights.

(3) Each emergency medical services station or fire station that is staffed with full-time firefighters, emergency medical technicians, or paramedics shall accept any ~~newborn~~ infant left with a firefighter, an emergency medical technician, or a paramedic. The firefighter, emergency medical technician, or paramedic shall consider these actions as implied consent to and shall:

(a) Provide emergency medical services to the ~~newborn~~ infant to the extent that he or she is trained to provide those services~~,~~; and

(b) Arrange for the immediate transportation of the ~~newborn~~ infant to the nearest hospital having emergency services.

A licensee as defined in s. 401.23, a fire department, or an employee or agent of a licensee or fire department may treat and transport an ~~a newborn~~ infant pursuant to this section. If an ~~a newborn~~ infant is placed in the physical custody of an employee or agent of a licensee or fire department, such placement is ~~shall be~~ considered implied consent for treatment and transport. A licensee, a fire department, or an employee or agent of a licensee or fire department is immune from criminal or civil liability for acting in good faith pursuant to this section. ~~Nothing in~~ This subsection does not limit ~~limits~~ liability for negligence.

(4)(a) After the delivery of an infant in a hospital, a parent of the infant may leave the infant with medical staff or

a licensed health care professional at the hospital if the parent notifies such medical staff or licensed health care professional that the parent is voluntarily surrendering the infant and does not intend to return.

(b) Each hospital of this state subject to s. 395.1041 shall, and any other hospital may, admit and provide all necessary emergency services and care, as defined in s. 395.002(9), to any ~~newborn~~ infant left with the hospital in accordance with this section. The hospital or any of its medical staff or licensed health care professionals shall consider these actions as implied consent for treatment, and a hospital accepting physical custody of an ~~a newborn~~ infant has implied consent to perform all necessary emergency services and care. The hospital or any of its medical staff or licensed health care professionals are ~~is~~ immune from criminal or civil liability for acting in good faith in accordance with this section. ~~Nothing in~~ This subsection does not limit ~~limits~~ liability for negligence.

(5) Except when there is actual or suspected child abuse or neglect, any parent who leaves an ~~a newborn~~ infant with a firefighter, an emergency medical technician, or a paramedic at a fire station or an emergency medical services station, or brings an ~~a newborn~~ infant to an emergency room of a hospital and expresses an intent to leave the ~~newborn~~ infant and not return, has the absolute right to remain anonymous and to leave at any time and may not be pursued or followed unless the parent seeks to reclaim the ~~newborn~~ infant. When an infant is born in a hospital and the mother expresses intent to leave the infant and not return, upon the mother’s request, the hospital or registrar shall complete the infant’s birth certificate without naming the

mother thereon.

(6) A parent of an ~~a newborn~~ infant left at a hospital, an emergency medical services station, or a fire station under this section may claim his or her ~~newborn~~ infant up until the court enters a judgment terminating his or her parental rights. A claim to the ~~newborn~~ infant must be made to the entity having physical or legal custody of the ~~newborn~~ infant or to the circuit court before whom proceedings involving the ~~newborn~~ infant are pending.

(7) Upon admitting an ~~a newborn~~ infant under this section, the hospital shall immediately contact a local licensed child-placing agency or alternatively contact the statewide central abuse hotline for the name of a licensed child-placing agency for purposes of transferring physical custody of the ~~newborn~~ infant. The hospital shall notify the licensed child-placing agency that an ~~a newborn~~ infant has been left with the hospital and approximately when the licensed child-placing agency can take physical custody of the infant ~~child~~. In cases where there is actual or suspected child abuse or neglect, the hospital or any of its medical staff or licensed health care professionals shall report the actual or suspected child abuse or neglect in accordance with ss. 39.201 and 395.1023 in lieu of contacting a licensed child-placing agency.

(8) An ~~Any newborn~~ infant admitted to a hospital in accordance with this section is presumed eligible for coverage under Medicaid, subject to federal rules.

(9) An ~~a newborn~~ infant left at a hospital, an emergency medical services station, or a fire station in accordance with this section may ~~shall~~ not be deemed abandoned and subject to

reporting and investigation requirements under s. 39.201 unless there is actual or suspected child abuse or until the Department of Health takes physical custody of the infant ~~child~~.

(10) If the parent of an infant is unable to surrender the infant in accordance with this section, the parent may call 911 to request that an emergency medical services provider meet the surrendering parent at a specified location. The surrendering parent must stay with the infant until the emergency medical services provider arrives to take custody of the infant.

(11) A criminal investigation may ~~shall~~ not be initiated solely because an ~~a newborn~~ infant is surrendered in accordance with ~~left at a hospital under~~ this section unless there is actual or suspected child abuse or neglect.

Section 2. Subsection (1) and paragraph (e) of subsection (34) of section 39.01, Florida Statutes, are amended to read:

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

(1) "Abandoned" or "abandonment" means 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. For purposes of this subsection, "establish or maintain a substantial and positive relationship" includes, but is not 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. Marginal efforts and incidental or token visits or

communications are not sufficient to establish or maintain a substantial and positive relationship with a child. A man's acknowledgment of paternity of the child does not limit the period of time considered in determining whether the child was abandoned. The term does not include a surrendered ~~newborn~~ infant as described in s. 383.50, a "child in need of services" as defined in chapter 984, or a "family in need of services" as defined in chapter 984. The absence of a parent, legal custodian, or caregiver responsible for a child's welfare, who is a servicemember, by reason of deployment or anticipated deployment as defined in 50 U.S.C. s. 3938(e), may not be considered or used as a factor in determining abandonment. The incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment.

(34) "Harm" to a child's health or welfare can occur when any person:

(e) Abandons the child. Within the context of the definition of "harm," the term "abandoned the child" or "abandonment of the child" means 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. For purposes of this paragraph, "establish or maintain a substantial and positive relationship" includes, but is not 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. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child. The term "abandoned" does not include a surrendered ~~newborn~~ infant as described in s. 383.50, a child in need of services as defined in chapter 984, or a family in need of services as defined in chapter 984. The incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment.

Section 3. Paragraph (e) of subsection (3) of section 39.201, Florida Statutes, is amended to read:

39.201 Required reports of child abuse, abandonment, or neglect, sexual abuse of a child, and juvenile sexual abuse; required reports of death; reports involving a child who has exhibited inappropriate sexual behavior.—

(3) ADDITIONAL CIRCUMSTANCES RELATED TO REPORTS.—

(e) *Surrendered ~~newborn~~ infants.*—

1. The central abuse hotline must receive reports involving surrendered ~~newborn~~ infants as described in s. 383.50.

2.a. A report may not be considered a report of child abuse, abandonment, or neglect solely because the infant has been surrendered in accordance with ~~left at a hospital, emergency medical services station, or fire station under~~ s. 383.50.

b. If the report involving a surrendered ~~newborn~~ infant does not include indications of child abuse, abandonment, or neglect other than that necessarily entailed in the infant

having been surrendered ~~left at a hospital, emergency medical services station, or fire station~~, the central abuse hotline must provide to the person making the report the name of an eligible licensed child-placing agency that is required to accept physical custody of and to place surrendered ~~newborn~~ infants. The department shall provide names of eligible licensed child-placing agencies on a rotating basis.

3. If the report includes indications of child abuse, abandonment, or neglect beyond that necessarily entailed in the infant having been surrendered ~~left at a hospital, emergency medical services station, or fire station~~, the report must be considered as a report of child abuse, abandonment, or neglect and, notwithstanding chapter 383, is subject to s. 39.395 and all other relevant provisions of this chapter.

Section 4. Subsections (1) and (4), paragraph (c) of subsection (7), and subsection (10) of section 63.0423, Florida Statutes, are amended to read:

63.0423 Procedures with respect to surrendered infants.—

(1) Upon entry of final judgment terminating parental rights, a licensed child-placing agency that takes physical custody of an infant surrendered in accordance with ~~at a hospital, emergency medical services station, or fire station pursuant to~~ s. 383.50 assumes responsibility for the medical and other costs associated with the emergency services and care of the surrendered infant from the time the licensed child-placing agency takes physical custody of the surrendered infant.

(4) The parent who surrenders the infant in accordance with s. 383.50 is presumed to have consented to termination of parental rights, and express consent is not required. Except

when there is actual or suspected child abuse or neglect, the licensed child-placing agency may ~~shall~~ not attempt to pursue, search for, or notify that parent as provided in s. 63.088 and chapter 49. For purposes of s. 383.50 and this section, a surrendered ~~an~~ infant who tests positive for illegal drugs, narcotic prescription drugs, alcohol, or other substances, but shows no other signs of child abuse or neglect, shall be placed in the custody of a licensed child-placing agency. Such a placement does not eliminate the reporting requirement under s. 383.50(7). When the department is contacted regarding an infant properly surrendered under this section and s. 383.50, the department shall provide instruction to contact a licensed child-placing agency and may not take custody of the infant unless reasonable efforts to contact a licensed child-placing agency to accept the infant have not been successful.

(7) If a claim of parental rights of a surrendered infant is made before the judgment to terminate parental rights is entered, the circuit court may hold the action for termination of parental rights in abeyance for a period of time not to exceed 60 days.

(c) The court may not terminate parental rights solely on the basis that the parent surrendered ~~left~~ the infant ~~at a hospital, emergency medical services station, or fire station~~ in accordance with s. 383.50.

(10) Except to the extent expressly provided in this section, proceedings initiated by a licensed child-placing agency for the termination of parental rights and subsequent adoption of an infant surrendered ~~a newborn left at a hospital, emergency medical services station, or fire station~~ in

accordance with s. 383.50 shall be conducted pursuant to this chapter.

Section 5. Paragraph (f) of subsection (2) of section 63.167, Florida Statutes, is amended to read:

63.167 State adoption information center.—

(2) The functions of the state adoption information center shall include:

(f) Maintaining a list of licensed child-placing agencies eligible and willing to take custody of and place ~~newborn~~ infants surrendered in accordance with ~~left at a hospital, pursuant to~~ s. 383.50. The names and contact information for the licensed child-placing agencies on the list shall be provided on a rotating basis to the statewide central abuse hotline.

Section 6. Section 383.51, Florida Statutes, is amended to read:

383.51 Confidentiality; identification of parent surrendering ~~leaving newborn~~ infant ~~at hospital, emergency medical services station, or fire station~~.—The identity of a parent who surrenders an ~~leaves a newborn~~ infant ~~at a hospital, emergency medical services station, or fire station~~ in accordance with s. 383.50 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The identity of a parent surrendering an infant ~~leaving a child~~ shall be disclosed to a person claiming to be a parent of the ~~newborn~~ infant.

Section 7. Section 827.035, Florida Statutes, is amended to read:

827.035 ~~Newborn~~ Infants.—It does ~~shall~~ not constitute neglect of a child pursuant to s. 827.03 or contributing to the

dependency of a child pursuant to s. 827.04~~,~~ if a parent surrenders an ~~leaves a newborn~~ infant in accordance ~~at a hospital, emergency medical services station, or fire station or brings a newborn infant to an emergency room and expresses an intent to leave the infant and not return, in compliance~~ with s. 383.50.

Section 8. Subsection (3) of section 827.10, Florida Statutes, is amended to read:

827.10 Unlawful desertion of a child.—

(3) This section does not apply to a person who surrenders an ~~a newborn~~ infant in accordance ~~compliance~~ with s. 383.50.

Section 9. This act shall take effect July 1, 2024.

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.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL:	SB 790
INTRODUCER:	Senator Yarborough
SUBJECT:	Surrendered Infants
DATE:	January 25, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Morgan	Brown	HP	**Favorable**
2.	Rao	Tuszynski	CF	**Pre-meeting**
3.			RC	

I. Summary:

SB 790 modifies statutory provisions relating to surrendered newborn infants, changing the term "newborn infant" to "infant." The age of an infant who may be lawfully surrendered is increased by the bill from up to approximately seven days old to approximately 30 days old.

The bill provides an additional method of lawful surrender by allowing the parent of an infant to dial 911 to request that an emergency medical service (EMS) provider meet at a specified location for surrender of the infant directly to the EMS provider. The bill also clarifies the manner in which a parent may relinquish an infant at a hospital following delivery.

The bill extends immunity from criminal investigation solely because an infant is left with eligible EMS station personnel or at an EMS station or a fire station. The bill also extends immunity from criminal or civil liability to medical staff of a hospital for acting in good faith when accepting a surrendered infant at a hospital in accordance with statutory provisions.

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

II. Present Situation:

Infant Safe Haven Laws

Every state legislature has enacted laws to address infant abandonment and endangerment in response to a reported increase in the abandonment of infants in unsafe locations, such as public restrooms or trash receptacles. Beginning with Texas in 1999, states have enacted these safe haven laws as an incentive for mothers in crisis to safely relinquish their babies at designated

locations where the babies are protected and provided with care until a permanent home is found.[1]

While there is great variability in the laws across states, safe haven laws generally allow the parent, or an agent of the parent, to remain anonymous and to be shielded from criminal liability and prosecution for child endangerment, abandonment, or neglect in exchange for surrendering the baby to a safe haven.[2] Most states designate hospitals, EMS providers, health care facilities, and fire stations as a safe haven. In ten states, emergency medical personnel responding to 911 calls may accept an infant.[3]

The age in which a baby may be lawfully surrendered also varies significantly from state to state. Approximately 23 states accept infants up to 30 days old.[4] Ages in other states range from up to 72 hours to one year.[5]

According to the nonprofit organization known as the National Safe Haven Alliance (NSHA), nearly 5,000 safe haven relinquishments occurred during 1999-2022 nationwide,[6] and 4,706 nationally as of this writing.[7] Illegal abandonments have also occurred during that time span, with some newborns found alive and others deceased. These statistics are unofficial estimates, as there is no federally mandated safe haven report requirement.

Surrender of Newborn Infants in Florida

The Florida Legislature enacted Florida's initial abandoned newborn infant law in 2000.[8] The law created s. 383.50, F.S., and authorized the abandonment of a newborn infant, up to three days old or younger, at a hospital or a fire station and addressed presumption of relinquishment of parental rights, implied consent to treatment, anonymity, and physical custody of the infant.[9]

In 2001, s. 383.50, F.S., was amended to authorize EMS stations, in addition to hospitals and fire stations, as optional locations for the lawful relinquishment of a newborn infant.[10]

In 2008, multiple provisions of the section were modified to refer to "surrendered newborn infant" rather than "abandoned newborn infant."[11] The three-day age limit for surrender of a newborn infant was increased to a seven-day age limit. Additionally, a provision was added to

[1] U.S. Department of Health and Human Services Administration for Families, Children's Bureau, Child Welfare Information Gateway, *Infant Safe Haven Laws*, 2022 (Current through September 2021), *available at* https://www.childwelfare.gov/resources/infant-safe-haven-laws/ (last visited Jan. 24, 2024).
[2] *Id.*
[3] *Id.* Connecticut, Idaho, Illinois, Indiana, Iowa, Louisiana, Minnesota, New Hampshire, Vermont, and Wisconsin.
[4] *Id.* Arizona, Arkansas, Connecticut, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Montana, Nebraska, Nevada, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, and West Virginia.
[5] *Id*.
[6] National Safe Haven Alliance, *2022 Impact Report, available at* https://www.nationalsafehavenalliance.org/_files/ugd/da9676_2c6d678cd51e44528e73b6b0a64ebf49.pdf (last visited Jan. 24, 2024).
[7] Nation Safe Haven Alliance, *available at* https://www.nationalsafehavenalliance.org/our-cause (last visited Jan. 24, 2024).
[8] Chapter 2000-188, L.O.F.
[9] Section 383.50, F.S.
[10] Chapter 2001-53, s. 15, L.O.F.
[11] Chapter 2008-90, s. 4, L.O.F.

indicate that when an infant is born in a hospital and the mother expresses intent to leave the infant and not return, the hospital or registrar is directed, upon her request, to complete the infant's birth certificate without naming the mother.

Under current law, a firefighter, emergency medical technician, or paramedic at a fire station or EMS station that accepts a surrendered newborn infant must arrange for the immediate transportation of the newborn infant to the nearest hospital having emergency services.[12] Upon admitting a surrendered newborn infant, each hospital in this state with emergency services must provide all necessary emergency services and care for the surrendered newborn infant and immediately contact a local licensed child-placing agency (CPA) or the Department of Children and Families' (DCF) statewide abuse hotline for the name of a CPA and transfer custody of the surrendered newborn infant.[13]

A Safe Haven for Newborns[14] reports that over the past 24 years, approximately 443 newborns have been surrendered or abandoned in Florida.[15] Since 2000, 379 newborns have been surrendered in a safe haven hospital, EMS station, or a fire station, and approximately 64 newborns have been abandoned in unsafe places.[16] In 2023, 18 newborns were surrendered to a safe haven and two were abandoned in an unsafe place.[17]

III. Effect of Proposed Changes:

SB 790 amends s. 383.50, F.S., to change the term "newborn infant" to "infant," as well as revise the definition to increase the allowable age of a surrendered infant from approximately seven days old or younger to approximately 30 days old or younger.

The bill clarifies the manner in which a parent may surrender an infant at a hospital. The infant may be left with medical staff or a licensed health care professional after the delivery of the infant in a hospital, if the parent notifies medical staff or a licensed health care professional that the parent is voluntarily surrendering the infant and does not intend to return.

The bill provides another avenue for lawfully surrendering an infant. If the parent is unable to surrender the infant to the appropriate persons at a hospital, EMS station, or fire station, the parent may dial 911 to request that an EMS provider meet the surrendering parent at a specified location. The surrendering parent must stay with the infant until the EMS provider arrives to take custody of the infant.

The bill further provides that a criminal investigation may not be initiated solely because an infant is left with eligible EMS station personnel, or at an EMS station or a fire station in accordance with this section of statute unless there is actual or suspected child abuse or neglect.

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[12] Sections 383.50(3) and 395.1041, F.S.
[13] Sections 395.50(4) and 395.50(7), F.S.
[14] A Safe Haven for Newborns is a program of The Florida M. Silverio Foundation, a 501(c)(3) organization located in Miami, Florida.
[15] A Safe Haven for Newborns, *Safe Haven Statistics*, (last updated Jan. 1, 2024), *available at* https://asafehavenfornewborns.com/what-we-do/safe-haven-statistics/ (last visited Jan. 24, 2024).
[16] *Id*.
[17] *Id*.

This provision currently applies only to an infant left at a hospital. The bill also extends immunity from criminal or civil liability to medical staff of a hospital for acting in good faith when accepting a surrendered infant at a hospital in accordance with statutory provisions.

The bill makes conforming and technical changes related to the revised terminology, immunity extension, and termination of parental rights procedures with respect to surrendered infants.

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

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 383.50, 39.01, 39.201, 63.0423, 63.167, 383.51, 827.035, and 827.10.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Burton

12-00140A-24 20241224__

A bill to be entitled

An act relating to dependent children; amending s. 39.001, F.S.; revising the purposes of chapter 39; requiring the Statewide Guardian ad Litem Office and circuit guardian ad litem offices to participate in the development of a certain state plan; conforming a provision to changes made by the act; amending s. 39.00145, F.S.; authorizing a child's attorney ad litem to inspect certain records; amending s. 39.00146, F.S.; conforming provisions to changes made by the act; amending s. 39.0016, F.S.; requiring a child's guardian ad litem be included in the coordination of certain educational services; amending s. 39.01, F.S.; providing and revising definitions; amending s. 39.013, F.S.; requiring the court to appoint a guardian ad litem for a child at the earliest possible time; authorizing a guardian ad litem to represent a child in other proceedings to secure certain services and benefits; authorizing the court to appoint an attorney ad litem for a child after it makes certain determinations; authorizing an attorney ad litem to represent a child in other proceedings to secure certain services and benefits; amending s. 39.01305, F.S.; revising legislative findings; revising provisions relating to the appointment of an attorney ad litem for certain children; authorizing the court to appoint an attorney ad litem after making certain determinations; providing requirements for the appointment and

discharge of an attorney ad litem; authorizing an attorney ad litem to represent a child in other proceedings to secure certain services and benefits; conforming provisions to changes made by the act; providing applicability; amending s. 39.0132, F.S.; authorizing a child's attorney ad litem to inspect certain records; amending s. 39.0136, F.S.; revising the parties who may request a continuance in a proceeding; amending s. 39.01375, F.S.; conforming provisions to changes made by the act; amending s. 39.0139, F.S.; conforming provisions to changes made by the act; amending s. 39.202, F.S.; requiring that certain confidential records be released to the guardian ad litem and attorney ad litem; conforming a cross-reference; amending s. 39.402, F.S.; requiring parents to consent to provide certain information to the guardian ad litem and attorney ad litem; conforming provisions to changes made by the act; amending s. 39.4022, F.S.; revising the participants who must be invited to a multidisciplinary team staffing; amending s. 39.4023, F.S.; requiring that notice of a multidisciplinary team staffing be provided to a child's guardian ad litem and attorney ad litem; conforming provisions to changes made by the act; amending s. 39.407, F.S.; conforming provisions to changes made by the act; amending s. 39.4085, F.S.; providing a goal of permanency; conforming provisions to changes made by the act; amending ss. 39.502 and 39.522, F.S.; conforming provisions to changes made by

the act; amending s. 39.6012, F.S.; requiring a case plan to include written descriptions of certain activities; conforming a cross-reference; creating s. 39.6036, F.S.; providing legislative findings and intent; requiring the Statewide Guardian ad Litem Office to work with certain children to identify a supportive adult to enter into a specified agreement; requiring such agreement be documented in the child's court file; requiring the office to coordinate with the Office of Continuing Care for a specified purpose; amending s. 39.621, F.S.; conforming provisions to changes made by the act; amending s. 39.6241, F.S.; requiring a guardian ad litem to advise the court regarding certain information and to ensure a certain agreement has been documented in the child's court file; amending s. 39.701, F.S.; requiring certain notice be given to an attorney ad litem; requiring a court to give a guardian ad litem an opportunity to address the court in certain proceedings; requiring the court to inquire and determine if a child has a certain agreement documented in his or her court file at a specified hearing; conforming provisions to changes made by the act; amending s. 39.801, F.S.; conforming provisions to changes made by the act; amending s. 39.807, F.S.; requiring a court to appoint a guardian ad litem to represent a child in certain proceedings; revising a guardian ad litem's responsibilities and authorities; deleting provisions relating to bonds and service of pleadings or papers;

amending s. 39.808, F.S.; conforming provisions to changes made by the act; amending s. 39.815, F.S.; conforming provisions to changes made by the act; repealing s. 39.820, F.S., relating to definitions of the terms "guardian ad litem" and "guardian advocate"; amending s. 39.821, F.S.; conforming provisions to changes made by the act; amending s. 39.822, F.S.; declaring that a guardian ad litem is a fiduciary and must provide independent representation of a child; revising responsibilities of a guardian ad litem; requiring that guardians ad litem have certain access to the children they represent; providing actions that a guardian ad litem does and does not have to fulfill; making technical changes; amending s. 39.827, F.S.; authorizing a child's guardian ad litem and attorney ad litem to inspect certain records; amending s. 39.8296, F.S.; revising the duties and appointment of the executive director of the Statewide Guardian ad Litem Office; requiring the training program for guardians ad litem to be maintained and updated regularly; deleting provisions regarding the training curriculum and the establishment of a curriculum committee; requiring the office to provide oversight and technical assistance to attorneys ad litem; specifying certain requirements of the office; amending s. 39.8297, F.S.; conforming provisions to changes made by the act; amending s. 39.8298, F.S.; authorizing the executive director of the Statewide Guardian ad Litem Office to create or designate local

direct-support organizations; providing responsibilities for the executive director of the office; requiring that certain moneys be held in a separate depository account; conforming provisions to changes made by the act; creating s. 1009.898, F.S.; authorizing the Pathway to Prosperity program to provide certain grants to youth and young adults who are aging out of foster care; requiring grants to extend for a certain period of time after a recipient is reunited with his or her parents; amending ss. 29.008, 39.6011, 40.24, 43.16, 61.402, 110.205, 320.08058, 943.053, 985.43, 985.441, 985.455, 985.461, and 985.48, F.S.; conforming provisions to changes made by the act; amending ss. 39.302, 39.521, 61.13, 119.071, 322.09, 394.495, 627.746, 934.255, and 960.065, F.S.; conforming cross-references; providing a directive to the Division of Law Revision; providing an effective date;

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

Section 1. Paragraph (j) of subsection (1), paragraph (j) of subsection (3), and paragraph (a) of subsection (10) of section 39.001, Florida Statutes, are amended to read:

39.001 Purposes and intent; personnel standards and screening.—

(1) PURPOSES OF CHAPTER.—The purposes of this chapter are:

(j) To ensure that, when reunification or adoption is not possible, the child will be prepared for alternative permanency

goals or placements, to include, but not be limited to, long-term foster care, independent living, custody to a relative on a permanent basis with or without legal guardianship, or custody to a foster parent or legal custodian on a permanent basis with or without legal guardianship. Permanency for a child who is transitioning from foster care to independent living includes naturally occurring, lifelong, kin-like connections between the child and a supportive adult.

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

(j) The ability to contact their guardian ad litem or attorney ad litem, if one is appointed, by having that individual's name entered on all orders of the court.

(10) PLAN FOR COMPREHENSIVE APPROACH.—

(a) The office shall develop a state plan for the promotion of adoption, support of adoptive families, and prevention of abuse, abandonment, and neglect of children. The Department of Children and Families, the Department of Corrections, the Department of Education, the Department of Health, the Department of Juvenile Justice, the Department of Law Enforcement, the Statewide Guardian ad Litem Office, and the Agency for Persons with Disabilities shall participate and fully cooperate in the development of the state plan at both the state and local levels. Furthermore, appropriate local agencies and organizations shall be provided an opportunity to participate in the development of the state plan at the local level. Appropriate local groups and organizations shall include, but not be limited to, community mental health centers; circuit

guardian ad litem offices ~~programs for children under the circuit court~~; the school boards of the local school districts; the Florida local advocacy councils; community-based care lead agencies; private or public organizations or programs with recognized expertise in working with child abuse prevention programs for children and families; private or public organizations or programs with recognized expertise in working with children who are sexually abused, physically abused, emotionally abused, abandoned, or neglected and with expertise in working with the families of such children; private or public programs or organizations with expertise in maternal and infant health care; multidisciplinary Child Protection Teams; child day care centers; law enforcement agencies; and the circuit courts~~,~~ ~~when guardian ad litem programs are not available in the local area~~. The state plan to be provided to the Legislature and the Governor shall include, as a minimum, the information required of the various groups in paragraph (b).

Section 2. Subsection (2) of section 39.00145, Florida Statutes, is amended to read:

39.00145 Records concerning children.—

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

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

one is appointed.

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

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

(d) For the purposes of this subsection, the term "caregiver" is limited to parents, legal custodians, permanent guardians, or foster parents; employees of a residential home, institution, facility, or agency at which the child resides; and other individuals legally responsible for a child's welfare in a residential setting.

Section 3. Paragraph (a) of subsection (2) of section 39.00146, Florida Statutes, is amended to read:

39.00146 Case record face sheet.—

(2) The case record of every child under the supervision or in the custody of the department or the department's authorized agents, including community-based care lead agencies and their subcontracted providers, must include a face sheet containing relevant information about the child and his or her case, including at least all of the following:

(a) General case information, including, but not limited to, all of the following:

1. The child's name and date of birth.~~;~~

2. The current county of residence and the county of residence at the time of the referral.~~;~~

3. The reason for the referral and any family safety concerns.~~;~~

4. The personal identifying information of the parents or legal custodians who had custody of the child at the time of the referral, including name, date of birth, and county of residence.~~;~~

5. The date of removal from the home.~~; and~~

6. The name and contact information of the attorney or attorneys assigned to the case in all capacities, including the attorney or attorneys that represent the department and the parents, and the guardian ad litem~~, if one has been appointed~~.

Section 4. Paragraph (b) of subsection (2) and paragraph (b) of subsection (3) of section 39.0016, Florida Statutes, are amended to read:

39.0016 Education of abused, neglected, and abandoned children; agency agreements; children having or suspected of having a disability.—

(2) AGENCY AGREEMENTS.—

(b) The department shall enter into agreements with district school boards or other local educational entities regarding education and related services for children known to the department who are of school age and children known to the department who are younger than school age but who would otherwise qualify for services from the district school board.

Such agreements must ~~shall~~ include, but are not limited to:

1. A requirement that the department shall:

a. Ensure that children known to the department are enrolled in school or in the best educational setting that meets the needs of the child. The agreement must ~~shall~~ provide for continuing the enrollment of a child known to the department at the school of origin when possible if it is in the best interest of the child, with the goal of minimal disruption of education.

b. Notify the school and school district in which a child known to the department is enrolled of the name and phone number of the child known to the department caregiver and caseworker for child safety purposes.

c. Establish a protocol for the department to share information about a child known to the department with the school district, consistent with the Family Educational Rights and Privacy Act, since the sharing of information will assist each agency in obtaining education and related services for the benefit of the child. The protocol must require the district school boards or other local educational entities to access the department's Florida Safe Families Network to obtain information about children known to the department, consistent with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g.

d. Notify the school district of the department's case planning for a child known to the department, both at the time of plan development and plan review. Within the plan development or review process, the school district may provide information regarding the child known to the department if the school district deems it desirable and appropriate.

e. Show no prejudice against a caregiver who desires to educate at home a child placed in his or her home through the child welfare system.

2. A requirement that the district school board shall:

a. Provide the department with a general listing of the services and information available from the district school board to facilitate educational access for a child known to the department.

b. Identify all educational and other services provided by the school and school district which the school district believes are reasonably necessary to meet the educational needs of a child known to the department.

c. Determine whether transportation is available for a child known to the department when such transportation will avoid a change in school assignment due to a change in residential placement. Recognizing that continued enrollment in the same school throughout the time the child known to the department is in out-of-home care is preferable unless enrollment in the same school would be unsafe or otherwise impractical, the department, the district school board, and the Department of Education shall assess the availability of federal, charitable, or grant funding for such transportation.

d. Provide individualized student intervention or an individual educational plan when a determination has been made through legally appropriate criteria that intervention services are required. The intervention or individual educational plan must include strategies to enable the child known to the department to maximize the attainment of educational goals.

3. A requirement that the department and the district

school board shall cooperate in accessing the services and supports needed for a child known to the department who has or is suspected of having a disability to receive an appropriate education consistent with the Individuals with Disabilities Education Act and state implementing laws, rules, and assurances. Coordination of services for a child known to the department who has or is suspected of having a disability may include:

a. Referral for screening.

b. Sharing of evaluations between the school district and the department where appropriate.

c. Provision of education and related services appropriate for the needs and abilities of the child known to the department.

d. Coordination of services and plans between the school and the residential setting to avoid duplication or conflicting service plans.

e. Appointment of a surrogate parent, consistent with the Individuals with Disabilities Education Act and pursuant to subsection (3), for educational purposes for a child known to the department who qualifies.

f. For each child known to the department 14 years of age and older, transition planning by the department and all providers, including the department's independent living program staff and the guardian ad litem of the child, to meet the requirements of the local school district for educational purposes.

(3) CHILDREN HAVING OR SUSPECTED OF HAVING A DISABILITY.—

(b)1. Each district school superintendent or dependency

court must appoint a surrogate parent for a child known to the department who has or is suspected of having a disability, as defined in s. 1003.01(9), when:

a. After reasonable efforts, no parent can be located; or

b. A court of competent jurisdiction over a child under this chapter has determined that no person has the authority under the Individuals with Disabilities Education Act, including the parent or parents subject to the dependency action, or that no person has the authority, willingness, or ability to serve as the educational decisionmaker for the child without judicial action.

2. A surrogate parent appointed by the district school superintendent or the court must be at least 18 years old and have no personal or professional interest that conflicts with the interests of the student to be represented. Neither the district school superintendent nor the court may appoint an employee of the Department of Education, the local school district, a community-based care provider, the Department of Children and Families, or any other public or private agency involved in the education or care of the child as appointment of those persons is prohibited by federal law. This prohibition includes group home staff and therapeutic foster parents. However, a person who acts in a parental role to a child, such as a foster parent or relative caregiver, is not prohibited from serving as a surrogate parent if he or she is employed by such agency, willing to serve, and knowledgeable about the child and the exceptional student education process. The surrogate parent may be a court-appointed guardian ad litem or a relative or nonrelative adult who is involved in the child's life regardless

of whether that person has physical custody of the child. Each person appointed as a surrogate parent must have the knowledge and skills acquired by successfully completing training using materials developed and approved by the Department of Education to ensure adequate representation of the child.

3. ~~If a guardian ad litem has been appointed for a child,~~ The district school superintendent must first consider the child's guardian ad litem when appointing a surrogate parent. The district school superintendent must accept the appointment of the court if he or she has not previously appointed a surrogate parent. Similarly, the court must accept a surrogate parent duly appointed by a district school superintendent.

4. A surrogate parent appointed by the district school superintendent or the court must be accepted by any subsequent school or school district without regard to where the child is receiving residential care so that a single surrogate parent can follow the education of the child during his or her entire time in state custody. Nothing in this paragraph or in rule shall limit or prohibit the continuance of a surrogate parent appointment when the responsibility for the student's educational placement moves among and between public and private agencies.

5. For a child known to the department, the responsibility to appoint a surrogate parent resides with both the district school superintendent and the court with jurisdiction over the child. If the court elects to appoint a surrogate parent, notice shall be provided as soon as practicable to the child's school. At any time the court determines that it is in the best interests of a child to remove a surrogate parent, the court may

appoint a new surrogate parent for educational decisionmaking purposes for that child.

6. The surrogate parent shall continue in the appointed role until one of the following occurs:

a. The child is determined to no longer be eligible or in need of special programs, except when termination of special programs is being contested.

b. The child achieves permanency through adoption or legal guardianship and is no longer in the custody of the department.

c. The parent who was previously unknown becomes known, whose whereabouts were unknown is located, or who was unavailable is determined by the court to be available.

d. The appointed surrogate no longer wishes to represent the child or is unable to represent the child.

e. The superintendent of the school district in which the child is attending school, the Department of Education contract designee, or the court that appointed the surrogate determines that the appointed surrogate parent no longer adequately represents the child.

f. The child moves to a geographic location that is not reasonably accessible to the appointed surrogate.

7. The appointment and termination of appointment of a surrogate under this paragraph shall be entered as an order of the court with a copy of the order provided to the child's school as soon as practicable.

8. The person appointed as a surrogate parent under this paragraph must:

a. Be acquainted with the child and become knowledgeable about his or her disability and educational needs.

b. Represent the child in all matters relating to identification, evaluation, and educational placement and the provision of a free and appropriate education to the child.

c. Represent the interests and safeguard the rights of the child in educational decisions that affect the child.

9. The responsibilities of the person appointed as a surrogate parent shall not extend to the care, maintenance, custody, residential placement, or any other area not specifically related to the education of the child, unless the same person is appointed by the court for such other purposes.

10. A person appointed as a surrogate parent shall enjoy all of the procedural safeguards afforded a parent with respect to the identification, evaluation, and educational placement of a student with a disability or a student who is suspected of having a disability.

11. A person appointed as a surrogate parent shall not be held liable for actions taken in good faith on behalf of the student in protecting the special education rights of the child.

Section 5. Present subsections (8) through (30) and (31) through (87) of section 39.01, Florida Statutes, are redesignated as subsections (9) through (31) and (34) through (90), respectively, present subsections (9), (36), and (58) are amended, and new subsections (8), (32), and (33) are added to that section, to read:

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

(8) "Attorney ad litem" means an attorney appointed by the court to represent a child in a dependency case who has an attorney-client relationship with the child under the rules

regulating The Florida Bar.

(10) ~~(9)~~ "Caregiver" means the parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child's welfare as defined in subsection (57) ~~(54)~~.

(32) "Guardian ad litem" means a person or an entity that is a fiduciary appointed by the court to represent a child in any civil, criminal, or administrative proceeding to which the child is a party, including, but not limited to, under this chapter, which uses a best interest standard for decisionmaking and advocacy. For purposes of this chapter, the term includes, but is not limited to, the Statewide Guardian ad Litem Office, which includes all circuit guardian ad litem offices and the duly certified volunteers, staff, and attorneys assigned by the Statewide Guardian ad Litem Office to represent children; a court-appointed attorney; or a responsible adult who is appointed by the court. A guardian ad litem is a party to the judicial proceeding as a representative of the child and serves until the jurisdiction of the court over the child terminates or until excused by the court.

(33) "Guardian advocate" means a person appointed by the court to act on behalf of a drug-dependent newborn under part XI of this chapter.

(39) ~~(36)~~ "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect in which the person allegedly perpetrating the child abuse or neglect is an employee of a public or private school, public or private day care center, residential home, institution, facility, or agency or any other person at such institution responsible for the

child's welfare as defined in subsection (57) ~~(54)~~.

(61)~~(58)~~ "Party" means the parent or parents of the child, the petitioner, the department, the guardian ad litem ~~or the representative of the guardian ad litem program when the program has been appointed~~, and the child. The presence of the child may be excused by order of the court when presence would not be in the child's best interest. Notice to the child may be excused by order of the court when the age, capacity, or other condition of the child is such that the notice would be meaningless or detrimental to the child.

Section 6. Subsection (11) of section 39.013, Florida Statutes, is amended, and subsection (14) is added to that section, to read:

39.013 Procedures and jurisdiction; right to counsel; guardian ad litem and attorney ad litem.—

(11) The court shall appoint a guardian ad litem at the earliest possible time to represent a child throughout the proceedings, including any appeals. The guardian ad litem may represent the child in proceedings outside of the dependency case to secure the services and benefits that provide for the care, safety, and protection of the child ~~encourage the Statewide Guardian Ad Litem Office to provide greater representation to those children who are within 1 year of transferring out of foster care~~.

(14) The court may appoint an attorney ad litem for a child if the court believes the child is in need of such representation and determines that the child has a rational and factual understanding of the proceedings and sufficient present ability to consult with an attorney with a reasonable degree of

rational understanding. The attorney ad litem may represent the child in proceedings outside of the dependency case to secure services and benefits that provide for the care, safety, and protection of the child.

Section 7. Section 39.01305, Florida Statutes, is amended to read:

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

(1)~~(a)~~ The Legislature finds that~~:~~

~~1.~~ all children in proceedings under this chapter have important interests at stake, such as health, safety, and well-being and the need to obtain permanency. While such children are represented by the Statewide Guardian ad Litem Office using a best interest standard of decisionmaking and advocacy, some children may also need representation by an attorney ad litem in proceedings under this chapter.

(2) The court may appoint an attorney ad litem for a child if the court believes the child is in need of such representation and determines that the child has a rational and factual understanding of the proceedings and sufficient present ability to consult with an attorney with a reasonable degree of rational understanding.

~~2. A dependent child who has certain special needs has a particular need for an attorney to represent the dependent child in proceedings under this chapter, as well as in fair hearings and appellate proceedings, so that the attorney may address the child's medical and related needs and the services and supports necessary for the child to live successfully in the community.~~

~~(b) The Legislature recognizes the existence of~~

~~organizations that provide attorney representation to children in certain jurisdictions throughout the state. Further, the statewide Guardian Ad Litem Program provides best interest representation for dependent children in every jurisdiction in accordance with state and federal law. The Legislature, therefore, does not intend that funding provided for representation under this section supplant proven and existing organizations representing children. Instead, the Legislature intends that funding provided for representation under this section be an additional resource for the representation of more children in these jurisdictions, to the extent necessary to meet the requirements of this chapter, with the cooperation of existing local organizations or through the expansion of those organizations. The Legislature encourages the expansion of pro bono representation for children. This section is not intended to limit the ability of a pro bono attorney to appear on behalf of a child.~~

~~(2) As used in this section, the term "dependent child" means a child who is subject to any proceeding under this chapter. The term does not require that a child be adjudicated dependent for purposes of this section.~~

~~(3) An attorney shall be appointed for a dependent child who:~~

~~(a) Resides in a skilled nursing facility or is being considered for placement in a skilled nursing home;~~

~~(b) Is prescribed a psychotropic medication but declines assent to the psychotropic medication;~~

~~(c) Has a diagnosis of a developmental disability as defined in s. 393.063;~~

~~(d) Is being placed in a residential treatment center or being considered for placement in a residential treatment center; or~~

~~(e) Is a victim of human trafficking as defined in s. 787.06(2)(d).~~

(3)(a) ~~(4)(a)~~ Before a court may appoint an attorney ad litem~~,~~ who may be compensated pursuant to this section, the court must request a recommendation from the Statewide Guardian ad Litem Office for an attorney who is willing to represent a child without additional compensation. If such an attorney is available within 15 days after the court's request, the court must appoint that attorney. However, the court may appoint a compensated attorney within the 15-day period if the Statewide Guardian ad Litem Office informs the court that the office is unable ~~it will not be able~~ to recommend an attorney within that time period.

(b) A court order appointing ~~After~~ an attorney ad litem must be in writing. ~~is appointed, the appointment continues in effect until the attorney is allowed to withdraw or is discharged by~~ The court must discharge ~~or until the case is dismissed.~~ an attorney ad litem who is appointed under this section if the need for such representation is resolved. The attorney ad litem may represent the child in proceedings outside of the dependency case to secure services and benefits that provide for the care, safety, and protection of the child ~~to represent the child shall provide the complete range of legal services, from the removal from home or from the initial appointment through all available appellate proceedings~~. With the permission of the court, the attorney ad litem ~~for the~~

~~dependent child~~ may arrange for supplemental or separate counsel to represent the child in appellate proceedings. ~~A court order appointing an attorney under this section must be in writing.~~

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

~~(6) The department shall develop procedures to identify a dependent child who has a special need specified under subsection (3) and to request that a court appoint an attorney for the child.~~

~~(7) The department may adopt rules to administer this section.~~

~~(8) This section does not limit the authority of the court to appoint an attorney for a dependent child in a proceeding under this chapter.~~

(5)~~(9)~~ Implementation of this section is subject to appropriations expressly made for that purpose.

Section 8. The amendments made by this act to s. 39.01305, Florida Statutes, apply only to attorney ad litem appointments made on or after July 1, 2024.

Section 9. Subsection (3) of section 39.0132, Florida Statutes, is amended to read:

39.0132 Oaths, records, and confidential information.—

(3) The clerk shall keep all court records required by this chapter separate from other records of the circuit court. All court records required by this chapter may ~~shall~~ not be open to inspection by the public. All records may ~~shall~~ be inspected only upon order of the court by persons deemed by the court to have a proper interest therein, except that, subject to ~~the provisions of~~ s. 63.162, a child, ~~and~~ the parents of the child and their attorneys, the guardian ad litem, criminal conflict and civil regional counsels, law enforcement agencies, ~~and~~ the department and its designees, and the attorney ad litem, if one is appointed, ~~shall~~ always have the right to inspect and copy any official record pertaining to the child. The Justice Administrative Commission may inspect court dockets required by this chapter as necessary to audit compensation of court-appointed attorneys ad litem. If the docket is insufficient for purposes of the audit, the commission may petition the court for additional documentation as necessary and appropriate. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, under whatever conditions upon their use and disposition the court may deem proper, and may punish by contempt proceedings any violation of those conditions.

Section 10. Paragraph (a) of subsection (3) of section 39.0136, Florida Statutes, is amended to read:

39.0136 Time limitations; continuances.—

(3) The time limitations in this chapter do not include:

(a) Periods of delay resulting from a continuance granted at the request of the child's counsel, ~~or the child's~~ guardian ad litem, or attorney ad litem, if one is appointed~~, if the child is of sufficient capacity to express reasonable consent, at the request or with the consent of the child~~. The court must consider the best interests of the child when determining periods of delay under this section.

Section 11. Subsection (7) of section 39.01375, Florida Statutes, is amended to read:

39.01375 Best interest determination for placement.—The department, community-based care lead agency, or court shall consider all of the following factors when determining whether a proposed placement under this chapter is in the child's best interest:

(7) The recommendation of the child's guardian ad litem~~, if one has been appointed~~.

Section 12. Paragraphs (a) and (b) of subsection (4) of section 39.0139, Florida Statutes, are amended to read:

39.0139 Visitation or other contact; restrictions.—

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

(a) Before ~~Prior to~~ the hearing, the court shall appoint ~~an attorney ad litem or~~ a guardian ad litem for the child if one has not already been appointed. The guardian ad litem and ~~Any~~ attorney ad litem, if one is ~~or guardian ad litem~~ appointed, must ~~shall~~ have special training in the dynamics of child sexual

abuse.

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

Section 13. Paragraphs (d) and (t) of subsection (2) of section 39.202, Florida Statutes, are amended to read:

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

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

(d) The parent or legal custodian of any child who is alleged to have been abused, abandoned, or neglected; the child; the child's guardian ad litem; the child's attorney ad litem, if one is appointed; or~~, and the child, and their attorneys,~~ ~~including~~ any attorney representing a child in civil or criminal proceedings. This access must ~~shall~~ be made available no later than 60 days after the department receives the initial report of abuse, neglect, or abandonment. However, any information otherwise made confidential or exempt by law may ~~shall~~ not be released pursuant to this paragraph.

(t) Persons with whom the department is seeking to place

the child or to whom placement has been granted, including foster parents for whom an approved home study has been conducted, the designee of a licensed child-caring agency as defined in s. 39.01 ~~s. 39.01(41)~~, an approved relative or nonrelative with whom a child is placed pursuant to s. 39.402, preadoptive parents for whom a favorable preliminary adoptive home study has been conducted, adoptive parents, or an adoption entity acting on behalf of preadoptive or adoptive parents.

Section 14. Paragraph (c) of subsection (8), paragraphs (b) and (c) of subsection (11), and paragraph (a) of subsection (14) of section 39.402, Florida Statutes, are amended to read:

39.402 Placement in a shelter.—

(8)

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

1. Appoint a guardian ad litem to represent the best interest of the child~~, unless the court finds that such representation is unnecessary~~;

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

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

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

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

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

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

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

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

f. Whether a man is named on the birth certificate of the child pursuant to s. 382.013(2).

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

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

(11)

(b) The court shall request that the parents consent to provide access to the child's medical records and provide information to the court, the department or its contract agencies, and <u>the</u> ~~any~~ guardian ad litem or attorney <u>ad litem, if one is appointed,</u> for the child. If a parent is unavailable or unable to consent or withholds consent and the court determines

access to the records and information is necessary to provide services to the child, the court shall issue an order granting access. The court may also order the parents to provide all known medical information to the department and to any others granted access under this subsection.

(c) The court shall request that the parents consent to provide access to the child's child care records, early education program records, or other educational records and provide information to the court, the department or its contract agencies, and the ~~any~~ guardian ad litem or attorney ad litem, if one is appointed, for the child. If a parent is unavailable or unable to consent or withholds consent and the court determines access to the records and information is necessary to provide services to the child, the court shall issue an order granting access.

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

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

Section 15. Paragraphs (a) and (b) of subsection (4) of section 39.4022, Florida Statutes, are amended to read:

39.4022 Multidisciplinary teams; staffings; assessments; report.—

(4) PARTICIPANTS.—

(a) Collaboration among diverse individuals who are part of

the child's network is necessary to make the most informed decisions possible for the child. A diverse team is preferable to ensure that the necessary combination of technical skills, cultural knowledge, community resources, and personal relationships is developed and maintained for the child and family. The participants necessary to achieve an appropriately diverse team for a child may vary by child and may include extended family, friends, neighbors, coaches, clergy, coworkers, or others the family identifies as potential sources of support.

1. Each multidisciplinary team staffing must invite the following members:

a. The child, unless he or she is not of an age or capacity to participate in the team, and the child's guardian ad litem;

b. The child's family members and other individuals identified by the family as being important to the child, provided that a parent who has a no contact order or injunction, is alleged to have sexually abused the child, or is subject to a termination of parental rights may not participate;

c. The current caregiver, provided the caregiver is not a parent who meets the criteria of one of the exceptions under sub-subparagraph b.;

d. A representative from the department other than the Children's Legal Services attorney, when the department is directly involved in the goal identified by the staffing;

e. A representative from the community-based care lead agency, when the lead agency is directly involved in the goal identified by the staffing;

f. The case manager for the child, or his or her case manager supervisor; and

g. A representative from the Department of Juvenile Justice, if the child is dually involved with both the department and the Department of Juvenile Justice.

2. The multidisciplinary team must make reasonable efforts to have all mandatory invitees attend. However, the multidisciplinary team staffing may not be delayed if the invitees in subparagraph 1. fail to attend after being provided reasonable opportunities.

(b) Based on the particular goal the multidisciplinary team staffing identifies as the purpose of convening the staffing as provided under subsection (5), the department or lead agency may also invite to the meeting other professionals, including, but not limited to:

1. A representative from Children's Medical Services;

~~2. A guardian ad litem, if one is appointed;~~

2.~~3.~~ A school personnel representative who has direct contact with the child;

3.~~4.~~ A therapist or other behavioral health professional, if applicable;

4.~~5.~~ A mental health professional with expertise in sibling bonding, if the department or lead agency deems such expert is necessary; or

5.~~6.~~ Other community providers of services to the child or stakeholders, when applicable.

Section 16. Paragraph (d) of subsection (3) and paragraph (c) of subsection (4) of section 39.4023, Florida Statutes, are amended to read:

39.4023 Placement and education transitions; transition plans.—

(3) PLACEMENT TRANSITIONS.—

(d) *Transition planning.*—

1. If the supportive services provided pursuant to paragraph (c) have not been successful to make the maintenance of the placement suitable or if there are other circumstances that require the child to be moved, the department or the community-based care lead agency must convene a multidisciplinary team staffing as required under s. 39.4022 before the child's placement is changed, or within 72 hours of moving the child in an emergency situation, for the purpose of developing an appropriate transition plan.

2. A placement change may occur immediately in an emergency situation without convening a multidisciplinary team staffing. However, a multidisciplinary team staffing must be held within 72 hours after the emergency situation arises.

3. The department or the community-based care lead agency must provide written notice of the planned move at least 14 days before the move or within 72 hours after an emergency situation, to the greatest extent possible and consistent with the child's needs and preferences. The notice must include the reason a placement change is necessary. A copy of the notice must be filed with the court and be provided to all of the following:

a. The child, unless he or she, due to age or capacity, is unable to comprehend the written notice, which will necessitate the department or lead agency to provide notice in an age-appropriate and capacity-appropriate alternative manner.~~;~~

b. The child's parents, unless prohibited by court order.~~;~~

c. The child's out-of-home caregiver.~~;~~

d. The guardian ad litem.~~, if one is appointed;~~

e. The attorney ad litem for the child, if one is appointed.~~; and~~

f. The attorney for the department.

4. The transition plan must be developed through cooperation among the persons included in subparagraph 3., and such persons must share any relevant information necessary for its development. Subject to the child's needs and preferences, the transition plan must meet the requirements of s. 409.1415(2)(b)8. and exclude any placement changes that occur between 7 p.m. and 8 a.m.

5. The department or the community-based care lead agency shall file the transition plan with the court within 48 hours after the creation of such plan and provide a copy of the plan to the persons included in subparagraph 3.

(4) EDUCATION TRANSITIONS.—

(c) *Minimizing school changes.*—

1. Every effort must be made to keep a child in the school of origin if it is in the child's best interest. Any placement decision must include thoughtful consideration of which school a child will attend if a school change is necessary.

2. Members of a multidisciplinary team staffing convened for a purpose other than a school change must determine the child's best interest regarding remaining in the school or program of origin if the child's educational options are affected by any other decision being made by the multidisciplinary team.

3. The determination of whether it is in the child's best interest to remain in the school of origin, and if not, of which school the child will attend in the future, must be made in

consultation with the following individuals, including, but not limited to, the child; the parents; the caregiver; the child welfare professional; the guardian ad litem~~, if appointed~~; the educational surrogate, if appointed; child care and educational staff, including teachers and guidance counselors; and the school district representative or foster care liaison. A multidisciplinary team member may contact any of these individuals in advance of a multidisciplinary team staffing to obtain his or her recommendation. An individual may remotely attend the multidisciplinary team staffing if one of the identified goals is related to determining an educational placement. The multidisciplinary team may rely on a report from the child's current school or program district and, if applicable, any other school district being considered for the educational placement if the required school personnel are not available to attend the multidisciplinary team staffing in person or remotely.

4. The multidisciplinary team and the individuals listed in subparagraph 3. must consider, at a minimum, all of the following factors when determining whether remaining in the school or program of origin is in the child's best interest or, if not, when selecting a new school or program:

a. The child's desire to remain in the school or program of origin.

b. The preference of the child's parents or legal guardians.

c. Whether the child has siblings, close friends, or mentors at the school or program of origin.

d. The child's cultural and community connections in the

school or program of origin.

e. Whether the child is suspected of having a disability under the Individuals with Disabilities Education Act (IDEA) or s. 504 of the Rehabilitation Act of 1973, or has begun receiving interventions under this state's multitiered system of supports.

f. Whether the child has an evaluation pending for special education and related services under IDEA or s. 504 of the Rehabilitation Act of 1973.

g. Whether the child is a student with a disability under IDEA who is receiving special education and related services or a student with a disability under s. 504 of the Rehabilitation Act of 1973 who is receiving accommodations and services and, if so, whether those required services are available in a school or program other than the school or program of origin.

h. Whether the child is an English Language Learner student and is receiving language services and, if so, whether those required services are available in a school or program other than the school or program of origin.

i. The impact a change to the school or program of origin would have on academic credits and progress toward promotion.

j. The availability of extracurricular activities important to the child.

k. The child's known individualized educational plan or other medical and behavioral health needs and whether such plan or needs are able to be met at a school or program other than the school or program of origin.

l. The child's permanency goal and timeframe for achieving permanency.

m. The child's history of school transfers and how such

transfers have impacted the child academically, emotionally, and behaviorally.

n. The length of the commute to the school or program from the child's home or placement and how such commute would impact the child.

o. The length of time the child has attended the school or program of origin.

5. The cost of transportation cannot be a factor in making a best interest determination.

Section 17. Paragraph (f) of subsection (3) of section 39.407, Florida Statutes, is amended to read:

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

(3)

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

2. The court may, in the best interests of the child, order

the department to obtain a medical opinion addressing whether the continued use of the medication under the circumstances is safe and medically appropriate.

Section 18. Paragraphs (m), (t), and (u) of subsection (1) of section 39.4085, Florida Statutes, are amended to read:

39.4085 Goals for dependent children; responsibilities; education; Office of the Children's Ombudsman.—

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

(m) To receive meaningful case management and planning that will quickly return the child to his or her family or move the child on to other forms of permanency. For a child who is transitioning from foster care to independent living, permanency includes establishing naturally occurring, lifelong, kin-like connections between the child and a supportive adult.

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

(u) To have all their records available for review by their guardian ad litem or ~~and~~ attorney ad litem, if one is appointed, if they deem such review necessary.

This subsection establishes goals and not rights. This subsection does not require the delivery of any particular service or level of service in excess of existing appropriations. A person does not have a cause of action against the state or any of its subdivisions, agencies, contractors, subcontractors, or agents, based upon the adoption of or failure to provide adequate funding for the achievement of these goals by the Legislature. This subsection does not require the expenditure of funds to meet the goals established in this subsection except those funds specifically appropriated for such purpose.

Section 19. Subsection (8) of section 39.502, Florida Statutes, is amended to read:

39.502 Notice, process, and service.—

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

Section 20. Paragraph (c) of subsection (3) of section 39.522, Florida Statutes, is amended to read:

39.522 Postdisposition change of custody.—

(3)

(c)1. The department or community-based care lead agency must notify a current caregiver who has been in the physical custody placement for at least 9 consecutive months and who

meets all the established criteria in paragraph (b) of an intent to change the physical custody of the child, and a multidisciplinary team staffing must be held in accordance with ss. 39.4022 and 39.4023 at least 21 days before the intended date for the child's change in physical custody, unless there is an emergency situation as defined in s. 39.4022(2)(b). If there is not a unanimous consensus decision reached by the multidisciplinary team, the department's official position must be provided to the parties within the designated time period as provided for in s. 39.4022.

2. A caregiver who objects to the department's official position on the change in physical custody must notify the court and the department or community-based care lead agency of his or her objection and the intent to request an evidentiary hearing in writing in accordance with this section within 5 days after receiving notice of the department's official position provided under subparagraph 1. The transition of the child to the new caregiver may not begin before the expiration of the 5-day period within which the current caregiver may object.

3. Upon the department or community-based care lead agency receiving written notice of the caregiver's objection, the change to the child's physical custody must be placed in abeyance and the child may not be transitioned to a new physical placement without a court order, unless there is an emergency situation as defined in s. 39.4022(2)(b).

4. Within 7 days after receiving written notice from the caregiver, the court must conduct an initial case status hearing, at which time the court must <u>do all of the following</u>:

a. Grant party status to the current caregiver who is

seeking permanent custody and has maintained physical custody of that child for at least 9 continuous months for the limited purpose of filing a motion for a hearing on the objection and presenting evidence pursuant to this subsection.~~;~~

~~b. Appoint an attorney for the child who is the subject of the permanent custody proceeding, in addition to the guardian ad litem, if one is appointed;~~

b.~~c.~~ Advise the caregiver of his or her right to retain counsel for purposes of the evidentiary hearing.~~; and~~

c.~~d.~~ Appoint a court-selected neutral and independent licensed professional with expertise in the science and research of child-parent bonding.

Section 21. Paragraph (c) of subsection (1) and paragraph (c) of subsection (3) of section 39.6012, Florida Statutes, are amended to read:

39.6012 Case plan tasks; services.—

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

(c) If there is evidence of harm as defined in s. 39.01(37)(g) ~~s. 39.01(34)(g)~~, the case plan must include as a required task for the parent whose actions caused the harm that the parent submit to a substance abuse disorder assessment or evaluation and participate and comply with treatment and services identified in the assessment or evaluation as being necessary.

(3) In addition to any other requirement, if the child is in an out-of-home placement, the case plan must include:

(c) When appropriate, for a child who is 13 years of age or older, a written description of the programs and services that

will help the child prepare for the transition from foster care to independent living. The written description must include age-appropriate activities for the child's development of relationships, coping skills, and emotional well-being.

Section 22. Section 39.6036, Florida Statutes, is created to read:

39.6036 Supportive adults for children transitioning out of foster care.—

(1) The Legislature finds that a committed, caring adult provides a lifeline for a child transitioning out of foster care to live independently. Accordingly, it is the intent of the Legislature that the Statewide Guardian ad Litem Office help children connect with supportive adults with the hope of creating an ongoing relationship that lasts into adulthood.

(2) The Statewide Guardian ad Litem Office shall work with a child who is transitioning out of foster care to identify at least one supportive adult with whom the child can enter into a formal agreement for an ongoing relationship and document such agreement in the child's court file. If the child cannot identify a supportive adult, the Statewide Guardian ad Litem Office shall work in coordination with the Office of Continuing Care to identify at least one supportive adult with whom the child can enter into a formal agreement for an ongoing relationship and document such agreement in the child's court file.

Section 23. Paragraph (c) of subsection (10) of section 39.621, Florida Statutes, is amended to read:

39.621 Permanency determination by the court.—

(10) The permanency placement is intended to continue until

the child reaches the age of majority and may not be disturbed absent a finding by the court that the circumstances of the permanency placement are no longer in the best interest of the child.

(c) The court shall base its decision concerning any motion by a parent for reunification or increased contact with a child on the effect of the decision on the safety, well-being, and physical and emotional health of the child. Factors that must be considered and addressed in the findings of fact of the order on the motion must include:

1. The compliance or noncompliance of the parent with the case plan;

2. The circumstances which caused the child's dependency and whether those circumstances have been resolved;

3. The stability and longevity of the child's placement;

4. The preferences of the child, if the child is of sufficient age and understanding to express a preference;

5. The recommendation of the current custodian; and

6. Any ~~The~~ recommendation of the guardian ad litem~~, if one has been appointed~~.

Section 24. Subsection (2) of section 39.6241, Florida Statutes, is amended to read:

39.6241 Another planned permanent living arrangement.—

(2) The department and the guardian ad litem must provide the court with a recommended list and description of services needed by the child, such as independent living services and medical, dental, educational, or psychological referrals, and a recommended list and description of services needed by his or her caregiver. The guardian ad litem must also advise the court

whether the child has been connected with a supportive adult and, if the child has been connected with a supportive adult, whether the child has entered into a formal agreement with the adult. If the child has entered into a formal agreement pursuant to s. 39.6036, the guardian ad litem must ensure that the agreement is documented in the child's court file.

Section 25. Paragraphs (b) and (f) of subsection (1), paragraph (c) of subsection (2), subsection (3), and paragraph (e) of subsection (4) of section 39.701, Florida Statutes, are amended to read:

39.701 Judicial review.—

(1) GENERAL PROVISIONS.—

(b)1. The court shall retain jurisdiction over a child returned to his or her parents for a minimum period of 6 months after ~~following~~ the reunification, but, at that time, based on a report of the social service agency and the guardian ad litem~~, if one has been appointed,~~ and any other relevant factors, the court shall make a determination as to whether supervision by the department and the court's jurisdiction shall continue or be terminated.

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

(f) Notice of a judicial review hearing or a citizen review panel hearing, and a copy of the motion for judicial review, if any, must be served by the clerk of the court upon all of the following persons, if available to be served, regardless of

whether the person was present at the previous hearing at which the date, time, and location of the hearing was announced:

1. The social service agency charged with the supervision of care, custody, or guardianship of the child, if that agency is not the movant.

2. The foster parent or legal custodian in whose home the child resides.

3. The parents.

4. The guardian ad litem for the child~~, or the representative of the guardian ad litem program if the program has been appointed~~.

5. The attorney ad litem for the child, if one is appointed.

6. The child, if the child is 13 years of age or older.

7. Any preadoptive parent.

8. Such other persons as the court may direct.

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

(c) *Review determinations.*—The court and any citizen review panel shall take into consideration the information contained in the social services study and investigation and all medical, psychological, and educational records that support the terms of the case plan; testimony by the social services agency, the parent, the foster parent or caregiver, the guardian ad litem, the ~~or~~ surrogate parent for educational decisionmaking if one has been appointed for the child, and any other person deemed appropriate; and any relevant and material evidence submitted to the court, including written and oral reports to the extent of their probative value. These reports and evidence may be

received by the court in its effort to determine the action to be taken with regard to the child and may be relied upon to the extent of their probative value, even though not competent in an adjudicatory hearing. In its deliberations, the court and any citizen review panel shall seek to determine:

1. If the parent was advised of the right to receive assistance from any person or social service agency in the preparation of the case plan.

2. If the parent has been advised of the right to have counsel present at the judicial review or citizen review hearings. If not so advised, the court or citizen review panel shall advise the parent of such right.

3. If a guardian ad litem needs to be appointed for the child in a case in which a guardian ad litem has not previously been appointed ~~or if there is a need to continue a guardian ad litem in a case in which a guardian ad litem has been appointed~~.

4. Who holds the rights to make educational decisions for the child. If appropriate, the court may refer the child to the district school superintendent for appointment of a surrogate parent or may itself appoint a surrogate parent under the Individuals with Disabilities Education Act and s. 39.0016.

5. The compliance or lack of compliance of all parties with applicable items of the case plan, including the parents' compliance with child support orders.

6. The compliance or lack of compliance with a visitation contract between the parent and the social service agency for contact with the child, including the frequency, duration, and results of the parent-child visitation and the reason for any noncompliance.

7. The frequency, kind, and duration of contacts among siblings who have been separated during placement, as well as any efforts undertaken to reunite separated siblings if doing so is in the best interests of the child.

8. The compliance or lack of compliance of the parent in meeting specified financial obligations pertaining to the care of the child, including the reason for failure to comply, if applicable.

9. Whether the child is receiving safe and proper care according to s. 39.6012, including, but not limited to, the appropriateness of the child's current placement, including whether the child is in a setting that is as family-like and as close to the parent's home as possible, consistent with the child's best interests and special needs, and including maintaining stability in the child's educational placement, as documented by assurances from the community-based care lead agency that:

a. The placement of the child takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement.

b. The community-based care lead agency has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement.

10. A projected date likely for the child's return home or other permanent placement.

11. When appropriate, the basis for the unwillingness or inability of the parent to become a party to a case plan. The

court and the citizen review panel shall determine if the efforts of the social service agency to secure party participation in a case plan were sufficient.

12. For a child who has reached 13 years of age but is not yet 18 years of age, the adequacy of the child's preparation for adulthood and independent living. For a child who is 15 years of age or older, the court shall determine if appropriate steps are being taken for the child to obtain a driver license or learner's driver license.

13. If amendments to the case plan are required. Amendments to the case plan must be made under s. 39.6013.

14. If the parents and caregivers have developed a productive relationship that includes meaningful communication and mutual support.

(3) REVIEW HEARINGS FOR CHILDREN 16 AND 17 YEARS OF AGE.—At each review hearing held under this subsection, the court shall give the child and the guardian ad litem the opportunity to address the court and provide any information relevant to the child's best interest, particularly in relation to independent living transition services. The foster parent or~~,~~ legal custodian~~, or guardian ad litem~~ may also provide any information relevant to the child's best interest to the court. In addition to the review and report required under paragraphs (1)(a) and (2)(a), respectively, and the review and report required under s. 39.822(2)(a)2., the court shall:

(a) Inquire about the life skills the child has acquired and whether those services are age appropriate, at the first judicial review hearing held subsequent to the child's 16th birthday. At the judicial review hearing, the department shall

provide the court with a report that includes specific information related to the life skills that the child has acquired since the child's 13th birthday or since the date the child came into foster care, whichever came later. For any child who may meet the requirements for appointment of a guardian advocate under s. 393.12 or a guardian under chapter 744, the updated case plan must be developed in a face-to-face conference with the child, if appropriate; the child's attorney ad litem, if one is appointed; the child's~~; any court-appointed~~ guardian ad litem; the temporary custodian of the child; and the parent of the child, if the parent's rights have not been terminated.

(b) The court shall hold a judicial review hearing within 90 days after a child's 17th birthday. The court shall issue an order, separate from the order on judicial review, that the disability of nonage of the child has been removed under ss. 743.044-743.047 for any disability that the court finds is in the child's best interest to remove. The department shall include in the social study report for the first judicial review that occurs after the child's 17th birthday written verification that the child has:

1. A current Medicaid card and all necessary information concerning the Medicaid program sufficient to prepare the child to apply for coverage upon reaching the age of 18, if such application is appropriate.

2. A certified copy of the child's birth certificate and, if the child does not have a valid driver license, a Florida identification card issued under s. 322.051.

3. A social security card and information relating to social security insurance benefits if the child is eligible for

those benefits. If the child has received such benefits and they are being held in trust for the child, a full accounting of these funds must be provided and the child must be informed as to how to access those funds.

4. All relevant information related to the Road-to-Independence Program under s. 409.1451, including, but not limited to, eligibility requirements, information on participation, and assistance in gaining admission to the program. If the child is eligible for the Road-to-Independence Program, he or she must be advised that he or she may continue to reside with the licensed family home or group care provider with whom the child was residing at the time the child attained his or her 18th birthday, in another licensed family home, or with a group care provider arranged by the department.

5. An open bank account or the identification necessary to open a bank account and to acquire essential banking and budgeting skills.

6. Information on public assistance and how to apply for public assistance.

7. A clear understanding of where he or she will be living on his or her 18th birthday, how living expenses will be paid, and the educational program or school in which he or she will be enrolled.

8. Information related to the ability of the child to remain in care until he or she reaches 21 years of age under s. 39.013.

9. A letter providing the dates that the child is under the jurisdiction of the court.

10. A letter stating that the child is in compliance with

financial aid documentation requirements.

11. The child's educational records.

12. The child's entire health and mental health records.

13. The process for accessing the child's case file.

14. A statement encouraging the child to attend all judicial review hearings.

15. Information on how to obtain a driver license or learner's driver license.

(c) At the first judicial review hearing held subsequent to the child's 17th birthday, if the court determines pursuant to chapter 744 that there is a good faith basis to believe that the child qualifies for appointment of a guardian advocate, limited guardian, or plenary guardian for the child and that no less restrictive decisionmaking assistance will meet the child's needs:

1. The department shall complete a multidisciplinary report which must include, but is not limited to, a psychosocial evaluation and educational report if such a report has not been completed within the previous 2 years.

2. The department shall identify one or more individuals who are willing to serve as the guardian advocate under s. 393.12 or as the plenary or limited guardian under chapter 744. Any other interested parties or participants may make efforts to identify such a guardian advocate, limited guardian, or plenary guardian. The child's biological or adoptive family members, including the child's parents if the parents' rights have not been terminated, may not be considered for service as the plenary or limited guardian unless the court enters a written order finding that such an appointment is in the child's best

interests.

3. Proceedings may be initiated within 180 days after the child's 17th birthday for the appointment of a guardian advocate, plenary guardian, or limited guardian for the child in a separate proceeding in the court division with jurisdiction over guardianship matters and pursuant to chapter 744. The Legislature encourages the use of pro bono representation to initiate proceedings under this section.

4. In the event another interested party or participant initiates proceedings for the appointment of a guardian advocate, plenary guardian, or limited guardian for the child, the department shall provide all necessary documentation and information to the petitioner to complete a petition under s. 393.12 or chapter 744 within 45 days after the first judicial review hearing after the child's 17th birthday.

5. Any proceedings seeking appointment of a guardian advocate or a determination of incapacity and the appointment of a guardian must be conducted in a separate proceeding in the court division with jurisdiction over guardianship matters and pursuant to chapter 744.

(d) If the court finds at the judicial review hearing after the child's 17th birthday that the department has not met its obligations to the child as stated in this part, in the written case plan, or in the provision of independent living services, the court may issue an order directing the department to show cause as to why it has not done so. If the department cannot justify its noncompliance, the court may give the department 30 days within which to comply. If the department fails to comply within 30 days, the court may hold the department in contempt.

(e) If necessary, the court may review the status of the child more frequently during the year before the child's 18th birthday. At the last review hearing before the child reaches 18 years of age, and in addition to the requirements of subsection (2), the court shall:

1. Address whether the child plans to remain in foster care, and, if so, ensure that the child's transition plan includes a plan for meeting one or more of the criteria specified in s. 39.6251 and determine if the child has entered into a formal agreement for an ongoing relationship with a supportive adult.

2. Ensure that the transition plan includes a supervised living arrangement under s. 39.6251.

3. Ensure the child has been informed of:

a. The right to continued support and services from the department and the community-based care lead agency.

b. The right to request termination of dependency jurisdiction and be discharged from foster care.

c. The opportunity to reenter foster care under s. 39.6251.

4. Ensure that the child, if he or she requests termination of dependency jurisdiction and discharge from foster care, has been informed of:

a. Services or benefits for which the child may be eligible based on his or her former placement in foster care, including, but not limited to, the assistance of the Office of Continuing Care under s. 414.56.

b. Services or benefits that may be lost through termination of dependency jurisdiction.

c. Other federal, state, local, or community-based services

or supports available to him or her.

(4) REVIEW HEARINGS FOR YOUNG ADULTS IN FOSTER CARE.—During each period of time that a young adult remains in foster care, the court shall review the status of the young adult at least every 6 months and must hold a permanency review hearing at least annually.

(e)1. Notwithstanding the provisions of this subsection, if a young adult has chosen to remain in extended foster care after he or she has reached 18 years of age, the department may not close a case and the court may not terminate jurisdiction until the court finds, following a hearing, that the following criteria have been met:

a.~~1.~~ Attendance of the young adult at the hearing; or

b.~~2.~~ Findings by the court that:

(I)~~a.~~ The young adult has been informed by the department of his or her right to attend the hearing and has provided written consent to waive this right; and

(II)~~b.~~ The young adult has been informed of the potential negative effects of early termination of care, the option to reenter care before reaching 21 years of age, the procedure for, and limitations on, reentering care, and the availability of alternative services, and has signed a document attesting that he or she has been so informed and understands these provisions; or

(III)~~c.~~ The young adult has voluntarily left the program, has not signed the document in sub-subparagraph b., and is unwilling to participate in any further court proceeding.

2.~~3.~~ In all permanency hearings or hearings regarding the transition of the young adult from care to independent living,

the court shall consult with the young adult regarding the proposed permanency plan, case plan, and individual education plan for the young adult and ensure that he or she has understood the conversation. The court shall also inquire of the young adult regarding his or her relationship with the supportive adult with whom the young adult has entered into a formal agreement for an ongoing relationship, if such agreement exists.

Section 26. Paragraph (a) of subsection (3) of section 39.801, Florida Statutes, is amended to read:

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

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

(a) Notice of the date, time, and place of the advisory hearing for the petition to terminate parental rights; if applicable, instructions for appearance through audio-video communication technology; and a copy of the petition must be personally served upon the following persons, specifically notifying them that a petition has been filed:

1. The parents of the child.

2. The legal custodians of the child.

3. If the parents who would be entitled to notice are dead or unknown, a living relative of the child, unless upon diligent search and inquiry no such relative can be found.

4. Any person who has physical custody of the child.

5. Any grandparent entitled to priority for adoption under s. 63.0425.

6. Any prospective parent who has been identified under s. 39.503 or s. 39.803, unless a court order has been entered pursuant to s. 39.503(4) or (9) or s. 39.803(4) or (9) which indicates no further notice is required. Except as otherwise provided in this section, if there is not a legal father, notice of the petition for termination of parental rights must be provided to any known prospective father who is identified under oath before the court or who is identified by a diligent search of the Florida Putative Father Registry. Service of the notice of the petition for termination of parental rights is not required if the prospective father executes an affidavit of nonpaternity or a consent to termination of his parental rights which is accepted by the court after notice and opportunity to be heard by all parties to address the best interests of the child in accepting such affidavit.

7. The guardian ad litem for the child ~~or the representative of the guardian ad litem program, if the program has been appointed~~.

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

Section 27. Subsection (2) of section 39.807, Florida Statutes, is amended to read:

39.807 Right to counsel; guardian ad litem.—

(2)(a) The court shall appoint a guardian ad litem to represent the ~~best interest of the~~ child in any termination of parental rights proceedings and shall ascertain at each stage of the proceedings whether a guardian ad litem has been appointed.

(b) The guardian ad litem has the ~~following~~ responsibilities and authority listed in s. 39.822.~~:~~

~~1. To investigate the allegations of the petition and any subsequent matters arising in the case and,~~

(c) Unless excused by the court, the guardian ad litem must ~~to~~ file a written report. This report must include a statement of the wishes of the child and the recommendations of the guardian ad litem and must be provided to all parties and the court at least 72 hours before the disposition hearing.

~~2. To be present at all court hearings unless excused by the court.~~

~~3. To represent the best interests of the child until the jurisdiction of the court over the child terminates or until excused by the court.~~

~~(c) A guardian ad litem is not required to post bond but shall file an acceptance of the office.~~

~~(d) A guardian ad litem is entitled to receive service of pleadings and papers as provided by the Florida Rules of Juvenile Procedure.~~

(d)~~(c)~~ This subsection does not apply to any voluntary relinquishment of parental rights proceeding.

Section 28. Subsection (2) of section 39.808, Florida

Statutes, is amended to read:

39.808 Advisory hearing; pretrial status conference.—

(2) At the hearing the court shall inform the parties of their rights under s. 39.807, ~~shall~~ appoint counsel for the parties in accordance with legal requirements, and ~~shall~~ appoint a guardian ad litem to represent the ~~interests of the~~ child if one has not already been appointed.

Section 29. Subsection (2) of section 39.815, Florida Statutes, is amended to read:

39.815 Appeal.—

(2) An attorney for the department shall represent the state upon appeal. When a notice of appeal is filed in the circuit court, the clerk shall notify the attorney for the department, ~~together with~~ the attorney for the parent, the guardian ad litem, and the ~~any~~ attorney ad litem for the child, if one is appointed.

Section 30. Section 39.820, Florida Statutes, is repealed.

Section 31. Subsections (1) and (3) of section 39.821, Florida Statutes, are amended to read:

39.821 Qualifications of guardians ad litem.—

(1) Because of the special trust or responsibility placed in a guardian ad litem, the Statewide Guardian ad Litem Office ~~Program~~ may use any private funds collected by the office ~~program~~, or any state funds so designated, to conduct a security background investigation before certifying a volunteer to serve. A security background investigation must include, but need not be limited to, employment history checks, checks of references, local criminal history records checks through local law enforcement agencies, and statewide criminal history records

checks through the Department of Law Enforcement. Upon request, an employer shall furnish a copy of the personnel record for the employee or former employee who is the subject of a security background investigation conducted under this section. The information contained in the personnel record may include, but need not be limited to, disciplinary matters and the reason why the employee was terminated from employment. An employer who releases a personnel record for purposes of a security background investigation is presumed to have acted in good faith and is not liable for information contained in the record without a showing that the employer maliciously falsified the record. A security background investigation conducted under this section must ensure that a person is not certified as a guardian ad litem if the person has an arrest awaiting final disposition for, been convicted of, regardless of adjudication, entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under the provisions listed in s. 435.04. All applicants must undergo a level 2 background screening pursuant to chapter 435 before being certified to serve as a guardian ad litem. In analyzing and evaluating the information obtained in the security background investigation, the office ~~program~~ must give particular emphasis to past activities involving children, including, but not limited to, child-related criminal offenses or child abuse. The office ~~program~~ has sole discretion in determining whether to certify a person based on his or her security background investigation. The information collected pursuant to the security background investigation is confidential and exempt from s. 119.07(1).

(3) It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person to willfully, knowingly, or intentionally fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for a volunteer position or for paid employment with the Statewide Guardian ad Litem Office ~~Program~~, any material fact used in making a determination as to the applicant's qualifications for such position.

Section 32. Section 39.822, Florida Statutes, is amended to read:

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

(1) A guardian ad litem shall be appointed by the court at the earliest possible time to represent the child in any child abuse, abandonment, or neglect judicial proceeding, whether civil or criminal. A guardian ad litem is a fiduciary and must provide independent representation of the child using a best interest standard of decisionmaking and advocacy.

(2)(a) A guardian ad litem must:

1. Be present at all court hearings unless excused by the court.

2. Investigate issues related to the best interest of the child who is the subject of the appointment, review all disposition recommendations and changes in placement, and, unless excused by the court, file written reports and recommendations in accordance with general law.

3. Represent the child until the court's jurisdiction over the child terminates or until excused by the court.

4. Advocate for the child's participation in the

proceedings and to report the child's preferences to the court, to the extent the child has the ability and desire to express his or her preferences.

5. Perform other duties that are consistent with the scope of the appointment.

(b) A guardian ad litem shall have immediate and unlimited access to the children he or she represents.

(c) A guardian ad litem is not required to post bond but must file an acceptance of the appointment.

(d) A guardian ad litem is entitled to receive service of pleadings and papers as provided by the Florida Rules of Juvenile Procedure.

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

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

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

(a) An agency, as defined in chapter 119, shall allow the guardian ad litem to inspect and copy records related to the best interests of the child who is the subject of the

appointment, including, but not limited to, records made confidential or exempt from s. 119.07(1) or s. 24(a), Art. I of the State Constitution. The guardian ad litem shall maintain the confidential or exempt status of any records shared by an agency under this paragraph.

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

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

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

Section 33. Subsection (4) of section 39.827, Florida Statutes, is amended to read:

39.827 Hearing for appointment of a guardian advocate.—

(4) The hearing under this section must ~~shall~~ remain confidential and closed to the public. The clerk shall keep all court records required by this part separate from other records

of the circuit court. All court records required by this part are ~~shall be~~ confidential and exempt from ~~the provisions of~~ s. 119.07(1). ~~All~~ Records may only ~~shall~~ be inspected ~~only~~ upon order of the court by persons deemed by the court to have a proper interest therein, except that a child and the parents or custodians of the child and their attorneys, the guardian ad litem, ~~and~~ the department and its designees, and the attorney ad litem, if one is appointed, ~~shall~~ always have the right to inspect and copy any official record pertaining to the child. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, under whatever conditions upon their use and disposition the court may deem proper, and may punish by contempt proceedings any violation of those conditions. All information obtained pursuant to this part in the discharge of official duty by any judge, employee of the court, or authorized agent of the department is ~~shall be~~ confidential and exempt from ~~the provisions of~~ s. 119.07(1) and may ~~shall~~ not be disclosed to anyone other than the authorized personnel of the court or the department and its designees, except upon order of the court.

Section 34. Paragraphs (a), (b), and (d) of subsection (1) and subsection (2) of section 39.8296, Florida Statutes, are amended to read:

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

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds that for the past 20 years, the

Statewide Guardian Ad Litem Office ~~Program~~ has been the only mechanism for best interest representation for children in Florida who are involved in dependency proceedings.

(b) The Legislature also finds that while the Statewide Guardian Ad Litem Office ~~Program~~ has been supervised by court administration within the circuit courts since the office's ~~program's~~ inception, there is a perceived conflict of interest created by the supervision of program staff by the judges before whom they appear.

(d) It is therefore the intent of the Legislature to place the Statewide Guardian Ad Litem Office ~~Program~~ in an appropriate place and provide a statewide infrastructure to increase functioning and standardization among the local offices ~~programs~~ currently operating in the 20 judicial circuits.

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

(a) The head of the Statewide Guardian ad Litem Office is the executive director, who shall be appointed by the Governor from a list of a minimum of three eligible applicants submitted by a Guardian ad Litem Qualifications Committee. The Guardian ad

Litem Qualifications Committee shall be composed of five persons, two persons appointed by the Governor, two persons appointed by the Chief Justice of the Supreme Court, and one person appointed by the Statewide Guardian ad Litem Office ~~Association~~. The committee shall provide for statewide advertisement and the receiving of applications for the position of executive director. The Governor shall appoint an executive director from among the recommendations, or the Governor may reject the nominations and request the submission of new nominees. The executive director must have knowledge in dependency law and knowledge of social service delivery systems available to meet the needs of children who are abused, neglected, or abandoned. The executive director shall serve on a full-time basis and shall personally, or through representatives of the office, carry out the purposes and functions of the Statewide Guardian ad Litem Office in accordance with state and federal law and the state's long-established policy of prioritizing children's best interests. The executive director shall report to the Governor. The executive director shall serve a 3-year term, subject to removal for cause by the Governor. Any person appointed to serve as the executive director may be permitted to serve more than one term without the necessity of convening the Guardian ad Litem Qualifications Committee.

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

1. The office shall identify the resources required to

implement methods of collecting, reporting, and tracking reliable and consistent case data.

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

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

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

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

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

and constitutional rights and fulfill other needs of dependent children.

7. The office shall ensure that each child has an attorney assigned to his or her case and, within available resources, is represented using multidisciplinary teams that may include volunteers, pro bono attorneys, social workers, and mentors.

8. The office shall provide oversight and technical assistance to attorneys ad litem, including, but not limited to, all of the following:

a. Develop an attorney ad litem training program in collaboration with dependency court stakeholders, including, but not limited to, dependency judges, representatives from legal aid providing attorney ad litem representation, and an attorney ad litem appointed from a registry maintained by the chief judge. The training program must be updated regularly with or without convening the stakeholders group.

b. Offer consultation and technical assistance to chief judges in maintaining attorney registries for the selection of attorneys ad litem.

c. Assist with recruitment, training, and mentoring of attorneys ad litem as needed.

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

10.~~8.~~ The office shall submit to the Governor, the

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

Section 35. Section 39.8297, Florida Statutes, is amended to read:

39.8297 County funding for guardian ad litem employees.—

(1) A county and the executive director of the Statewide Guardian ad Litem Office may enter into an agreement by which the county agrees to provide funds to the local guardian ad litem office in order to employ persons who will assist in the operation of the guardian ad litem office ~~program~~ in the county.

(2) The agreement, at a minimum, must provide that:

(a) Funding for the persons who are employed will be provided on at least a fiscal-year basis.

(b) The persons who are employed will be hired, supervised, managed, and terminated by the executive director of the Statewide Guardian ad Litem Office. The statewide office is responsible for compliance with all requirements of federal and

state employment laws, and shall fully indemnify the county from any liability under such laws, as authorized by s. 768.28(19), to the extent such liability is the result of the acts or omissions of the Statewide Guardian ad Litem Office or its agents or employees.

(c) The county is the employer for purposes of s. 440.10 and chapter 443.

(d) Employees funded by the county under this section and other county employees may be aggregated for purposes of a flexible benefits plan pursuant to s. 125 of the Internal Revenue Code of 1986.

(e) Persons employed under this section may be terminated after a substantial breach of the agreement or because funding to the guardian ad litem office ~~program~~ has expired.

(3) Persons employed under this section may not be counted in a formula or similar process used by the Statewide Guardian ad Litem Office to measure personnel needs of a judicial circuit's guardian ad litem office ~~program~~.

(4) Agreements created pursuant to this section do not obligate the state to allocate funds to a county to employ persons in the guardian ad litem office ~~program~~.

Section 36. Section 39.8298, Florida Statutes, is amended to read:

39.8298 Guardian ad Litem direct-support organizations ~~organization~~.—

(1) AUTHORITY.—The Statewide Guardian ad Litem Office created under s. 39.8296 is authorized to create a state direct-support organization and to create or designate local direct-support organizations. The executive director of the Statewide

Guardian ad Litem Office is responsible for designating local direct-support organizations under this subsection.

(a) The state direct-support organization and the local direct-support organizations must be ~~a~~ Florida corporations ~~corporation~~ not for profit, incorporated under ~~the provisions of~~ chapter 617. The state direct-support organization and the local direct-support organizations are ~~shall be~~ exempt from paying fees under s. 617.0122.

(b) The state direct-support organization and each local direct-support organization must ~~shall~~ be organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and make expenditures to or for the direct or indirect benefit of the Statewide Guardian Ad Litem Office, including the local guardian ad litem offices.

(c) If the executive director of the Statewide Guardian Ad Litem Office determines that the state direct-support organization or a local direct-support organization is operating in a manner that is inconsistent with the goals and purposes of the Statewide Guardian Ad Litem Office or not acting in the best interest of the state, the executive director may terminate the organization's contract and thereafter the organization may not use the name of the Statewide Guardian Ad Litem Office.

(2) CONTRACTS ~~CONTRACT~~.—The state direct-support organization and the local direct-support organizations shall operate under a written contract with the Statewide Guardian Ad Litem Office. The written contract must, at a minimum, provide

for:

(a) Approval of the articles of incorporation and bylaws of the direct-support organization by the executive director of the Statewide Guardian Ad Litem Office.

(b) Submission of an annual budget for the approval by the executive director of the Statewide Guardian Ad Litem Office.

(c) The reversion without penalty to the Statewide Guardian Ad Litem Office, or to the state if the Statewide Guardian Ad Litem Office ceases to exist, of all moneys and property held in trust by the state direct-support organization for the Statewide Guardian Ad Litem Office if the direct-support organization ceases to exist or if the contract is terminated.

(d) The fiscal year of the state direct-support organization and the local direct-support organizations, which must begin July 1 of each year and end June 30 of the following year.

(e) The disclosure of material provisions of the contract and the distinction between the Statewide Guardian Ad Litem Office and the state direct-support organization or the local direct-support organization to donors of gifts, contributions, or bequests, as well as on all promotional and fundraising publications.

(3) BOARD OF DIRECTORS.—The executive director of the Statewide Guardian Ad Litem Office shall appoint a board of directors for the state direct-support organization. The executive director may designate employees of the Statewide Guardian Ad Litem Office to serve on the board of directors of the state direct-support organization or a local direct-support organization. Members of the board of the state direct-support

organization or a local direct-support organization shall serve at the pleasure of the executive director.

(4) USE OF PROPERTY AND SERVICES.—The executive director of the Statewide Guardian Ad Litem Office:

(a) May authorize the use of facilities and property other than money that are owned by the Statewide Guardian Ad Litem Office to be used by the state direct-support organization or a local direct-support organization.

(b) May authorize the use of personal services provided by employees of the Statewide Guardian Ad Litem Office to be used by the state direct-support organization or a local direct-support organization. For the purposes of this section, the term "personal services" includes full-time personnel and part-time personnel as well as payroll processing.

(c) May prescribe the conditions by which the state direct-support organization or a local direct-support organization may use property, facilities, or personal services of the office or the state direct-support organization.

(d) May ~~Shall~~ not authorize the use of property, facilities, or personal services by the state ~~of the~~ direct-support organization or a local direct-support organization if the organization does not provide equal employment opportunities to all persons, regardless of race, color, religion, sex, age, or national origin.

(5) MONEYS.—Moneys of the state direct-support organization or a local direct-support organization must ~~may~~ be held in a separate depository account in the name of the direct-support organization and subject to the provisions of the contract with the Statewide Guardian ad Litem Office.

(6) ANNUAL AUDIT.—The state direct-support organization and a local direct-support organization must ~~shall~~ provide for an annual financial audit in accordance with s. 215.981.

(7) LIMITS ON DIRECT-SUPPORT ORGANIZATIONS ~~ORGANIZATION~~.—The state direct-support organization and a local direct-support organization may ~~shall~~ not exercise any power under s. 617.0302(12) or (16). A ~~No~~ state employee may not ~~shall~~ receive compensation from the state direct-support organization or a local direct-support organization for service on the board of directors or for services rendered to the direct-support organization.

Section 37. Section 1009.898, Florida Statutes, is created to read:

1009.898 Pathway to Prosperity grants.—

(1) The Pathway to Prosperity program shall administer the following grants to youth and young adults aging out of foster care:

(a) Grants to provide financial literacy instruction using a curriculum developed by the Department of Financial Services.

(b) Grants to provide SAT and ACT preparation, including one-on-one support and fee waivers for the examinations.

(c) Grants to youth and young adults planning to pursue trade careers or paid apprenticeships.

(2) If a youth who is aging out of foster care is reunited with his or her parents, the grants remain available for the youth for up to 6 months after reunification.

Section 38. Subsection (1) of section 29.008, Florida Statutes, is amended to read:

29.008 County funding of court-related functions.—

(1) Counties are required by s. 14, Art. V of the State Constitution to fund the cost of communications services, existing radio systems, existing multiagency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the circuit and county courts, public defenders' offices, state attorneys' offices, guardian ad litem offices, and the offices of the clerks of the circuit and county courts performing court-related functions. For purposes of this section, the term "circuit and county courts" includes the offices and staffing of the guardian ad litem offices ~~programs~~, and the term "public defenders' offices" includes the offices of criminal conflict and civil regional counsel. The county designated under s. 35.05(1) as the headquarters for each appellate district shall fund these costs for the appellate division of the public defender's office in that county. For purposes of implementing these requirements, the term:

(a) "Facility" means reasonable and necessary buildings and office space and appurtenant equipment and furnishings, structures, real estate, easements, and related interests in real estate, including, but not limited to, those for the purpose of housing legal materials for use by the general public and personnel, equipment, or functions of the circuit or county courts, public defenders' offices, state attorneys' offices, and court-related functions of the office of the clerks of the circuit and county courts and all storage. The term "facility" includes all wiring necessary for court reporting services. The term also includes access to parking for such facilities in connection with such court-related functions that may be

available free or from a private provider or a local government for a fee. The office space provided by a county may not be less than the standards for space allotment adopted by the Department of Management Services, except this requirement applies only to facilities that are leased, or on which construction commences, after June 30, 2003. County funding must include physical modifications and improvements to all facilities as are required for compliance with the Americans with Disabilities Act. Upon mutual agreement of a county and the affected entity in this paragraph, the office space provided by the county may vary from the standards for space allotment adopted by the Department of Management Services.

1. As of July 1, 2005, equipment and furnishings shall be limited to that appropriate and customary for courtrooms, hearing rooms, jury facilities, and other public areas in courthouses and any other facility occupied by the courts, state attorneys, public defenders, guardians ad litem, and criminal conflict and civil regional counsel. Court reporting equipment in these areas or facilities is not a responsibility of the county.

2. Equipment and furnishings under this paragraph in existence and owned by counties on July 1, 2005, except for that in the possession of the clerks, for areas other than courtrooms, hearing rooms, jury facilities, and other public areas in courthouses and any other facility occupied by the courts, state attorneys, and public defenders, shall be transferred to the state at no charge. This provision does not apply to any communications services as defined in paragraph (f).

(b) "Construction or lease" includes, but is not limited to, all reasonable and necessary costs of the acquisition or lease of facilities for all judicial officers, staff, jurors, volunteers of a tenant agency, and the public for the circuit and county courts, the public defenders' offices, state attorneys' offices, and for performing the court-related functions of the offices of the clerks of the circuit and county courts. This includes expenses related to financing such facilities and the existing and future cost and bonded indebtedness associated with placing the facilities in use.

(c) "Maintenance" includes, but is not limited to, all reasonable and necessary costs of custodial and groundskeeping services and renovation and reconstruction as needed to accommodate functions for the circuit and county courts, the public defenders' offices, and state attorneys' offices and for performing the court-related functions of the offices of the clerks of the circuit and county court and for maintaining the facilities in a condition appropriate and safe for the use intended.

(d) "Utilities" means all electricity services for light, heat, and power; natural or manufactured gas services for light, heat, and power; water and wastewater services and systems, stormwater or runoff services and systems, sewer services and systems, all costs or fees associated with these services and systems, and any costs or fees associated with the mitigation of environmental impacts directly related to the facility.

(e) "Security" includes but is not limited to, all reasonable and necessary costs of services of law enforcement officers or licensed security guards and all electronic,

cellular, or digital monitoring and screening devices necessary to ensure the safety and security of all persons visiting or working in a facility; to provide for security of the facility, including protection of property owned by the county or the state; and for security of prisoners brought to any facility. This includes bailiffs while providing courtroom and other security for each judge and other quasi-judicial officers.

(f) "Communications services" are defined as any reasonable and necessary transmission, emission, and reception of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, optical, audio equipment, or other electromagnetic systems and includes all facilities and equipment owned, leased, or used by judges, clerks, public defenders, state attorneys, guardians ad litem, criminal conflict and civil regional counsel, and all staff of the state courts system, state attorneys' offices, public defenders' offices, and clerks of the circuit and county courts performing court-related functions. Such system or services shall include, but not be limited to:

1. Telephone system infrastructure, including computer lines, telephone switching equipment, and maintenance, and facsimile equipment, wireless communications, cellular telephones, pagers, and video teleconferencing equipment and line charges. Each county shall continue to provide access to a local carrier for local and long distance service and shall pay toll charges for local and long distance service.

2. All computer networks, systems and equipment, including computer hardware and software, modems, printers, wiring, network connections, maintenance, support staff or services

including any county-funded support staff located in the offices of the circuit court, county courts, state attorneys, public defenders, guardians ad litem, and criminal conflict and civil regional counsel; training, supplies, and line charges necessary for an integrated computer system to support the operations and management of the state courts system, the offices of the public defenders, the offices of the state attorneys, the guardian ad litem offices, the offices of criminal conflict and civil regional counsel, and the offices of the clerks of the circuit and county courts; and the capability to connect those entities and reporting data to the state as required for the transmission of revenue, performance accountability, case management, data collection, budgeting, and auditing purposes. The integrated computer system shall be operational by July 1, 2006, and, at a minimum, permit the exchange of financial, performance accountability, case management, case disposition, and other data across multiple state and county information systems involving multiple users at both the state level and within each judicial circuit and be able to electronically exchange judicial case background data, sentencing scoresheets, and video evidence information stored in integrated case management systems over secure networks. Once the integrated system becomes operational, counties may reject requests to purchase communications services included in this subparagraph not in compliance with standards, protocols, or processes adopted by the board established pursuant to former s. 29.0086.

3. Courier messenger and subpoena services.

4. Auxiliary aids and services for qualified individuals with a disability which are necessary to ensure access to the

courts. Such auxiliary aids and services include, but are not limited to, sign language interpretation services required under the federal Americans with Disabilities Act other than services required to satisfy due-process requirements and identified as a state funding responsibility pursuant to ss. 29.004-29.007, real-time transcription services for individuals who are hearing impaired, and assistive listening devices and the equipment necessary to implement such accommodations.

(g) "Existing radio systems" includes, but is not limited to, law enforcement radio systems that are used by the circuit and county courts, the offices of the public defenders, the offices of the state attorneys, and for court-related functions of the offices of the clerks of the circuit and county courts. This includes radio systems that were operational or under contract at the time Revision No. 7, 1998, to Art. V of the State Constitution was adopted and any enhancements made thereafter, the maintenance of those systems, and the personnel and supplies necessary for operation.

(h) "Existing multiagency criminal justice information systems" includes, but is not limited to, those components of the multiagency criminal justice information system as defined in s. 943.045, supporting the offices of the circuit or county courts, the public defenders' offices, the state attorneys' offices, or those portions of the offices of the clerks of the circuit and county courts performing court-related functions that are used to carry out the court-related activities of those entities. This includes upgrades and maintenance of the current equipment, maintenance and upgrades of supporting technology infrastructure and associated staff, and services and expenses

to assure continued information sharing and reporting of information to the state. The counties shall also provide additional information technology services, hardware, and software as needed for new judges and staff of the state courts system, state attorneys' offices, public defenders' offices, guardian ad litem offices, and the offices of the clerks of the circuit and county courts performing court-related functions.

Section 39. Paragraph (a) of subsection (1) of section 39.6011, Florida Statutes, is amended to read:

39.6011 Case plan development.—

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

(a) The case plan must be developed in a face-to-face conference with the parent of the child, <u>the</u> ~~any~~ court-appointed guardian ad litem, and, if appropriate, the child and the temporary custodian of the child.

Section 40. Subsection (8) of section 40.24, Florida Statutes, is amended to read:

40.24 Compensation and reimbursement policy.—

(8) In circuits that elect to allow jurors to donate their jury service fee upon conclusion of juror service, each juror

may irrevocably donate all of the juror's compensation to the 26 U.S.C. s. 501(c)(3) organization specified by the Statewide Guardian ad Litem Office ~~program~~ or to a domestic violence shelter as specified annually on a rotating basis by the clerk of court in the circuit for the juror's county of residence. The funds collected may not reduce or offset the amount of compensation that the Statewide Guardian ad Litem Office ~~program~~ or domestic violence shelter would otherwise receive from the state. The clerk of court shall ensure that all jurors are given written notice at the conclusion of their service that they have the option to so donate their compensation, and that the applicable program specified by the Statewide Guardian ad Litem Office ~~program~~ or a domestic violence shelter receives all funds donated by the jurors. Any circuit guardian ad litem office ~~program~~ receiving donations of juror compensation must expend such moneys on services for children for whom guardians ad litem have been appointed.

Section 41. Subsections (5), (6), and (7) of section 43.16, Florida Statutes, are amended to read:

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

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

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

(b) Each state attorney, public defender, and criminal conflict and civil regional counsel and the Statewide Guardian Ad Litem Office ~~Program~~ shall continue to prepare necessary budgets, vouchers that represent valid claims for reimbursement by the state for authorized expenses, and other things incidental to the proper administrative operation of the office, such as revenue transmittals to the Chief Financial Officer and automated systems plans, but will forward such items to the commission for recording and submission to the proper state officer. However, when requested by a state attorney, a public defender, a criminal conflict and civil regional counsel, or the Statewide Guardian Ad Litem Office ~~Program~~, the commission will either assist in the preparation of budget requests, voucher schedules, and other forms and reports or accomplish the entire project involved.

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

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

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

(c) Support economical and efficient operations.

(d) Ensure reliability of financial records and reports.

(e) Safeguard assets.

(7) ~~The provisions contained in~~ This section is ~~shall be~~ supplemental to ~~those of~~ chapter 27, relating to state

attorneys, public defenders, criminal conflict and civil regional counsel, and capital collateral regional counsel; to ~~those of~~ chapter 39, relating to the Statewide Guardian Ad Litem Office ~~Program~~; or to other laws pertaining hereto.

Section 42. Paragraph (a) of subsection (1) and subsection (4) of section 61.402, Florida Statutes, are amended to read:

61.402 Qualifications of guardians ad litem.—

(1) A person appointed as a guardian ad litem pursuant to s. 61.401 must be:

(a) Certified by the Statewide Guardian Ad Litem Office ~~Program~~ pursuant to s. 39.821;

(b) Certified by a not-for-profit legal aid organization as defined in s. 68.096; or

(c) An attorney who is a member in good standing of The Florida Bar.

(4) Nothing in this section requires the Statewide Guardian Ad Litem Office ~~Program~~ or a not-for-profit legal aid organization to train or certify guardians ad litem appointed under this chapter.

Section 43. Paragraph (x) of subsection (2) of section 110.205, Florida Statutes, is amended to read:

110.205 Career service; exemptions.—

(2) EXEMPT POSITIONS.—The exempt positions that are not covered by this part include the following:

(x) All officers and employees of the Justice Administrative Commission, Office of the State Attorney, Office of the Public Defender, regional offices of capital collateral counsel, offices of criminal conflict and civil regional counsel, and Statewide Guardian Ad Litem Office, including the

circuit guardian ad litem offices ~~programs~~.

Section 44. Paragraph (b) of subsection (96) of section 320.08058, Florida Statutes, is amended to read:

320.08058 Specialty license plates.—

(96) GUARDIAN AD LITEM LICENSE PLATES.—

(b) The annual use fees from the sale of the plate shall be distributed to the Florida Guardian Ad Litem Foundation, Inc., a direct-support organization and a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code. Up to 10 percent of the proceeds may be used for administrative costs and the marketing of the plate. The remainder of the proceeds must be used in this state to support the mission and efforts of the Statewide Guardian Ad Litem Office ~~Program~~ to represent abused, abandoned, and neglected children and advocate for their best interests; recruit and retain volunteer child advocates; and meet the unique needs of the dependent children the program serves.

Section 45. Paragraph (e) of subsection (3) of section 943.053, Florida Statutes, is amended to read:

943.053 Dissemination of criminal justice information; fees.—

(3)

(e) The fee per record for criminal history information provided pursuant to this subsection and s. 943.0542 is $24 per name submitted, except that the fee for the Statewide Guardian Ad Litem Office ~~program~~ and vendors of the Department of Children and Families, the Department of Juvenile Justice, the Agency for Persons with Disabilities, and the Department of Elderly Affairs is $8 for each name submitted; the fee for a state criminal history provided for application processing as

required by law to be performed by the Department of Agriculture and Consumer Services is $15 for each name submitted; and the fee for requests under s. 943.0542, which implements the National Child Protection Act, is $18 for each volunteer name submitted. An office of the public defender or an office of criminal conflict and civil regional counsel may not be assessed a fee for Florida criminal history information or wanted person information.

Section 46. Subsection (2) of section 985.43, Florida Statutes, is amended to read:

985.43 Predisposition reports; other evaluations.—

(2) The court shall consider the child's entire assessment and predisposition report and shall review the records of earlier judicial proceedings before making a final disposition of the case. If the child is under the jurisdiction of a dependency court, the court may receive and consider any information provided by the Statewide Guardian Ad Litem Office ~~Program~~ and the child's attorney ad litem, if one is appointed. The court may, by order, require additional evaluations and studies to be performed by the department; the county school system; or any social, psychological, or psychiatric agency of the state. The court shall order the educational needs assessment completed under s. 985.18(2) to be included in the assessment and predisposition report.

Section 47. Subsection (4) of section 985.441, Florida Statutes, is amended to read:

985.441 Commitment.—

(4) The department may transfer a child, when necessary to appropriately administer the child's commitment, from one

facility or program to another facility or program operated, contracted, subcontracted, or designated by the department, including a postcommitment nonresidential conditional release program, except that the department may not transfer any child adjudicated solely for a misdemeanor to a residential program except as provided in subsection (2). The department shall notify the court that committed the child to the department and any attorney of record for the child, in writing, of its intent to transfer the child from a commitment facility or program to another facility or program of a higher or lower restrictiveness level. If the child is under the jurisdiction of a dependency court, the department shall also provide notice to the dependency court, ~~and~~ the Department of Children and Families, ~~and, if appointed,~~ the Statewide Guardian Ad Litem Office, ~~Program~~ and the child's attorney ad litem, if one is appointed. The court that committed the child may agree to the transfer or may set a hearing to review the transfer. If the court does not respond within 10 days after receipt of the notice, the transfer of the child shall be deemed granted.

Section 48. Subsection (3) of section 985.455, Florida Statutes, is amended to read:

985.455 Other dispositional issues.—

(3) Any commitment of a delinquent child to the department must be for an indeterminate period of time, which may include periods of temporary release; however, the period of time may not exceed the maximum term of imprisonment that an adult may serve for the same offense, except that the duration of a minimum-risk nonresidential commitment for an offense that is a misdemeanor of the second degree, or is equivalent to a

misdemeanor of the second degree, may be for a period not to exceed 6 months. The duration of the child's placement in a commitment program of any restrictiveness level shall be based on objective performance-based treatment planning. The child's treatment plan progress and adjustment-related issues shall be reported to the court quarterly, unless the court requests monthly reports. If the child is under the jurisdiction of a dependency court, the court may receive and consider any information provided by the Statewide Guardian Ad Litem Office ~~Program~~ or the child's attorney ad litem, if one is appointed. The child's length of stay in a commitment program may be extended if the child fails to comply with or participate in treatment activities. The child's length of stay in the program shall not be extended for purposes of sanction or punishment. Any temporary release from such program must be approved by the court. Any child so committed may be discharged from institutional confinement or a program upon the direction of the department with the concurrence of the court. The child's treatment plan progress and adjustment-related issues must be communicated to the court at the time the department requests the court to consider releasing the child from the commitment program. The department shall give the court that committed the child to the department reasonable notice, in writing, of its desire to discharge the child from a commitment facility. The court that committed the child may thereafter accept or reject the request. If the court does not respond within 10 days after receipt of the notice, the request of the department shall be deemed granted. This section does not limit the department's authority to revoke a child's temporary release status and

return the child to a commitment facility for any violation of the terms and conditions of the temporary release.

Section 49. Paragraph (b) of subsection (4) of section 985.461, Florida Statutes, is amended to read:

985.461 Transition to adulthood.—

(4) As part of the child's treatment plan, the department may provide transition-to-adulthood services to children released from residential commitment. To support participation in transition-to-adulthood services and subject to appropriation, the department may:

(b) Use community reentry teams to assist in the development of a list of age-appropriate activities and responsibilities to be incorporated in the child's written case plan for any youth who is under the custody or supervision of the department. Community reentry teams may include representatives from school districts, law enforcement, workforce development services, community-based service providers, the Statewide Guardian Ad Litem Office ~~Program~~, and the youth's family. Such community reentry teams must be created within existing resources provided to the department. Activities may include, but are not limited to, life skills training, including training to develop banking and budgeting skills, interviewing and career planning skills, parenting skills, personal health management, and time management or organizational skills; educational support; employment training; and counseling.

Section 50. Subsection (11) of section 985.48, Florida Statutes, is amended to read:

985.48 Juvenile sexual offender commitment programs; sexual

abuse intervention networks.—

(11) Membership of a sexual abuse intervention network shall include, but is not limited to, representatives from:

(a) Local law enforcement agencies;

(b) Local school boards;

(c) Child protective investigators;

(d) The office of the state attorney;

(e) The office of the public defender;

(f) The juvenile division of the circuit court;

(g) Professionals licensed under chapter 458, chapter 459, s. 490.0145, or s. 491.0144 providing treatment for juvenile sexual offenders or their victims;

(h) The Statewide Guardian Ad Litem Office ~~program~~;

(i) The Department of Juvenile Justice; and

(j) The Department of Children and Families.

Section 51. Subsection (1) of section 39.302, Florida Statutes, is amended to read:

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

(1) The department shall conduct a child protective investigation of each report of institutional child abuse, abandonment, or neglect. Upon receipt of a report that alleges that an employee or agent of the department, or any other entity or person covered by s. 39.01(39) or (57) ~~s. 39.01(36) or (54)~~, acting in an official capacity, has committed an act of child abuse, abandonment, or neglect, the department shall initiate a child protective investigation within the timeframe established under s. 39.101(2) and notify the appropriate state attorney, law enforcement agency, and licensing agency, which shall

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

Section 52. Paragraph (c) of subsection (1) of section 39.521, Florida Statutes, is amended to read:

39.521 Disposition hearings; powers of disposition.—

(1) A disposition hearing shall be conducted by the court, if the court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing, or if the

parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition, have failed to appear for the arraignment hearing after proper notice, or have not been located despite a diligent search having been conducted.

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

1. Require the parent and, when appropriate, the legal guardian or the child to participate in treatment and services identified as necessary. The court may require the person who has custody or who is requesting custody of the child to submit to a mental health or substance abuse disorder assessment or evaluation. The order may be made only upon good cause shown and pursuant to notice and procedural requirements provided under the Florida Rules of Juvenile Procedure. The mental health assessment or evaluation must be administered by a qualified professional as defined in s. 39.01, and the substance abuse assessment or evaluation must be administered by a qualified professional as defined in s. 397.311. The court may also require such person to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a mental health court program established under chapter 394 or a treatment-based drug court program established under s. 397.334. Adjudication of a child as dependent based upon evidence of harm as defined in s. 39.01(37)(g) ~~s. 39.01(34)(g)~~ demonstrates good cause, and the court shall require the parent whose actions caused the harm to submit to a substance abuse disorder

assessment or evaluation and to participate and comply with treatment and services identified in the assessment or evaluation as being necessary. In addition to supervision by the department, the court, including the mental health court program or the treatment-based drug court program, may oversee the progress and compliance with treatment by a person who has custody or is requesting custody of the child. The court may impose appropriate available sanctions for noncompliance upon a person who has custody or is requesting custody of the child or make a finding of noncompliance for consideration in determining whether an alternative placement of the child is in the child's best interests. Any order entered under this subparagraph may be made only upon good cause shown. This subparagraph does not authorize placement of a child with a person seeking custody of the child, other than the child's parent or legal custodian, who requires mental health or substance abuse disorder treatment.

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

3. Require placement of the child either under the protective supervision of an authorized agent of the department in the home of one or both of the child's parents or in the home of a relative of the child or another adult approved by the court, or in the custody of the department. Protective supervision continues until the court terminates it or until the child reaches the age of 18, whichever date is first. Protective supervision shall be terminated by the court whenever the court determines that permanency has been achieved for the child, whether with a parent, another relative, or a legal custodian, and that protective supervision is no longer needed. The

termination of supervision may be with or without retaining jurisdiction, at the court's discretion, and shall in either case be considered a permanency option for the child. The order terminating supervision by the department must set forth the powers of the custodian of the child and include the powers ordinarily granted to a guardian of the person of a minor unless otherwise specified. Upon the court's termination of supervision by the department, further judicial reviews are not required if permanency has been established for the child.

4. Determine whether the child has a strong attachment to the prospective permanent guardian and whether such guardian has a strong commitment to permanently caring for the child.

Section 53. Paragraph (c) of subsection (2) of section 61.13, Florida Statutes, is amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(2)

(c) The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, except that modification of a parenting plan and time-sharing schedule requires a showing of a substantial and material change of circumstances.

1. It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. Unless otherwise

provided in this section or agreed to by the parties, there is a rebuttable presumption that equal time-sharing of a minor child is in the best interests of the minor child. To rebut this presumption, a party must prove by a preponderance of the evidence that equal time-sharing is not in the best interests of the minor child. Except when a time-sharing schedule is agreed to by the parties and approved by the court, the court must evaluate all of the factors set forth in subsection (3) and make specific written findings of fact when creating or modifying a time-sharing schedule.

2. The court shall order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. In determining detriment to the child, the court shall consider:

a. Evidence of domestic violence, as defined in s. 741.28;

b. Whether either parent has or has had reasonable cause to believe that he or she or his or her minor child or children are or have been in imminent danger of becoming victims of an act of domestic violence as defined in s. 741.28 or sexual violence as defined in s. 784.046(1)(c) by the other parent against the parent or against the child or children whom the parents share in common regardless of whether a cause of action has been brought or is currently pending in the court;

c. Whether either parent has or has had reasonable cause to believe that his or her minor child or children are or have been in imminent danger of becoming victims of an act of abuse ~~as defined in s. 39.01(2)~~, abandonment ~~as defined in s. 39.01(1)~~, or neglect, as those terms are defined in s. 39.01, ~~s. 39.01(50)~~

by the other parent against the child or children whom the parents share in common regardless of whether a cause of action has been brought or is currently pending in the court; and

d. Any other relevant factors.

3. The following evidence creates a rebuttable presumption that shared parental responsibility is detrimental to the child:

a. A parent has been convicted of a misdemeanor of the first degree or higher involving domestic violence, as defined in s. 741.28 and chapter 775;

b. A parent meets the criteria of s. 39.806(1)(d); or

c. A parent has been convicted of or had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., and at the time of the offense:

(I) The parent was 18 years of age or older.

(II) The victim was under 18 years of age or the parent believed the victim to be under 18 years of age.

If the presumption is not rebutted after the convicted parent is advised by the court that the presumption exists, shared parental responsibility, including time-sharing with the child, and decisions made regarding the child, may not be granted to the convicted parent. However, the convicted parent is not relieved of any obligation to provide financial support. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make such arrangements for time-sharing as specified in the parenting plan as will best protect the child or abused spouse from further harm. Whether or not there is a conviction of any offense of domestic violence or child abuse or

the existence of an injunction for protection against domestic violence, the court shall consider evidence of domestic violence or child abuse as evidence of detriment to the child.

4. In ordering shared parental responsibility, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child's welfare or may divide those responsibilities between the parties based on the best interests of the child. Areas of responsibility may include education, health care, and any other responsibilities that the court finds unique to a particular family.

5. The court shall order sole parental responsibility for a minor child to one parent, with or without time-sharing with the other parent if it is in the best interests of the minor child.

6. There is a rebuttable presumption against granting time-sharing with a minor child if a parent has been convicted of or had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., and at the time of the offense:

a. The parent was 18 years of age or older.

b. The victim was under 18 years of age or the parent believed the victim to be under 18 years of age.

A parent may rebut the presumption upon a specific finding in writing by the court that the parent poses no significant risk of harm to the child and that time-sharing is in the best interests of the minor child. If the presumption is rebutted, the court must consider all time-sharing factors in subsection (3) when developing a time-sharing schedule.

7. Access to records and information pertaining to a minor

child, including, but not limited to, medical, dental, and school records, may not be denied to either parent. Full rights under this subparagraph apply to either parent unless a court order specifically revokes these rights, including any restrictions on these rights as provided in a domestic violence injunction. A parent having rights under this subparagraph has the same rights upon request as to form, substance, and manner of access as are available to the other parent of a child, including, without limitation, the right to in-person communication with medical, dental, and education providers.

Section 54. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term:

a. "Home addresses" means the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

b. "Judicial assistant" means a court employee assigned to the following class codes: 8140, 8150, 8310, and 8320.

c. "Telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.a. The home addresses, telephone numbers, dates of birth,

and photographs of active or former sworn law enforcement personnel or of active or former civilian personnel employed by a law enforcement agency, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

c. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations whose duties include the investigation of fraud, theft, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

d. The home addresses, telephone numbers, dates of birth, and photographs of current or former firefighters certified in compliance with s. 633.408; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

e. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges~~,~~ and ~~of~~ current judicial assistants; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges and ~~of~~ current judicial assistants; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges and of current judicial assistants are exempt from s.

119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims,

administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

h. The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

i. The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.01 ~~s. 39.820~~; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the

names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

k. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

l. The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; and the names and locations

of schools and day care facilities attended by the children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

m. The home addresses, telephone numbers, dates of birth, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

n. The home addresses, telephone numbers, and dates of birth of county tax collectors; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

o. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the

Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

p. The home addresses, telephone numbers, dates of birth, and photographs of current or former impaired practitioner consultants who are retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person's skill and safety to practice a licensed profession; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of schools and day care facilities attended by the children of such consultants or employees are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

q. The home addresses, telephone numbers, dates of birth, and photographs of current or former emergency medical technicians or paramedics certified under chapter 401; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such emergency medical technicians or paramedics; and the names and locations of schools and day care facilities attended by the children of such emergency medical technicians or paramedics are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

r. The home addresses, telephone numbers, dates of birth,

and photographs of current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

s. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this sub-subparagraph, the term "addiction treatment facility" means a county government, or agency thereof, that is licensed pursuant to s. 397.401 and provides substance abuse prevention, intervention, or clinical treatment, including any licensed service component described in s. 397.311(26).

t. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(2) and fulfills the

screening requirement of s. 39.3035(3), and the members of a Child Protection Team as described in s. 39.303 whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, and child exploitation or to provide services as part of a multidisciplinary case review team; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel and members; and the names and locations of schools and day care facilities attended by the children of such personnel and members are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

u. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former staff and domestic violence advocates, as defined in s. 90.5036(1)(b), of domestic violence centers certified by the Department of Children and Families under chapter 39; the names, home addresses, telephone numbers, places of employment, dates of birth, and photographs of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

v. The home addresses, telephone numbers, dates of birth, and photographs of current or former inspectors or investigators of the Department of Agriculture and Consumer Services; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former inspectors or investigators; and the names and locations of schools and day care facilities attended by the children of

current or former inspectors or investigators are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. must maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written and notarized request for maintenance of the exemption to the custodial agency. The request must state under oath the statutory basis for the individual's exemption request and confirm the individual's status as a party eligible for exempt status.

4.a. A county property appraiser, as defined in s. 192.001(3), or a county tax collector, as defined in s. 192.001(4), who receives a written and notarized request for maintenance of the exemption pursuant to subparagraph 3. must comply by removing the name of the individual with exempt status and the instrument number or Official Records book and page number identifying the property with the exempt status from all publicly available records maintained by the property appraiser or tax collector. For written requests received on or before July 1, 2021, a county property appraiser or county tax collector must comply with this sub-subparagraph by October 1, 2021. A county property appraiser or county tax collector may

not remove the street address, legal description, or other information identifying real property within the agency's records so long as a name or personal information otherwise exempt from inspection and copying pursuant to this section is not associated with the property or otherwise displayed in the public records of the agency.

b. Any information restricted from public display, inspection, or copying under sub-subparagraph a. must be provided to the individual whose information was removed.

5. An officer, an employee, a justice, a judge, or other person specified in subparagraph 2. may submit a written request for the release of his or her exempt information to the custodial agency. The written request must be notarized and must specify the information to be released and the party authorized to receive the information. Upon receipt of the written request, the custodial agency must release the specified information to the party authorized to receive such information.

6. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

7. Information made exempt under this paragraph may be disclosed pursuant to s. 28.2221 to a title insurer authorized pursuant to s. 624.401 and its affiliates as defined in s. 624.10; a title insurance agent or title insurance agency as defined in s. 626.841(1) or (2), respectively; or an attorney duly admitted to practice law in this state and in good standing with The Florida Bar.

8. The exempt status of a home address contained in the Official Records is maintained only during the period when a

protected party resides at the dwelling location. Upon conveyance of real property after October 1, 2021, and when such real property no longer constitutes a protected party's home address as defined in sub-subparagraph 1.a., the protected party must submit a written request to release the removed information to the county recorder. The written request to release the removed information must be notarized, must confirm that a protected party's request for release is pursuant to a conveyance of his or her dwelling location, and must specify the Official Records book and page, instrument number, or clerk's file number for each document containing the information to be released.

9. Upon the death of a protected party as verified by a certified copy of a death certificate or court order, any party can request the county recorder to release a protected decedent's removed information unless there is a related request on file with the county recorder for continued removal of the decedent's information or unless such removal is otherwise prohibited by statute or by court order. The written request to release the removed information upon the death of a protected party must attach the certified copy of a death certificate or court order and must be notarized, must confirm the request for release is due to the death of a protected party, and must specify the Official Records book and page number, instrument number, or clerk's file number for each document containing the information to be released. A fee may not be charged for the release of any document pursuant to such request.

10. Except as otherwise expressly provided in this paragraph, this paragraph is subject to the Open Government

Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 55. Subsection (4) of section 322.09, Florida Statutes, is amended to read:

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

(4) Notwithstanding subsections (1) and (2), if a caregiver of a minor who is under the age of 18 years and is in out-of-home care as defined in s. 39.01 ~~s. 39.01(55)~~, an authorized representative of a residential group home at which such a minor resides, the caseworker at the agency at which the state has placed the minor, or a guardian ad litem specifically authorized by the minor's caregiver to sign for a learner's driver license signs the minor's application for a learner's driver license, that caregiver, group home representative, caseworker, or guardian ad litem does not assume any obligation or become liable for any damages caused by the negligence or willful misconduct of the minor by reason of having signed the application. Before signing the application, the caseworker, authorized group home representative, or guardian ad litem shall notify the caregiver or other responsible party of his or her intent to sign and verify the application.

Section 56. Paragraph (p) of subsection (4) of section 394.495, Florida Statutes, is amended to read:

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

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

(p) Trauma-informed services for children who have suffered sexual exploitation as defined in s. 39.01(80)(g) ~~s. 39.01(77)(g)~~.

Section 57. Section 627.746, Florida Statutes, is amended to read:

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

Section 58. Paragraph (c) of subsection (1) of section 934.255, Florida Statutes, is amended to read:

934.255 Subpoenas in investigations of sexual offenses.—

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

(c) "Sexual abuse of a child" means a criminal offense based on any conduct described in s. 39.01(80) ~~s. 39.01(77)~~.

Section 59. Subsection (5) of section 960.065, Florida Statutes, is amended to read:

960.065 Eligibility for awards.—

(5) A person is not ineligible for an award pursuant to paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that person is a victim of sexual exploitation of a child as defined in s. 39.01(80)(g) ~~s. 39.01(77)(g)~~.

Section 60. The Division of Law Revision is requested to prepare a reviser's bill for the 2025 Regular Session of the

Legislature to substitute the term "Statewide Guardian ad Litem Office" for the term "Guardian ad Litem Program" or "Statewide Guardian ad Litem Program" throughout the Florida Statutes.

Section 61. This act shall take effect July 1, 2024.

OPPAGA
Office of Program Policy Analysis and Government Accountability
Research Memorandum

December 2020

OPPAGA Review of Florida's Guardian ad Litem Program

EXECUTIVE SUMMARY

Florida law requires the appointment of a guardian ad litem (GAL) to any child abuse, abandonment, or neglect judicial proceeding. The Florida GAL Program is the state's mechanism for best interest representation for children involved in dependency proceedings. It provides oversight and technical assistance to GAL programs in each of Florida's 20 judicial circuits and recruits, trains, and supervises volunteers to serve on dependency cases across the state.

SCOPE

The Legislature directed OPPAGA to review the Florida Guardian ad Litem Program, including whether the program

- fulfills statutory requirements to represent all children in dependency proceedings, and if not, how it prioritizes appointments;
- follows best practices for child advocacy;
- represents children in an effective and efficient manner;
- identifies areas where it can improve performance; and
- has adequate procedures to screen and supervise volunteers.

The Florida GAL Program adheres to national standards for court-appointed special advocate or GAL programs but differs from most other states' programs in its model of child representation. Florida employs a multi-disciplinary team approach, wherein a child receives the services of a GAL volunteer, a staff advocate, and a staff attorney that represents the program, not the child. Professional societies and academic literature recommend attorney representation for children in dependency proceedings. Florida's program follows state and national volunteer requirements, and while many stakeholders feel that staff and volunteer training and supervision is sufficient, some recommend training in additional areas, such as the realities of foster care and challenges of disadvantaged parents.

Over each of the past four fiscal years, the GAL Program provided best interest representation to 67% to 68% of children in dependency proceedings statewide. When local programs are unable to provide

representation in all dependency cases, judges and staff reported prioritizing specific types of cases based on statutory criteria, the child's age, abuse severity, placement type, or presence of special circumstances, such as victims of human trafficking.

The GAL Program tracks performance using its own program data but relies on statewide dependency data for child welfare outcomes. We recommend that the program clarify that some of its measures include all children in the dependency system and are not specific to children served by the program. While the program engages in activities to improve performance, we recommend it implements additional program performance metrics, such as pre-and post-program well-being assessments and/or child outcomes specific to those served by the program.

GAL and dependency court data create limitations for analysis, and a unified data set that combines GAL case information with statewide child welfare outcomes does not exist. We recommend that the program improve its data management and staff understanding of program data to be better able to identify and address data problems. We also recommend that the program include a unique identification number in each child's case file to be better able to identify child placements and outcomes in statewide data.

Over the past four years, the number of children served in the dependency system and by the GAL Program has decreased. Although data issues limit our ability to analyze GAL Program outcomes, we identified similar trends when comparing GAL Program outcomes and statewide data. However, because GAL closure dates do not always align with Department of Children and Families (DCF) discharge dates for individual cases, comparing trends between GAL Program and DCF case outcomes is limited.

Stakeholder opinions regarding the effectiveness and efficiency of Florida's GAL Program split along professional lines. Several judges reported the program is effective and efficient due to the use of unpaid volunteers, volunteers' abilities to get to know the child better than others, volunteer provision of information not otherwise available, and the value of best interest advocacy in general. Conversely, several attorneys expressed concerns about the program, including the lack of legal representation for children; volunteers discharging off cases before they conclude; volunteers often reiterating DCF's recommendations; and lack of volunteer expertise. Despite these differing views, GAL volunteers were commended across stakeholder groups for obtaining needed services for children.

BACKGROUND

The federal Child Abuse Prevention and Treatment Act requires states to document in their state plan provisions for appointing a guardian ad litem (GAL) to represent the child's best interest in every case of abuse or neglect that results in a judicial proceeding. Depending on state requirements, GALs may be attorneys or volunteer court-appointed special advocates (CASAs) who have received appropriate training.[1,2] GALs represent the child in all judicial proceedings related to the case, meet with the child on a regular basis, and investigate the circumstances of a child's case before submitting a recommendation to the court as to what they feel is in the child's best interests (e.g., family reunification or adoption).

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. The ultimate safety and well-being of the child are the predominant concerns of such determinations, and these decisions typically consider many factors related to the child and parent or caregiver's circumstances and capacity to parent.[3] The best interests of a child may or may not align with a child's expressed wishes. Attorneys may be appointed instead of or in addition to a GAL to represent a child's expressed wishes, which is referred to as client-directed representation.

Florida law requires the court to appoint a GAL to any child abuse, abandonment, or neglect judicial proceeding, and the Florida Guardian ad Litem Program is the state's mechanism for best interest representation for children involved in dependency proceedings.[4,5,6] Florida's GAL program is an independent entity responsible for providing oversight and technical assistance to all local GAL programs in each of Florida's 20 judicial circuits.[7,8,9] (See Appendix A for a map of Florida's judicial circuits.) The Florida GAL Program recruits, trains, and supervises GAL volunteers to serve on dependency cases across the state. The program employs a multi-disciplinary team approach, wherein a child receives the services of a GAL volunteer, a staff advocate, and a staff attorney. This model has evolved over the years from what used to be a volunteer-only approach.

State funding for the program has increased by 21% over the past five years, from $43.6 million in Fiscal Year 2015-16 to $52.9 million in Fiscal Year 2019-20. Expenditures increased at a similar rate, from $43.5 million in Fiscal Year 2015-16 to $51.6 million in Fiscal Year 2019-20. (See Exhibit 1.)

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[1] While GALs may serve in other types of proceedings, this review is specific to the role of a GAL in dependency (child abuse and neglect) cases.
[2] While CASAs may serve as GALs in some states, in states where GALs are required to be attorneys or professionals, a CASA may be appointed to assist the GAL or otherwise serve the court to determine the child's best interest.
[3] Child Welfare Information Gateway. (2020). *Determining the best interests of the child.* Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau.
[4] Section 39.822(1), *F.S.*
[5] While Ch. 39, *F.S.*, requires the appointment of a GAL in all child abuse, abandonment, or neglect proceedings, the chapter also has specific provisions requiring GAL appointment in cases involving the termination of parental rights and placements in residential treatment centers (ss. 39.807(2)(a) and 39.407(6), *F.S.*).
[6] Section 39.8296(1)(a), *F.S.*
[7] The Justice Administration Commission provides administrative services for the GAL Program.
[8] The program was originally established in 1980 and coordinated by the Office of the State Courts Administrator. The 2003 Florida Legislature created an independent statewide GAL program housed administratively in the Justice Administrative Commission.
[9] The Florida GAL Program provides advocacy to children in all counties except for Orange County, where the Orange County Legal Aid Society provides attorney GALs.

Exhibit 1

Over the Past Five Fiscal Years, State Funding for the GAL Program Has Increased by 21%

Fiscal Year	State Appropriations[1]	GAL Program Expenditures
2015-16	$43.6 million	$43.5 million
2016-17	46.4 million	46.6 million
2017-18	47.1 million	48.8 million
2018-19	51.5 million	51.1 million
2019-20	52.9 million	51.6 million
Total	**$241.4 million**	**$241.5 million**
Five-Year Percent Increase	**21%**	**19%**

[1] Funding includes both general revenue and the Grants and Donations Trust Fund.
Source: OPPAGA analysis of Florida Guardian ad Litem Program data.

In addition to state funds, local GAL offices receive funds from various sources, including local governments, federal Victims of Crime Act funds, local nonprofit organizations, and other private sources. Over the last five years, funding from these sources more than doubled from $4.6 million in Calendar Year 2015 to $9.7 million in Calendar Year 2019. (See Exhibit 2.)

Exhibit 2

Over the Past Five Years, Funding for Local GAL Offices Has More Than Doubled

	Funding Sources				
Calendar Year	Local Governments	VOCA	NCASA	Non-Profits	Total
2015	$3.6 million	$136,826	$20,500	$910,762	**$4.6 million**
2016	3.4 million	139,920	—	153,128[1]	**3.7 million**
2017	3.7 million	1.1 million	290,000	1.5 million	**6.5 million**
2018	3.9 million	1.5 million	117,400	1.5 million	**7.0 million**
2019	4.8 million	2.5 million	—	2.4 million	**9.7 million**
Total	**$19.3 million**	**$5.4 million**	**$427,900**	**$6.4 million**	**$31.6 million**

[1] The GAL Program was not able to provide the full amount of local non-profit donations for 2016.
Source: OPPAGA analysis of Florida Guardian ad Litem Program data.

The number of GAL Program staff has increased, while the number of volunteers has remained relatively stable over the past several years; the number of children served has decreased. In Fiscal Year 2019-20, the Florida GAL Program served 36,506 children, employed 848 staff, and had 13,231 volunteers. (See Appendix B for circuit-level data on GAL Program staffing, volunteers, and children served.)

Over the past five years, the number of staff employed by the GAL Program has increased from 712.25 in Fiscal Year 2015-16 to 848 in Fiscal Year 2019-20. The number of volunteers remained relatively stable during this period, increasing from 12,980 in Fiscal Year 2016-17 to 13,231 in Fiscal Year 2019-20.[10] Although the average length of time volunteers stay with the program increased (from 42 months in 2017 to 47 months in 2019), the monthly average of newly certified volunteers decreased from 228 in 2017 to 191 in 2019.

The number of children served decreased from Fiscal Year 2016-17 to Fiscal Year 2019-20 (40,032 to 36,506, respectively), but the number of closed cases that were reopened significantly increased (from 448 cases reopened in Calendar Year 2017 to 1,147 cases reopened in Calendar Year 2020). Over the last two years, the length of time children were served by the program increased from an average of 21 months in 2018 to an average of 24 months in 2019.[11]

[10] Due to a change in GAL Program data systems, OPPAGA's analysis of program data includes data from Fiscal Year 2016-17 through Fiscal Year 2019-20.
[11] The average length of time children were served by the program was only available in the program's 2018 and 2019 NCASA reports.

METHODOLOGY

OPPAGA's review of the Florida Guardian ad Litem Program included interviews with Florida dependency court stakeholders (including judges, attorneys, and local GAL Program staff and volunteers), representatives from nine states' court-appointed special advocate (CASA) associations, and national stakeholders (including the American Bar Association and the National CASA/GAL Association for Children); analysis of GAL Program, Office of the State Courts Administrator (OSCA), and Department of Children and Families (DCF) data; a 50-state review of dependency laws and rules, and CASA/GAL association funding; and a review of relevant literature.[12,13]

CHILD REPRESENTATION MODELS

Florida's model differs from most other states; professional groups and some studies support attorney representation

While Florida's Guardian ad Litem Program follows standards set by the National CASA/GAL Association for Children (NCASA) and has a similar administrative structure to several other CASA/GAL programs, its team approach to best interest advocacy is different from other states.

The National CASA/GAL Association for Children sets program standards; Florida's program is similar to many other states' programs in administrative structure and funding sources. Including Florida, 49 states and the District of Columbia have court-appointed special advocate or guardian ad litem programs that are members of NCASA, which sets national program standards, including requirements for screening, training, and supervising volunteers, and provides grant funding.[14] The Florida GAL Program adheres to these national standards.

State CASA/GAL organizations vary in their administrative structures, both in terms of the type of organization and in their authority over and relationship to their state's local offices. Four states do not have a formal CASA/GAL state organization, 10 states (including Florida) have publicly administered state organizations that provide direct services to children, and 30 states have nonprofit state organizations with separate local organizations that provide direct services to children. The remaining state programs are publicly administered state organizations with separate local organizations (5) or nonprofit organizations that provide direct services (1).

As part of our review of states' CASA/GAL programs, we reviewed available information on funding, children served, and volunteers. As with Florida's program, CASA/GAL programs nationwide receive funding through a variety of sources, including state and local funds; federal funds, including Victims of Crime Act and Temporary Assistance to Needy Families funds; and private donations. State CASA/GAL programs also vary widely in the amount of funding they receive due to the variation in the size of their service populations, administrative structures (programs where state and local offices are distinct entities may have different funding streams), the role of the CASA program in the state (those with attorney ad litem or attorney GAL models may have smaller budgets if their appointment is optional), and many CASA programs are not statewide (thus their funding may not be representative of the full cost to serve children across the state). For example, California statutes require children to

[12] We interviewed Florida dependency court stakeholders in eight judicial circuits that represent a mixture of urban and rural areas as well as those in the northern, central, and southern regions of the state. We also interviewed volunteers in four circuits.

[13] As part of our review, we spoke with representatives from CASA/GAL associations in the following states: California, Illinois, New Hampshire, New York, North Carolina, Ohio, South Dakota, Texas, and Utah. These include states that are of a comparable size to Florida as well as a mixture of representation models and program administrative structures.

[14] North Dakota does not have a NCASA-affiliated program.

be represented by attorneys in abuse and neglect proceedings, while the appointment of CASAs is optional.[15] Additionally, the California state CASA program is a separate nonprofit from the local CASA programs and has separate revenue from its local programs. (See Appendix C for a complete listing of state CASA/GAL associations' funding and administrative structures.)

The Florida GAL Program differs from most other states' programs and uses a best interest team approach with lay volunteers supported by paid staff. Florida's GAL Program uses a multidisciplinary team approach to best interest advocacy, wherein a lay volunteer serves as the child's GAL and is supported by a child advocate manager (CAM) and a program attorney.[16] When a volunteer is not available, the GAL Program may assign a CAM to serve as the child's GAL.[17]

A primary difference between child representation models is whether a child is entitled to attorney representation. While an attorney serves on a child's GAL team in Florida, the attorney provides advice and counsel to the GAL team and does not provide legal representation to the child.[18] Florida is unlike states where attorneys represent the child in either a best interest or client-directed capacity.[19,20] Florida statutes require the appointment of client-directed attorneys (referred to as attorneys ad litem) to represent children in specific types of dependency cases.[21] Additionally, two circuits in Florida have programs wherein children receive attorneys through local legal aid programs. In the 9th Judicial Circuit, the Legal Aid Society of Orange County provides attorney GALs to children and has done so since the 1970s.[22] The attorneys are either volunteers from the Orange County Bar or staff attorneys from Legal Aid. In contrast, in the 15th Judicial Circuit, the Legal Aid Society of Palm Beach County provides client-directed attorney representation to children in out-of-home care dependency cases in addition to the GALs provided by the Florida GAL Program. This model, known as the Foster Children's Project, began in 2001 to provide legal representation to children 3 years of age and younger and was later expanded to assist children up to 12 years of age.

States' requirements for children's representation in dependency proceedings include best interest and/or client-directed representation provided by attorneys, paid professionals, or lay volunteers. Representation for children in dependency proceedings may be best interest or client directed (or a hybrid approach) and is generally provided by an attorney and/or lay volunteer. While GALs (whether attorneys, professionals, or volunteers) make a recommendation to the court as to what they believe is in the child's best interest, client-directed attorneys may be appointed to represent a child's expressed wishes. Depending on a state's requirements (which may vary based on the circumstances of the case), a child may receive an attorney in addition to or instead of a GAL.

States' models of child representation generally fall into one of six categories.[23,24] (See Exhibit 3.) There may be additional variation within these categories of representation because of differences across

[15] California requires an attorney to represent the child's best interests unless the judge determines the child would not benefit from the appointment of an attorney, and a CASA may be appointed as GAL. According to California CASA staff, attorneys are appointed in all dependency proceedings.

[16] The CAMs supervise and support the volunteers. The program attorneys attend hearings and depositions, negotiate outside of the courtroom, and handle appeals.

[17] In each year of our review period, approximately 30% of children were appointed a staff advocate when no volunteer was available or when the program determined the child's interests would be better served by staff.

[18] According to the GAL Program's Standards of Operation, the GAL Program attorney represents the program; while there is no attorney-client relationship between the GAL attorney and the child, the GAL attorney has a fiduciary duty to the child as the beneficiary of the program's representation.

[19] Florida's GAL model is most similar to North Carolina, where a three-person team approach is also used; however, in North Carolina's team model, the attorney provides best interest legal representation to the child.

[20] Idaho and South Carolina require attorneys to represent the GAL.

[21] Section 39.01305(3), *F.S.*, requires the appointment of attorneys ad litem to represent the child's wishes in cases where the child resides in a skilled nursing facility (or is being considered for placement in such a facility); is non-compliant with prescribed psychotropic medication; is diagnosed as being developmentally disabled; is being placed in a residential treatment center (or is being considered for placement in such a facility); or is a victim of human trafficking.

[22] The attorney GALs represent the best interest of the children and are not client directed.

[23] This includes the District of Columbia.

[24] These models of representation are based on OPPAGA analysis and categorization of state statute, rules of court and/or procedure, and interviews with state CASA association representatives. The categories include what is required for all children in dependency proceedings. In addition to

states in specific role definitions and regional variation within states where additional requirements exist at the local level. For example, when a judge appoints both an attorney and a volunteer, some states require the volunteer to assist the attorney, while others allow the two parties to work independently. Further, some states allow counties to develop their own rules around representation that may add requirements to those set at the state level. (See Appendix D for more information on states' models of child representation.)

Exhibit 3
States' Models of Representation for Children in Dependency Proceedings Fall Into Six Categories

Representation Model	Number of States That Use Model	Description
Age Dependent	4	Children in these states receive different types of representation depending on their age. In these states, older children receive a client-directed attorney, and younger children receive a GAL.
Best Interest (attorney or professional)	20	Children in these states 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.
Best Interest (lay volunteer)	12	Children in these states 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.
Client-Directed Attorney	7	Children in these states always receive a client-directed attorney. These states may also allow for the appointment of a separate GAL or CASA at the discretion of the judge or in certain circumstances.
Hybrid	6	Children in these states always receive both a client-directed attorney and a GAL.
Multidisciplinary Team	2	Children in these states are represented by a GAL team, made up of a volunteer, a staff advocate, and an attorney.

Source: OPPAGA analysis of state statutes and court rules.

Professional groups and federal agencies recommend attorney representation for children in dependency proceedings. Since at least 1995, national children's law experts have recommended children in abuse and neglect proceedings be represented by a client-directed attorney.[25] Further, the American Bar Association's Model Act for the representation of children in abuse and neglect proceedings recommends a client-directed attorney for each child and supports the use of best interest advocates as a complement to, and not a replacement for, legal representation.[26] Additionally, in 2002, the Florida Bar's Commission on the Legal Needs of Children recommended that Florida fully fund independent advocacy, including attorneys and GALs for children in certain legal and administrative proceedings, and create a Statewide Office of the Child Advocate to oversee and provide best interest and client-directed representation.[27]

In addition to professional legal societies, federal child welfare agencies have also studied the representation of children in abuse and neglect proceedings. A study commissioned by the Administration for Children, Youth, and Families examined five GAL models to assess the types of activities performed under each model and whether the GALs were effective in serving children's best interests.[28] The five models were: 1) law school clinic model; 2) staff attorney model; 3) paid private attorney model; 4) CASA/paid attorney model; and 5) CASA/no attorney model. Both CASA models were highly recommended due to their performance on best interest outcome measures. The study

these requirements, states may have additional requirements for specific types of cases or children, or they may allow judges discretion in appointing additional advocates.

[25] Duquette, Donald N. et al. "Child Representation in America: Progress Report from the National Quality Improvement Center." *Family Law Quarterly* 46, no. 1 (Spring 2012): 87-137.

[26] American Bar Association. *ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings.* 2011.

[27] The Florida Bar Commission on the Legal Needs of Children. *Final Report.* 2002.

[28] Condelli, Larry. *National Evaluation of the Impact of Guardians Ad Litem in Child Abuse or Neglect Judicial Proceedings.* Washington, DC: CSR, Incorporated, 1988.

also recommended the staff attorney model but did not recommend the private attorney and law student models.

The U. S. Children's Bureau sponsored two studies to design and evaluate a best practice model. In the first study, the authors designed the National Quality Improvement Center on the Representation of Children in the Child Welfare System (QIC) Best Practice Model using the 1996 ABA Standards, information from academic literature, state laws, government reports, stakeholder interviews (e.g., judges, attorneys, caseworkers, CASAs, and children), and their own study group discussions.[29] The authors recommended that a child's representative be an individual or office charged with providing legal representation to the child, stating the functions may be fulfilled by a multidisciplinary team, including a lawyer and social workers, paralegals, and/or lay advocates. Training was developed and emphasizes six core skills attorneys need in order to implement the model effectively.[30]

A follow-up study evaluating this model was conducted in Washington and Georgia.[31] Attorneys were randomly assigned to receive training on the core skills or continue practice as usual.[32] The study found that the training resulted in behavioral changes among the attorneys that were aligned with the QIC Best Practice Model, including meeting with their child clients more frequently, contacting more parties relevant to the case, spending more time on cases, and making more efforts to initiate a non-adversarial case resolution process. There was no difference between attorney groups in the likelihood of children achieving permanency, being placed with kin, or having fewer placement changes; however, permanency outcomes had not been reached for approximately half of the children in the sample at the study's conclusion.

Most literature reviewed favors legal representation and shows that lay advocates generally perform comparably to attorneys in several areas; lay advocate use is not an evidence-based practice due to significant limitations in available research. Much of the recent research on child representation acknowledges widespread consensus among academics, practitioners, and states favoring legal representation for children in dependency proceedings as a means to give children equal footing with other parties to a case.[33,34] However, CASA programs are widely utilized throughout the U.S. and have been considered cost effective.[35] Most research measuring the effectiveness of CASA intervention compares cases with CASA advocacy to cases without CASA advocacy that are represented by paid private attorneys, staff attorneys, and/or law students on variables regarding court processes and case outcomes. Overall, findings suggest that CASA volunteers perform at least as well as, and in some respects better than, attorneys in certain areas, including higher provision of services for children and their families, higher adoption rates, and fewer placement changes.[36] However, there are some areas where CASAs do not perform as well, including more time spent in out-

[29] Duquette, Donald N. et al. (Spring 2012).

[30] Core skills include the ability to enter the child's world and engage with the child; assess child safety; actively evaluate the child's and family's needs; advance case planning; develop a theory of the case that will direct advocacy; and effectively advocate for each need or goal.

[31] Orlebeke, Britany et al. *Evaluation of the QIC-ChildRep Best Practices Model Training for Attorneys Representing Children in the Child Welfare System*. Chicago, IL: Chapin Hall at the University of Chicago, 2016.

[32] The treatment group received a two-day training on the core skills identified above and had periodic follow-up meetings to receive supplemental training.

[33] The majority of the literature reviewed did not distinguish between client-directed and best interest legal representation.

[34] Duquette, Donald N. et al. (Spring 2012); Kelly, Lisa et al. "Until the Client Speaks: Reviving the Legal-Interest Model for Preverbal Children." *Family Law Quarterly* 50, no. 3 (Fall 2016): 384-426; Miller, J. Jay, et al. "Conceptualizing Effective Legal Representation for Foster Youth: A Group Concept Mapping Study." *Children and Youth Services Review* 91, (June 2018): 271-278; Dale, Michael J. "Providing Attorneys for Children in Dependency and Termination of Parental Rights Proceedings in Florida: The Issue Updated." *Nova Law Review* 35 (Spring 2011): 305-362; Orlebeke, Britany et al. (2016); ABA (2011).

[35] Duquette, Donald N. et al. "Using Lay Volunteers to Represent Children in Child Protection Court Proceedings." *Child Abuse and Neglect* 10 (1986): 293-308; Leung, Patrick. "Is the Court-Appointed Special Advocate Program Effective? A Longitudinal Analysis of Time Involvement in Case Outcomes." *Child Welfare* LXXV, no. 3 (May-June 1996): 269-284; Poertner, John et al. "Who Best Represents the Interests of the Child in Court?" *Child Welfare League of America* LXIX, no. 6 (November-December 1990): 537-549.

[36] Youngclarke, Davin et al. "A Systematic Review of the Impact of Court Appointed Special Advocates." *Journal of the Center for Families, Children and the Courts* 5, no. 109 (2004): 1-28; Lawson, Jennifer et al. "Establishing CASA as an Evidence-Based Practice." *Journal of Evidence-Based Social Work* 10, no. 4 (2013): 321-337.

of-home care and lower reunification rates.[37] There are also several areas, including amount of time spent in the dependency system, where there are no significant differences or findings have been inconsistent.[38] Consistent with the ABA and Florida Bar, several authors recommend CASAs should work either under attorney supervision or as a team with attorneys.[39]

Despite widespread use and research analyzing the effectiveness of CASA programs, lay advocacy is not an evidence-based practice.[40] Some authors posit that efficacy of lay advocacy programs cannot be reliably established due to research limitations, including methodological weaknesses such as selection bias, inconsistent study results, and difficulty comparing programs that utilize different models of advocacy.[41] Because cases in which CASAs are appointed tend to be more complex, studies that analyze the effects of CASAs on cases must control for the variables that make these cases different, such as prior child welfare involvement, severity and type of abuse, and family characteristics.[42] Despite statistical controls, there may still be unobserved or unmeasured differences between children with and without a CASA, which can limit the ability of studies to isolate the effects of CASA intervention.[43] Research reviewed focused largely on permanency outcomes, length of time in foster care, and several additional measures.

Permanency Outcomes

Research on the effect of CASAs on permanency have produced inconsistent findings, with many studies showing no significant differences in the likelihood of child permanency among different advocacy models.[44] One study found that, while most children in their sample achieved permanency regardless of CASA assignment, there were significant differences in the type of permanency achieved.[45] Children with a CASA were significantly less likely to be reunified or placed in permanent kin guardianship and were significantly more likely to be adopted. Among children who were not reunified or adopted, those with a CASA were less likely to experience permanency than those without a CASA.[46] These findings were supported by several other studies, which found that cases with a CASA were significantly less likely to end in reunification and significantly more likely to end in adoption.[47] Studies regarding kinship placement and permanent kin guardianship were mixed.[48]

Length of Time in Care

Research results are mixed regarding the length of time children with a CASA spend in the dependency system. Several studies found that children with a CASA spend more time in the child welfare system,

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[37] Poertner, John et al. (1990); Condelli, Larry (1988); Caliber Associates. *Evaluation of CASA Representation, Final Report*. Fairfax, VA: Caliber Associates, 2004; Osborne, Cynthia et al. "The Effect of CASA on Child Welfare Permanency Outcomes." *Child Maltreatment* 25, no. 3 (2019): 1-11; U.S. Department of Justice Office of the Inspector General Audit Division. *National Court-Appointed Special Advocate Program: Audit Report 07-04*. Washington, DC: U.S. Department of Justice, 2006.

[38] Caliber Associates (2004); Youngclarke, Davin et al. (2004); Litzelfelner, Pat. "The Effectiveness of CASAs in Achieving Positive Outcomes for Children." *Child Welfare* LXXIX, no. 2 (March/April 2000): 179-193; Lawson, Jennifer et al. (2013); Duquette, Donald N. et al. (1986); Condelli, Larry (1988).

[39] Duquette, Donald N. et al. (1986); Poertner, John et al. (1990); Youngclarke, Davin et al. (2004).

[40] At the time of our review, NCASA reported being in the final stages of two studies in an effort to become evidence based and for the development of best practices. These include a judicial impact study and a volunteer retention study.

[41] Lawson, Jennifer et al. (2013); Litzelfelner, Pat (2000).

[42] Litzelfelner, Pat (2000); Lawson, Jennifer et al. (2013).

[43] Osborne, Cynthia et al. (2019).

[44] Osborne, Cynthia et al. (2019); Litzelfelner, Pat (2000); Orlebeke, Britany et al. (2016).

[45] Osborne, Cynthia et al. (2019).

[46] Osborne, Cynthia et al. (2019).

[47] Caliber Associates (2004); Poertner, John et al. (1990); Lawson, Jennifer et al. (2013); Zinn, Andrew E. et al. *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County*. Chicago, IL: Chapin Hall at the University of Chicago, 2008; Youngclarke, Davin et al. (2004); U. S. Department of Justice Office of the Inspector General Audit Division (2006); Abramson, Shareen. "Use of Court-Appointed Special Advocates to Assist in Permanency Planning for Minority Children." *Child Welfare League of America* LXX, no. 4 (July-August 1991): 477-487; Brennan, Kathy et al. *Washington State Court Appointed Special Advocate Program Evaluation Report.* Washington: University of Washington School of Social Work and Washington State Center for Court Research, 2010.

[48] Caliber Associates (2004); Orlebeke, Britany et al. (2016); Youngclarke, Davin et al. (2004); Brennan, Kathy et al. (2010).

though differences were not significant or consistent.[49] Some studies indicated children with a CASA, staff attorney, or trained advocate have shorter times between hearings or between the filing of the petition and the first major disposition.[50] Two studies reported youth with a CASA spent less time in out-of-home care placements.[51] One study found that children with a CASA spent three months longer outside of the home, on average, but the difference was not statistically significant.[52]

Additional Measures

The literature has considered a number of additional measures, including placement changes, services, and rates of subsequent maltreatments. Most of the reviewed studies that examined placement changes concluded that youth with a CASA had fewer placement changes, though three studies found no significant difference.[53] One of the most consistent findings across studies was that children with a CASA or trained advocate, as well as their families, received more services, such as medical and mental health, legal, and family support services, and found that services were more likely to be related to the child's case plan.[54] Although differences were not significant, a few studies found that children with a CASA were less likely to experience subsequent maltreatments or re-enter the dependency system than children who did not have a CASA.[55] Additionally, research suggests CASA involvement may be associated with other positive factors, such as increased chances of sibling groups remaining together, increased likelihood of mothers appearing in court, and more orders related to visitation.[56] (See Appendix E for more information on the literature reviewed.)

VOLUNTEER SCREENING, TRAINING, AND SUPERVISION

Florida's GAL Program follows state and national volunteer requirements; volunteers reported receiving sufficient training and supervision, but stakeholders reported concerns

The Florida GAL Program reported adhering to statutory and national association requirements for volunteer screening, training, and supervision. In addition to background screening and investigation requirements in Florida statutes, the National CASA/GAL Association sets standards for its member organizations for volunteer screening, training, and supervision. (See Exhibit 4.) To assess volunteer screening, training, and supervision, OPPAGA examined Florida GAL Program data and documentation, reviewed national standards, and interviewed 37 dependency attorneys, 21 GAL Program volunteers, 9 dependency judges, and 8 local GAL Program offices.

[49] Caliber Associates (2004); Litzelfelner, Pat (2000); Lawson, Jennifer et al. (2013); Youngclarke, Davin et al. (2004); U.S. Department of Justice Office of the Inspector General Audit Division (2006).
[50] Condelli, Larry (1988); Duquette, Donald N. et al. (1986).
[51] Leung, Patrick (1996); Brennan, Kathy et al. (2010).
[52] Poertner, John et al. (1990).
[53] Leung, Patrick (1996); Litzelfelner, Pat (2000); Lawson, Jennifer et al. (2013); Youngclarke, Davin et al. (2004); Caliber Associates (2004); Orlebeke, Britany et al. (2016); Brennan, Kathy et al. (2010).
[54] Caliber Associates (2004); Condelli, Larry (1988); Poertner, John et al. (1990); Litzelfelner, Pat (2000); Duquette, Donald N. et al. (1986); Lawson, Jennifer et al. (2013); Youngclarke, Davin et al. (2004); U.S. Department of Justice Office of the Inspector General Audit Division (2006).
[55] Caliber Associates (2004); Abramson, Shareen (1991); Lawson, Jennifer et al. (2013); Duquette, Donald N. et al. (1986); Poertner, John et al. (1990); Youngclarke, Davin et al. (2004); U.S. Department of Justice Office of the Inspector General Audit Division (2006).
[56] Condelli, Larry (1988); Youngclarke, Davin et al. (2004); Duquette, Donald N. et al. (1986).

Exhibit 4
Florida Statutes, NCASA, and the Florida GAL Program Set Requirements for Staff and Volunteers

	Florida Statutes	NCASA	Florida GAL Program
Volunteer Screening	✓ Level 2 background check ✓ Security background investigation	✓ Reference check ✓ SSN verification ✓ Review of law enforcement databases ✓ Interview	✓ NCASA and Florida statutes requirements ✓ Local offices permitted to have additional requirements
Volunteer Training	✓ Must include training on the recognition of and responses to head trauma and brain injury in a child under six years of age	✓ 30 hours pre-service ✓ 12 hours in-service annually ✓ Specified topics	✓ NCASA requirements ✓ Supervised fieldwork
Volunteer Supervisor Training	✓ Must include training on the recognition of and responses to head trauma and brain injury in a child under six years of age	✓ Volunteer training ✓ 12 hours in-service annually	✓ NCASA requirements ✓ Certification process ✓ 40 hours of continuing education every two years
Volunteer Supervision		✓ Supervisor must meet with volunteer at least monthly ✓ Supervisor should supervise a maximum of 30 volunteers at a time ✓ Volunteers assigned to no more than two cases at a time	✓ Volunteer supervisor serves on GAL team with volunteer ✓ No standard for volunteer supervisor caseloads ✓ Volunteers assigned to no more than two cases at a time

Source: OPPAGA analysis of Florida statutes, NCASA standards for state and local programs, and Florida GAL Program Standards of Operation.

Volunteer Screening

Chapter 435 and s. 39.821, *Florida Statutes*, require the GAL Program to conduct a level 2 background screening as well as a security background investigation before certifying a volunteer to serve. The security background investigation must include employment history checks, checks of references, local criminal history records checks through local law enforcement agencies, and statewide criminal history records checks through the Department of Law Enforcement.[57] The Florida GAL Program also follows the National CASA/GAL Association's requirements and guidelines for screening prospective volunteers, which include aspects such as references, social security number verification, checks against several law enforcement databases, and an interview. Local Florida GAL offices may have additional screening requirements, such as the submission of a writing sample.

Volunteer Training

NCASA requires that all volunteers receive 30 hours of pre-service training and 12 hours of annual in-service training. The pre-service training includes topics such as the roles and responsibilities of a CASA/GAL volunteer, court processes, relevant state and federal laws and regulations, cultural competency, and effective advocacy. The Florida GAL Program adheres to the NCASA requirements and has established a three-phase pre-service training, which is standardized across the state but allows for local additions based on aspects of dependency unique to specific judicial circuits. The three-phase training includes both online and classroom instruction, followed by supervised fieldwork, which includes a home visit, court observation, and report writing. Additionally, local programs have

[57] In analyzing and evaluating the information obtained in the security background investigation, the program must give particular emphasis to past activities involving children, including, but not limited to, child-related criminal offenses or child abuse.

partnerships with community groups to provide training on topics relevant to their local areas. After completing pre-service training, the volunteer is certified and sworn in. After one year of service, volunteers must annually complete 12 hours of in-service training and undergo an annual re-certification review.[58,59]

Staff Training and Volunteer Supervision

NCASA requires volunteer supervisors to attend volunteer pre-service training and receive a minimum of 12 hours of annual continuing education. Supervisors must meet with volunteers at least once per month and regularly review progress on each case. In addition to these requirements, the Florida GAL Program certifies volunteer supervisors (i.e., CAMs) via a three-week training program, a certification exam, and an agreement to follow a standard Code of Ethical and Professional Conduct.[60,61] A certified supervisor must hold a bachelor's degree or higher, complete 1,500 hours of work as a CAM, conduct three field visits/observations, and be supervised for 20 hours. Maintaining certification requires 40 hours of continuing education every two years.[62]

While there are no in-service training requirements for GAL program attorneys, the attorneys must complete 33 hours of continuing legal education every three years to maintain a Florida Bar license.[63] The GAL program also encourages attorneys to pursue board certification in juvenile law; 24 of the approximately 200 program attorneys are board certified.[64]

Volunteer and Staff Caseloads

NCASA sets standards for caseloads for volunteers and volunteer supervisors. Volunteers are to be appointed to no more than two cases at one time, though exceptions may be granted.[65] The Florida GAL Program's Standards of Operations set the same standard, though program staff reported that the standard expectation is that a volunteer be appointed to 1.8 cases or 2.1 children at a time. According to program data, the program meets this standard, with volunteers averaging 1.7 cases in Calendar Year 2019. (See Appendix B for volunteer caseloads by circuit.)

NCASA requires that volunteer supervisors oversee no more than 30 active volunteers (or 45 cases) at one time. In cases where staff is required to perform duties other than supervising volunteers, the number of volunteers the staff can supervise is reduced proportionally. While the GAL Program's Standards of Operation do not address caseloads for CAMs, program staff reported that the expectation is for CAMs to supervise approximately 36 volunteers and have caseloads of 76 children at one time. If a CAM is serving as the advocate (with no volunteer assigned), the expected caseload is 38.[66,67] Program data show that in Calendar Year 2019, volunteer supervisors' caseloads were slightly higher than this standard (109%).

[58] The annual recertification reviews include the CAM providing feedback to the volunteer, asking what additional supports or training the volunteer might need, and discussing their overall experiences as a volunteer.
[59] Attorneys serving as GAL volunteers who are active members of the bar are exempt from in-service training requirements.
[60] The GAL Program developed the certification program in partnership with the Florida Board of Certification and the University of South Florida's School of Social Work.
[61] Training topics include roles of advocacy team members, trauma-informed care, and court preparation.
[62] During the first renewal period, the 40 hours must be completed by October 31st of the renewal year.
[63] There is no specific requirement for completing courses in juvenile or dependency law to satisfy continuing legal education (CLE) requirements.
[64] A study comparing attorneys trained in the QIC Best Practice Model to those who had not received the training found that older children with a trained attorney were 40% more likely to reach permanency within six months.
[65] Under the exception, the volunteer shall be appointed to no more than five cases.
[66] If a CAM is both managing volunteers and serving as a staff advocate, an individualized, blended workload is generated wherein cases without a volunteer are double weighted.
[67] While NCASA does not set standards for attorney caseloads, the Florida GAL Program has a standard expectation of 150 children per full-time attorney.

Many stakeholders feel that the training and supervision volunteers and staff receive is sufficient; however, some stakeholders believe training in additional areas would be beneficial. We spoke with 21 GAL volunteers from four judicial circuits.[68] Twenty volunteers reported that the training and supervision they receive from the local program is adequate. Six volunteers described the training provided by program attorneys or more experienced volunteers as being particularly helpful. Five volunteers reported that the quality of the supervision they receive varies somewhat by the CAM assigned to the case, and four reported that many of the supervisors appear to be overworked.

Seven of the nine dependency judges and staff at all eight local GAL Program offices we spoke with also reported that the GAL volunteers and staff are adequately trained.[69,70] One judge cited the training's thoroughness, while another stated that the program does a good job of having volunteers observe court proceedings as well as pairing new volunteers with experienced staff. One local GAL office reported that it would like a larger training budget, more time to attend trainings, and more National Institute for Trial Advocacy-style trainings.

Among the attorneys from Children's Legal Services (who represent DCF) and the Office of Criminal Conflict and Civil Regional Counsel (who represent parents in dependency proceedings) who provided responses regarding training, 18 mentioned a need for additional volunteer and/or staff training in multiple areas.[71] Some attorneys would like more training on family reunification as the primary goal in dependency. This could include increased awareness of the benefits of preserving the family, consequences of terminating parental rights, realities of foster care, and difficulties faced by disadvantaged parents. Six of the attorneys also reported that volunteers need more training on what actions or options are legal within the dependency system. Finally, three attorneys in one judicial circuit felt that GAL program attorneys need more preparation, such as a trial techniques program focused on dependency court.[72]

REPRESENTATION OF CHILDREN IN DEPENDENCY PROCEEDINGS

Florida's GAL Program does not represent children on all dependency cases; when resources are limited, local offices prioritize cases

Over each of the past four fiscal years, the GAL Program provided best interest representation to approximately two-thirds of children in the dependency system statewide; wide variation exists among circuits. While Florida statute requires judges to appoint a GAL at the earliest possible time to represent the child in any abuse, abandonment, or neglect judicial proceeding, not all children in these proceedings receive a GAL. The percentage of children in the dependency system assigned to the GAL Program remained the same from Fiscal Year 2016-17 through Fiscal Year 2018-19, decreasing slightly in Fiscal Year 2019-20. (See Exhibit 5.) The percentage of dependent children who received a GAL varied greatly by judicial circuit. In Fiscal Year 2019-20, the percentage of dependent

[68] OPPAGA selected a random sample of 80 volunteers from 4 of Florida's 20 judicial circuits and interviewed 21 volunteers.
[69] OPPAGA staff interviewed nine dependency judges in eight circuits.
[70] OPPAGA staff interviewed local GAL Program offices in eight circuits.
[71] OPPAGA staff interviewed 37 dependency attorneys in eight circuits.
[72] Our review identified six states that require training in excess of the national association's requirements. All six of these states require 40 hours of pre-service training for volunteer advocates.

children represented by the GAL Program ranged from 45% in the 4th Circuit to 93% in the 16th Circuit. (See Appendix B for additional analyses of circuit-level data.)

Exhibit 5
The Percentage of Children in the Dependency System Assigned to the GAL Program Has Remained Stable Across the Four Fiscal Years

Fiscal Year	Number of Children Served	Number of Children in Dependency System	Percentage of Children in Dependency Served by GAL Program
2016-17	40,032	58,784	68%
2017-18	39,562	58,375	68%
2018-19	38,997	57,355	68%
2019-20	36,506	54,695	67%

Source: Florida Guardian ad Litem Program and Department of Children and Families data.

Stakeholders and GAL Program staff at the state and local levels reported that the program sometimes has to discharge from a case before its conclusion, which some attributed to insufficient resources. Local program staff also reported that a GAL may not be appointed due to a determination at a shelter hearing that the child's safety risk is low or because the judge does not appoint a GAL to the case. The majority of the dependency judges we spoke with in eight judicial circuits reported that while their preference is to appoint a GAL on all cases, various factors affect their ability to do so, including a lack of resources (too few volunteers and too few GAL attorneys), conflicts of interest, or a child being placed outside of the circuit.[73]

When local programs are unable to provide representation in all dependency cases, judges and staff reported prioritizing specific types of cases. Each circuit determines how to prioritize the appointment of GALs when resources do not allow their appointment on all dependency cases. Judges reported prioritizing appointments based on a child's age (with younger children being the priority). One judge also reported certain cases being a lower priority for GAL appointment, including cases where the child has an attorney ad litem and those where the child appears to be in a stable placement. Most local GAL Program staff reported prioritizing cases based on statutory requirements (which specifically require GALs in cases involving the termination of parental rights and placements in residential treatment centers), the child's age, abuse severity, placement type, or whether any special circumstances are present (such as victims of human trafficking, children with disabilities, and children prescribed psychotropic medications). One program reported using a scoring matrix to determine the severity of a case and assist with case prioritization; another circuit uses a case prioritization list.

PROGRAM OUTCOMES AND PERFORMANCE

The GAL Program uses data from multiple sources to measure performance; Florida's performance activities differ from those of other states

The GAL Program tracks circuit performance using its own data but relies on DCF statewide dependency data for all children for child welfare outcomes; the program engages in activities to improve performance. The program uses a case management data system to manage and monitor its cases in each circuit. Program effectiveness is measured through reports that are published monthly

[73] OPPAGA staff interviewed nine dependency judges in eight circuits.

on the program's website—Performance Advocacy SnapShots and Representation Reports. The SnapShot reports include two categories of measures—Individual GAL Circuit Program Performance and GAL Influence on Child Welfare Outcomes. The Representation Reports include the percentages of children in the dependency system who are represented by the GAL Program.

The individual circuit program performance measures (e.g., percentage of active volunteers, ratio of children to volunteers, and 12-month rolling certified volunteer retention rate) use data from the program's case management system. However, for its child welfare outcome measures, the program does not use its own data but instead monitors the performance of the child welfare system as a whole through the Department of Children and Families Florida Safe Families Network (FSFN) reports.[74] These reports include many of the federally required child welfare measures, such as the number of children achieving permanency within 12 months and the number of children not re-entering out-of-home care within 12 months. While program staff reported that the GAL Program affects the child welfare system as a whole, these larger measures (that include data for children who were not served by the program) may not be indicative of the program's actual performance.

In addition to the above measures, GAL Program staff reported that the state and local GAL offices use a variety of tools to monitor and improve performance, including employee performance evaluations, annual volunteer re-certifications, specialized trainings in needed areas (e.g., substance abuse, domestic violence, psychotropic medications, and legal advocacy), and Advocacy, Collaboration, and Teamwork (ACT) reviews. ACT reviews are a qualitative review process wherein teams (made up of leadership and staff from other local offices) conduct local office site visits and perform file reviews. Program staff reported that by reviewing these files, the teams assess the program's overall effectiveness, whether the child's needs were met, and what could be improved upon.

CASA/GAL performance metrics are similar across states; several states report additional performance information. To gather information on how other states' CASA/GAL programs report performance data, OPPAGA reviewed publically available information from the 49 state CASA/GAL associations and conducted interviews with staff from nine associations.[75] Most states reported having service metrics, such as number of volunteers and ratio of children to volunteers, which are similar to Florida's metrics. Several states report additional performance information related to services and child welfare outcomes that differs from the information reported by Florida's GAL Program.

- Colorado CASA conducts pre- and post-program wellbeing assessments of children served by the program, gathering information in areas such as foster care placements, education, and health.
- New Hampshire CASA reported conducting additional analyses related to youth with a permanency goal of another planned permanent living arrangement (APPLA).[76]
- New York CASA uses a child outcomes tool with questions to measure the program's effectiveness in the areas of education, health care, mental health, placement stability, and safety. With every six-month permanency hearing, a staff member or volunteer answers a series of questions regarding the child's status and services received and enters the information into the program's data system.
- Ohio CASA reported that some of their local offices monitor child outcomes and compare them to the state child welfare agency and its services.

[74] FSFN is the data system for DCF's Office of Child Welfare.
[75] Five states did not have any publically available performance information.
[76] APPLA, is a permanency goal for youth who are expected to be in foster care until they reach adulthood. APPLA is a permanency option only when other options such as reunification or legal guardianship have been ruled out.

This additional level of detailed performance information can help states better assess program effectiveness and thus identify potential areas of improvement. Florida's GAL Program could consider identifying areas where performance information could be further developed to better monitor program effectiveness.

While data issues limit analysis of GAL Program outcomes, records show some similarities with statewide trends; stakeholder opinions of the program are mixed

To examine program outcomes and performance, OPPAGA analyzed GAL Program, Office of the State Courts Administrator, and Department of Children and Families data pertaining to children involved in dependency proceedings from Fiscal Year 2016-17 through Fiscal Year 2019-20. OPPAGA also interviewed dependency judges and attorneys to assess their perceptions of GAL Program efficiency and effectiveness.

GAL and dependency court data problems create limitations for analysis; a unified data set that combines GAL case information with DCF child welfare outcomes does not exist. The GAL Program uses a vendor to manage its case management system. The vendor creates reports that the program uses to produce case numbers (e.g., the number of children served per year). Due to the program's reliance on the vendor to create these reports and manage the system as a whole, program staff does not have a strong understanding of the system's underlying data. When OPPAGA requested that program staff export all raw program data for Fiscal Year 2015-16 through Fiscal Year 2019-20, program staff was only able to provide a vendor programmed report, which made it difficult to determine the completeness and accuracy of the data and hindered analysis. Further, due to a data system change in mid-2016, staff reported that the data prior to this time may not be reliable.[77] Because GAL program staff lack in-depth knowledge of the data in the system and lack direct access to the data other than through automated reports, it appears that they are unable to assess the accuracy of all system data.

In addition, OPPAGA staff found several problems with the data received from the program, including not having a unique identifier for children receiving services as well as issues with dates contained within the system (e.g., children with more closure dates than open dates). Limitations to the data provided to us by the GAL Program prevented us from conducting original analyses to calculate figures such as the number of children served and number of volunteers involved with the program. For such measures, we used figures produced by the GAL Program in lieu of OPPAGA original analyses. Further, because the GAL Program does not use its own data system to collect child outcomes information, supplemental datasets are required to conduct a complete analysis.

Other entities have information systems that may be used to supplement GAL Program data; however, these sources also have limitations. OSCA's dependency court data system, the Florida Dependency Court Information System, is limited as a data source for GAL Program information. The system was designed for use by court staff and keeps real-time data, overwriting historical records in cases where a child has subsequent removals. Several years ago, data quality issues led OSCA staff to remove some records, resulting in incomplete GAL data prior to 2018. DCF's Florida Safe Families Network data system maintains data on children involved in dependency cases; however, the database does not identify which children were assigned a GAL. In addition, GAL program data do not include the unique FSFN identifying number for each child's case, creating issues for matching children's files in the two systems.

[77] Due to this change in data systems, OPPAGA's analysis includes data from Fiscal Year 2016-17 through Fiscal Year 2019-20.

The following analysis of children's outcomes includes children served by the GAL Program who OPPAGA staff were able to match to records within FSFN. Matched records represent 80% of children with a closed case in the GAL Program's data and are not representative of all GAL children. The incomplete match across databases hindered our ability to compare children served by the GAL program to those who did not receive program services.

Over the past four years, the number of children served in the dependency system and by the GAL Program has decreased; the most frequent GAL case closure reason has been reunification. From Fiscal Year 2016-17 through Fiscal Year 2019-20, the number of children served in the dependency system decreased (from 58,784 in Fiscal Year 2016-17 to 54,695 in Fiscal Year 2019-20). Correspondingly, the number of children served by the GAL Program also decreased during this time (from 40,032 in Fiscal Year 2016 to 36,506 in Fiscal Year 2019-20). OPPAGA's analysis of GAL Program and DCF data identified 43,135 children, with 45,568 court-ordered removals, who had a closed case with the GAL Program over the past four fiscal years (Fiscal Year 2016-17 through Fiscal Year 2019-20). The children served were primarily white (62%), ranged in age from 0 to 17 at the time of removal, were equal shares male and female, and were most often initially placed with a relative caregiver; in addition, the majority had no prior removals. Of the 45,568 removals, 43,768 were closed and had a discharge reason during this time.[78]

When a child must be removed from their family, it is important that child welfare agencies find a safe, permanent home as quickly as possible.[79] The first goal is to reunite the child with their family, referred to as reunification. When family reunification is not an option, children may achieve permanency through adoption or permanent guardianship.[80] Children who do not achieve permanency by their 18th birthday may enter Extended Foster Care or age out of the foster care system. During the time of our review, the average time children appointed to the GAL Program spent in DCF out-of-home care increased slightly. In Fiscal Year 2016-17, the average removal duration was nearly 17 months; in Fiscal Year 2019-20 this increased to 18 months. The removal duration also varied by circuit, with the 8th Circuit having the shortest average removal episodes (14 months) and the 9th Circuit having the longest (24 months).

GAL Program data for these children over the past four fiscal years shows that the majority of cases were closed by the program because the child achieved reunification (30%), had an established permanency goal and was seen as stable in their placement (21%), or was adopted (19%).[81] These closure reasons have remained somewhat stable across the four years, with the largest shifts among cases closed to permanent guardianship and those closed because the child had an established permanency goal. The number of cases closed to permanent guardianship decreased from 17% in Fiscal Year 2016-17 to 12% in Fiscal Year 2019-20; the percentage of cases closed because the child had an established permanency goal increased from 18% to 22%. (See Exhibit 6.)

[78] While a GAL may be appointed to a child in in-home care, program staff reported that out-of-home cases are their priority. As such, our analysis of child outcomes is focused on children who were placed in out-of-home care at any point during their removal episode.

[79] According to federal and state law, a permanency hearing must be held no later than 12 months after the date the child is considered to have entered foster care. The hearing determines the permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent; placed for adoption and the state will file a petition for termination of parental rights; referred for legal guardianship; or, in the case of a child who has attained 16 years of age, placed in another planned permanent living arrangement. A permanency hearing must be held at least every 12 months for any child who continues to be supervised by the department or awaits adoption.

[80] A court may appoint a relative or other kin as a permanent guardian when that person has been caring for the child as a foster parent. Kinship guardianship can be a permanency option when reunification with the child's parents or permanency through adoption is not feasible. Guardianship creates a legal relationship between a child and caregiver that is intended to be permanent and self-sustaining and can provide a permanent family for the child without terminating parental rights.

[81] The GAL Program does not always keep a case open until it is closed through the courts. In some cases, the program may discharge off a case if the child's permanency goal has been established by the court, and the child is stable in the placement.

Exhibit 6

Closure Reasons Reported by GAL Program Remained Stable From Fiscal Year 2016-17 Through the First Half of Fiscal Year 2019-20[1]

GAL Program Closure Reason for GAL Program Closures	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20[1]	Four-Year Total
Reunification	29%	31%	29%	31%	30%
Adoption	18%	18%	20%	19%	19%
Permanency Goal Established[2]	18%	19%	23%	22%	21%
Permanent Guardianship	17%	15%	13%	12%	15%
Other[3]	9%	9%	6%	6%	8%
Insufficient Program Resources[4]	5%	4%	4%	4%	5%
Aged Out of Care	3%	4%	4%	4%	4%
Total	**100%**	**100%**	**100%**	**100%**	**100%**

[1] To control for differences between GAL Program closures and DCF discharges, we limited the Fiscal Year 2019-20 data to the first six months (July 1, 2019–December 31, 2019).
[2] Closure reasons of APPLA are included here.
[3] Other includes children who ran away, were transferred to or placed in another circuit, and cases that were either consolidated or bifurcated by the courts.
[4] This includes cases to which the GAL Program was appointed where the program was either unable to staff the case at all or had to discharge from a case before it concluded. Closure reasons of APPLA are included here.
Source: OPPAGA analysis of Florida Guardian ad Litem Program data representing 80% of GAL children with a closed case.

To determine the child's ultimate outcome in the dependency system, OPPAGA analyzed trends in DCF discharge data for the matched children served by the GAL Program. Of the children who were discharged from the GAL Program, 30% were ultimately adopted, 44% were reunified, 16% went into permanent guardianship, and 5% aged out of care. Of the 21% of children who were discharged from the GAL Program due to achieving permanency goals and being in a stable placement, 50% were ultimately adopted, 32% were reunified, 7% went into permanent guardianship, and 4% aged out of care. From Fiscal Year 2016-17 through Fiscal Year 2019-20, the percentage of removals that ended in adoption remained somewhat stable, while the percentage of removals that ended in reunification decreased (from 45% to 43%). From Fiscal Year 2016-17 through Fiscal Year 2019-20, between 2% and 9% of cases remained open or had a missing discharge reason; therefore, closure reasons in other categories may be slightly underrepresented. (See Exhibit 7.)

Exhibit 7

During the Same Time Period, DCF Discharges for GAL Program Closures Have Remained Fairly Stable, but Some Discharge Reasons May Be Underrepresented Due to Incomplete Discharge Data[1]

DCF Out-of-Home Care Discharge Reason for GAL Program Closures	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20[2]	Four-Year Total
Reunification	45%	45%	43%	43%	44%
Adoption	28%	30%	31%	28%	30%
Permanent Guardianship	18%	16%	14%	13%	16%
Aged Out of Care	6%	6%	5%	5%	5%
Removal Still Open/No Discharge Reason	2%	2%	5%	9%	4%
Other[3]	1%	1%	1%	1%	1%
Total[4]	**100%**	**100%**	**100%**	**100%**	**100%**

[1] Analysis is on GAL closures that matched to a DCF removal episode. Discharge reason is reported by the fiscal year of the GAL closure.
[2] To control for differences between GAL Program closures and DCF discharges, we limited the Fiscal Year 2019-20 data to the first six months (July 1, 2019–December 31, 2019).
[3] Other includes death of a child, children living with other relatives, and children who were transferred to another agency.
[4] Totals do not sum to 100% due to rounding.
Source: OPPAGA analysis of Florida Guardian ad Litem Program and Department of Children and Families data representing 80% of GAL children with a closed case.

While statewide trends in discharge reasons for GAL closures have been fairly stable over the past several years, large variation can be seen across judicial circuits. Over the four fiscal years, 47% of removals in the 4th Circuit resulted in adoption, compared to only 19% in the 10th Circuit. Examining reunifications, the 13th Circuit had the highest rate (51%), while the 6th and 8th Circuits had the lowest (37%). (See Appendix B for child outcomes by circuit.) There were slight differences when examining child outcomes by race. A greater percentage of removals involving white children ended in adoption (31% of white children vs. 26% of black children), with a smaller percentage ending in the child aging out of care (5% of white children vs. 7% of black children). On average, black children also tended to stay in care longer. GAL-assigned removals involving black children lasted an average of 573 days, while removals involving white children lasted an average of 534 days.

GAL closure dates do not always align with DCF discharge dates for individual cases, and this creates limitations for comparing trends between GAL closure and DCF discharge reasons. The date on which the GAL Program closes a case may not always align with the date on which DCF discharges a case. This may happen in cases where there are limited program resources, and the GAL Program closes a child's case before the case is closed by the courts and DCF. In such cases, the closure reason in the GAL Program's data system may be different from that in DCF's system. Additionally, Florida statutes require the court to retain jurisdiction over dependency cases for a minimum of six months following reunification, and in these cases, the GAL Program may remain on the case and close it after DCF has closed the out-of-home care case.[82] Consistent with this state requirement, OPPAGA analysis of GAL Program data for matched children suggests that GALs remained on many reunification cases after the child was discharged from out-of-home care, as opposed to adoptions, where the GAL Program often closed the case prior to the DCF discharge.

Examining all DCF out-of-home care cases from Fiscal Year 2016-17 through Fiscal Year 2019-20, discharges to reunification decreased from 50% to 45%, and adoptions increased from 22% to 31%. (See Exhibit 8.) OPPAGA analyses showed similar but less pronounced trends among those children served by the GAL Program (as seen in Exhibit 7). However, because trends among GAL cases are based on the GAL Program closure date, and trends among the foster care system as a whole are based on DCF discharge date, results between Exhibit 7 and Exhibit 8 are not directly comparable year to year.

Exhibit 8
DCF Discharges to Reunification and Permanent Guardianship Have Decreased Over the Past Four Years, While Adoptions Have Increased

DCF Discharge Reason for All Out-of-Home Care Discharges	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	Four-Year Total
Reunification	50%	48%	46%	45%	48%
Adoption	22%	25%	29%	31%	27%
Permanent Guardianship	20%	19%	18%	16%	18%
Aged Out of Care	6%	6%	6%	6%	6%
Other	1%	1%	1%	2%	1%
Total[1]	**100%**	**100%**	**100%**	**100%**	**100%**

[1] Totals do not sum to 100% due to rounding.
Source: OPPAGA analysis of Department and Children and Families data.

Stakeholder opinions regarding the effectiveness and efficiency of Florida's GAL Program were split along professional lines. Most judges we interviewed reported that the program is effective and efficient due to several factors, including use of unpaid volunteers; GALs being able to get to know the child better than other parties; and GALs providing judges with information that would not otherwise be brought to their attention, as well as the general benefit of someone advocating for the child's best interests. Judges also described GALs as independent and impartial voices.

[82] Section 39.701(1)(b), *F.S.*

Conversely, dependency attorneys expressed several concerns with the program. Concerns included the lack of legal representation for GAL children; GALs discharging off cases before they conclude; GALs often reiterating DCF's recommendations; and lack of volunteer expertise. Some also stated the program seems biased against and often delays reunification. Attorneys and one judge expressed concern that volunteers' personal experiences and biases may lead them to confound the safety of the parents' home with what they think is a better home environment with a foster parent, resulting in more frequent recommendations for termination of parental rights. Attorneys also reported that there are sometimes issues with GAL team cohesion. For example, some stated that child advocate managers direct what gets reported to the court regardless of whether the volunteer agrees, or volunteers are asked not to come to court if their opinion differs from the program's opinion.[83]

Many of these attorneys also reported issues with GAL efficiency, including difficulty in scheduling court dates around volunteers' schedules, irrelevant court filings by the GAL (such as requests for parent to undergo a psychological evaluation when there is no history of mental health issues), or not bringing issues regarding the child's needs to the court's attention in a timely manner. These attorney stakeholders reported that while the original intent of the program is reasonable, the execution has not always been successful.

Despite these differing views, stakeholder groups commended GALs for obtaining needed services for children. This is consistent with several studies demonstrating that children with a CASA and their families are more likely to receive services.[84] Most stakeholder groups, including volunteers, also reported that the program is effective in that judges often listen to and follow the GAL's recommendation, though there was disagreement as to whether that had a positive or negative impact.

OPTIONS

OPPAGA's review of Florida's Guardian ad Litem Program identified several issues with program data and performance measurement that could be addressed. To address these issues, we present several options for the program's consideration.

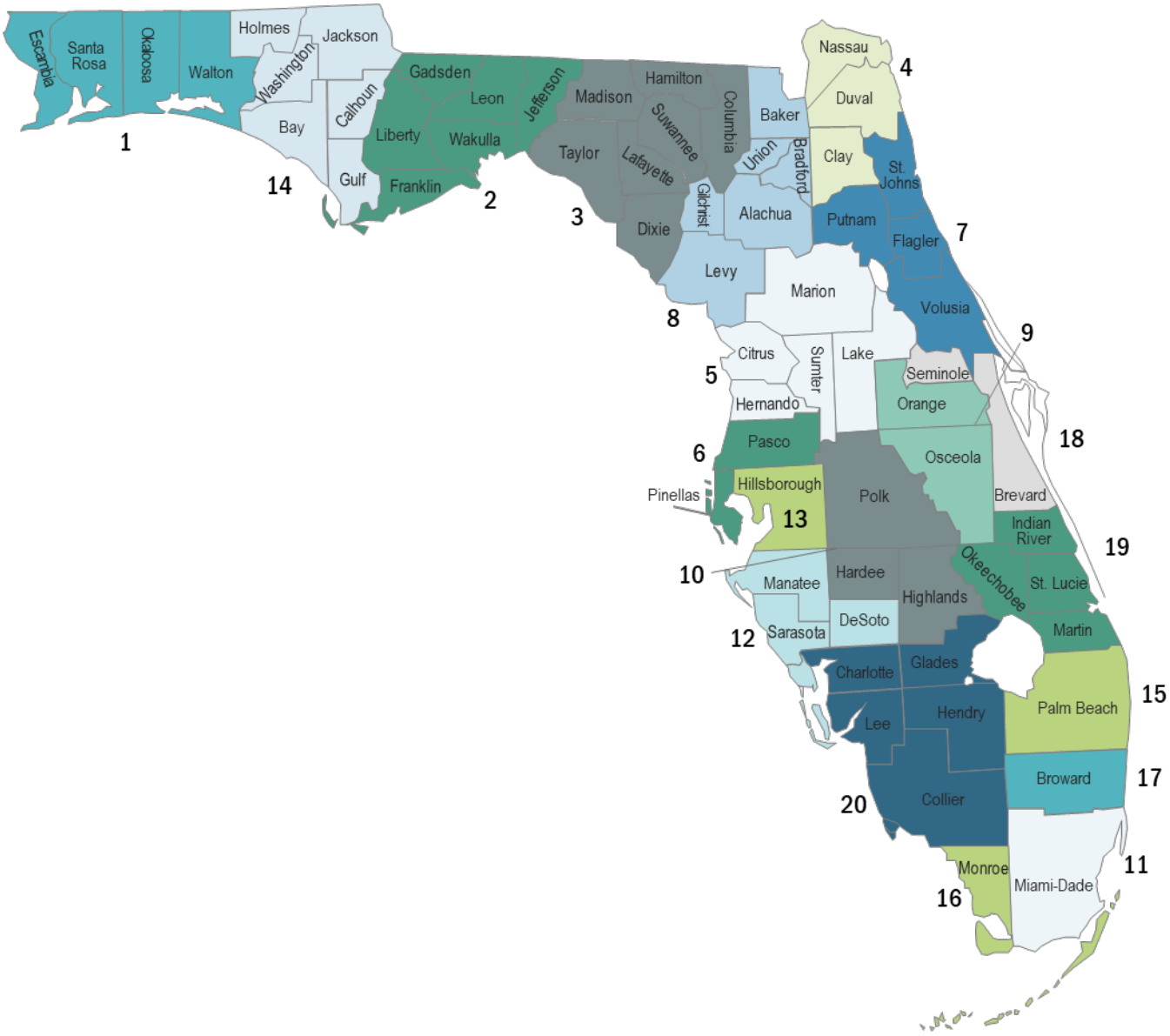
- Implement additional program performance metrics similar to those of other states, such as pre-and post-program well-being assessments and/or child outcomes specific to those served by the GAL Program.
- If the GAL Program continues to report Department of Children and Families outcomes data as part of its SnapShot measures, clarify that the data includes all children in the dependency system and is not specific to children served by the GAL Program.
- Improve GAL data management, including program staff developing a better understanding of the case management system's underlying data to help identify and address data errors.
- Include a Florida Safe Families Network unique identification number in each child's case file to facilitate accurate tracking of child placements and outcomes in DCF's data system.

[83] GAL Program Standards of Operation address team conflict, stating that if a difference of opinion regarding a case issue or advocacy decision arises, the team should discuss the issue, conduct a staffing if necessary, and develop a consensus position. When a conflict arises as to an issue of fact, the team shall defer to the GAL volunteer and CAM. When a conflict arises as to an issue of law, the team shall defer to the GAL Program attorney. If team members cannot reach consensus, they should consult with circuit leadership. Circuit leadership can confer with regional and state office staff if needed.

[84] Caliber Associates (2004); Condelli, Larry (1988); Poertner, John et al. (1990); Litzelfelner, Pat (2000); Duquette, Donald N. et al. (1986); Lawson, Jennifer et al. (2013); Youngclarke, Davin et al. (2004); U.S. Department of Justice Office of the Inspector General Audit Division (2006).

APPENDIX A

Map of Florida's Judicial Circuits



Source: Florida Office of the State Courts Administrator.

APPENDIX B

Guardian ad Litem Circuit-Level Data

GAL Program Staffing, Volunteers, and Children Served by Circuit

In Fiscal Year 2019-20, the GAL Program employed 848 staff across Florida's 20 judicial circuits. State, county, federal, and private sources fund staff positions. The number of staff employed by the program's local offices ranged from 9 in the 16th Circuit to 103.5 in the 11th Circuit. Each office has volunteers that are certified and sworn in by their circuit to serve as GALs to children in abuse and neglect proceedings. The number of volunteers in Fiscal Year 2019-20 ranged from 85 in the 16th Circuit to 1,203 in the 6th Circuit, with a total of 13,231 volunteers statewide. (See Exhibit B-1.)

Exhibit B-1
Fiscal Year 2019-20 GAL Staff and Certified Volunteers by Circuit

Circuit	FTEs (all funding sources)[1]	Volunteers
1	46	832
2	19.5	473
3	18.5	207
4	43.75	628
5	48	755
6	56.5	1,203
7	42.5	735
8	21.5	481
9	16	221
10	45	931
11	103.5	889
12	32.5	718
13	64	1,187
14	21	321
15	52.5	721
16	9	85
17	56	976
18	38.75	650
19	28	454
20	46	764
State Office	39.5	-
Total	**848**	**13,231**

[1] Program staff are funded through general revenue, the GAL Foundation, local GAL fundraising organizations, Victims of Crime Act and other federal grants, state grants, and county funds.
Source: OPPAGA analysis of Florida Guardian ad Litem Program data.

GAL Program Circuit-Level Performance Measures

The GAL Program reports its circuit performance data monthly. Due to the numbers of children and volunteers that remain with the program across months, the data in this format cannot be summed across months. To report these data by fiscal year, OPPAGA staff averaged the monthly data for each fiscal year. The program's circuit performance measures presented below are averages per month, by fiscal year.

From Fiscal Year 2016-17 through Fiscal Year 2019-20, there was wide variation across circuits in GAL Program monthly performance metrics, including in the average monthly percentage of children in the dependency system who were appointed to the GAL Program, the average monthly percentage of children in the program who received volunteer GALs, and the average monthly number of children per volunteer in each circuit. Across the four years, the percentage of children in the dependency system who were assigned to the program ranged from 53% in the 13th Circuit to 106% in the 2nd Circuit.[85,86] The percentage of children appointed to a volunteer ranged from a low of 32% in the 16th Circuit to a high of 95% in the 2nd Circuit. Further, the number of children per volunteer in each circuit ranged from a low of 0.6 in the 16th Circuit, to a high of 2.5 in the 7th Circuit. (See Exhibit B-2 through Exhibit B-16).

Exhibit B-2
GAL Statewide Program Performance Metrics[1]

Statewide Performance Metrics	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Average number of children in dependency per month	30,967	30,716	30,116	30,956
Average number of children assigned to GAL Program per month	24,160	23,905	23,312	22,035
Average percentage of children in dependency assigned to program per month	78%	78%	78%	71%
Average number of volunteers per month	9,634	10,021	10,028	10,717
Average number of children assigned to volunteers per month	17,277	16,756	17,200	15,596
Average percentage of children assigned to a volunteer per month	72%	72%	72%	71%
Average number of children per volunteer per month	1.8	1.7	1.7	1.5

[1] Monthly data averaged by fiscal year.
Source: OPPAGA analysis of Florida Guardian ad Litem Program data.

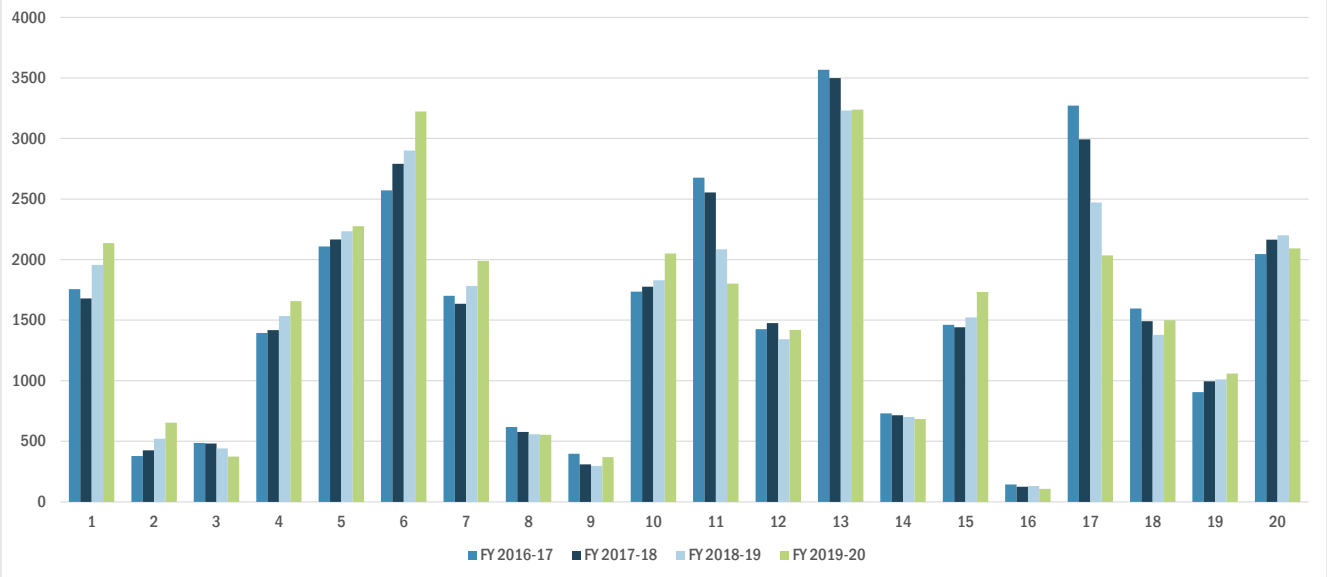
[85] The data in this table are included in the GAL Program's monthly performance reports. Due to the issues with the program's data system, OPPAGA was not able to produce annual calculations. This exhibit presents the monthly figures averaged across each fiscal year.
[86] According to GAL Program staff, representation percentages above 100% are due to differences in when the different agencies close a case. Further, the GAL Program's policy is to keep a case open during the 30-day appellate window following the closure of a dependency case, in case an appeal is filed.

Exhibit B-3
Average Number of Children in Dependency per Month[1]

Circuit	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
1	1,756	1,680	1,956	2,137
2	378	425	520	654
3	486	481	439	370
4	1,395	1,418	1,534	1,657
5	2,108	2,166	2,233	2,275
6	2,571	2,791	2,900	3,223
7	1,701	1,636	1,783	1,989
8	617	577	558	553
9	397	310	297	368
10	1,735	1,776	1,829	2,050
11	2,677	2,555	2,084	1,802
12	1,426	1,476	1,340	1,420
13	3,568	3,499	3,231	3,254
14	731	715	700	683
15	1,461	1,442	1,523	1,732
16	144	125	128	102
17	3,271	2,993	2,471	2,035
18	1,594	1,491	1,379	1,499
19	906	995	1,011	1,060
20	2,046	2,165	2,201	2,093

[1] Monthly data averaged by fiscal year.
Source: OPPAGA analysis of Florida Guardian ad Litem Program data.

Exhibit B-4
Average Number of Children in Dependency per Month[1]



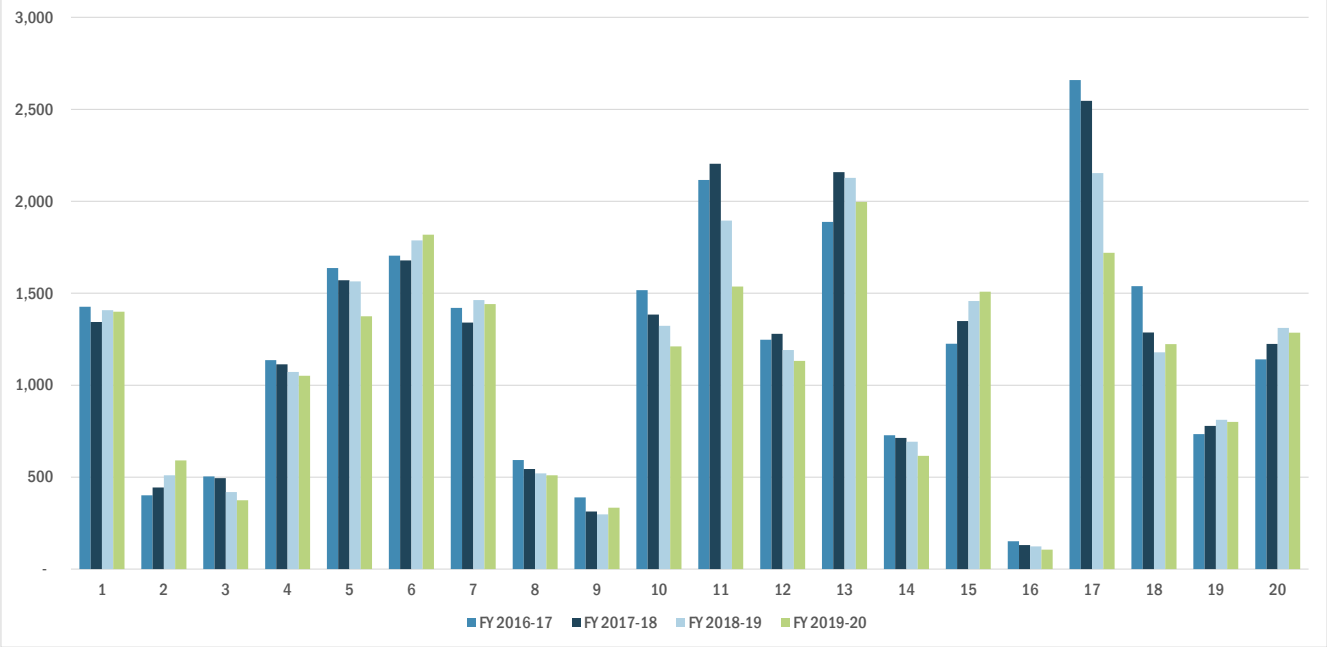
[1] Monthly data averaged by fiscal year.
Source: OPPAGA analysis of Florida Guardian ad Litem Program data.

Exhibit B-5
Average Number of Children Assigned to the GAL Program per Month[1]

Circuit	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
1	1,427	1,344	1,408	1,400
2	401	444	510	591
3	504	495	419	374
4	1,136	1,114	1,072	1,051
5	1,637	1,571	1,565	1,375
6	1,705	1,679	1,787	1,819
7	1,420	1,341	1,463	1,441
8	593	545	521	510
9	390	313	298	334
10	1,517	1,384	1,323	1,211
11	2,116	2,204	1,895	1,537
12	1,247	1,280	1,191	1,132
13	1,888	2,159	2,128	1,997
14	728	714	693	616
15	1,226	1,349	1,458	1,509
16	152	131	124	106
17	2,659	2,546	2,153	1,720
18	1,539	1,287	1,179	1,224
19	734	779	812	801
20	1,141	1,225	1,312	1,286

[1] Monthly data averaged by fiscal year.
Source: OPPAGA analysis of Florida Guardian ad Litem Program data.

Exhibit B-6
Average Number of Children Assigned to the GAL Program per Month[1]



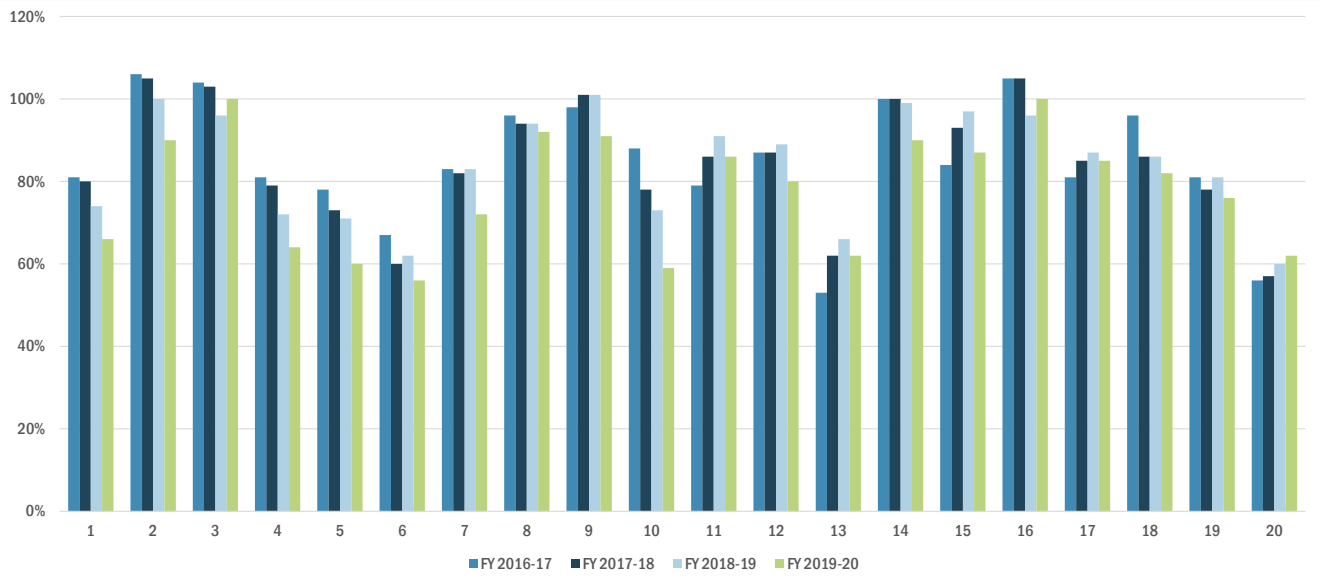
[1] Monthly data averaged by fiscal year.
Source: OPPAGA analysis of Florida Guardian ad Litem Program data.

Exhibit B-7
Average Percentage of Children in Dependency Assigned to the GAL Program per Month[1,2]

Circuit	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
1	81%	80%	74%	66%
2	106%	105%	100%	90%
3	104%	103%	96%	101%
4	81%	79%	72%	64%
5	78%	73%	71%	60%
6	66%	60%	62%	56%
7	83%	82%	83%	72%
8	96%	94%	94%	92%
9	98%	101%	101%	91%
10	88%	78%	73%	59%
11	79%	86%	91%	86%
12	87%	87%	89%	80%
13	53%	62%	66%	61%
14	100%	100%	99%	90%
15	84%	93%	97%	87%
16	105%	105%	96%	100%
17	81%	85%	87%	85%
18	97%	86%	86%	82%
19	81%	78%	81%	76%
20	56%	57%	60%	62%

[1] Monthly data averaged by fiscal year.
[2] According to GAL Program staff, representation percentages above 100% are due to differences in when the different agencies close a case. Further, the GAL Program's policy is to keep a case open during the 30-day appellate window following the closure of a dependency case, in the event an appeal is filed.
Source: OPPAGA analysis of Florida Guardian ad Litem Program data.

Exhibit B-8
Average Percentage of Children in Dependency Assigned to the GAL Program per Month[1]



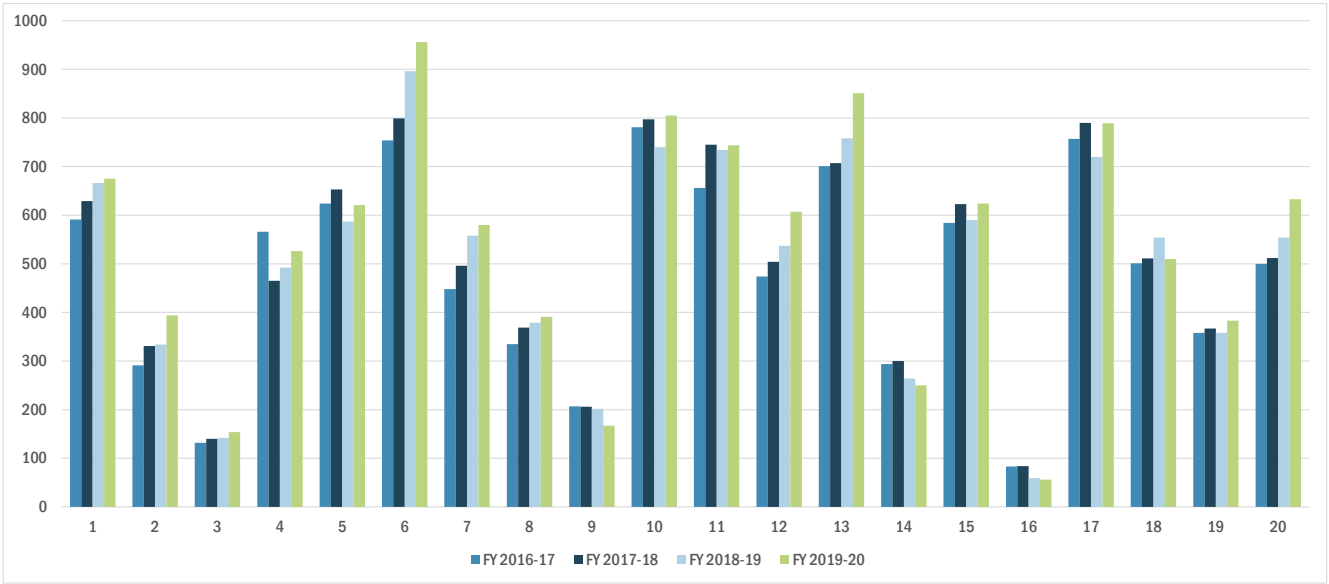
[1] Monthly data averaged by fiscal year.
Source: OPPAGA analysis of Florida Guardian ad Litem Program data.

Exhibit B-9
Average Number of Volunteers per Month[1]

Circuit	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
1	591	629	666	675
2	291	331	334	394
3	132	140	142	154
4	566	465	492	526
5	624	653	587	621
6	754	799	896	956
7	448	496	558	580
8	335	369	379	391
9	207	206	202	167
10	781	797	740	805
11	656	745	734	744
12	474	504	537	607
13	701	707	758	851
14	294	300	264	250
15	584	623	590	624
16	83	84	59	56
17	757	790	720	789
18	501	511	554	510
19	358	367	358	383
20	500	512	554	633

[1] Monthly data averaged by fiscal year.
Source: OPPAGA analysis of Florida Guardian ad Litem Program data.

Exhibit B-10
Average Number of Volunteers per Month[1]



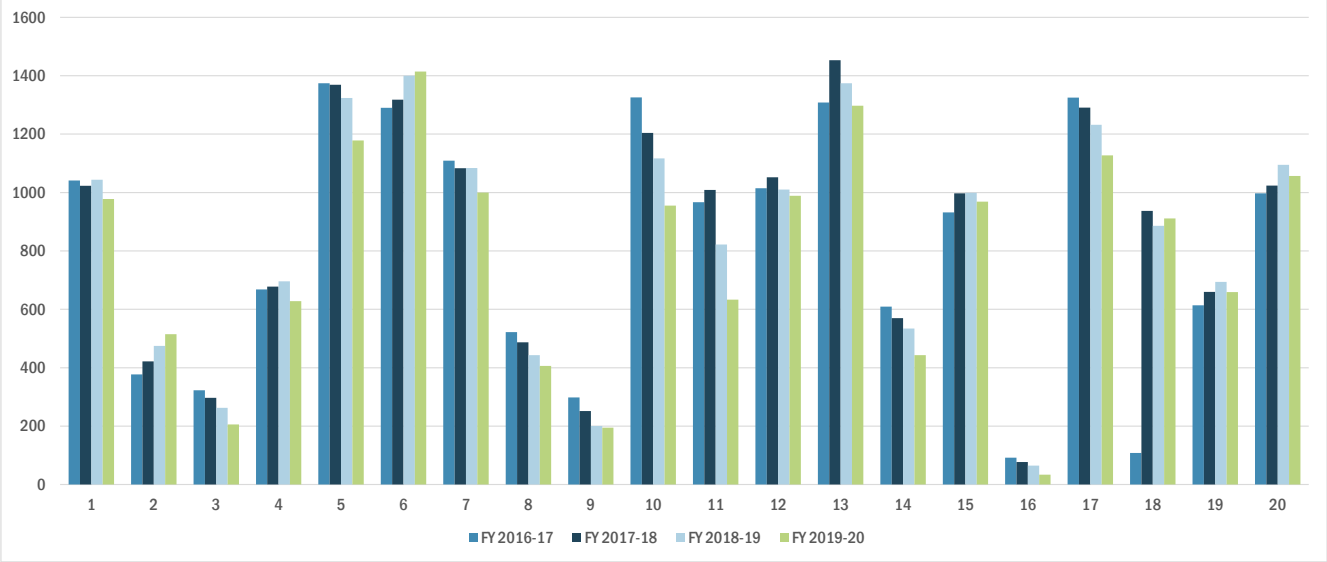
[1] Monthly data averaged by fiscal year.
Source: OPPAGA analysis of Florida Guardian ad Litem Program data.

Exhibit B-11
Average Number of Children Assigned to Volunteers per Month[1]

Circuit	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
1	1,041	1,023	1,044	978
2	377	422	475	515
3	323	297	263	206
4	668	678	696	628
5	1,374	1,369	1,324	1,178
6	1,290	1,318	1,400	1,414
7	1,109	1,083	1,084	1,000
8	522	487	443	406
9	298	252	201	195
10	1,326	1,204	1,117	955
11	967	1,009	822	633
12	1,015	1,052	1,010	989
13	1,308	1,453	1,374	1,297
14	609	570	534	443
15	932	997	999	969
16	92	77	65	34
17	1,325	1,291	1,232	1,127
18	108	937	886	911
19	614	660	694	659
20	997	1,024	1,095	1,057

[1] Monthly data averaged by fiscal year.
Source: OPPAGA analysis of Florida Guardian ad Litem Program data.

Exhibit B-12
Average Number of Children Assigned to Volunteers per Month[1]



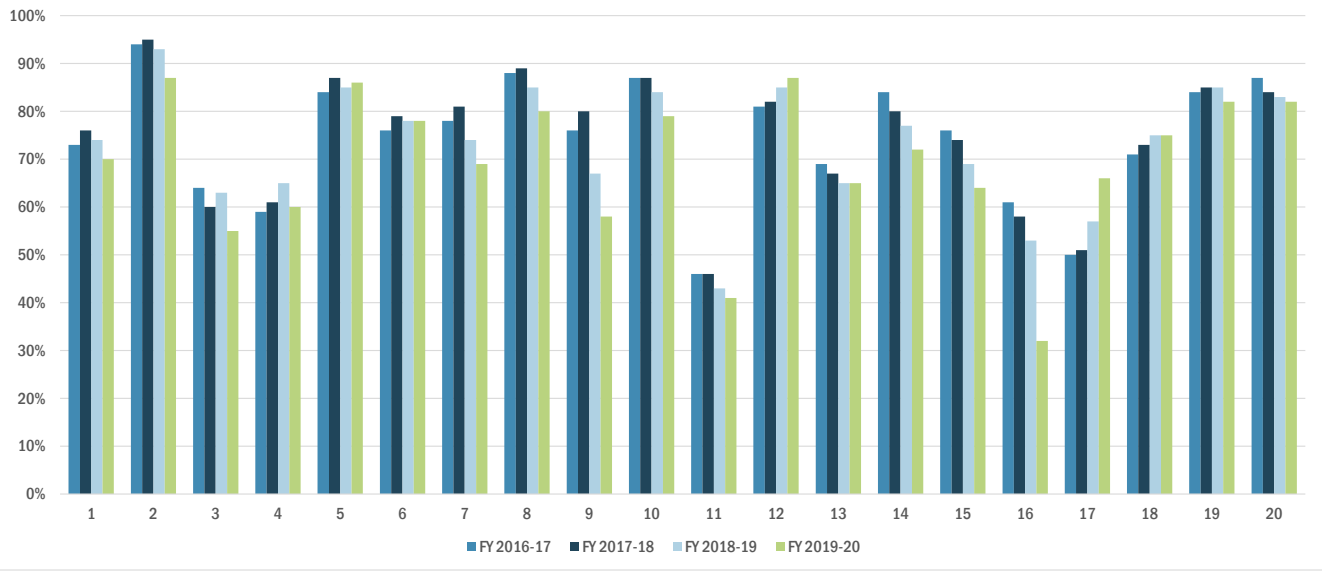
[1] Monthly data averaged by fiscal year.
Source: OPPAGA analysis of Florida Guardian ad Litem Program data.

Exhibit B-13
Average Percentage of Children Assigned to a Volunteer per Month[1]

Circuit	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
1	73%	76%	74%	70%
2	94%	95%	93%	87%
3	64%	60%	63%	55%
4	59%	61%	65%	60%
5	84%	87%	85%	86%
6	76%	79%	78%	78%
7	78%	81%	74%	69%
8	88%	89%	85%	80%
9	76%	80%	67%	58%
10	87%	87%	84%	79%
11	46%	46%	43%	41%
12	81%	82%	85%	87%
13	69%	67%	65%	65%
14	84%	80%	77%	72%
15	76%	74%	69%	64%
16	61%	58%	53%	32%
17	50%	51%	57%	66%
18	71%	73%	75%	75%
19	84%	85%	85%	82%
20	87%	84%	83%	82%

[1] Monthly data averaged by fiscal year.
Source: OPPAGA analysis of Florida Guardian ad Litem Program data.

Exhibit B-14
Average Percentage of Children Assigned to a Volunteer per Month[1]



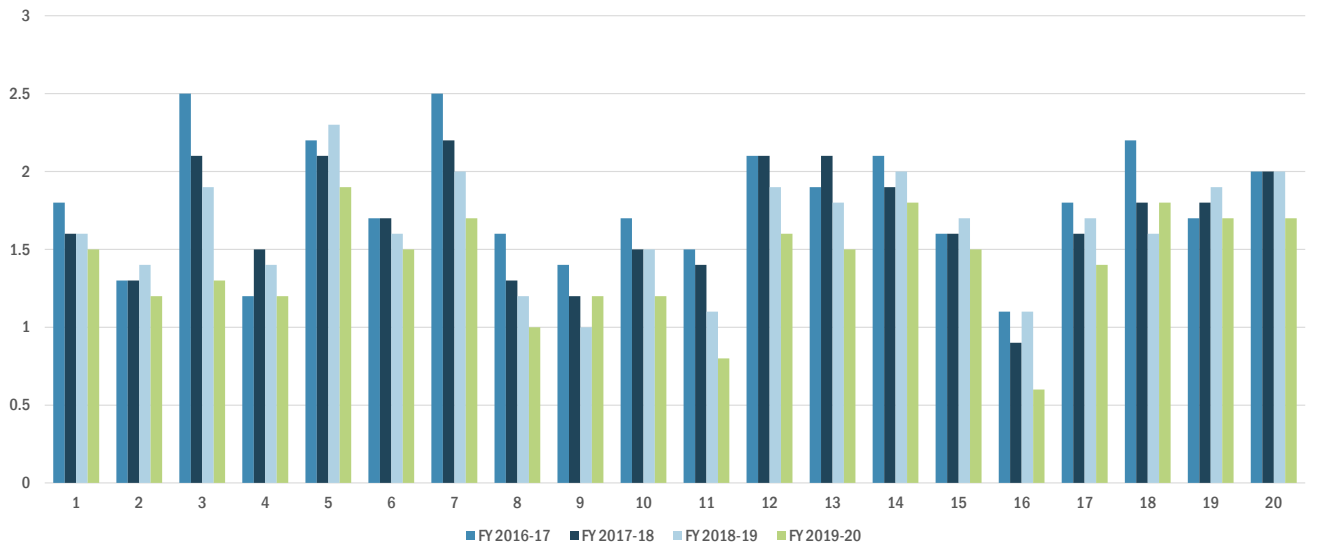
[1] Monthly data averaged by fiscal year.
Source: OPPAGA analysis of Florida Guardian ad Litem Program data.

Exhibit B-15
Average Number of Children per Volunteer per Month[1]

Circuit	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
1	1.8	1.6	1.6	1.4
2	1.3	1.3	1.4	1.3
3	2.4	2.1	1.9	1.3
4	1.2	1.5	1.4	1.2
5	2.2	2.1	2.3	1.9
6	1.7	1.6	1.6	1.5
7	2.5	2.2	1.9	1.7
8	1.6	1.3	1.2	1.0
9	1.4	1.2	1.0	1.2
10	1.7	1.5	1.5	1.2
11	1.5	1.4	1.1	0.9
12	2.1	2.1	1.9	1.6
13	1.9	2.1	1.8	1.5
14	2.1	1.9	2.0	1.8
15	1.6	1.6	1.7	1.5
16	1.1	0.9	1.1	0.6
17	1.8	1.6	1.7	1.4
18	2.2	1.8	1.6	1.8
19	1.7	1.8	1.9	1.7
20	2.0	2.0	2.0	1.7

[1] Monthly data averaged by fiscal year.
Source: OPPAGA analysis of Florida Guardian ad Litem Program data.

Exhibit B-16
Average Number of Children per Volunteer per Month[1]



[1] Monthly data averaged by fiscal year.
Source: OPPAGA analysis of Florida Guardian ad Litem Program data.

Department of Children Families Child Outcomes for Children Served by the GAL Program by Circuit

Circuit-level variation is also evident in GAL children's DCF outcomes. Across the four fiscal years, 47% of removals in the 4th Circuit for which a GAL was appointed resulted in adoption, compared to only 19% of removals in the 10th Circuit. Examining reunifications, the 13th Circuit had the highest reunification rate (51%), while the 6th and 8th Circuits had the lowest (37%). (See Exhibits B-17 through B-21.)

Exhibit B-17
Percentage of GAL Closures That Ended With a DCF Discharge Reason of Adoption[1]

Circuit	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20[2]	Four-Year Total
1	38%	37%	33%	27%	35%
2	42%	36%	29%	33%	35%
3	31%	31%	37%	43%	34%
4	39%	50%	52%	47%	47%
5	20%	23%	26%	20%	23%
6	31%	35%	39%	0%	35%
7	31%	43%	37%	37%	37%
8	27%	29%	46%	36%	34%
9	38%	28%	41%	35%	36%
10	18%	17%	24%	16%	19%
11	35%	30%	31%	26%	31%
12	20%	25%	26%	26%	24%
13	25%	21%	21%	23%	22%
14	41%	42%	40%	43%	41%
15	20%	24%	25%	15%	22%
16	23%	35%	28%	38%	31%
17	27%	26%	29%	27%	27%
18	18%	25%	25%	26%	23%
19	34%	37%	41%	42%	38%
20	29%	28%	27%	33%	29%
State	**28%**	**30%**	**31%**	**28%**	**30%**

[1] Analysis is on GAL closures that matched to a DCF removal episode. Discharge reason is reported by the fiscal year of the GAL closure.
[2] To control for differences between GAL Program closures and DCF discharges, we limited the Fiscal Year 2019-20 data to the first six months (July 1, 2019–December 31, 2019).
Source: OPPAGA analysis of Florida Guardian ad Litem Program and Department of Children and Families data representing 80% of GAL children with a closed case.

Exhibit B-18
Percentage of GAL Closures That Ended With a DCF Discharge Reason of Aging Out of Care[1]

Circuit	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20[2]	Four-Year Total
1	6%	4%	4%	2%	4%
2	6%	12%	6%	4%	7%
3	1%	3%	2%	3%	2%
4	6%	4%	3%	2%	4%
5	3%	6%	4%	5%	4%
6	6%	7%	6%	0%	6%
7	5%	5%	4%	4%	4%
8	3%	3%	4%	2%	3%
9	10%	9%	11%	9%	10%
10	4%	3%	6%	6%	5%
11	8%	10%	11%	9%	10%
12	4%	5%	4%	5%	4%
13	5%	4%	4%	4%	5%
14	3%	2%	4%	6%	3%
15	7%	8%	8%	9%	8%
16	8%	13%	7%	4%	8%
17	7%	7%	6%	6%	7%
18	5%	5%	4%	7%	5%
19	7%	6%	5%	4%	6%
20	7%	4%	5%	7%	6%
State	**6%**	**6%**	**5%**	**5%**	**5%**

[1] Analysis is on GAL closures that matched to a DCF removal episode. Discharge reason is reported by the fiscal year of the GAL closure.
[2] To control for differences between GAL Program closures and DCF discharges, we limited the Fiscal Year 2019-20 data to the first six months (July 1, 2019–December 31, 2019).
Source: OPPAGA analysis of Florida Guardian ad Litem Program and Department of Children and Families data representing 80% of GAL children with a closed case.

Exhibit B-19
Percentage of GAL Closures That Ended With a DCF Discharge Reason of Permanent Guardianship[1]

Circuit	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20[2]	Four-Year Total
1	10%	13%	12%	12%	12%
2	4%	7%	14%	7%	9%
3	26%	25%	24%	12%	24%
4	15%	5%	3%	2%	7%
5	31%	22%	21%	15%	23%
6	18%	15%	12%	0%	15%
7	16%	12%	14%	15%	14%
8	28%	21%	15%	24%	22%
9	13%	8%	8%	20%	11%
10	24%	29%	22%	18%	24%
11	11%	12%	12%	11%	12%
12	20%	18%	18%	22%	19%
13	10%	12%	10%	9%	11%
14	9%	7%	4%	9%	7%
15	21%	18%	18%	15%	18%
16	13%	28%	13%	2%	14%
17	21%	16%	16%	17%	18%
18	25%	24%	20%	15%	22%
19	8%	6%	3%	4%	5%
20	22%	24%	21%	16%	21%
State	**18%**	**16%**	**14%**	**13%**	**16%**

[1] Analysis is on GAL closures that matched to a DCF removal episode. Discharge reason is reported by the fiscal year of the GAL closure.
[2] To control for differences between GAL Program closures and DCF discharges, we limited the Fiscal Year 2019-20 data to the first six months (July 1, 2019–December 31, 2019).
Source: OPPAGA analysis of Florida Guardian ad Litem Program and Department of Children and Families data representing 80% of GAL children with a closed case.

Exhibit B-20
Percentage of GAL Closures That Ended With a DCF Discharge Reason of Reunification[1]

Circuit	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20[2]	Four-Year Total
1	42%	39%	39%	43%	40%
2	44%	42%	46%	45%	45%
3	40%	39%	35%	36%	38%
4	38%	38%	35%	40%	38%
5	43%	45%	41%	44%	43%
6	41%	39%	32%	0%	37%
7	46%	37%	42%	37%	41%
8	39%	42%	32%	34%	37%
9	38%	54%	37%	36%	42%
10	52%	50%	44%	53%	49%
11	44%	45%	43%	47%	44%
12	54%	50%	49%	40%	49%
13	54%	55%	51%	42%	51%
14	42%	44%	47%	36%	43%
15	49%	49%	47%	57%	50%
16	56%	24%	50%	53%	46%
17	42%	48%	44%	43%	44%
18	48%	44%	48%	43%	46%
19	48%	50%	48%	42%	48%
20	39%	41%	42%	41%	41%
State	**45%**	**45%**	**43%**	**43%**	**44%**

[1] Analysis is on GAL closures that matched to a DCF removal episode. Discharge reason is reported by the fiscal year of the GAL closure.
[2] To control for differences between GAL Program closures and DCF discharges, we limited the Fiscal Year 2019-20 data to the first six months (July 1, 2019–December 31, 2019).
Source: OPPAGA analysis of Florida Guardian ad Litem Program and Department of Children and Families data representing 80% of GAL children with a closed case.

Exhibit B-21
Percentage of GAL Closures That Are Still in Care or Missing a Discharge Reason[1,2]

Circuit	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20[3]	Four-Year Total
1	3%	5%	11%	13%	7%
2	1%	1%	2%	10%	3%
3	2%	2%	1%	5%	2%
4	1%	2%	6%	7%	4%
5	1%	2%	7%	17%	6%
6	3%	4%	8%	0%	5%
7	1%	2%	3%	5%	3%
8	1%	4%	3%	4%	3%
9	0%	0%	1%	0%	0%
10	1%	1%	3%	7%	2%
11	1%	1%	2%	6%	2%
12	0%	1%	2%	6%	2%
13	4%	6%	13%	21%	10%
14	3%	2%	3%	5%	3%
15	1%	0%	2%	4%	2%
16	0%	0%	0%	2%	1%
17	2%	2%	4%	4%	3%
18	2%	1%	2%	8%	3%
19	2%	1%	1%	6%	2%
20	1%	1%	4%	3%	2%
State	**2%**	**2%**	**5%**	**9%**	**4%**

[1] Analysis is on GAL closures that matched to a DCF removal episode. Discharge reason is reported by the fiscal year of the GAL closure.
[2] Removals were still open as of the DCF data pull date of 08/31/2020. Only a small percentage (0.1%) of DCF removals were discharged but missing a discharge reason.
[3] To control for differences between GAL Program closures and DCF discharges, we limited the Fiscal Year 2019-20 data to the first six months (July 1, 2019–December 31, 2019).
Source: OPPAGA analysis of Florida Guardian ad Litem Program and Department of Children and Families data representing 80% of GAL children with a closed case.

APPENDIX C

State Court-Appointed Special Advocate/Guardian ad Litem Associations

State CASA/GAL State Associations' Administrative Structures

State CASA/GAL organizations vary in their administrative structures, both in terms of organization type and in their authority over and relationship to their state's local offices; four states do not have a formal CASA/GAL state organization. Florida and nine other states are publicly administered state organizations that provide direct services to children, while 30 programs are nonprofit state organizations, with separate local organizations that provide direct services to children. The remaining state programs are publicly administered state organizations with separate local organizations (5) or nonprofit organizations that provide direct services (1). (See Exhibit C-1.)

Exhibit C-1
State CASA/GAL Associations' Administrative Structures[1]

Nonprofit, No Direct Service	Nonprofit, Direct Service	Publically Administered, Direct Service	Publically Administered, No Direct Service
Alabama	New Hampshire	Alaska	Arkansas
California		Delaware	Arizona
Colorado		Florida	Indiana
Connecticut		Iowa	South Dakota
Illinois		Maine	Virginia
Georgia		North Carolina	
Kansas		Rhode Island	
Kentucky		South Carolina	
Louisiana		Utah	
Massachusetts		Vermont	
Maryland			
Michigan			
Minnesota			
Mississippi			
Missouri			
Montana			
Nebraska			
New Jersey			
New Mexico			
Nevada			
New York			
Ohio			
Oklahoma			
Oregon			
Pennsylvania			
Tennessee			
Texas			
Washington			
West Virginia			
Wisconsin			

[1] Hawaii, Idaho, and Wyoming have local CASA/GAL offices but no state association. North Dakota does not have an NCASA-affiliated CASA/GAL association.
Source: National CASA/GAL Association for Children.

State CASA/GAL State Associations' Funding and Service Provision

According to the National Court Appointed Special Advocate/Guardian ad Litem Association's 2018 surveys (completed annually for all state and local CASA/GAL associations), the median total revenue for state CASA/GAL associations was $627,390 in Calendar Year 2018; the median state revenue for state organizations was approximately $350,000. For local CASA/GAL offices, the median total revenue in 2018 was $198,339; the median state revenue for individual local organizations (not including state funds passed through from their state offices) was approximately $88,726.[87,88] OPPAGA requested funding and service information from all states with an NCASA-affiliated state office and received comprehensive information from 11 states.[89] It is important to note that states have different requirements for representation of children in abuse and neglect proceedings, and state CASA/GAL associations have varying structures. These differences affect the amount of funding reported by the state CASA/GAL association, as these associations may not have full access to funding and service information of their local offices, and, in some cases, states may have funding for child representation that does not go through the CASA/GAL association (e.g., funding for attorney representation). (See Exhibit C-2.)

Exhibit C-2
Other States' CASA/GAL State Associations Vary on Numerous Factors[1]

State CASA Association[1]	Representation Model	CASA/GAL Asso. Structure	Total Funding	State Funding	Number of Children Served	Number of Active Volunteers
Delaware	Best interest (attorney)	Publically administered, direct service	$2.6 million	$2.4 million	464	240
Florida	Multidisciplinary team	Publically administered, direct service	60.7 million	51.4 million	37,947	9,938
Georgia	Hybrid	Nonprofit, no direct service	16 million	3.2 million	11,000	2,700
Illinois[2]	Best interest (lay volunteer)	Nonprofit, no direct service	11.5 million	1.4 million[3]	6,447	2,436
Iowa	Hybrid	Publically administered, direct service	2.8 million	2.8 million	1,376	505
Kentucky	Best interest (attorney)	Nonprofit, no direct service	1.5 million	1.4 million	3,818	1,313
Nebraska	Best interest (attorney)	Nonprofit, no direct service	4.7 million	500,000	2,031	912
North Carolina	Multidisciplinary team	Publically administered, direct service	17.8 million	15.5 million	18,036	5,539
Ohio	Best interest (lay volunteer)	Nonprofit, no direct service	14.1 million	226,361	10,189	2,491
South Dakota	Best interest (attorney)	Publically administered, no direct service	1.8 million	760,596[4]	1,628	348
Texas	Hybrid	Nonprofit, no direct service	33.5 million	13.6 million	30,432	10,874
Utah	Best interest (attorney)	Publically administered, direct service	8.7 million	8.7 million	1,659	736
Median values			**$10.1 million**	**$2.6 million**	**5,133**	**1,875**

[1] Depending on the CASA/GAL association's administrative structure and the state's model of representation, some states may have revenue for child representation that does not go through the state CASA/GAL association. State fiscal year date ranges may vary.
[2] Figures are for 2018.
[3] Includes both state and local funds.
[4] Includes both state and federal funds.
Source: OPPAGA analysis of state documents.

[87] This includes funding from state court administration.
[88] Local programs received an average of $47,383 in state funds passed through their state associations.
[89] While OPPAGA received state funding information from 16 states, five state programs without administrative authority over local offices were not able to provide complete program funding information and are not included in this analysis.

APPENDIX D

State Models of Child Representation

Based on a review of states' statutes, rules of court, and interviews with several state stakeholders, OPPAGA organized states' requirements for child representation in dependency proceedings into six categories: best interest representation by an attorney or professional (20); best interest representation by a lay volunteer (12); client-directed attorney representation with an optional best interest advocate (7); hybrid model that requires children be appointed both a client-directed attorney and a best interest advocate (6); age-dependent model wherein younger children tend to receive a GAL and older children receive an attorney (4); or multi-disciplinary team approach (2).[90] States may have additional requirements for specific types of cases or children, or they may allow judges or local governments discretion in requiring the appointment of additional advocates. (See Exhibit D-1.)

Exhibit D-1
State Requirements for Child Representation in Abuse and Neglect Proceedings

State	Who can serve as GAL?[1]	Does child always get a best interest advocate?[2]	When does child receive client-directed representation?	Primary representation model[3]
Alabama	Attorney	Y	N/A	Best interest (attorney)
Alaska	Professional GAL[4]	Y	Discretionary basis	Best interest (professional)
Arizona	Attorney or volunteer	Y	Specific types of cases	Best interest (lay volunteer)
Arkansas	Attorney	Y	N/A	Best interest (attorney)
California	Attorney or volunteer[5]	Y	N/A	Best interest (attorney)
Colorado	Attorney	Y	Discretionary basis	Best interest (attorney)
Connecticut	Volunteer	N	Required for all	Client directed
District of Columbia	Attorney	Y	Discretionary basis	Best interest (attorney)
Delaware	Attorney	Y	N/A	Best interest (attorney)
Florida	Volunteer	N	Specific types of cases	Multidisciplinary team
Georgia	Attorney or volunteer	Y	Required for all	Hybrid
Hawaii	Volunteer	Y	Upon request	Best interest (lay volunteer)
Idaho	Volunteer	N	Children 12 and older, and children under 12 if no GAL available	Age dependent
Illinois	Attorney or volunteer	Y	Discretionary basis	Best interest (lay volunteer)
Indiana	Attorney or volunteer	N	Discretionary basis	Best interest (lay volunteer)
Iowa	Attorney or volunteer	Y	Required for all	Hybrid
Kansas	Attorney	Y	Discretionary basis	Best interest (attorney)
Kentucky	Attorney	Y	N/A	Best interest (attorney)
Louisiana	Volunteer	N	Required for all	Client directed
Maine	Attorney or volunteer	Y	Upon request	Best interest (lay volunteer)

[90] A total of 33 states require the court to appoint an attorney to represent children in abuse and neglect proceedings (including both best interest and client-directed representation).

State	Who can serve as GAL?[1]	Does child always get a best interest advocate?[2]	When does child receive client-directed representation?	Primary representation model[3]
Maryland	Volunteer	N	Required for all	Client directed
Massachusetts	Varies based on role	N	Required for all	Client directed
Michigan	Attorney	Y	Discretionary basis	Best interest (attorney)
Minnesota	Volunteer or professional GAL	Y	Children 10 and older	Age dependent
Mississippi	Attorney or suitable layperson[6]	Y	If GAL is not an attorney	Best interest (attorney)
Missouri	Attorney	Y	Discretionary basis	Best interest (attorney)
Montana	Attorney or volunteer	Y	If no GAL available, and on a discretionary basis	Best interest (lay volunteer)
Nebraska	Attorney	Y	Discretionary basis	Best interest (attorney)
Nevada	Volunteer	Y	Required for all	Hybrid
New Hampshire	Attorney or volunteer	Y	Discretionary basis	Best interest (lay volunteer)
New Jersey	Volunteer[7]	N	Required for all	Client directed
New Mexico	Attorney	N	Children 14 and older	Age dependent
New York	Volunteer[8]	N	Required for all	Client directed
North Carolina	Volunteer	Y	N/A	Multidisciplinary team
North Dakota	Volunteer	Y	Only at certain stages of proceedings	Best interest (lay volunteer)
Ohio	Attorney or volunteer	Y	Discretionary basis	Best interest (lay volunteer)
Oklahoma	Volunteer	N	Required for all	Client directed
Oregon	Volunteer	Y	Upon request	Best interest (lay volunteer)
Pennsylvania	Attorney	Y	Discretionary basis	Best interest (attorney)
Rhode Island	Attorney	Y	Only for youth in extended foster care	Best interest (attorney)
South Carolina	Attorney or volunteer	Y	Discretionary basis	Best interest (lay volunteer)
South Dakota	Attorney	Y	N/A	Best interest (attorney)
Tennessee	Attorney	Y	Discretionary basis	Best interest (attorney)
Texas	Attorney or volunteer	Y	Required for all	Hybrid
Utah	Attorney	Y	N/A	Best interest (attorney)
Vermont	Volunteer	Y	Required for all	Hybrid
Virginia	Attorney	Y	Discretionary basis	Best interest (attorney)
Washington[9]	Attorney or volunteer	N	Upon request, court discretion, and specific circumstances	Best interest (lay volunteer)
West Virginia[10]	Attorney	Y	Required for all	Hybrid
Wisconsin[11]	Attorney	N	Children 12 and older	Age dependent
Wyoming	Attorney	Y	Discretionary basis	Best interest (attorney)

[1] In states with requirements for attorneys to serve as GALs, the appointment of a CASA volunteer is often optional.
[2] This includes GALs as well as CASAs that do not legally serve as the child's GAL.
[3] The primary representation model is based on OPPAGA analysis of state documents, and, in some cases, discussion with state CASA association staff. While the models appear to be the primary representation model for each state, there may be variation in rules of court by county and/or circuit. Additionally, many states give judges discretion in which parties to appoint in dependency proceedings.
[4] Alaska employs professional GALs through their Office of Public Advocacy, which also oversees the state's CASA association.

[5] California requires an attorney to represent the child's best interests unless the judge determines the child would not benefit from the appointment of an attorney, and a CASA may be appointed as GAL. According to California CASA staff, attorneys are appointed in all dependency proceedings.
[6] The suitable layperson is not a CASA volunteer, though the court may appoint a CASA volunteer in addition to the GAL.
[7] While the court may appoint a CASA volunteer, they do not legally serve as the child's GAL. The child's official representation in abuse and neglect proceedings is the child's attorney.
[8] Ibid.
[9] Washington statutes require the appointment of a GAL unless the court finds the appointment unnecessary.
[10] West Virginia Rules of Procedure in Child Abuse and Neglect Cases expressly state that the child's attorney serves a dual role, both as the child's attorney and representing the child's best interests.
[11] Any child in abuse and neglect proceedings may be appointed a GAL. Children 12 years of age and older shall be appointed client-directed representation, while children less than 12 years of age may be appointed a GAL instead of counsel.
Source: OPPAGA analysis of state statutes and court rules; GAL program documents; and interviews with state CASA association staff in California, New York, South Dakota, Texas, Ohio, and Utah.

APPENDIX E

Child Advocacy and Representation Literature Review

The following table presents the results of studies evaluating different models of child representation in dependency proceedings, including lay advocacy and attorney representation. Studies are presented in reverse chronological order. (See Exhibits E-1 and E-2.)

Exhibit E-1
Studies of Child Representation Models in Dependency Proceedings

Study	Program Type	Methods	Sample Size	Measured Outcomes	Findings
Osborne, Cynthia, Hilary Warner-Doe, McKenna LeClear, and Holly Sexton. "The Effect of CASA on Child Welfare Permanency Outcomes." *Child Maltreatment* 25, no.3 (2019): 1-11.	Texas CASA	Quasi-experimental intent-to-treat design	31,754 children in foster care in Texas (56.17% received a CASA)	Effect of CASA assignment on final case outcomes of children in foster care	About 91% of children with a CASA and 92% of children without a CASA achieved permanency; however, CASA children were significantly less likely to be reunified or placed in permanent kin guardianship and significantly more likely to be adopted than non-CASA children. Age and first placement type among CASA children affected permanency outcomes—older children and children first placed with kin had significantly lower odds of experiencing any type of permanency than similar non-CASA children. Overall, children with a CASA had significantly lower odds of achieving legal permanency.
Orlebeke, Britany, Xiaomeng Zhou, Ada Skyles, and Andrew Zinn. *Evaluation of the QIC-ChildRep Best Practices Model Training for Attorneys Representing Children in the Child Welfare System*. Chicago, IL: Chapin Hall at the University of Chicago, 2016.	Legal representation at different sites in Washington and Georgia	Multisite cluster randomized control design to assign attorneys to receive the training intervention or continue practice as usual. Children were not randomly assigned to attorneys. Impact comparison utilized intent-to-treat analyses.	146 attorneys and 2,318 children in Georgia; 118 attorneys and 1,956 children in Washington; 131 attorneys were assigned to the treatment group	Impact of core skills training on attorney behaviors and case-level outcomes compared to attorneys who did not receive training	Attorneys who received training had changes in behavior that were more aligned with the QIC-ChildRep Best Practice Model. They met with their child client more often, contacted more parties relevant to the case, spent more time on cases, engaged in more advocacy activities, contacted foster parents and substitute caregivers more, spent more time developing the theory of the case, made more efforts to initiate a non-adversarial case resolution process, and were more likely to have family team meetings and motion hearings. There were no differences between treatment attorneys and non-treatment attorneys regarding the likelihood of permanency, placement with kin, or placement change among the children represented. In Washington, older children with a trained attorney were 40% more likely to reach permanency within six months than older children with attorneys who did not receive training.
Lawson, Jennifer and Jill Duerr Berrick. "Establishing CASA as an Evidence-Based Practice." *Journal of Evidence-Based Social Work* 10, no. 4 (2013): 321-337.	Variable, depending on study reviewed	Literature review of published articles using treatment and comparison groups to evaluate indicators of CASA efficacy	Number of studies analyzed not reported	Case characteristics; process-related outcomes (e.g., services received, case duration, number and type of placements); and child outcomes (e.g., permanency plans, permanency outcomes, maltreatment recurrence and reentry into care, well-being)	There is currently not enough evidence to establish CASA as an evidence-based practice, but there are benefits to CASA programs. CASA cases tend to be more difficult than non-CASA cases. Studies show CASA volunteers perform at least as well as attorneys on representing best interests. Children with a CASA and their families receive more services. CASA cases may be more likely to end in adoption, but other permanency outcomes have been inconsistent, or no significant differences were found. Studies regarding case duration are mixed, with some showing cases with a CASA open longer, open less, or no difference; most studies show no significant differences, though CASA cases do tend to stay open longer. Placement data are unclear, though available research shows CASA cases may have fewer placements. CASA children tend to have lower referral rates due to maltreatment recurrence, but differences are not significant. Regarding child well-being, youth with a CASA may have more protective factors, better family function, fewer school problems, and better school performance.

Study	Program Type	Methods	Sample Size	Measured Outcomes	Findings
Duquette, Donald N., and Julian Darwall. "Child Representation in America: Progress Report from the National Quality Improvement Center." ***Family Law Quarterly*** **46 no. 1, (Spring 2012): 87-137.**	N/A	Development of a best practice model for attorney representation	N/A	N/A	A best practice model for attorney representation (QIC-Best Practice Model of Child Representation) was developed based on the 1996 ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, academic literature, state laws, government reports, stakeholder interviews (judges, attorneys, caseworkers, CASAs, state regional office directors, tribes, and children), other research and descriptive studies, and their own study group discussions.. Authors concluded children should have legal representation and determined attorneys should possess six core skills to be effective in their role: (1) enter the child's world; (2) assess child safety; (3) actively evaluate needs; (4) advance case planning; (5) develop case theory; and (6) advocate effectively.
Brennan, Kathy, Dee Wilson, Tom George, and Oma McLaughlin. ***Washington State Court Appointed Special Advocate Program Evaluation Report.*** **Washington: University of Washington School of Social Work and Washington State Center for Court Research, 2010.**	CASA, CASA staff, Contract GAL, Mixed Representation (when a case transferred from CASA to CASA staff or vice versa), and No CASA/GAL (children with attorneys were categorized as No CASA/GAL)	Retrospective case comparison **Case outcomes:** CASA cases were placed in the intervention group and all other forms of representation were the comparison groups. Court administrative data was linked to child welfare agency records and to case assignment data from CASA programs. **CASA representation activities:** Case record review of CASA reports to the court and the social worker's Individual Social Service Plan	**Case outcomes analyses:** 3,013 dependent children ages 0-12; 48% represented by a CASA **CASA representation activities:** 215 cases (22%) selected from the case outcomes cohort for an in-depth case review	Permanency outcomes and placement stability associated with different types of representation for children in dependency proceedings	Case outcomes varied by age, race, and ethnicity, as well as type of representation. Infants had the most timely permanency outcomes. Children ages 6-12 were most likely to remain in care four or more years after a dependency petition was filed; they were more likely to be reunified but much less likely to be adopted compared to younger children. Black and Native American children were less often reunified and more often placed in guardianships compared to Caucasian and Latino children. Native American and Latino children were less often adopted than Caucasian children, who were adopted slightly less often than black children. Caucasian children were the least likely, and Native American children were almost twice as likely, to have an open case still. Children assigned a CASA staff were significantly more likely to be reunified than children assigned a CASA; no other representation groups were statistically significant. All representation groups had significantly higher adoption rates than the no CASA/GAL group. Regarding guardianship rates, there were no significant differences between groups. Children with no CASA/GAL were significantly more likely to still be in care than children with a CASA, who were more likely to be in care than those with a CASA staff or mixed representation. There were no consistent differences among time in care; however, among cases that ended in adoption, those with a CASA and CASA staff were finalized 5-6 months sooner than those with a contract GAL or no CASA/GAL. Analyses did not reveal significant differences in number of placements by type of representation; children who were still in out-of-home care had more placements than children who were adopted, reunified, or placed in guardianships. Most children (68%) had just one CASA, but only 10% had the same social worker throughout their case; children with fewer social workers and CASAs had shorter lengths of stay, whereas children with multiple social workers or CASAs were more likely to still have an open case by study's end. CASAs advocated in 24% of cases for sibling visits when siblings did not all live together. CASAs disagreed with social workers about current placement in 7% of cases and about the permanency plan in 11% of cases. CASA recommendations were mostly aligned with courts' decisions regarding permanency planning in most cases; there was disagreement in 8% of cases. Services recommended by CASAs were consistent with social workers' recommendations; services were recommended in 87% of cases, though services were more often recommended for mothers (89%) than fathers (60%).

Study	Program Type	Methods	Sample Size	Measured Outcomes	Findings
Zinn, Andrew E., and Jack Slowriver. *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County*. Chicago, IL: Chapin Hall at the University of Chicago, 2008.	Legal representation	Natural experimental condition; analysis of data from the Florida Department of Children and Families' administrative database, court files, and qualitative interviews of informed participants (judges, attorneys, DCF and social service agency staff), youth, and parents	Children age 12 and under in the dependency system who were referred to the Legal Aid Society of Palm Beach County's Foster Children's Project's (FCP) representation FCP group: 1,496 Comparison group: 905	Impact of FCP representation on the nature and timing of children's permanency outcomes; program elements and practices that define the FCP; and the broader impact of FCP on the child protective system in the county	Children represented by the FCP had higher permanency rates via adoption and long-term custody than children not served by FCP but did not have significantly lower reunification rates. Age appeared related to the type of permanency achieved; older children were less likely to be adopted or placed in long-term custody but more likely to be reunified. Differences in adoption or long-term custody between children with and without FCP representation were higher for children between the ages of 4-7 years and for children between the ages of 1-3 years than for infants and children over age 8 years. Adoption and long-term custody rates were much lower for black than white children, but rates of reunification were not significantly different. Cases of children with FCP representation moved from case plan approval to permanency at approximately twice the rate of the comparison group, but the difference was not significant. There were no differences in reentry rates between FCP children and comparison children.
U.S. Department of Justice Office of the Inspector General Audit Division, *National Court-Appointed Special Advocate Program: Audit Report 07-04.* Washington, DC: U. S. Department of Justice, 2006.	Nationwide CASA programs	Review of available literature Analyses of data available from state and local CASA program case-tracking databases compared to national data maintained by the U.S. Department of Health and Human Services (HHS) for all child protective services (CPS) cases; data from an Office of the Inspector General (OIG) survey sent to all state, local, and tribal CASA program offices; most recent Adoption and Foster Care Analysis and Reporting System (AFCARS) data available on all children in the state and local CPS for comparison purposes	CASA data request: 339 programs OIG survey: 491 responses	Length of time a child spent in foster care; the extent to which there was in increased provision of services; the percentage of cases permanently closed; and achievement of the permanent plan for reunification or adoption	Children with a CASA volunteer spent more time in foster care compared to cases without a CASA volunteer and compared to the national average for all CPS cases. Due to data issues, the study was unable to determine whether there were any differences in services ordered for children with and without a CASA volunteer among their own data sets, but their literature review indicated children with CASAs and their parents received more services than those without a CASA volunteer. Only 1.4% of children with a CASA reentered the child welfare system during the study period. Children with a CASA were more likely to be adopted and less likely to be reunified with their parents than children without a CASA and as compared to the national AFCARS averages; however, children were usually placed in foster care for 4-5 months prior to referral to the CASA program.
Caliber Associates. *Evaluation of CASA Representation, Final Report*. Fairfax, VA: Caliber Associates, 2004.	Nationwide CASA programs	Analysis of combined data collected through NCASAA's management information system and through the National Survey of Child and Adolescent Well-being (NSCAW).	3,774 children from 25 CASA sites	Provision of descriptive statistics on children, volunteers, case activities, trainings, and court activities and comparison of characteristics of and outcomes for children who had and did not have a CASA volunteer	Children with a CASA were significantly more likely to receive medical and mental health services, and their parents received significantly more services (health care, legal, alcohol/drug, and family support services) than children who did not have a CASA. There were no significant differences in rates of subsequent maltreatment. CASA children spent more time in the child welfare system, but the difference was not significant. Children with a CASA were significantly more likely to have been placed in out-of-home care; among children ever placed in out-of-home care and whose case had closed, there were no significant differences in the number of placements. Children with a CASA who were ever in out-of-home care but whose case had not closed were less likely to

Study	Program Type	Methods	Sample Size	Measured Outcomes	Findings
					have been reunified as of 18 months after the investigation closed, less likely to have been in kin care, and more likely to be in out-of-home care. On 16 measures of child well-being, there was only one significant difference–adolescents with a CASA reported having less adult support than adolescents without a CASA, though both groups reported having very supportive relationships with adults.
Youngclarke, Davin, Kathleen Dyer Ramos, and Lorraine Granger-Merkle. "A Systematic Review of the Impact of Court Appointed Special Advocates." ***Journal of the Center for Families, Children and the Courts*** **5, no. 109 (2004): 1-28.**	CASA programs and similar trained-volunteer child advocacy programs	Systematic review	20 studies	Impact of CASA programs on activities performed on behalf of children, court processes, and child outcomes	Children with CASA support do about as well, and in some ways, better, than those represented by an attorney. Mothers whose children had a CASA were more likely to appear in court. There were no significant differences in the number of court continuances. Most studies found cases with CASA volunteers had more services ordered, one of which found that CASA-attorney teams resulted in more appropriate, case-plan related services being ordered than cases with an attorney only. Findings were mixed for number of placements, but overall, CASA cases had fewer placements. Studies on time in the system were mixed, but when poorer quality studies were removed, children with CASA volunteers were in the system slightly longer; however, overall, there was no consistent difference. Adoption was more likely for CASA cases, but this was thought to be due to small decreases across all other permanency categories. Nine studies suggested reunification was equally likely for cases with and without a CASA. Findings related to guardianship were mixed, but overall, it appeared equally likely. Of the studies reporting the number of children who did not achieve permanent placement, most suggested no difference, but one (the only randomized controlled trial) showed CASA children were significantly less likely to be in long-term foster care. Three studies examining reentry into foster care after case closure showed CASA cases had about half the risk of other foster children.
Litzelfelner, Pat. "The Effectiveness of CASAs in Achieving Positive Outcomes for Children." ***Child Welfare*** **LXXIX, no. 2, (March/April 2000): 179-193.**	"Friend of the court" CASA model in Kansas; children are also assigned attorneys as GALs to represent them	Quasi-experimental design comparing children with and without a CASA volunteer	119 children with a CASA and 81 comparison cases with no CASA; comparison sample was selected from court records and matched on age, race, and type of maltreatment	Outcomes (case closure rates, length of time under court jurisdiction, number of children adopted) and court and out-of-home care process variables thought to be associated with permanency (type of placements, number of court continuances, number of services provided to children and their families)	Having a CASA did not influence permanency outcomes as defined, but having a CASA may influence some of the process variables thought to influence permanency (fewer placements, fewer court continuances, and more services). Fewer CASA cases reached closure, but the difference was not significant. Among all cases, there was no significant difference for average length of time under court jurisdiction. Among closed cases, those with a CASA were open longer, but the difference was not significant. More comparison cases ended with adoption, but no statistical analyses were completed due to the small sample size of adopted youth. Children with a CASA had significantly fewer placements; this was true for all cases and closed cases. Children with a CASA were more likely to be in placements with parents, relatives, or adoptive homes than comparison cases at 24 months. Children without a CASA were more likely to be placed in institutions. Among all cases, there were no significant differences for court continuances; however, among closed cases, those with a CASA had significantly fewer court continuances. Cases with CASAs had significantly more services provided to families among all cases but not among closed cases.
Leung, Patrick. "Is the Court-Appointed Special Advocate Program Effective? A Longitudinal Analysis of Time Involvement in	CASA program in a Midwestern city	Quasi-experimental design comparing cases with and without a CASA, and cases on a waiting list for a CASA	66 children with a CASA; 107 children without a CASA; and 24 children referred to CASA but not	Number of out-of-home placements, length of out-of-home placements, frequency of placement changes, and types of placement changes	CASA intervention reduced the amount of time in out-of-home care placements, decreased placement changes, and increased the likelihood of reunification and positive placement changes (remaining at home, returning from out-of-home care, staying in one family foster home at all times, remaining in one relative's home at all

Study	Program Type	Methods	Sample Size	Measured Outcomes	Findings
Case Outcomes." *Child Welfare* LXXV, no. 3, (May-June 1996): 269-284.			assigned to a volunteer		times). CASA intervention was most effective when the volunteer was assigned between pretrial and disposition.
Abramson, Shareen. "Use of Court-Appointed Special Advocates to Assist in Permanency Planning for Minority Children." *Child Welfare League of America* LXX, no. 4, (July-August 1991): 477-487.	Fresno Amicus Program (local CASA program in Fresno County, California), which emphasized recruiting and training minority and bilingual volunteers and matching them with families on similar ethnic, cultural, and language backgrounds	Randomized controlled trial	28 Amicus families/60 children and 28 comparison families/62 children who did not receive a volunteer	Case outcomes and recidivism rates (new referrals to CPS after dismissal of cases)	Having minority social workers and administrators improves service delivery to minority clients; when volunteers and families were matched on ethnic/cultural similarities, outcomes were improved. There was no significant difference in rates of dismissed and pending cases, but there were significant differences for permanent placements and case plans for pending cases. Children with an Amicus had more adoptions, were less likely to have long-term foster care as a permanency goal, and more likely to have reunification as a permanency goal. Among cases of new referrals after case closure, Amicus children were less likely to have new petitions filed, but the difference was not statistically significant.
Poertner, John and Allan Press. "Who Best Represents the Interests of the Child in Court?" *Child Welfare League of America* LXIX, no. 6, November-(December 1990): 537-549.	CASA program in comparison to staff attorney model in a large Midwestern city	Retrospective selection and comparison of cases	61 CASA cases, 148 staff attorney cases, reduced to 60 and 98, respectively, during analyses	Outcome variables: length of time the case was within the judicial system, disposition of case (closure reason), disposition of case as to whether or not the child stayed with abuser, and reentry into the judicial system. Process variables: number of continuances and placement changes, amount of time spent outside of the home, number of voluntary dismissals after the case was opened, and number and type of services for child and family members	Cases with a CASA received significantly more services, spent significantly less time placed in their own home, and spent more time outside the home, though not significantly more. There were no differences between CASAs and staff attorneys on three out of four outcome variables; CASA cases had significantly more adoptions. CASAs performed as well as attorneys on six out of eight process variables; children with a CASA had more identified services in court records and spent less time in their own home compared to cases with staff attorneys. CASA cases may have also had more services for parents/guardians and more agency services as indicated in court findings. Race and abuse history were notable factors in adoptions among CASA versus staff attorney cases.
Condelli, Larry. *National Evaluation of the Impact of Guardians Ad Litem in Child Abuse or Neglect Judicial Proceedings*. Washington, DC: CSR, Incorporated, 1988.	Private attorney, staff attorney, law students, CASA/staff attorney, and CASA/no attorney models in six states	Qualitative analysis of interviews with judges, state attorneys, GAL program directors, GALs, caseworkers, and children and parents or other family members and quantitative analysis of data from child welfare	245 case records and 16 case networks (networks consisted of a GAL, caseworker, child, and parent or other family member)	Impact of GALs serving children's best interest and examination of GAL activity and responsibilities under different GAL program models	Both CASA models were highly recommended, the staff attorney model was recommended, and law student and private attorney models were not recommended. Cases with a staff attorney and cases with a CASA/no attorney had the shortest times between hearings, while cases with a CASA/staff attorney had the longest median times from the filing of the initial petition to the first dispositional hearing (though there were too few closed cases for a definitive assessment, and CASAs were not appointed uniformly under this model and were sometimes appointed much later in a case). Cases with a staff attorney and CASA/staff attorney had the most cases maintain the

Study	Program Type	Methods	Sample Size	Measured Outcomes	Findings
		agency records and family court records			initial goal of reunification, while cases with law students and private attorneys had the fewest cases maintaining the initial goal of reunification. Cases with private attorneys and CASA/no attorney had a higher number of out-of-home placements, and cases with the attorney models were less likely to be placed with siblings than cases with non-attorney models. Cases with CASA/staff attorney and CASA/no attorney, followed by staff attorney cases, were more likely to have more specific orders for treatment and evaluation per hearing and more likely to have appropriate services ordered by the agency.
Duquette, Donald N. and Sarah H. Ramsey. "Using Lay Volunteers to Represent Children in Child Protection Court Proceedings." *Child Abuse and Neglect* 10 (1986): 293-308.	Trained demonstration groups (attorneys, law students, lay volunteers) compared to untrained attorneys in Michigan; best interest and client-directed representation depending on child's age	Factor analysis of interviews with child advocates and path analysis of outcome measures	Control group (attorneys with no intervention from the research team): 38 cases of alleged child abuse and neglect Demonstration groups (received training): 53 cases (law students–16 cases, volunteers–22 cases, trained lawyers–15 cases)	Efficacy of each of the three demonstration groups in representing children as compared to one another and to a control group of attorneys with no special training from the research team. **Process measures** (investigation-interaction, advocacy, motivation, time spent with the child) and **outcome measures** (court processing time, placement orders, visitation orders, treatment/assessment orders, no contest pleas, ward of court, dismissals, and other procedural orders) were analyzed.	All three demonstration groups performed similar activities while representing their child clients and were combined for comparison with the control group. All three demonstration groups provided similar high-quality representation, leading to better outcomes than the non-trained attorneys. Regarding process measures, the demonstration group spent more time on their cases, talked to more people, relied upon more sources of information, took more steps to mediate disputes at preliminary hearings, were more critical of others in the process, were more likely to engage in follow-up activities on behalf of the children, made more recommendations, obtained more services for their clients, and monitored more persons after the first major disposition. Regarding outcome measures, children represented by the demonstration groups had shorter court processing times; they were also more likely to be placed in their own home, have visitation orders, and have more orders for treatment and assessment. Control cases were more likely to be made wards of the court and later dismissed, but demonstration cases were more likely to be dismissed without the child first being made a ward of the court; at six-month follow up, demonstration groups dismissed by the court had not returned for further court action. Other procedural orders included court orders disposing of motions and amendments to petitions. There were no significant differences in the number of no contest pleas.

Source: OPPAGA analysis of peer-reviewed articles, literature reviews, and systematic analyses pertaining to models of child representation.

Exhibit E-2
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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.)

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

BILL:	SB 1224
INTRODUCER:	Senator Burton
SUBJECT:	Dependent Children
DATE:	January 29, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rao	Tuszynski	CF	**Pre-meeting**
2.			ACJ	
3.			FP	

I. Summary:

SB 1224 adjusts the role and operations of the Statewide Guardian ad Litem Office (Office). The bill specifies the duties and responsibilities of the Office, guardians ad litem (GAL), and attorneys ad litem (AAL). Specifically, the bill:

- Allows an AAL to be appointed if the court believes the child needs such representation and determines the child has a rational and factual understanding of the proceedings and sufficient present ability to consult with a lawyer with a reasonable degree of rational understanding and standardizes that throughout the statutes.
- Specifies that all children are represented by a GAL and removes the current ”special needs” criteria to be eligible for the appointment of an attorney.
- Allows the GAL and AAL to inspect records.
- Requires the GAL to receive invitation to a multidisciplinary team staffing in the event of a placement change.
- Requires that the written description of programs and services required in the case plan for a child who is 13 years of age or older must include age-appropriate activities for the child’s development of relationships, coping skills, and emotional well-being.
- Requires the Statewide GAL Office to provide oversight and technical assistance to AALs; develop a training program in collaboration with dependency court stakeholders, including, but not limited to, dependency judges, representatives from legal aid providing AAL representation, and an AAL appointed from a registry maintained by the chief judge. The Office is required to offer consultation and technical assistance to chief judges in maintaining attorney registries and assist in recruiting, training, and mentoring of AAL as needed.
- Requires the Office to assist youth in meeting supportive adults with the hope of creating an ongoing relationship and providing for an opportunity to collaborate with the DCF Office of Continuing Care to connect youth with supportive adults.

- Authorizes the executive director of the Statewide GAL Office to create or designate local direct support organizations (DSO) in addition to a state DSO and adds local DSOs to all provisions related to the state DSO.
- Creates the Pathway to Prosperity Program in the Department of Education for youth and young adults aging out of foster care providing financial literacy instruction, SAT and ACT preparation, including one-on-one support and fee waivers for the examination, and assisting those persons pursuing trade careers or paid apprenticeships.

The bill likely has a significant fiscal impact on state government. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2024.

II. Present Situation:

An estimated 3.9 million referrals of alleged child abuse and neglect were made nationwide in 2021.[1] Of that 3.9 million, approximately 2 million met the requirements for an investigation[2] leading to approximately 588,000 children with a finding of maltreatment.[3] More than 4.28 million children live in Florida, a vast majority of which, fortunately, never come to the attention of Florida's child welfare system.[4] In 2021, the Department of Children and Families (DCF) investigated 256,060 reports of potential child abuse and approximately 11 percent (27,394) of those investigations resulted in a finding of maltreatment.[5]

Congress appropriates federal funds through various grants to the DCF to supplement state general revenue funds for the implementation of child welfare programs.[6] The DCF uses these funds to contract with community-care based lead agencies (CBCs) to provide services.[7]

Florida's Child Welfare System - Generally

Chapter 39, F.S., creates Florida's dependency system that is charged with protecting the welfare of children; this system is often referred to as the "child welfare system." The DCF Office of Child and Family Well-Being works in partnership with local communities and the courts to ensure the safety, timely permanency, and well-being of children.

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[1] U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, *Report on Child Maltreatment 2021*, p. 8, available at https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2021.pdf (last viewed Jan. 23, 2024). As of January, 2024, the 2022 Report is not yet available.
[2] *Id.* at 13; referred to as "screened in referrals."
[3] *Id.* at 21; referred to as "victims from reporting states."
[4] U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, *Child Population Data for Florida*, available at https://cwoutcomes.acf.hhs.gov/cwodatasite/pdf/florida.html (last viewed Jan. 23, 2024).
[5] *Id.*
[6] The main federal grant programs that supplement state-level child welfare programs are Titles IV-E and IV-B of the Social Security Act.
[7] Part V of ch. 409, F.S.

Child welfare services are directed toward the prevention of abandonment,[8] abuse,[9] and neglect[10] of children.[11] The DCF practice model is based on the safety of the child within his or her home, using in-home services such as parenting coaching and counseling to maintain and strengthen that child's natural supports in his or her home environment. Such services are coordinated by the DCF-contracted community-based care lead agencies (CBC).[12] The 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.[13] Ultimately, the DCF is responsible for program oversight and the overall performance of the child welfare system.[14]

Department of Children and Families

The DCF's statutory mission is to work in partnership with local communities to protect the vulnerable, promote strong and economically self-sufficient families, and advance personal and family recovery and resiliency.[15] The DCF must develop a strategic plan to fulfill this mission and establish measurable goals, objectives, performance standards, and quality assurance requirements to ensure the DCF is accountable to taxpayers.[16]

The DCF is required to provide services relating to:
- Adult protection.
- Child care regulation.
- Child welfare.
- Domestic violence.

[8] Section 39.01(1), F.S., defined 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. For purposes of this subsection, "establish or maintain a substantial and positive relationship" includes, but is not 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. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child

[9] Section 39.01(2), F.S., defined 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 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.

[10] *See* s. 39.01(50), F.S., defined, in part, 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.

[11] Section 39.001(8), F.S.

[12] Section 409.986(1), F.S.; *See generally* The Department of Children and Families (The DCF), *About Community-Based Care*, available at https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/about-community-based-care (last viewed Jan. 23, 2024).

[13] Office of Program Policy Analysis and Government Accountability, *Child Welfare System Performance Mixed in First Year of Statewide Community-Based Care*, Report 06-50, June 2006, p. 2, available at available at: https://oppaga.fl.gov/Documents/Reports/06-50.pdf (last viewed Jan. 23, 2024).

[14] *Id.*

[15] Section 20.19(1)(a), F.S.

[16] Section 20.19(1)(b), F.S.

- Economic self-sufficiency.
- Homelessness.
- Mental health.
- Refugees.
- Substance abuse.[17]

The DCF must also deliver services by contract through private providers to the extent allowed by law and funding.[18] These private providers include CBCs delivering child welfare services and managing entities (MEs) delivering behavioral health services.[19]

Dependency Case Process

When child welfare necessitates that the DCF remove a child from the home to ensure his or her safety, a series of dependency court proceedings must occur to place that child in an out-of-home placement, adjudicate the child dependent, and, if necessary, terminate parental rights and free that child for adoption.

Steps in the dependency process usually 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.[20]

Dependency Proceeding	Description of Process	Controlling Statute(s)
Removal	The DCF may remove a child from his or her home after a protective investigation determines that conditions in that child's home are unsafe and a safety plan cannot make the conditions safe.	s. 39.401, F.S.
Shelter Hearing	The court must hold a shelter hearing within 24 hours after removal. At this hearing, the judge determines whether there was probable cause to remove the child and whether to keep the child out-of-home.	s. 39.401, F.S.
Petition for Dependency	The DCF must file a petition for dependency within 21 days of the shelter hearing. This petition seeks to find the child dependent.	s. 39.501, F.S.

[17] Section 20.19(4)(a), F.S.,
[18] Section 20.19(1)(c), F.S.
[19] Part V of ch. 409, F.S., and s. 394.9082, F.S.
[20] 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. Section 63.022, F.S.

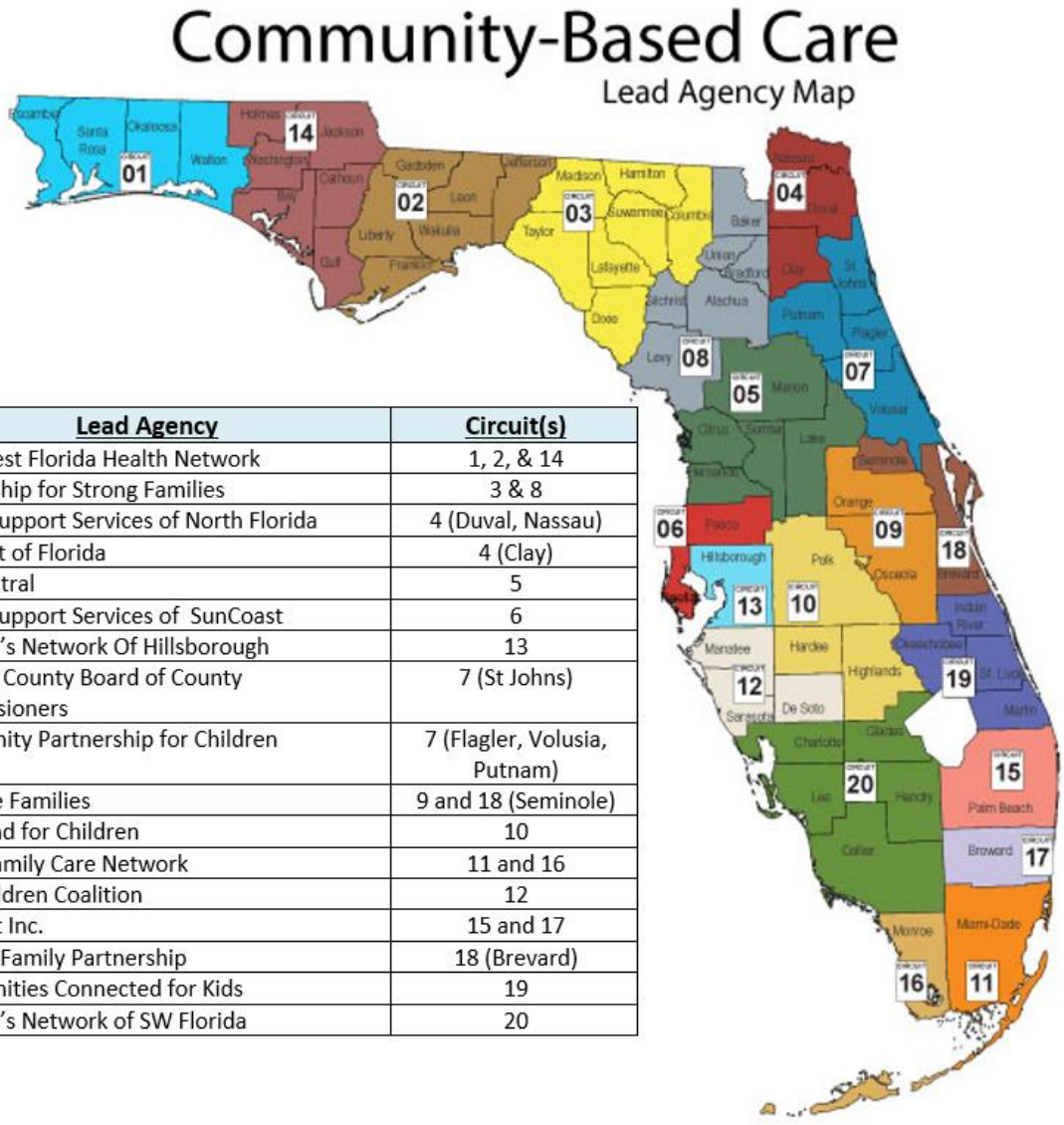
Dependency Proceeding	Description of Process	Controlling Statute(s)
Arraignment Hearing and Shelter Review	The court must hold an arraignment and shelter review within 28 days of the shelter hearing. The hearing allows the parent to admit, deny, or consent to the allegations within the petition for dependency and allows the court to review any previous shelter placement.	s. 39.506, F.S.
Adjudicatory Trial	The court must hold an adjudicatory trial within 30 days of arraignment. The judge determines whether a child is dependent during this trial.	s. 39.507, F.S.
Disposition Hearing	The court must hold a disposition hearing within 15 days of arraignment (if the parents admits or consents to adjudication) or 30 days of adjudication if a court finds the child dependent. At this hearing, the judge reviews the case plan and placement of the child and orders the case plan and the appropriate placement of the child.	s. 39.506, F.S. s. 39.521, F.S.
Postdisposition Change of Custody Hearing	The court may change the temporary out-of-home placement of a child at a postdisposition hearing any time after disposition but before the child is residing in the permanent placement approved at a permanency hearing.	s. 39.522, F.S.
Judicial Review Hearings	The court must review the case plan and placement at least every 6 months, or upon motion of a party.	s. 39.701, F.S.
Petition for Termination of Parental Rights	If the DCF determines that reunification is no longer a viable goal and termination of parental rights is in the best interest of the child, and other requirements are met, a petition for termination of parental rights is filed.	s. 39.802, F.S. s. 39.8055, F.S. s. 39.806, F.S. s. 39.810, F.S.
Advisory Hearing	The court must hold an advisory hearing as soon as possible after all parties have been served with the petition for termination of parental rights. The hearing allows the parent to admit, deny, or consent to the allegations within the petition for termination of parental rights.	s. 39.808, F.S.
Adjudicatory Hearing	The court must hold an adjudicatory trial within 45 days after the advisory hearing. The judge determines whether to terminate parental rights to the child at this trial.	s. 39.809, F.S.

Community-Based Care Organizations and Services

The DCF contracts for case management, out-of-home care (foster care), adoption, and other child welfare related services with the CBCs. This model is designed to increase local community ownership of service delivery and design of child welfare services.[21] There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.[22] The CBCs employ case

[21] The Department of Children and Families, *About Community-Based Care*, available at https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/about-community-based-care (last visited Jan. 23, 2024).
[22] The DCF, *Lead Agency Information*, available at https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/lead-agency-information (last visited Jan. 23, 2024).

managers that serve as the primary link between the child welfare system and families with children under the DCF's supervision. These case managers work with affected families to ensure that a child reaches his or her permanency goal in a timely fashion.[23]



Lead Agency	Circuit(s)
Northwest Florida Health Network	1, 2, & 14
Partnership for Strong Families	3 & 8
Family Support Services of North Florida	4 (Duval, Nassau)
Kids First of Florida	4 (Clay)
Kids Central	5
Family Support Services of SunCoast	6
Children's Network Of Hillsborough	13
St Johns County Board of County Commissioners	7 (St Johns)
Community Partnership for Children	7 (Flagler, Volusia, Putnam)
Embrace Families	9 and 18 (Seminole)
Heartland for Children	10
Citrus Family Care Network	11 and 16
Safe Children Coalition	12
ChildNet Inc.	15 and 17
Brevard Family Partnership	18 (Brevard)
Communities Connected for Kids	19
Children's Network of SW Florida	20

The DCF, through the CBCs, administers a system of care[24] directed toward:

- Prevention of separation of children from their families;
- Intervention to allow children to remain safely in their own homes;
- Reunification of families who have had children removed from their care;
- Safety for children who are separated from their families;

[23] Section 409.988(1), F.S.
[24] *Id.*

- Promoting the well-being of children through emphasis on educational stability and timely health care;
- Permanency; and
- Transition to independence and self-sufficiency.[25]

The CBCs must give priority to services that are evidence-based and trauma informed.[26] The CBCs contract with a number of subcontractors for case management and direct care services to children and their families.

In-Home Services

The DCF is required to make all efforts to keep children with their families and provide interventions that allow children to remain safely in their own homes.[27] Protective investigators and CBC case managers can refer families for in-home services to allow children who would otherwise be unsafe to remain in their own homes. As of September 30, 2022, there were 8,136 children receiving in-home services.[28]

Out-of-home Placement

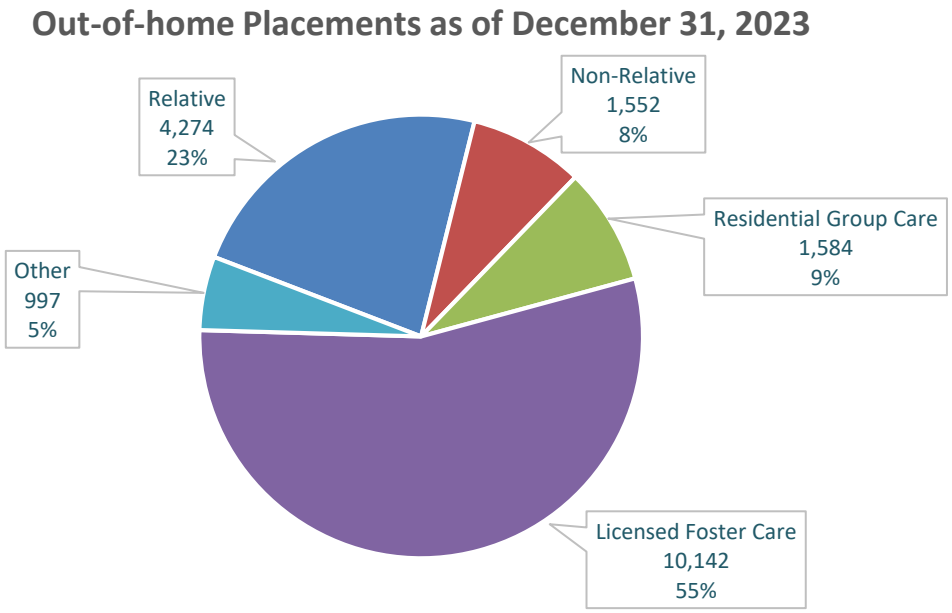
When a child protective investigator determines that in-home services are not enough to ensure safety, the investigator removes and places the child with a safe and appropriate temporary out-of-home placement, often referred to as "foster care".[29] These out-of-home placements provide housing, support, and services to a child until the conditions in his or her home are safe enough to return or the child achieves permanency with another family through another permanency option, like adoption.[30]

The CBCs must maintain and license various out-of-home placement types[31] to place children in the most appropriate available setting after conducting an assessment using child-specific factors.[32] Legislative intent is to place a child in the least restrictive, most family-like environment in close proximity to parents when removed from his or her home.[33]

The DCF, through the CBCs, places children in a variety of settings. As of December 31, 2023, there were 18,549 children in out-of-home care with 4,274 with non-licensed relatives; 1,552 with non-licensed non-relative kin; 10,142 in licensed family foster homes (to include Level I

[25] *Id.*; *Also see generally* s. 409.988, F.S.
[26] Section 409.988(3), F.S.
[27] Sections 39.402(7), 39.521(1)(f), and 39.701(d), F.S.
[28] The DCF, *Child Welfare Key Indicators Monthly Report,* September 2023, p. 30, available at: https://www.myflfamilies.com/sites/default/files/2023-11/KI_Monthly_Report_Oct2023.pdf (last viewed Jan. 25, 2024).
[29] Sections 39.401 through 39.4022, F.S.
[30] The Office of Program Policy and Government Accountability, *Program Summary*, available at https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=5053 (last visited Jan. 25, 2024).
[31] Chapter 65C-45, F.A.C.
[32] Rule 65C-28.004, F.A.C., provides that the child-specific factors include age, sex, sibling status, physical, educational, emotional, and developmental needs, maltreatment, community ties, and school placement.
[33] Sections 39.001(1) and 39.4021(1), F.S.

licensed family and kin); and 1,584 in residential group care.[34]



Source: Department of Children and Families, Placement in Out-of-Home Care Data Dashboard

Case planning

For all children and families requiring services in the child welfare system, the DCF must develop and draft a case plan.[35] The purpose of a case plan is to develop a documented plan that details the identified concerns and barriers within the family unit, the permanency goal or goals, and the services designed to ameliorate those concerns and barriers and achieve the permanency goal.[36]

The services detailed in a case plan must be designed in collaboration with the parent and stakeholders to improve the conditions in the home and aid in maintaining the child in the home, facilitate the child's safe return to the home, ensure proper care of the child, or facilitate the child's permanent placement.[37] The services offered must be the least intrusive possible into the life of the parent and child and must provide the most efficient path to quick reunification or other permanent placement.[38]

Multidisciplinary Teams

Because of the complex nature of child abuse and neglect investigations and family assessments and interventions, multidisciplinary team staffings (MDTs) are used to enhance and improve child protective investigations and responses necessary for children and families to recover and

[34] The DCF Placement in Out-of-Home Care Data, Children in Out-of-Home Care by Placement Type Dashboard, available at: https://www.myflfamilies.com/services/abuse/domestic-violence/programs/child-welfare-child-protection/placement-out-home-care (last visited Jan. 26, 2024).
[35] *See* Part VII of ch. 39, F.S.
[36] Section 39.6012(1), F.S.
[37] *Id.*
[38] *Id.*

succeed.[39] MDT's are becoming more widely used to involve a variety of individuals, both professional and non-professional, that interact and coordinate their efforts to plan for children and families receiving child welfare services.[40]

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.[41] As a result, a number of states are using a MDT team model, also known as a "Child and Family Team".[42] 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.[43]

Currently, Florida law and the DCF rules provide for the use of MDT's 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.

The multidisciplinary team (MDT) approach to representing children is increasingly popular and widely considered a good practice, dramatically improving case outcomes and a child's experience in foster care. Research shows that MDTs lead to quicker case resolution and preserved family connections more often.[44] Children served by an MDT had fewer removals after intervention, fewer adjudications of jurisdiction, and fewer petitions to terminate parental rights.[45] When children were removed from the home, and a MDT was assigned to the cases, the children were more likely to be placed with relatives and less likely to be placed in foster care.[46]

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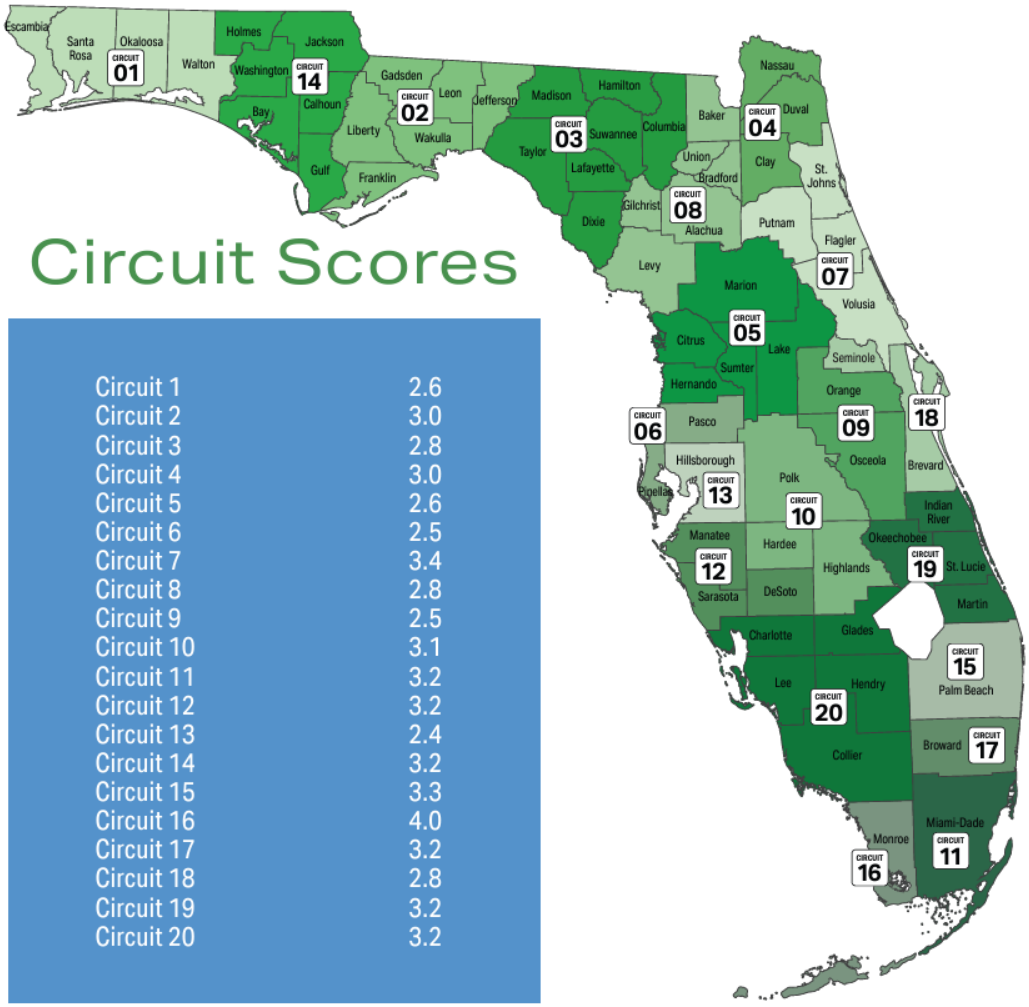
[39] Section 39.4022, F.S.
[40] *Id.*
[41] National Center on Child Abuse and Neglect, U.S. Children's Bureau, Administration for Children, Youth and Families, Office of Human Development Services, U.S. Department of Health, Education, and Welfare, *Multidisciplinary Teams In Child Abuse And Neglect Programs*, 1978, p. 8, available at https://www.ojp.gov/pdffiles1/Digitization/51625NCJRS.pdf (last viewed Jan. 27, 2024).
[42] *See e.g.* State of Tennessee Department of Children's Services, *Administrative Policies and Procedures: 31.7*, available at https://files.dcs.tn.gov/policies/chap31/31.7.pdf; and Indiana Department of Child Services, *Child Welfare Policy*, Jan. 1, 2020, available at https://www.in.gov/dcs/files/5.07%20Child%20and%20Family%20Team%20Meetings.pdf (all sites last viewed Jan. 27, 2024).
[43] California Department of Social Services, *About Child and Family Teams*, available at https://www.cdss.ca.gov/inforesources/foster-care/child-and-family-teams/about (last visited Jan. 27, 2024).
[44] Duquette, et al., *Children's Justice: How to Improve Legal Representation for Children in the Child Welfare System* [University of Michigan Law School Scholarship Repository, 2021], secs. 12.5 and 13.8, available at https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1109&context=books (last viewed Jan. 27, 2024)
[45] *Id.*
[46] *Id.*

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

While there are no standardized definitions or measures for well-being, there is general consensus in the literature and among stakeholders regarding common elements, including financial security, obtaining education, securing housing, finding and maintaining stable employment, independence from public assistance, permanent connections and social supports.[47] DCF has also identified areas that have the most significant systemic impact on improving permanency and well-being[48] and evaluated progress toward achieving permanency, safety, and well-being for children in the welfare system.[49]

In FY 2022-2023, the DCF gave 12 of 20 circuits a score of 3 or higher, indicating that the circuit's performance exceeds established standards.[50] A score of 2.00-2.99 indicated the circuit's performance does not meet established standards:[51]

[47] The OPPAGA, *Presentation on Independent Living Services*, 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 (last visited Jan. 27, 2024).
[48] The DCF, *Annual Accountability Report on the Health of Florida's Child Welfare System*, *Fiscal Year 2022-2023*, pg. 3, available at https://myflfamilies.com/sites/default/files/2023-12/Annual_Accountibility_Report_on_the_Health_of_Floridas_Child_Welfare_System_F_202022-23.pdf (last visited Jan. 27, 2024) (hereinafter cited as "DCF Accountability Report")
[49] *Id.*
[50] *Id.* at p. 6.
[51] *Id.*



Circuit Scores

Circuit 1	2.6
Circuit 2	3.0
Circuit 3	2.8
Circuit 4	3.0
Circuit 5	2.6
Circuit 6	2.5
Circuit 7	3.4
Circuit 8	2.8
Circuit 9	2.5
Circuit 10	3.1
Circuit 11	3.2
Circuit 12	3.2
Circuit 13	2.4
Circuit 14	3.2
Circuit 15	3.3
Circuit 16	4.0
Circuit 17	3.2
Circuit 18	2.8
Circuit 19	3.2
Circuit 20	3.2

The Legislature recognizes the need to focus on creating and preserving family relationships so that young adults have a permanent, lifelong connection with at least one committed adult who provides a safe and stable parenting relationship.[52] Science shows that children who do well despite serious hardship have had at least one stable and committed relationship with a supportive adult.[53]

Transition to Adulthood

Young adults who age out of the foster care system more frequently have challenges achieving self-sufficiency compared to young adults who never came to the attention of the foster care system. Young adults who age out of the foster care system are less likely to earn a high school diploma or GED and more likely to have lower rates of college attendance.[54] They suffer more

[52] Section 409.1451, F.S.
[53] National Scientific Council on the Developing Child (2015), *Supportive Relationships and Active Skill-Building Strengthen the Foundations of Resilience: Working Paper No. 13*, available at https://harvardcenter.wpenginepowered.com/wp-content/uploads/2015/05/The-Science-of-Resilience2.pdf (last visited Jan. 27, 2024).
[54] Gypen, L., Vanderfaeillie, J., et al., "Outcomes of Children Who Grew Up in Foster Care: Systematic-Review", *Children and Youth Services Review*, vol. 76, pp. 74-83, available at http://dx.doi.org/10.1016/j.childyouth.2017.02.035 (last visited Jan. 27, 2024).

from mental health problems, have a higher rate of involvement with the criminal justice system, and are more likely to have difficulty achieving financial independence.[55] These young adults also have a higher need for public assistance and are more likely to experience housing instability and homelessness.[56]

Extended Foster Care

In 2013, the Legislature created a path for youth who have not achieved permanency and turned 18 years of age while in licensed care to remain in licensed care and receive case management services until the date of the young adult's 21st birthday.[57] This program is commonly referred to as "extended foster care" or "EFC." To be eligible for extended foster care (EFC), a young adult must be:

- Completing secondary education or a program leading to an equivalent credential;
- Enrolled in an institution that provides postsecondary or vocational education;
- Participating in a program or activity designed to promote or eliminate barriers to employment;
- Employed at least 80 hours per month; or
- Unable to participate in the above listed activities due to a physical, intellectual, emotional, or psychiatric condition that limits participation.[58]

Independent Living Services

Florida's Independent Living service array is designed to assist youth and young adults in obtaining skills and support in six federally identified outcome areas[59] as they transition to adulthood. Independent Living programs include:

- Extended Foster Care (EFC) – a program that allows young adults to remain in foster care until the age of 21 while they participate in school, work or work training, and live in a supervised living arrangement;
- Postsecondary Education Services and Support- a program that helps pay for housing, and other expenses related to attending an educational institution; and
- Aftercare Services - a temporary needs-based program intended to be a bridge between EFC and PESS programs that may include mentoring, tutoring, mental health and substance abuse services, counseling, and financial assistance.[60]

Independent Living Services Advisory Council

The DCF formed the Independent Living Services Advisory Council (ILSAC) in 2005 to improve interagency policy and service coordination to better support older eligible foster youth in the successful transition to adulthood. The purpose of ILSAC is to review and make

[55] *Id.*
[56] *Id.*
[57] Chapter 2013-178 s. 5, L.O.F., codified as s. 39.6251, F.S.
[58] *Id.*
[59] The six federally identified outcome areas are increasing financial self-sufficiency, improving educational attainment, increasing connections to caring adults, reducing homelessness, reducing high-risk behavior, and improving access to health insurance.
[60] *See generally* The DCF, Office of Child and Family Well-Being, Legislatively Mandated Reports, Independent Living Services Annual Report FY 2021-2022, February 2023, available at https://www.myflfamilies.com/services/child-family/independent-living/annual-reports-for-independent-living (last visited Jan. 27, 2024).

recommendations concerning the implementation of Florida's EFC program and independent living services.[61]

The DCF's Secretary appoints members of the ILSAC. The membership of the council must include, at a minimum, representatives from the DCF's headquarters and regional offices, CBC's, the Department of Juvenile Justice, the Department of Economic Opportunity, the Department of Education, the Agency for Health Care Administration, the State Youth Advisory Board, CareerSource Florida, the Statewide Guardian ad Litem Office, foster parents, recipients of independent living services, and advocates for children in care.[62]

The ILSAC is required to provide an annual report on the implementation of Florida's independent living services, efforts to publicize the availability of independent living services, the success of the services, problems identified, recommendations for the DCF or legislative action, and the DCF's implementation of the recommendations contained in the report.[63]

The 2020 Annual ILSAC Report provided several recommendations to strengthen the independent living services in Florida, including the need for a more standardized approach to reaching young people to educate them on the independent living supports and services available.[64]

Office of Continuing Care

In 2020, the Legislature created the Office of Continuing Care within the DCF to help individuals who have aged out of the child welfare system.[65] The office provides ongoing support and care coordination needed for young adults to achieve self-sufficiency. Duties of the office include, but are not limited to:

- Informing young adults who age out of the foster care system of the purpose of the office, the types of support the office provides, and how to contact the office.
- Serving as a direct contact to the young adult in order to provide information on how to access services to support the young adult's self-sufficiency, including but not limited to, food assistance, behavioral health services, housing, Medicaid, and educational services.
- Assisting in accessing services and supports for the young adult to attain self-sufficiency, including, but not limited to, completing documentation required to apply for services.
- Collaborating with the CBC's to identify local resources that can provide support to young adults served by the office.[66]

[61] Section 409.1451(7), F.S.
[62] Section 409.1451(7)(c), F.S.
[63] Section 409.1454(7)(b), F.S.
[64] The DCF, *The Independent Living Services Advisory Council 2020 Annual Report*, available at https://www.myflfamilies.com/sites/default/files/2023-02/ILSAC_Annual_Report_2020.pdf (last viewed Jan. 27, 2023).
[65] Chapter 2021-169 s. 20, L.O.F.; codified as s. 414.56, F.S.
[66] Section 414.56, F.S.

Guardian ad Litem Program

In 2003, the Legislature created the statewide Guardian ad Litem Office (Office) within the Justice Administrative Commission.[67] The Office has oversight responsibilities for and provides technical assistance to all guardian ad litem programs located within the judicial circuits.[68]

The court must appoint a Guardian ad Litem (GAL) to represent a child as soon as possible in any child abuse, abandonment, or neglect proceeding.[69] Florida law outlines requirements to serve as a GAL.[70] A person appointed as guardian ad litem must be:

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

"Guardian ad litem" for the purposes of ch. 39, F.S., proceedings is defined as the Statewide Guardian Ad Litem Office, which includes circuit guardian ad litem programs, a duly certified volunteer, a staff member, a staff attorney, a contract attorney, pro bono attorney working on behalf of a GAL; court-appointed attorney; or responsible adult who is appointed by the court to represent the best interest of a child in a proceeding.[71]

In cases that involve an allegation of child abuse, abandonment, or neglect as defined in s. 39.01, F.S., the court must appoint a guardian ad litem at the earliest possible time to represent the child.[72] The guardian ad litem must be a party to any judicial proceeding from the date of the appointment until the date of discharge.[73]

The Office has more than 180 attorneys on staff and relies on more than 200 pro bono attorneys volunteering their services.[74] In 2021, the Office served more than 37,000 kids and had more than 13,000 volunteers.[75]

Federal and Florida law provide that a GAL must be appointed to represent the child in every case.[76] The Child Abuse Prevention and Treatment Act (CAPTA) makes the approval of CAPTA grants contingent on an eligible state plan, which must include provisions and procedures to appoint a GAL in every case.[77] The GAL must be appointed to:

- Obtain first-hand knowledge of the child's situation and needs; and
- Make recommendations to the court regarding the best interest of the child.[78]

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[67] Chapter 2003-53 s. 1, L.O.F.; codified as s. 39.8296, F.S.
[68] Section 39.8296(2)(b), F.S.
[69] Section 39.822, F.S.
[70] Sections 61.402 and 39.821, F.S.
[71] Section 39.820(1), F.S.
[72] Section 39.822, F.S.
[73] Section 39.820(1), F.S.
[74] Florida Statewide Guardian ad Litem Office, *About Us,* available at https://guardianadlitem.org/about/ (last visited on Jan. 27, 2024).
[75] *Id.*
[76] 42 U.S.C. 67 §5106a.(b)(2)(xiii); S. 39.822(1), F.S.
[77] 42 U.S.C. 67 §5106a.(b)(2)(xiii).
[78] *Id.*

The FY 23-24 Long Range Program Plan for the GAL Program details the following statistics regarding FY 2021-22:

- The program represented on average:
  - 24,993 children per month, and 36,948 total children during that fiscal year.[79]
  - 85.2% of children in the dependency system each month.[80]
- 1,671 new volunteers were certified, with a total of 9,342 volunteers active each month on average.[81]

Transportation of Children by GAL Volunteers

In 2012, the Legislature, allowed GAL volunteers to transport a child on his or her caseload.[82] This is intended to promote normalcy for the child as well as establish and promote trust between a court-appointed volunteer and the child.[83]

GAL Qualifications Committee

Section 39.8296(2), F.S., creates a Guardian ad Litem Qualification Committee that is composed of five members[84] to provide for advertisement and the receiving of applications for the position of the executive director of the Office. Current law provides that an executive director serves a 3-year term and may be allowed to serve more than one term.[85]

GAL Program Direct Support Organization

Section 39.8298, F.S., allows the Office to create a Direct-Support Organization (DSO). The direct-support organization must conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and make expenditures to or for the direct or indirect benefit of the Office.[86] The executive director of the Office appoints the board of directors.[87]

Direct-Support Organizations

DSOs are statutorily created private entities that are generally required to be non-profit corporations who are authorized to carry out specific tasks in support of public entities or public causes.[88] The functions, purpose, and scope of a DSO are prescribed by its enacting statute and, for most, by a written contract with the agency the DSO was created or designated to support. In

[79] Statewide Guardian ad Litem Office, *Long Range Program Plan*, Fiscal Years 2023-24 through 2027-28; Sept. 30, 2022, p. 13, available at http://floridafiscalportal.state.fl.us/Document.aspx?ID=24413&DocType=PDF (last viewed on Jan. 27, 2024).
[80] *Id.*
[81] *Id.* at p. 14.
[82] Chapter 2012-123 s. 5, L.O.F.; codified as s. 39.8296(2)(b)7., F.S.
[83] *Id.*
[84] Two appointed by the Governor, two appointed by the Chief Justice of the Supreme Court, and one appointed by the Guardian ad Litem Association.
[85] Section 39.8296(2)(a), F.S.
[86] Section 39.8298(1)(b) and (3), F.S.
[87] Section 39.8298(3), F.S.
[88] *See generally* s. 20.058, F.S.

2014, the Legislature created s. 20.058, F.S., to establish a comprehensive set of transparency and reporting requirements for DSOs created or designated pursuant to law.[89]

Most local GAL programs currently have affiliations with various non-profit organizations that support the child welfare system and provide fundraising and monetary support for children and families in local communities. These local non-profits are not currently considered DSOs and are not regulated under s. 20.058, F.S.

Legal Representation of Children in the Child Welfare System

Child representation in dependency proceedings varies but in most instances is based on what is in the child's best interest, direct representation, or a hybrid approach.[90] The table below provides a summary of the different models and how they operate:[91]

Exhibit 3
States' Models of Representation for Children in Dependency Proceedings Fall Into Six Categories

Representation Model	Number of States That Use Model	Description
Age Dependent	4	Children in these states receive different types of representation depending on their age. In these states, older children receive a client-directed attorney, and younger children receive a GAL.
Best Interest (attorney or professional)	20	Children in these states 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.
Best Interest (lay volunteer)	12	Children in these states 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.
Client-Directed Attorney	7	Children in these states always receive a client-directed attorney. These states may also allow for the appointment of a separate GAL or CASA at the discretion of the judge or in certain circumstances.
Hybrid	6	Children in these states always receive both a client-directed attorney and a GAL.
Multidisciplinary Team	2	Children in these states are represented by a GAL team, made up of a volunteer, a staff advocate, and an attorney.

Source: OPPAGA analysis of state statutes and court rules.

Appointment of an Attorney for a Special Needs Child

The Office currently has a role in in the appointment of an attorney for a special needs child. The court must ask the Office for a recommendation for an attorney willing to work without additional compensation, prior to the court appointing an attorney on a compensated basis.[92] That attorney must be available for services within 15 days after the court's request.[93] If, however, the Office does not make a recommendation within 15 days after the court's request, the court may

[89] Chapter 201-96, L.O.F.
[90] The Office of Program Policy Analysis and Government Accountability (OPPAGA), *OPPAGA Review of Florida's Guardian ad Litem Program, Presentation to the Senate Committee on Children, Families, and Elder Affairs*, p. 9, January 26, 2021, available at https://oppaga.fl.gov/Documents/Presentations/GAL%20Presentation%201-26-21.pdf (last visited Jan. 27, 2024).
[91] OPPAGA, *OPPAGA Review of Florida's Guardian ad Litem Program*, p. 5 and 34, December 2020 (on file with the Committee on Children, Families, and Elder Affairs).
[92] Section 39.01305, F.S.
[93] *Id.*

appoint a compensated attorney.[94] An attorney appointed for a specific purpose is commonly referred to as attorney ad litem (AAL); however, that term is not defined in statute.

An AAL representing a child provides the complete range of legal services from removal from the home or initial appointment through all appellate proceedings.[95] With court permission, the attorney is authorized to arrange for supplemental or separate counsel to handle appellate matters.[96] The Justice Administrative Commission contracts with appointed attorneys, whose fees are limited to $1,000 per child per year subject to appropriations and to review by the Commission for reasonableness.[97] Notwithstanding the specific procedures to appoint an attorney for a special needs child, the court has the general authority to appoint an attorney for a dependent child in any proceeding under ch. 39, F.S.[98]

III. Effect of Proposed Changes:

The bill amends numerous sections of ch. 39, F.S., governing proceedings and services relating to children in the child welfare system to adjust the structure, role, and operations of the Statewide Guardian ad Litem office.

Statewide Guardian Ad Litem Office

The bill changes references from the "Guardian ad Litem Program" to 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 term "Statewide Guardian ad Litem Office" for the term "Guardian Ad Litem Program" or "Statewide Guardian Ad Litem Program" throughout the Florida Statutes.

Executive Director

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

Multidisciplinary Teams

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

Training

The bill removes the requirement for the Statewide GAL Office to establish a curriculum committee to develop required training, granting unilateral authority to the office to develop, maintain, and regularly update the GAL training program. The bill also requires a GAL to

[94] *Id.*
[95] Section 39.01305(4)(b), F.S.
[96] *Id.*
[97] Section 39.01305(5), F.S.
[98] Section 39.01305(8), F.S.

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.

Direct Support Organizations

The bill designates the direct support organization (DSO) that the Statewide GAL Office is authorized to establish under current law as a state DSO, and authorizes the GAL executive director to create or designate local direct-support organizations. The bill makes the executive director responsible for the local DSOs, with the local DSO's board members serving at the pleasure of the executive director. The also bill gives the executive director permission to devote the personal services of employees to the DSOs, including full and part time GAL personnel and payroll processing.

Role of the Guardian ad Litem

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

The bill conforms references to a GAL's role in chapter 39 to specify that the GAL represents the *child*, rather than the child's *best interest*. This representation is to use a best interest standard.

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

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

Attorneys ad Litem Appointment for Children in the Child Welfare System

The bill changes all references to "attorneys" for children in the dependency system to "attorneys ad litem", which under the bill are lawyers with an attorney-client relationship with the child. The bill also makes all attorney ad litem appointments optional, rather than requiring such appointments under certain circumstances.

The bill creates a competency standard for the court to apply when determining whether a child is appointed an attorney ad litem. This competency standard limits the court's ability to appoint an attorney ad litem. The bill allows the court to appoint an attorney ad litem for a child if:

- The court believes the child is in need of such representation, and
- Determines that the child has a rational and factual understanding of the proceedings and sufficient present ability to consult with an attorney with a reasonable degree of rational understanding.

The bill removes the current mandatory attorney ad litem appointments, shifting to a case-by-case need and competency determination, rather than the current eligibility based on certain events or types of residency status. The bill removes mandatory attorney ad litem appointments for specific children that are:

- Residing in a skilled nursing facility or being considered for placement in a skilled nursing home;
- Prescribed a psychotropic medication when they decline assent to the psychotropic medication;
- Diagnosed with a developmental disability as defined in s. 393.063, F.S.;
- Placed in a residential treatment center or being considered for placement in a residential treatment center;
- Victims of human trafficking as defined in s. 787.06(2)(d), F.S.;
- Subject to a proceeding under s. 39.522(3)(c)4.b., F.S., regarding their removal from a foster home under certain conditions.

The court may appoint attorneys ad litem to children in the child welfare system without "special needs" only if they meet the competency standard detailed in the bill. This standard requires the court to determine that the child has a rational and factual understanding of the proceedings and sufficient present ability to consult with an attorney with a reasonable degree of rational understanding. The changes to the court's attorney ad litem appointment power affect any appointments made after June 30, 2024. The court must discharge an attorney ad litem when the need for specific attorney ad litem representation is resolved. If an attorney ad litem is appointed, the attorney ad litem may represent the child in other judicial proceedings to secure the services and benefits that provide for the care, safety, and protection of the child.

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

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

Transition-Age Youth

Case planning

The bill requires any case plan tailored for a transition to independent living to include a written description of age-appropriate activities for the child's development of relationships, coping skills, and emotional well-being.

Mentors for older foster youth

For youths aged 16 and up who are transitioning out of foster care into independent living, the bill requires the Statewide GAL Office to help those children establish a mentorship with at least one supportive adult. If the child cannot identify a supportive adult, the bill requires the Statewide GAL Office to work with DCF Office of Continuing Care to find at least one

supportive adult. The bill requires documented evidence of a formal agreement in the child's court file.

Pathway to Prosperity Grant Program

The bill establishes the Pathway to Prosperity program to administer grants to youth and young adults aging out of foster care for:

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

If a youth later reunifies with the youth's parents, the grants remain available for the youth for up to 6 months.

Other Provisions

The bill makes numerous conforming language and cross reference changes throughout the bill to give effect to the substantive provisions.

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

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:

At common law, children cannot legally enter into contractual agreements. The inability to contract is due to an unemancipated minors' lack of mental capacity to conduct business, known as the disability of non-age. The disability of non-age is expressly recognized in the Florida Constitution and in statute.[99] Due to the disability of non-age, "an adult person of reasonable judgment and integrity" must conduct any litigation for

[99] Fla. Const. Art. III, §11(a)(17); s. 743.01, 07, F.S.

the minor in judicial proceedings."[100] It follows that the unemancipated minors cannot engage legal counsel on their own unless there is a constitutional right or legislative act allowing such engagement.[101] The U.S. Supreme Court has only found a constitutional right to counsel for minors in delinquency proceedings.[102]

The Supreme Court held in In re Gualt 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.[103]

The Florida Legislature has authorized appointment of legal counsel for minors:

- If the disability of non-age has been removed under chapter 743, F.S.,
- 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., or
- If the child is within one of the five categories requiring mandatory appointment in dependency proceedings.[104]

In all other circumstances, "an adult person of reasonable judgment and integrity should conduct the litigation for the minor in judicial proceedings."[105]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill has a likely fiscal impact on AALs. It is likely that less children will be represented by an AAL given the new requirements of the bill. However, the bill's overall impact on employment and wages of AALs and revenues and expenditures of organizations providing AAL services is indeterminate.

[100] Garner v. I. E. Schilling Co., 174 So. 837, 839 (Fla. 1937).
[101] Buckner v. Family Services of Central Florida, Inc., 876 So.2d 1285 (Fla. 5th DCA 2004).
[102] In re Gault, 387 U.S. 1, 41 (1967).
[103] *Id*. at p. 36.
[104] Section 39.01305, F.S., requires an attorney to be appointed for a dependent child who:

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

[105] Garner v. I. E. Schilling Co., 174 So. 837, 839 (Fla. 1937).

C. Government Sector Impact:

Attorneys ad Litem

The bill has an indeterminate fiscal impact on state government related to the cost of appointing AALs. The number of AALs assigned under the bill's provisions is currently unknown. However, the Statewide GAL Office anticipates increased revenues due to the recent approval of the DCF cost allocation plan by the federal government providing federal Title IV-E matching to the Statewide GAL Office for legal representation.

Pathways to Prosperity

There is an indeterminate, likely significant, negative fiscal impact on state government to operate and fund the Pathways to Prosperity grant program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.001, 39.00145, 39.00146, 39.0016, 39.01, 39.013, 39.01305, 39.0132, 39.0136, 39.01375, 39.0139, 39.202, 39.402, 39.4022, 39.4023, 39.407, 39.4085, 39.502, 39.522, 39.6012, 39.621, 39.6241, 39.701, 39.801, 39.807, 39.808, 39.815, 39.821, 39.822, 39.827, 39.8296, 39.8297, 39.8298, , 29.008, 39.6011, 40.24, 43.16, 61.402, 110.205, 320.08058, 943.053, 985.43, 985.441, 985.455, 985.461, 985.48, 39.302, 39.521, 61.13, 119.071, 322.09, 394.495, 627.746, 934.255, 960.065
This bill creates the following sections of the Florida Statutes: 39.6036, 1009.898
This bill repeals the following sections of the Florida Statutes: 39.820

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.

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LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment (with title amendment)

Delete lines 504 - 2056
and insert:
Section 6. Subsection (11) of section 39.013, Florida Statutes, is amended to read:
39.013 Procedures and jurisdiction; right to counsel; guardian ad litem and attorney ad litem.—
(11) The court shall appoint a guardian ad litem at the earliest possible time to represent a child throughout the


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proceedings, including any appeals. The guardian ad litem may represent the child in proceedings outside of the dependency case to secure the services and benefits that provide for the care, safety, and protection of the child ~~encourage the Statewide Guardian Ad Litem Office to provide greater representation to those children who are within 1 year of transferring out of foster care~~.

Section 7. Paragraph (b) of subsection (1) of section 39.01305, Florida Statutes, is amended to read:

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

(1)

(b) The Legislature recognizes the existence of organizations that provide attorney representation to children in certain jurisdictions throughout the state. Further, the statewide Guardian ad Litem office ~~Program~~ provides best interest representation for dependent children in every jurisdiction in accordance with state and federal law. The Legislature, therefore, does not intend that funding provided for representation under this section supplant proven and existing organizations representing children. Instead, the Legislature intends that funding provided for representation under this section be an additional resource for the representation of more children in these jurisdictions, to the extent necessary to meet the requirements of this chapter, with the cooperation of existing local organizations or through the expansion of those organizations. The Legislature encourages the expansion of pro bono representation for children. This section is not intended to limit the ability of a pro bono attorney to

appear on behalf of a child.

Section 8. Subsection (3) of section 39.0132, Florida Statutes, is amended to read:

39.0132 Oaths, records, and confidential information.—

(3) The clerk shall keep all court records required by this chapter separate from other records of the circuit court. All court records required by this chapter may ~~shall~~ not be open to inspection by the public. All records may ~~shall~~ be inspected only upon order of the court by persons deemed by the court to have a proper interest therein, except that, subject to ~~the provisions of~~ s. 63.162, a child, ~~and~~ the parents of the child and their attorneys, the guardian ad litem, criminal conflict and civil regional counsels, law enforcement agencies, ~~and~~ the department and its designees, and the attorney ad litem, if one is appointed, ~~shall~~ always have the right to inspect and copy any official record pertaining to the child. The Justice Administrative Commission may inspect court dockets required by this chapter as necessary to audit compensation of court-appointed attorneys ad litem. If the docket is insufficient for purposes of the audit, the commission may petition the court for additional documentation as necessary and appropriate. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, under whatever conditions upon their use and disposition the court may deem proper, and may punish by contempt proceedings any violation of those conditions.

Section 9. Paragraph (a) of subsection (3) of section 39.0136, Florida Statutes, is amended to read:

39.0136 Time limitations; continuances.—

(3) The time limitations in this chapter do not include:

(a) Periods of delay resulting from a continuance granted at the request of the child's counsel, ~~or the child's~~ guardian ad litem, or attorney ad litem, if one is appointed~~, if the child is of sufficient capacity to express reasonable consent, at the request or with the consent of the child~~. The court must consider the best interests of the child when determining periods of delay under this section.

Section 10. Subsection (7) of section 39.01375, Florida Statutes, is amended to read:

39.01375 Best interest determination for placement.—The department, community-based care lead agency, or court shall consider all of the following factors when determining whether a proposed placement under this chapter is in the child's best interest:

(7) The recommendation of the child's guardian ad litem~~, if one has been appointed~~.

Section 11. Paragraphs (a) and (b) of subsection (4) of section 39.0139, Florida Statutes, are amended to read:

39.0139 Visitation or other contact; restrictions.—

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

(a) Before ~~Prior to~~ the hearing, the court shall appoint ~~an attorney ad litem or~~ a guardian ad litem for the child if one has not already been appointed. The guardian ad litem and ~~Any~~ attorney ad litem, if one is ~~or guardian ad litem~~ appointed,

must ~~shall~~ have special training in the dynamics of child sexual abuse.

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

Section 12. Paragraphs (d) and (t) of subsection (2) of section 39.202, Florida Statutes, are amended to read:

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

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

(d) The parent or legal custodian of any child who is alleged to have been abused, abandoned, or neglected; the child; the child's guardian ad litem; the child's attorney ad litem, if one is appointed; or~~, and the child, and their attorneys,~~ ~~including~~ any attorney representing a child in civil or criminal proceedings. This access must ~~shall~~ be made available no later than 60 days after the department receives the initial report of abuse, neglect, or abandonment. However, any information otherwise made confidential or exempt by law may ~~shall~~ not be released pursuant to this paragraph.

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

Section 13. Paragraph (c) of subsection (8), paragraphs (b) and (c) of subsection (11), and paragraph (a) of subsection (14) of section 39.402, Florida Statutes, are amended to read:

39.402 Placement in a shelter.—

(8)

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

1. Appoint a guardian ad litem to represent the best interest of the child~~, unless the court finds that such representation is unnecessary~~;

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

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

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

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whether they have any of the following information:

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

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

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

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

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

f. Whether a man is named on the birth certificate of the child pursuant to s. 382.013(2).

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

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

(11)

(b) The court shall request that the parents consent to provide access to the child's medical records and provide information to the court, the department or its contract agencies, and the ~~any~~ guardian ad litem or attorney ad litem, if one is appointed, for the child. If a parent is unavailable or

unable to consent or withholds consent and the court determines access to the records and information is necessary to provide services to the child, the court shall issue an order granting access. The court may also order the parents to provide all known medical information to the department and to any others granted access under this subsection.

(c) The court shall request that the parents consent to provide access to the child's child care records, early education program records, or other educational records and provide information to the court, the department or its contract agencies, and the ~~any~~ guardian ad litem or attorney ad litem, if one is appointed, for the child. If a parent is unavailable or unable to consent or withholds consent and the court determines access to the records and information is necessary to provide services to the child, the court shall issue an order granting access.

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

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

Section 14. Paragraphs (a) and (b) of subsection (4) of section 39.4022, Florida Statutes, are amended to read:

39.4022 Multidisciplinary teams; staffings; assessments; report.—

(4) PARTICIPANTS.—

(a) Collaboration among diverse individuals who are part of the child's network is necessary to make the most informed decisions possible for the child. A diverse team is preferable to ensure that the necessary combination of technical skills, cultural knowledge, community resources, and personal relationships is developed and maintained for the child and family. The participants necessary to achieve an appropriately diverse team for a child may vary by child and may include extended family, friends, neighbors, coaches, clergy, coworkers, or others the family identifies as potential sources of support.

1. Each multidisciplinary team staffing must invite the following members:

a. The child, unless he or she is not of an age or capacity to participate in the team, and the child's guardian ad litem;

b. The child's family members and other individuals identified by the family as being important to the child, provided that a parent who has a no contact order or injunction, is alleged to have sexually abused the child, or is subject to a termination of parental rights may not participate;

c. The current caregiver, provided the caregiver is not a parent who meets the criteria of one of the exceptions under sub-subparagraph b.;

d. A representative from the department other than the Children's Legal Services attorney, when the department is directly involved in the goal identified by the staffing;

e. A representative from the community-based care lead agency, when the lead agency is directly involved in the goal identified by the staffing;

f. The case manager for the child, or his or her case

manager supervisor; and

g. A representative from the Department of Juvenile Justice, if the child is dually involved with both the department and the Department of Juvenile Justice.

2. The multidisciplinary team must make reasonable efforts to have all mandatory invitees attend. However, the multidisciplinary team staffing may not be delayed if the invitees in subparagraph 1. fail to attend after being provided reasonable opportunities.

(b) Based on the particular goal the multidisciplinary team staffing identifies as the purpose of convening the staffing as provided under subsection (5), the department or lead agency may also invite to the meeting other professionals, including, but not limited to:

1. A representative from Children's Medical Services;

2. ~~A guardian ad litem, if one is appointed;~~

~~3.~~ A school personnel representative who has direct contact with the child;

3.~~4.~~ A therapist or other behavioral health professional, if applicable;

4.~~5.~~ A mental health professional with expertise in sibling bonding, if the department or lead agency deems such expert is necessary; or

5.~~6.~~ Other community providers of services to the child or stakeholders, when applicable.

Section 15. Paragraph (d) of subsection (3) and paragraph (c) of subsection (4) of section 39.4023, Florida Statutes, are amended to read:

39.4023 Placement and education transitions; transition

plans.—

(3) PLACEMENT TRANSITIONS.—

(d) *Transition planning.*—

1. If the supportive services provided pursuant to paragraph (c) have not been successful to make the maintenance of the placement suitable or if there are other circumstances that require the child to be moved, the department or the community-based care lead agency must convene a multidisciplinary team staffing as required under s. 39.4022 before the child's placement is changed, or within 72 hours of moving the child in an emergency situation, for the purpose of developing an appropriate transition plan.

2. A placement change may occur immediately in an emergency situation without convening a multidisciplinary team staffing. However, a multidisciplinary team staffing must be held within 72 hours after the emergency situation arises.

3. The department or the community-based care lead agency must provide written notice of the planned move at least 14 days before the move or within 72 hours after an emergency situation, to the greatest extent possible and consistent with the child's needs and preferences. The notice must include the reason a placement change is necessary. A copy of the notice must be filed with the court and be provided to all of the following:

a. The child, unless he or she, due to age or capacity, is unable to comprehend the written notice, which will necessitate the department or lead agency to provide notice in an age-appropriate and capacity-appropriate alternative manner.~~;~~

b. The child's parents, unless prohibited by court order.~~;~~

c. The child's out-of-home caregiver.~~;~~

d. The guardian ad litem.~~, if one is appointed;~~

e. The attorney ad litem for the child, if one is appointed.~~; and~~

f. The attorney for the department.

4. The transition plan must be developed through cooperation among the persons included in subparagraph 3., and such persons must share any relevant information necessary for its development. Subject to the child's needs and preferences, the transition plan must meet the requirements of s. 409.1415(2)(b)8. and exclude any placement changes that occur between 7 p.m. and 8 a.m.

5. The department or the community-based care lead agency shall file the transition plan with the court within 48 hours after the creation of such plan and provide a copy of the plan to the persons included in subparagraph 3.

(4) EDUCATION TRANSITIONS.—

(c) *Minimizing school changes.*—

1. Every effort must be made to keep a child in the school of origin if it is in the child's best interest. Any placement decision must include thoughtful consideration of which school a child will attend if a school change is necessary.

2. Members of a multidisciplinary team staffing convened for a purpose other than a school change must determine the child's best interest regarding remaining in the school or program of origin if the child's educational options are affected by any other decision being made by the multidisciplinary team.

3. The determination of whether it is in the child's best interest to remain in the school of origin, and if not, of which

school the child will attend in the future, must be made in consultation with the following individuals, including, but not limited to, the child; the parents; the caregiver; the child welfare professional; the guardian ad litem~~, if appointed~~; the educational surrogate, if appointed; child care and educational staff, including teachers and guidance counselors; and the school district representative or foster care liaison. A multidisciplinary team member may contact any of these individuals in advance of a multidisciplinary team staffing to obtain his or her recommendation. An individual may remotely attend the multidisciplinary team staffing if one of the identified goals is related to determining an educational placement. The multidisciplinary team may rely on a report from the child's current school or program district and, if applicable, any other school district being considered for the educational placement if the required school personnel are not available to attend the multidisciplinary team staffing in person or remotely.

4. The multidisciplinary team and the individuals listed in subparagraph 3. must consider, at a minimum, all of the following factors when determining whether remaining in the school or program of origin is in the child's best interest or, if not, when selecting a new school or program:

a. The child's desire to remain in the school or program of origin.

b. The preference of the child's parents or legal guardians.

c. Whether the child has siblings, close friends, or mentors at the school or program of origin.

d. The child's cultural and community connections in the school or program of origin.

e. Whether the child is suspected of having a disability under the Individuals with Disabilities Education Act (IDEA) or s. 504 of the Rehabilitation Act of 1973, or has begun receiving interventions under this state's multitiered system of supports.

f. Whether the child has an evaluation pending for special education and related services under IDEA or s. 504 of the Rehabilitation Act of 1973.

g. Whether the child is a student with a disability under IDEA who is receiving special education and related services or a student with a disability under s. 504 of the Rehabilitation Act of 1973 who is receiving accommodations and services and, if so, whether those required services are available in a school or program other than the school or program of origin.

h. Whether the child is an English Language Learner student and is receiving language services and, if so, whether those required services are available in a school or program other than the school or program of origin.

i. The impact a change to the school or program of origin would have on academic credits and progress toward promotion.

j. The availability of extracurricular activities important to the child.

k. The child's known individualized educational plan or other medical and behavioral health needs and whether such plan or needs are able to be met at a school or program other than the school or program of origin.

l. The child's permanency goal and timeframe for achieving permanency.

m. The child's history of school transfers and how such transfers have impacted the child academically, emotionally, and behaviorally.

n. The length of the commute to the school or program from the child's home or placement and how such commute would impact the child.

o. The length of time the child has attended the school or program of origin.

5. The cost of transportation cannot be a factor in making a best interest determination.

Section 16. Paragraph (f) of subsection (3) of section 39.407, Florida Statutes, is amended to read:

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

(3)

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

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

Section 17. Paragraphs (m), (t), and (u) of subsection (1) of section 39.4085, Florida Statutes, are amended to read:

39.4085 Goals for dependent children; responsibilities; education; Office of the Children's Ombudsman.—

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

(m) To receive meaningful case management and planning that will quickly return the child to his or her family or move the child on to other forms of permanency. For a child who is transitioning from foster care to independent living, permanency includes establishing naturally occurring, lifelong, kin-like connections between the child and a supportive adult.

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

(u) To have all their records available for review by their guardian ad litem or ~~and~~ attorney ad litem, if one is appointed, if they deem such review necessary.

This subsection establishes goals and not rights. This subsection does not require the delivery of any particular service or level of service in excess of existing appropriations. A person does not have a cause of action against the state or any of its subdivisions, agencies, contractors, subcontractors, or agents, based upon the adoption of or failure to provide adequate funding for the achievement of these goals by the Legislature. This subsection does not require the expenditure of funds to meet the goals established in this subsection except those funds specifically appropriated for such purpose.

Section 18. Subsection (8) of section 39.502, Florida Statutes, is amended to read:

39.502 Notice, process, and service.—

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

Section 19. Paragraph (c) of subsection (3) of section 39.522, Florida Statutes, is amended to read:

39.522 Postdisposition change of custody.—

(3)

(c)1. The department or community-based care lead agency must notify a current caregiver who has been in the physical

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custody placement for at least 9 consecutive months and who meets all the established criteria in paragraph (b) of an intent to change the physical custody of the child, and a multidisciplinary team staffing must be held in accordance with ss. 39.4022 and 39.4023 at least 21 days before the intended date for the child's change in physical custody, unless there is an emergency situation as defined in s. 39.4022(2)(b). If there is not a unanimous consensus decision reached by the multidisciplinary team, the department's official position must be provided to the parties within the designated time period as provided for in s. 39.4022.

2. A caregiver who objects to the department's official position on the change in physical custody must notify the court and the department or community-based care lead agency of his or her objection and the intent to request an evidentiary hearing in writing in accordance with this section within 5 days after receiving notice of the department's official position provided under subparagraph 1. The transition of the child to the new caregiver may not begin before the expiration of the 5-day period within which the current caregiver may object.

3. Upon the department or community-based care lead agency receiving written notice of the caregiver's objection, the change to the child's physical custody must be placed in abeyance and the child may not be transitioned to a new physical placement without a court order, unless there is an emergency situation as defined in s. 39.4022(2)(b).

4. Within 7 days after receiving written notice from the caregiver, the court must conduct an initial case status hearing, at which time the court must do all of the following:

a. Grant party status to the current caregiver who is seeking permanent custody and has maintained physical custody of that child for at least 9 continuous months for the limited purpose of filing a motion for a hearing on the objection and presenting evidence pursuant to this subsection.~~;~~

~~b. Appoint an attorney for the child who is the subject of the permanent custody proceeding, in addition to the guardian ad litem, if one is appointed;~~

b.~~c.~~ Advise the caregiver of his or her right to retain counsel for purposes of the evidentiary hearing.~~; and~~

c.~~d.~~ Appoint a court-selected neutral and independent licensed professional with expertise in the science and research of child-parent bonding.

Section 20. Paragraph (c) of subsection (1) and paragraph (c) of subsection (3) of section 39.6012, Florida Statutes, are amended to read:

39.6012 Case plan tasks; services.—

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

(c) If there is evidence of harm as defined in s. 39.01(37)(g) ~~s. 39.01(34)(g)~~, the case plan must include as a required task for the parent whose actions caused the harm that the parent submit to a substance abuse disorder assessment or evaluation and participate and comply with treatment and services identified in the assessment or evaluation as being necessary.

(3) In addition to any other requirement, if the child is in an out-of-home placement, the case plan must include:

(c) When appropriate, for a child who is 13 years of age or

older, a written description of the programs and services that will help the child prepare for the transition from foster care to independent living. The written description must include age-appropriate activities for the child's development of relationships, coping skills, and emotional well-being.

Section 21. Section 39.6036, Florida Statutes, is created to read:

39.6036 Supportive adults for children transitioning out of foster care.—

(1) The Legislature finds that a committed, caring adult provides a lifeline for a child transitioning out of foster care to live independently. Accordingly, it is the intent of the Legislature that the Statewide Guardian ad Litem Office help children connect with supportive adults with the hope of creating an ongoing relationship that lasts into adulthood.

(2) The Statewide Guardian ad Litem Office shall work with a child who is transitioning out of foster care to identify at least one supportive adult with whom the child can enter into a formal agreement for an ongoing relationship and document such agreement in the child's court file. If the child cannot identify a supportive adult, the Statewide Guardian ad Litem Office shall work in coordination with the Office of Continuing Care to identify at least one supportive adult with whom the child can enter into a formal agreement for an ongoing relationship and document such agreement in the child's court file.

Section 22. Paragraph (c) of subsection (10) of section 39.621, Florida Statutes, is amended to read:

39.621 Permanency determination by the court.—

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(10) The permanency placement is intended to continue until the child reaches the age of majority and may not be disturbed absent a finding by the court that the circumstances of the permanency placement are no longer in the best interest of the child.

(c) The court shall base its decision concerning any motion by a parent for reunification or increased contact with a child on the effect of the decision on the safety, well-being, and physical and emotional health of the child. Factors that must be considered and addressed in the findings of fact of the order on the motion must include:

1. The compliance or noncompliance of the parent with the case plan;

2. The circumstances which caused the child's dependency and whether those circumstances have been resolved;

3. The stability and longevity of the child's placement;

4. The preferences of the child, if the child is of sufficient age and understanding to express a preference;

5. The recommendation of the current custodian; and

6. Any ~~The~~ recommendation of the guardian ad litem~~, if one has been appointed~~.

Section 23. Subsection (2) of section 39.6241, Florida Statutes, is amended to read:

39.6241 Another planned permanent living arrangement.—

(2) The department and the guardian ad litem must provide the court with a recommended list and description of services needed by the child, such as independent living services and medical, dental, educational, or psychological referrals, and a recommended list and description of services needed by his or

her caregiver. The guardian ad litem must also advise the court whether the child has been connected with a supportive adult and, if the child has been connected with a supportive adult, whether the child has entered into a formal agreement with the adult. If the child has entered into a formal agreement pursuant to s. 39.6036, the guardian ad litem must ensure that the agreement is documented in the child's court file.

Section 24. Paragraphs (b) and (f) of subsection (1), paragraph (c) of subsection (2), subsection (3), and paragraph (e) of subsection (4) of section 39.701, Florida Statutes, are amended to read:

39.701 Judicial review.—

(1) GENERAL PROVISIONS.—

(b)1. The court shall retain jurisdiction over a child returned to his or her parents for a minimum period of 6 months after ~~following~~ the reunification, but, at that time, based on a report of the social service agency and the guardian ad litem~~,~~ ~~if one has been appointed,~~ and any other relevant factors, the court shall make a determination as to whether supervision by the department and the court's jurisdiction shall continue or be terminated.

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

(f) Notice of a judicial review hearing or a citizen review panel hearing, and a copy of the motion for judicial review, if any, must be served by the clerk of the court upon all of the

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following persons, if available to be served, regardless of whether the person was present at the previous hearing at which the date, time, and location of the hearing was announced:

1. The social service agency charged with the supervision of care, custody, or guardianship of the child, if that agency is not the movant.

2. The foster parent or legal custodian in whose home the child resides.

3. The parents.

4. The guardian ad litem for the child~~, or the representative of the guardian ad litem program if the program has been appointed~~.

5. The attorney ad litem for the child, if one is appointed.

6. The child, if the child is 13 years of age or older.

7. Any preadoptive parent.

8. Such other persons as the court may direct.

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

(c) *Review determinations.*—The court and any citizen review panel shall take into consideration the information contained in the social services study and investigation and all medical, psychological, and educational records that support the terms of the case plan; testimony by the social services agency, the parent, the foster parent or caregiver, the guardian ad litem, the ~~or~~ surrogate parent for educational decisionmaking if one has been appointed for the child, and any other person deemed appropriate; and any relevant and material evidence submitted to the court, including written and oral reports to the extent of

their probative value. These reports and evidence may be received by the court in its effort to determine the action to be taken with regard to the child and may be relied upon to the extent of their probative value, even though not competent in an adjudicatory hearing. In its deliberations, the court and any citizen review panel shall seek to determine:

1. If the parent was advised of the right to receive assistance from any person or social service agency in the preparation of the case plan.

2. If the parent has been advised of the right to have counsel present at the judicial review or citizen review hearings. If not so advised, the court or citizen review panel shall advise the parent of such right.

3. If a guardian ad litem needs to be appointed for the child in a case in which a guardian ad litem has not previously been appointed ~~or if there is a need to continue a guardian ad litem in a case in which a guardian ad litem has been appointed~~.

4. Who holds the rights to make educational decisions for the child. If appropriate, the court may refer the child to the district school superintendent for appointment of a surrogate parent or may itself appoint a surrogate parent under the Individuals with Disabilities Education Act and s. 39.0016.

5. The compliance or lack of compliance of all parties with applicable items of the case plan, including the parents' compliance with child support orders.

6. The compliance or lack of compliance with a visitation contract between the parent and the social service agency for contact with the child, including the frequency, duration, and results of the parent-child visitation and the reason for any

noncompliance.

7. The frequency, kind, and duration of contacts among siblings who have been separated during placement, as well as any efforts undertaken to reunite separated siblings if doing so is in the best interests of the child.

8. The compliance or lack of compliance of the parent in meeting specified financial obligations pertaining to the care of the child, including the reason for failure to comply, if applicable.

9. Whether the child is receiving safe and proper care according to s. 39.6012, including, but not limited to, the appropriateness of the child's current placement, including whether the child is in a setting that is as family-like and as close to the parent's home as possible, consistent with the child's best interests and special needs, and including maintaining stability in the child's educational placement, as documented by assurances from the community-based care lead agency that:

a. The placement of the child takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement.

b. The community-based care lead agency has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement.

10. A projected date likely for the child's return home or other permanent placement.

11. When appropriate, the basis for the unwillingness or

inability of the parent to become a party to a case plan. The court and the citizen review panel shall determine if the efforts of the social service agency to secure party participation in a case plan were sufficient.

12. For a child who has reached 13 years of age but is not yet 18 years of age, the adequacy of the child's preparation for adulthood and independent living. For a child who is 15 years of age or older, the court shall determine if appropriate steps are being taken for the child to obtain a driver license or learner's driver license.

13. If amendments to the case plan are required. Amendments to the case plan must be made under s. 39.6013.

14. If the parents and caregivers have developed a productive relationship that includes meaningful communication and mutual support.

(3) REVIEW HEARINGS FOR CHILDREN 16 AND 17 YEARS OF AGE.—At each review hearing held under this subsection, the court shall give the child and the guardian ad litem the opportunity to address the court and provide any information relevant to the child's best interest, particularly in relation to independent living transition services. The foster parent or~~,~~ legal custodian~~, or guardian ad litem~~ may also provide any information relevant to the child's best interest to the court. In addition to the review and report required under paragraphs (1)(a) and (2)(a), respectively, and the review and report required under s. 39.822(2)(a)2., the court shall:

(a) Inquire about the life skills the child has acquired and whether those services are age appropriate, at the first judicial review hearing held subsequent to the child's 16th

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birthday. At the judicial review hearing, the department shall provide the court with a report that includes specific information related to the life skills that the child has acquired since the child's 13th birthday or since the date the child came into foster care, whichever came later. For any child who may meet the requirements for appointment of a guardian advocate under s. 393.12 or a guardian under chapter 744, the updated case plan must be developed in a face-to-face conference with the child, if appropriate; the child's attorney ad litem, if one is appointed; the child's~~; any court-appointed~~ guardian ad litem; the temporary custodian of the child; and the parent of the child, if the parent's rights have not been terminated.

(b) The court shall hold a judicial review hearing within 90 days after a child's 17th birthday. The court shall issue an order, separate from the order on judicial review, that the disability of nonage of the child has been removed under ss. 743.044-743.047 for any disability that the court finds is in the child's best interest to remove. The department shall include in the social study report for the first judicial review that occurs after the child's 17th birthday written verification that the child has:

1. A current Medicaid card and all necessary information concerning the Medicaid program sufficient to prepare the child to apply for coverage upon reaching the age of 18, if such application is appropriate.

2. A certified copy of the child's birth certificate and, if the child does not have a valid driver license, a Florida identification card issued under s. 322.051.

3. A social security card and information relating to

social security insurance benefits if the child is eligible for those benefits. If the child has received such benefits and they are being held in trust for the child, a full accounting of these funds must be provided and the child must be informed as to how to access those funds.

4. All relevant information related to the Road-to-Independence Program under s. 409.1451, including, but not limited to, eligibility requirements, information on participation, and assistance in gaining admission to the program. If the child is eligible for the Road-to-Independence Program, he or she must be advised that he or she may continue to reside with the licensed family home or group care provider with whom the child was residing at the time the child attained his or her 18th birthday, in another licensed family home, or with a group care provider arranged by the department.

5. An open bank account or the identification necessary to open a bank account and to acquire essential banking and budgeting skills.

6. Information on public assistance and how to apply for public assistance.

7. A clear understanding of where he or she will be living on his or her 18th birthday, how living expenses will be paid, and the educational program or school in which he or she will be enrolled.

8. Information related to the ability of the child to remain in care until he or she reaches 21 years of age under s. 39.013.

9. A letter providing the dates that the child is under the jurisdiction of the court.

10. A letter stating that the child is in compliance with financial aid documentation requirements.

11. The child's educational records.

12. The child's entire health and mental health records.

13. The process for accessing the child's case file.

14. A statement encouraging the child to attend all judicial review hearings.

15. Information on how to obtain a driver license or learner's driver license.

(c) At the first judicial review hearing held subsequent to the child's 17th birthday, if the court determines pursuant to chapter 744 that there is a good faith basis to believe that the child qualifies for appointment of a guardian advocate, limited guardian, or plenary guardian for the child and that no less restrictive decisionmaking assistance will meet the child's needs:

1. The department shall complete a multidisciplinary report which must include, but is not limited to, a psychosocial evaluation and educational report if such a report has not been completed within the previous 2 years.

2. The department shall identify one or more individuals who are willing to serve as the guardian advocate under s. 393.12 or as the plenary or limited guardian under chapter 744. Any other interested parties or participants may make efforts to identify such a guardian advocate, limited guardian, or plenary guardian. The child's biological or adoptive family members, including the child's parents if the parents' rights have not been terminated, may not be considered for service as the plenary or limited guardian unless the court enters a written

order finding that such an appointment is in the child's best interests.

3. Proceedings may be initiated within 180 days after the child's 17th birthday for the appointment of a guardian advocate, plenary guardian, or limited guardian for the child in a separate proceeding in the court division with jurisdiction over guardianship matters and pursuant to chapter 744. The Legislature encourages the use of pro bono representation to initiate proceedings under this section.

4. In the event another interested party or participant initiates proceedings for the appointment of a guardian advocate, plenary guardian, or limited guardian for the child, the department shall provide all necessary documentation and information to the petitioner to complete a petition under s. 393.12 or chapter 744 within 45 days after the first judicial review hearing after the child's 17th birthday.

5. Any proceedings seeking appointment of a guardian advocate or a determination of incapacity and the appointment of a guardian must be conducted in a separate proceeding in the court division with jurisdiction over guardianship matters and pursuant to chapter 744.

(d) If the court finds at the judicial review hearing after the child's 17th birthday that the department has not met its obligations to the child as stated in this part, in the written case plan, or in the provision of independent living services, the court may issue an order directing the department to show cause as to why it has not done so. If the department cannot justify its noncompliance, the court may give the department 30 days within which to comply. If the department fails to comply

852 within 30 days, the court may hold the department in contempt.
853 (e) If necessary, the court may review the status of the
854 child more frequently during the year before the child's 18th
855 birthday. At the last review hearing before the child reaches 18
856 years of age, and in addition to the requirements of subsection
857 (2), the court shall:
858 1. Address whether the child plans to remain in foster
859 care, and, if so, ensure that the child's transition plan
860 includes a plan for meeting one or more of the criteria
861 specified in s. 39.6251 and determine if the child has entered
862 into a formal agreement for an ongoing relationship with a
863 supportive adult.
864 2. Ensure that the transition plan includes a supervised
865 living arrangement under s. 39.6251.
866 3. Ensure the child has been informed of:
867 a. The right to continued support and services from the
868 department and the community-based care lead agency.
869 b. The right to request termination of dependency
870 jurisdiction and be discharged from foster care.
871 c. The opportunity to reenter foster care under s. 39.6251.
872 4. Ensure that the child, if he or she requests termination
873 of dependency jurisdiction and discharge from foster care, has
874 been informed of:
875 a. Services or benefits for which the child may be eligible
876 based on his or her former placement in foster care, including,
877 but not limited to, the assistance of the Office of Continuing
878 Care under s. 414.56.
879 b. Services or benefits that may be lost through
880 termination of dependency jurisdiction.

c. Other federal, state, local, or community-based services or supports available to him or her.

(4) REVIEW HEARINGS FOR YOUNG ADULTS IN FOSTER CARE.—During each period of time that a young adult remains in foster care, the court shall review the status of the young adult at least every 6 months and must hold a permanency review hearing at least annually.

(e)1. Notwithstanding the provisions of this subsection, if a young adult has chosen to remain in extended foster care after he or she has reached 18 years of age, the department may not close a case and the court may not terminate jurisdiction until the court finds, following a hearing, that the following criteria have been met:

a.~~1.~~ Attendance of the young adult at the hearing; or

b.~~2.~~ Findings by the court that:

(I)~~a.~~ The young adult has been informed by the department of his or her right to attend the hearing and has provided written consent to waive this right; and

(II)~~b.~~ The young adult has been informed of the potential negative effects of early termination of care, the option to reenter care before reaching 21 years of age, the procedure for, and limitations on, reentering care, and the availability of alternative services, and has signed a document attesting that he or she has been so informed and understands these provisions; or

(III)~~c.~~ The young adult has voluntarily left the program, has not signed the document in sub-subparagraph b., and is unwilling to participate in any further court proceeding.

2.~~3.~~ In all permanency hearings or hearings regarding the

transition of the young adult from care to independent living, the court shall consult with the young adult regarding the proposed permanency plan, case plan, and individual education plan for the young adult and ensure that he or she has understood the conversation. The court shall also inquire of the young adult regarding his or her relationship with the supportive adult with whom the young adult has entered into a formal agreement for an ongoing relationship, if such agreement exists.

Section 25. Paragraph (a) of subsection (3) of section 39.801, Florida Statutes, is amended to read:

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

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

(a) Notice of the date, time, and place of the advisory hearing for the petition to terminate parental rights; if applicable, instructions for appearance through audio-video communication technology; and a copy of the petition must be personally served upon the following persons, specifically notifying them that a petition has been filed:

1. The parents of the child.

2. The legal custodians of the child.

3. If the parents who would be entitled to notice are dead or unknown, a living relative of the child, unless upon diligent search and inquiry no such relative can be found.

4. Any person who has physical custody of the child.

5. Any grandparent entitled to priority for adoption under

s. 63.0425.

6. Any prospective parent who has been identified under s. 39.503 or s. 39.803, unless a court order has been entered pursuant to s. 39.503(4) or (9) or s. 39.803(4) or (9) which indicates no further notice is required. Except as otherwise provided in this section, if there is not a legal father, notice of the petition for termination of parental rights must be provided to any known prospective father who is identified under oath before the court or who is identified by a diligent search of the Florida Putative Father Registry. Service of the notice of the petition for termination of parental rights is not required if the prospective father executes an affidavit of nonpaternity or a consent to termination of his parental rights which is accepted by the court after notice and opportunity to be heard by all parties to address the best interests of the child in accepting such affidavit.

7. The guardian ad litem for the child ~~or the representative of the guardian ad litem program, if the program has been appointed~~.

A party may consent to service or notice by e-mail by providing a primary e-mail address to the clerk of the court. The document containing the notice to respond or appear must contain, in type at least as large as the type in the balance of the document, the following or substantially similar language: "FAILURE TO APPEAR AT THIS ADVISORY HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE CHILD OR CHILDREN NAMED IN

THE PETITION ATTACHED TO THIS NOTICE.”

Section 26. Subsection (2) of section 39.807, Florida Statutes, is amended to read:

39.807 Right to counsel; guardian ad litem.—

(2)(a) The court shall appoint a guardian ad litem to represent the ~~best interest of the~~ child in any termination of parental rights proceedings and shall ascertain at each stage of the proceedings whether a guardian ad litem has been appointed.

(b) The guardian ad litem has the ~~following~~ responsibilities and authority specified in s. 39.822.~~:~~

~~1. To investigate the allegations of the petition and any subsequent matters arising in the case and,~~

(c) Unless excused by the court, the guardian ad litem must ~~to~~ file a written report. This report must include a statement of the wishes of the child and the recommendations of the guardian ad litem and must be provided to all parties and the court at least 72 hours before the disposition hearing.

~~2. To be present at all court hearings unless excused by the court.~~

~~3. To represent the best interests of the child until the jurisdiction of the court over the child terminates or until excused by the court.~~

~~(c) A guardian ad litem is not required to post bond but shall file an acceptance of the office.~~

~~(d) A guardian ad litem is entitled to receive service of pleadings and papers as provided by the Florida Rules of Juvenile Procedure.~~

(d) ~~(e)~~ This subsection does not apply to any voluntary relinquishment of parental rights proceeding.


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Section 27. Subsection (2) of section 39.808, Florida Statutes, is amended to read:

39.808 Advisory hearing; pretrial status conference.—

(2) At the hearing the court shall inform the parties of their rights under s. 39.807, ~~shall~~ appoint counsel for the parties in accordance with legal requirements, and ~~shall~~ appoint a guardian ad litem to represent the ~~interests of the~~ child if one has not already been appointed.

Section 28. Subsection (2) of section 39.815, Florida Statutes, is amended to read:

39.815 Appeal.—

(2) An attorney for the department shall represent the state upon appeal. When a notice of appeal is filed in the circuit court, the clerk shall notify the attorney for the department, ~~together with~~ the attorney for the parent, the guardian ad litem, and the ~~any~~ attorney ad litem for the child, if one is appointed.

Section 29. Section 39.820, Florida Statutes, is repealed.

Section 30. Subsections (1) and (3) of section 39.821, Florida Statutes, are amended to read:

39.821 Qualifications of guardians ad litem.—

(1) Because of the special trust or responsibility placed in a guardian ad litem, the Statewide Guardian ad Litem Office ~~Program~~ may use any private funds collected by the office ~~program~~, or any state funds so designated, to conduct a security background investigation before certifying a volunteer to serve. A security background investigation must include, but need not be limited to, employment history checks, checks of references, local criminal history records checks through local law

enforcement agencies, and statewide criminal history records checks through the Department of Law Enforcement. Upon request, an employer shall furnish a copy of the personnel record for the employee or former employee who is the subject of a security background investigation conducted under this section. The information contained in the personnel record may include, but need not be limited to, disciplinary matters and the reason why the employee was terminated from employment. An employer who releases a personnel record for purposes of a security background investigation is presumed to have acted in good faith and is not liable for information contained in the record without a showing that the employer maliciously falsified the record. A security background investigation conducted under this section must ensure that a person is not certified as a guardian ad litem if the person has an arrest awaiting final disposition for, been convicted of, regardless of adjudication, entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under the provisions listed in s. 435.04. All applicants must undergo a level 2 background screening pursuant to chapter 435 before being certified to serve as a guardian ad litem. In analyzing and evaluating the information obtained in the security background investigation, the office ~~program~~ must give particular emphasis to past activities involving children, including, but not limited to, child-related criminal offenses or child abuse. The office ~~program~~ has sole discretion in determining whether to certify a person based on his or her security background investigation. The information collected pursuant to the security background investigation is

confidential and exempt from s. 119.07(1).

(3) It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person to willfully, knowingly, or intentionally fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for a volunteer position or for paid employment with the Statewide Guardian ad Litem Office ~~Program~~, any material fact used in making a determination as to the applicant's qualifications for such position.

Section 31. Section 39.822, Florida Statutes, is amended to read:

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

(1) A guardian ad litem shall be appointed by the court at the earliest possible time to represent the child in any child abuse, abandonment, or neglect judicial proceeding, whether civil or criminal. A guardian ad litem is a fiduciary and must provide independent representation of the child using a best interest standard of decisionmaking and advocacy.

(2)(a) A guardian ad litem must:

1. Be present at all court hearings unless excused by the court.

2. Investigate issues related to the best interest of the child who is the subject of the appointment, review all disposition recommendations and changes in placement, and, unless excused by the court, file written reports and recommendations in accordance with general law.

3. Represent the child until the court's jurisdiction over the child terminates or until excused by the court.

4. Advocate for the child's participation in the proceedings and to report the child's preferences to the court, to the extent the child has the ability and desire to express his or her preferences.

5. Perform other duties that are consistent with the scope of the appointment.

(b) A guardian ad litem shall have immediate and unlimited access to the children he or she represents.

(c) A guardian ad litem is not required to post bond but must file an acceptance of the appointment.

(d) A guardian ad litem is entitled to receive service of pleadings and papers as provided by the Florida Rules of Juvenile Procedure.

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

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

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

(a) An agency, as defined in chapter 119, shall allow the guardian ad litem to inspect and copy records related to the

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

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

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

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

Section 32. Subsection (4) of section 39.827, Florida Statutes, is amended to read:

39.827 Hearing for appointment of a guardian advocate.—

(4) The hearing under this section must ~~shall~~ remain confidential and closed to the public. The clerk shall keep all

court records required by this part separate from other records of the circuit court. All court records required by this part are ~~shall be~~ confidential and exempt from ~~the provisions of~~ s. 119.07(1). ~~All~~ Records may only ~~shall~~ be inspected ~~only~~ upon order of the court by persons deemed by the court to have a proper interest therein, except that a child and the parents or custodians of the child and their attorneys, the guardian ad litem, ~~and~~ the department and its designees, and the attorney ad litem, if one is appointed, ~~shall~~ always have the right to inspect and copy any official record pertaining to the child. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, under whatever conditions upon their use and disposition the court may deem proper, and may punish by contempt proceedings any violation of those conditions. All information obtained pursuant to this part in the discharge of official duty by any judge, employee of the court, or authorized agent of the department is ~~shall be~~ confidential and exempt from ~~the provisions of~~ s. 119.07(1) and may ~~shall~~ not be disclosed to anyone other than the authorized personnel of the court or the department and its designees, except upon order of the court.

Section 33. Paragraphs (a), (b), and (d) of subsection (1) and subsection (2) of section 39.8296, Florida Statutes, are amended to read:

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

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds that for the past 20 years, the Statewide Guardian Ad Litem Office ~~Program~~ has been the only mechanism for best interest representation for children in Florida who are involved in dependency proceedings.

(b) The Legislature also finds that while the Statewide Guardian Ad Litem Office ~~Program~~ has been supervised by court administration within the circuit courts since the office's ~~program's~~ inception, there is a perceived conflict of interest created by the supervision of program staff by the judges before whom they appear.

(d) It is therefore the intent of the Legislature to place the Statewide Guardian Ad Litem Office ~~Program~~ in an appropriate place and provide a statewide infrastructure to increase functioning and standardization among the local offices ~~programs~~ currently operating in the 20 judicial circuits.

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

(a) The head of the Statewide Guardian ad Litem Office is the executive director, who shall be appointed by the Governor from a list of a minimum of three eligible applicants submitted

by a Guardian ad Litem Qualifications Committee. The Guardian ad Litem Qualifications Committee shall be composed of five persons, two persons appointed by the Governor, two persons appointed by the Chief Justice of the Supreme Court, and one person appointed by the Statewide Guardian ad Litem Office ~~Association~~. The committee shall provide for statewide advertisement and the receiving of applications for the position of executive director. The Governor shall appoint an executive director from among the recommendations, or the Governor may reject the nominations and request the submission of new nominees. The executive director must have knowledge in dependency law and knowledge of social service delivery systems available to meet the needs of children who are abused, neglected, or abandoned. The executive director shall serve on a full-time basis and shall personally, or through representatives of the office, carry out the purposes and functions of the Statewide Guardian ad Litem Office in accordance with state and federal law and the state's long-established policy of prioritizing children's best interests. The executive director shall report to the Governor. The executive director shall serve a 3-year term, subject to removal for cause by the Governor. Any person appointed to serve as the executive director may be permitted to serve more than one term without the necessity of convening the Guardian ad Litem Qualifications Committee.

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

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

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

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

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

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

6. The office shall determine the feasibility or desirability of new concepts of organization, administration,


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financing, or service delivery designed to preserve the civil and constitutional rights and fulfill other needs of dependent children.

7. The office shall ensure that each child has an attorney assigned to his or her case and, within available resources, is represented using multidisciplinary teams that may include volunteers, pro bono attorneys, social workers, and mentors.

8. The office shall provide oversight and technical assistance to attorneys ad litem, including, but not limited to, all of the following:

a. Develop an attorney ad litem training program in collaboration with dependency court stakeholders, including, but not limited to, dependency judges, representatives from legal aid providing attorney ad litem representation, and an attorney ad litem appointed from a registry maintained by the chief judge. The training program must be updated regularly with or without convening the stakeholders group.

b. Offer consultation and technical assistance to chief judges in maintaining attorney registries for the selection of attorneys ad litem.

c. Assist with recruitment, training, and mentoring of attorneys ad litem as needed.

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

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

Section 34. Section 39.8297, Florida Statutes, is amended to read:

39.8297 County funding for guardian ad litem employees.—

(1) A county and the executive director of the Statewide Guardian ad Litem Office may enter into an agreement by which the county agrees to provide funds to the local guardian ad litem office in order to employ persons who will assist in the operation of the guardian ad litem office ~~program~~ in the county.

(2) The agreement, at a minimum, must provide that:

(a) Funding for the persons who are employed will be provided on at least a fiscal-year basis.

(b) The persons who are employed will be hired, supervised, managed, and terminated by the executive director of the Statewide Guardian ad Litem Office. The statewide office is

responsible for compliance with all requirements of federal and state employment laws, and shall fully indemnify the county from any liability under such laws, as authorized by s. 768.28(19), to the extent such liability is the result of the acts or omissions of the Statewide Guardian ad Litem Office or its agents or employees.

(c) The county is the employer for purposes of s. 440.10 and chapter 443.

(d) Employees funded by the county under this section and other county employees may be aggregated for purposes of a flexible benefits plan pursuant to s. 125 of the Internal Revenue Code of 1986.

(e) Persons employed under this section may be terminated after a substantial breach of the agreement or because funding to the guardian ad litem office ~~program~~ has expired.

(3) Persons employed under this section may not be counted in a formula or similar process used by the Statewide Guardian ad Litem Office to measure personnel needs of a judicial circuit's guardian ad litem office ~~program~~.

(4) Agreements created pursuant to this section do not obligate the state to allocate funds to a county to employ persons in the guardian ad litem office ~~program~~.

Section 35. Section 1009.898, Florida Statutes, is created to read:

1009.898 Pathway to Prosperity grants.—

(1) The Pathway to Prosperity program shall administer the following grants to youth and young adults aging out of foster care:

(a) Grants to provide financial literacy instruction using

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a curriculum developed by the Department of Financial Services in consultation with the Department of Education.

(b) Grants to provide CLT, SAT, or ACT preparation, including one-on-one support and fee waivers for the examinations.

(c) Grants to youth and young adults planning to pursue trade careers or paid apprenticeships.

(2) If a youth who is aging out of foster care is reunited with his or her parents, the grants remain available for the youth for up to 1 year after reunification.

(3) The State Board of Education shall adopt rules to administer this section.

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

And the title is amended as follows:

Delete lines 15 - 121

and insert:

amending s. 39.013, F.S.; requiring the court to appoint a guardian ad litem for a child at the earliest possible time; authorizing a guardian ad litem to represent a child in other proceedings to secure certain services and benefits; amending s. 39.01305, F.S.; conforming a provision to changes made by the act; amending s. 39.0132, F.S.; authorizing a child's attorney ad litem to inspect certain records; amending s. 39.0136, F.S.; revising the parties who may request a continuance in a proceeding; amending s. 39.01375, F.S.; conforming provisions to changes made by the act; amending s. 39.0139, F.S.; conforming

provisions to changes made by the act; amending s. 39.202, F.S.; requiring that certain confidential records be released to the guardian ad litem and attorney ad litem; conforming a cross-reference; amending s. 39.402, F.S.; requiring parents to consent to provide certain information to the guardian ad litem and attorney ad litem; conforming provisions to changes made by the act; amending s. 39.4022, F.S.; revising the participants who must be invited to a multidisciplinary team staffing; amending s. 39.4023, F.S.; requiring that notice of a multidisciplinary team staffing be provided to a child's guardian ad litem and attorney ad litem; conforming provisions to changes made by the act; amending s. 39.407, F.S.; conforming provisions to changes made by the act; amending s. 39.4085, F.S.; providing a goal of permanency; conforming provisions to changes made by the act; amending ss. 39.502 and 39.522, F.S.; conforming provisions to changes made by the act; amending s. 39.6012, F.S.; requiring a case plan to include written descriptions of certain activities; conforming a cross-reference; creating s. 39.6036, F.S.; providing legislative findings and intent; requiring the Statewide Guardian ad Litem Office to work with certain children to identify a supportive adult to enter into a specified agreement; requiring such agreement be documented in the child's court file; requiring the office to coordinate with the Office of Continuing Care for a specified purpose;

amending s. 39.621, F.S.; conforming provisions to changes made by the act; amending s. 39.6241, F.S.; requiring a guardian ad litem to advise the court regarding certain information and to ensure a certain agreement has been documented in the child's court file; amending s. 39.701, F.S.; requiring certain notice be given to an attorney ad litem; requiring a court to give a guardian ad litem an opportunity to address the court in certain proceedings; requiring the court to inquire and determine if a child has a certain agreement documented in his or her court file at a specified hearing; conforming provisions to changes made by the act; amending s. 39.801, F.S.; conforming provisions to changes made by the act; amending s. 39.807, F.S.; requiring a court to appoint a guardian ad litem to represent a child in certain proceedings; revising a guardian ad litem's responsibilities and authorities; deleting provisions relating to bonds and service of pleadings or papers; amending s. 39.808, F.S.; conforming provisions to changes made by the act; amending s. 39.815, F.S.; conforming provisions to changes made by the act; repealing s. 39.820, F.S., relating to definitions of the terms "guardian ad litem" and "guardian advocate"; amending s. 39.821, F.S.; conforming provisions to changes made by the act; amending s. 39.822, F.S.; declaring that a guardian ad litem is a fiduciary and must provide independent representation of a child; revising responsibilities of a guardian ad litem;


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requiring that guardians ad litem have certain access to the children they represent; providing actions that a guardian ad litem does and does not have to fulfill; making technical changes; amending s. 39.827, F.S.; authorizing a child's guardian ad litem and attorney ad litem to inspect certain records; amending s. 39.8296, F.S.; revising the duties and appointment of the executive director of the Statewide Guardian ad Litem Office; requiring the training program for guardians ad litem to be maintained and updated regularly; deleting provisions regarding the training curriculum and the establishment of a curriculum committee; requiring the office to provide oversight and technical assistance to attorneys ad litem; specifying certain requirements of the office; amending s. 39.8297, F.S.; conforming provisions to changes made by the act; creating s. 1009.898, F.S.;

By Senator Harrell

31-00562C-24 20241340__

A bill to be entitled

An act relating to coordinated systems of care for children; amending s. 397.96, F.S.; defining the term "care coordination"; providing requirements for care coordinators; conforming provisions to changes made by the act; creating s. 1006.05, F.S.; requiring certain school districts to adhere to a specified mental health and treatment support system for certain children, to address certain recommendations, and meet specified performance outcomes; requiring certain school districts to have a care coordinator provided by a managing entity placed in such districts for certain purposes; requiring each school district to report annually to the Department of Education on certain outcomes and funding; providing an effective date.

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

Section 1. Section 397.96, Florida Statutes, is amended to read:

397.96 Care coordination ~~Case management~~ for complex substance abuse cases.—

(1) Contingent upon specific appropriations, it is the intent of the Legislature to provide for a more intensive level of care coordination ~~case management~~ for complex cases involving children who need substance abuse services. Such services shall be directed toward children receiving services from several agencies or programs to address the complex problems created by

substance abuse, dependency, or addiction.

(2) The department shall determine when a child receiving children's substance abuse services under this part shall have a care coordinator ~~case manager~~.

(3) For the purposes of this section, "care coordination" has the same meaning as in s. 394.4573(1). ~~"case management" means those activities aimed at:~~

~~(a) Implementing a treatment plan;~~

~~(b) Advocacy;~~

~~(c) Linking services providers to a child and family;~~

~~(d) Monitoring services delivery; and~~

~~(e) Collecting information to determine the effect of services and treatment.~~

(4) The care coordinator ~~case manager~~ shall periodically review services utilization to ascertain compliance with plans approved by the planning team.

(5) In the attempt to minimize duplication, it is the intent of the Legislature that a child have no more than one care coordinator ~~case manager~~.

Section 2. Section 1006.05, Florida Statutes, is created to read:

1006.05 Mental health coordinated system of care.—

(1) Pursuant to s. 394.491 and to further promote the effective implementation of a coordinated system of care pursuant to ss. 394.4573 and 394.495, each school district that provides mental health assessment, diagnosis, intervention, treatment, and recovery services to students diagnosed with one or more mental health or any co-occurring substance use disorder and students at high risk of such diagnoses shall be guided by

and adhere to the guiding principles of the mental health treatment and support system as provided under s. 394.491.

(2)(a) School districts shall contract with managing entities to provide care coordination as defined in s. 394.4573(1) for students with complex behavioral health needs who continue to experience adverse outcomes due to unmet needs or an inability to engage.

(b) A care coordinator provided by the managing entity shall be placed in each school district implementing a coordinated system of care under subsection (1) to ensure students are receiving necessary services and that appropriate funds are being used to support the cost of treatment, including Medicaid or other governmental or private health care or health insurance programs, before accessing school-based mental health treatment and support system funding to purchase community-based services.

(c) School districts shall address recommendations from the care coordinator provided by the managing entity when a student is identified as having experienced an involuntary admission to an acute psychiatric care facility upon the return of the student to the school setting.

(3)(a) Pursuant to s. 394.494, each school district shall meet the general performance outcomes for the child and adolescent mental health treatment and support system.

(b) Each school district shall report annually to the department on the general performance outcomes for the child and adolescent mental health treatment and support system and how the support system funding is allocated and spent.

Section 3. This act shall take effect July 1, 2024.

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.)

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

BILL:	SB 1340
INTRODUCER:	Senator Harrell
SUBJECT:	Coordinated Systems of Care for Children
DATE:	January 29, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rao	Tuszynski	CF	**Pre-meeting**
2.			AED	
3.			FP	

I. Summary:

SB 1340 reflects a shift in the model of providing children substance abuse services, from case management to care coordination. The bill shifts the responsibilities of case managers to care coordinators, requiring that a care coordinator review services provided to the child periodically.

The bill requires managing entities to provide care coordinators for each school district that shall implement a coordinated system of care for children that have complex behavioral health needs. The bill requires the school districts to address the recommendations of the care coordinator and report annually to the Department of Education on the performance outcomes of the child's treatment.

The bill has an indeterminate, but likely insignificant, negative fiscal impact to managing entities, school districts, and the state government. *See* Section V. Fiscal Impact Statement.

The bill is effective July 1, 2024.

II. Present Situation:

Substance Abuse / Substance Use Disorder

Substance abuse is the harmful use of substances such as alcohol and illicit drugs.[1] According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), a diagnosis of substance use disorder (SUD) is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.[2] SUD occurs when an individual chronically uses alcohol or

[1] Mayo Clinic, *Drug Addiction (Substance Use Disorder),* available at: https://www.mayoclinic.org/diseases-conditions/drug-addiction/symptoms-causes/syc-20365112 (last visited 1/24/24).
[2] The National Association of Addiction Treatment Providers, *Substance Use Disorder,* available at: https://www.naatp.org/resources/clinical/substance-use-disorder (last visited 1/24/24).

drugs, resulting in significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[3] Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance use disorder.[4] Imaging studies of brains belonging to persons with SUD reveal physical changes in areas of the brain critical to judgment, decision-making, learning and memory, and behavior control.[5]

In 2021, approximately 46.3 million people aged 12 or older had a SUD related to corresponding use of alcohol or illicit drugs within the previous year.[6] The most common substance use disorders in the United States are from the use of alcohol, tobacco, cannabis, opioids, hallucinogens, and stimulants.[7] Provisional data from the CDC's National Center for Health Statistics indicate there was an estimated 106,363 drug overdose deaths in the United States during 2023.[8]

Florida Department of Children and Families

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health prevention, treatment, and recovery for children and adults who are otherwise unable to obtain these services. These services are provided based upon state and federally established priority populations.[9] The DCF provides treatment for Mental Health and SUD through a community-based provider system.[10]

In 2001, the Legislature authorized the DCF to implement behavioral health managing entities (ME) as the management structure for the delivery of local mental health and substance abuse services.[11] The implementation of the ME system initially began on a pilot basis, and, in 2008, the Legislature authorized the DCF to implement MEs statewide.[12] Full implementation of the statewide managing entity system occurred in 2013 and all geographic regions are now served by a ME.[13]

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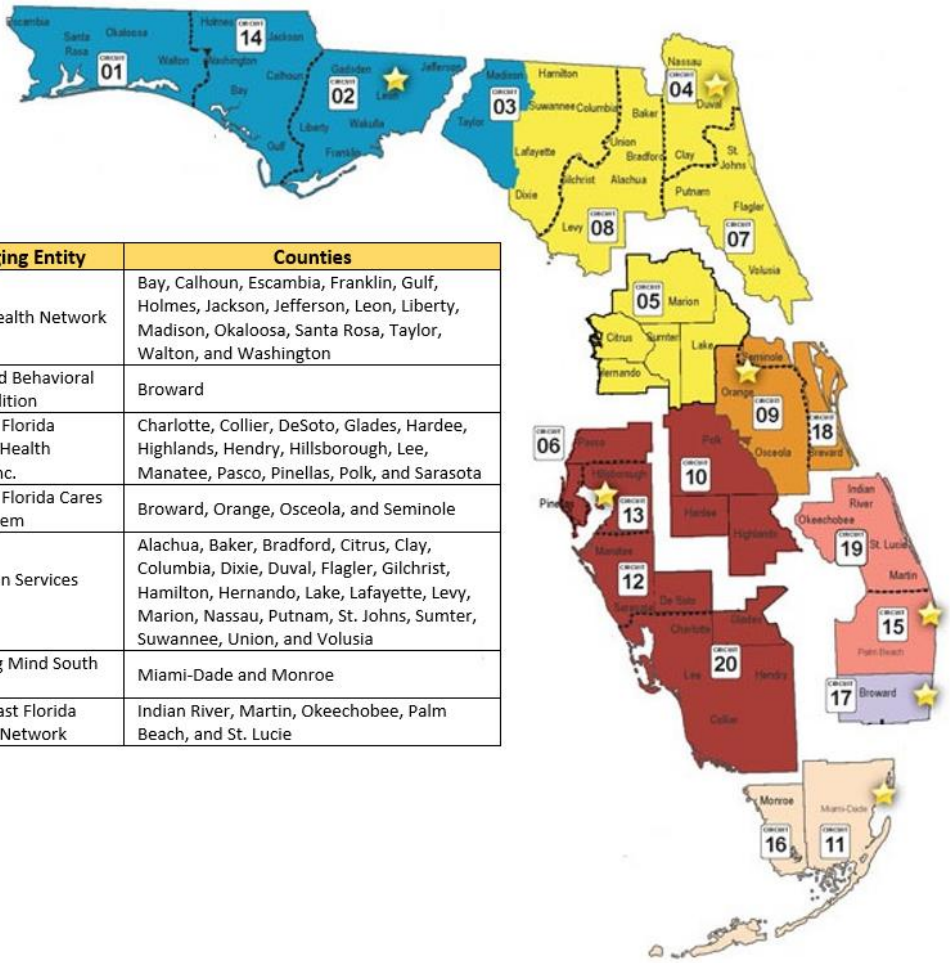
[3] The Substance Abuse and Mental Health Services Administration (The SAMHSA), *Substance Use Disorders,* available at: https://www.samhsa.gov/find-help/disorders (last visited 1/24/24).
[4] The NIDA, *Drugs, Brains, and Behavior: The Science of Addiction,* available at: https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/drug-misuse-addiction (last visited 1/24/24).
[5] *Id.*
[6] The SAMHSA, *Highlights for the 2021 National Survey on Drug Use and Health,* p. 2, available at: https://www.samhsa.gov/data/sites/default/files/2022-12/2021NSDUHFFRHighlights092722.pdf (last visited 1/24/24).
[7] The Rural Health Information Hub, *Defining Substance Abuse and Substance Use Disorders,* available at: https://www.ruralhealthinfo.org/toolkits/substance-abuse/1/definition (last visited 1/24/24).
[8] The Center for Disease Control and Prevention, National Center for Health Statistics, *U.S. Overdose Deaths in 2021,* available at: https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm (last visited 1/24/24).
[9] *See* chs. 394 and 397, F.S.
[10] The DCF, *Managing Entities,* available at: https://www.myflfamilies.com/services/samh/providers/managing-entities (last visited 1/24/24).
[11] Chapter 2001-191, Laws of Florida; codified in s. 394.9082, F.S.
[12] Chapter 2008-243, Laws of Florida
[13] The DCF, *Managing Entities,* available at: https://www.myflfamilies.com/services/samh/providers/managing-entities (last visited 1/24/24).

Contracted MEs

The MEs are required to comply with various statutory duties, including, in part, to[14]:

- Maintain a governing board;
- Promote and support care coordination;
- Develop a comprehensive list of qualified providers;
- Monitor network providers' performances;
- Manage and allocate funds for services in accordance with federal and state laws, rules, regulations, and grant requirements; and
- Operate in a transparent manner, providing access to information, notice of meetings, and opportunities for public participation in ME decision making.

The DCF contracts with seven MEs as shown in the map below and summarized as follows:[15]



Managing Entity	Counties
NWF Health Network	Bay, Calhoun, Escambia, Franklin, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Walton, and Washington
Broward Behavioral Health Coalition	Broward
Central Florida Behavioral Health Network, Inc.	Charlotte, Collier, DeSoto, Glades, Hardee, Highlands, Hendry, Hillsborough, Lee, Manatee, Pasco, Pinellas, Polk, and Sarasota
Central Florida Cares Health System	Broward, Orange, Osceola, and Seminole
Lutheran Services Florida	Alachua, Baker, Bradford, Citrus, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Hernando, Lake, Lafayette, Levy, Marion, Nassau, Putnam, St. Johns, Sumter, Suwannee, Union, and Volusia
Thriving Mind South Florida	Miami-Dade and Monroe
Southeast Florida Behavioral Network	Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie

The MEs in turn contract with local service providers for the delivery of mental health and substance abuse services.[16]

[14] Section 394.9082(5), F.S.
[15] The DCF, *Managing Entities*, available at: https://www.myflfamilies.com/services/samh/providers/managing-entities (last visited 1/24/24).
[16] Managing entities create and manage provider networks by contracting with service providers for the delivery of substance abuse and mental health services.

Coordinated System of Care

Managing entities are required to promote the development and implementation of a coordinated system of care. A coordinated system of care means a full array of behavioral and related services in a region or community offered by all service providers, participating either under contract with a managing entity or by another method of community partnership or mutual agreement.[17] A community or region provides a coordinated system of care for those suffering from mental illness or substance abuse disorder through a "no-wrong-door" model,[18] to the extent allowed by available resources.[19]

There are several essential elements which make up a coordinated system of care, including:

- Community interventions;
- Case management;
- Care coordination;
- Outpatient services;
- Residential services;
- Transportation to receiving facilities;
- Crisis services;
- Hospital inpatient care;
- Aftercare and post-discharge services;
- Medication-assisted treatment and medication management;
- Recovery support.[20]

Case Management and Care Coordination

Under Ch. 394, Florida's Mental Health Act, "case management" is defined as those direct services provided to a client in order to assess his or her needs, plan or arrange services, coordinate service providers, link the service system to a client, monitor service delivery, and evaluate patient outcomes to ensure the client is receiving the appropriate services.[21]

Florida's Mental Health Act also defines "care coordination" as the implementation of deliberate and planned organizational relationships and service procedures that improve the effectiveness and efficiency of the behavioral health system by engaging in purposeful interactions with individuals who are not yet effectively connected with services to ensure service linkage. The purpose of care coordination is to enhance the delivery of treatment services and recovery supports and to improve outcomes among priority populations.[22] Current law does not define "care coordinator," only "care coordination."

[17] Section 394.4573(1)(c), F.S.
[18] Section 394.4573(1)(d), F.S.; This means a model for the delivery of acute care services to persons who have mental health or substance use disorders, or both, which optimizes access to care, regardless of the entry point to the behavioral health care system.
[19] Section 394.4573(2)(b)2., F.S.
[20] Section 394.4573(2), F.S.
[21] Section 394.4573(1)(b), F.S.
[22] Section 294.4573(1)(a), F.S.

Florida's Children's Substance Abuse Services

Part IX of Chapter 397, F.S., Children's Substance Abuse Services, details a system with the intent of achieving the following for children who are in need of substance abuse services:

- Identification of the presenting problems and conditions of substance abuse through the use of valid assessment.
- Improvement in the child's ability to function in the family with minimum supports.
- Improvement in the child's ability to function in school with minimum supports.
- Improvement in the child's ability to function in the community with minimum supports.
- Improvement in the child's ability to live drug-free.
- Reduction of behaviors and conditions that may be linked to substance abuse, such as unintended pregnancy, delinquency, sexually transmitted diseases, and smoking, and other negative behaviors.
- Increased return of children in state custody, drug-free, to their homes, or the placement of such children, drug-free, in an appropriate setting.[23]

Current law requires the DCF to determine if a child receiving substance abuse services is complex enough to require a case manager.[24] A child's case manager is responsible for periodically reviewing the utilization of services to determine if the child's SUD treatment is in compliance with the case plan.[25] A case manager's activities are to be aimed at:

- Implementing a treatment plan;
- Advocacy;
- Linking services providers to a child and family;
- Monitoring services delivery; and
- Collecting information to determine the effect of services and treatment.[26]

Mental Health Services for Students

The Department of Education, through the Office of Safe Schools, promotes support, policies, and practices that focus on prevention and early intervention to improve student mental health and school safety.[27] Florida law requires instructional personnel to teach comprehensive health education that addresses concepts of mental and emotional health, as well as substance use and abuse.[28]

Mental Health Assistance Program

In 2018, the Marjory Stoneman Douglas High School Public Safety Act created the Mental Health Assistance Allocation within the Florida Education Finance Program.[29] The allocation is intended to provide funding to assist school districts in establishing or expanding school-based mental health care, train educators and other school staff in detecting and responding to mental

[23] Section 397.92, F.S.
[24] Section 397.96(2), F.S.
[25] Section 397.96(4), F.S.
[26] Section 397.96(3), F.S.
[27] Section 1001.212, F.S.
[28] Section 1003.42(2)(n), F.S.
[29] Chapter 2018-3, Laws of Fla.; codified as s. 1006.041, F.S.

health issues, and connect children, youth, and families who may experience behavioral health issues with appropriate services.[30]

For the 2023-2024 school year $160,000,000 was appropriated for the allocation.[31] Each school district receives a minimum of $100,000, and the remaining balance is allocated based on each district's proportionate share of the state's total unweighted full-time equivalent student enrollment.[32]

To receive allocation funds, a school district must develop and submit a detailed plan outlining its local plan and expenditures to the district school board for approval.[33] The plan must focus on a multitier system of supports to deliver evidence-based mental health care assessments, diagnoses, interventions, treatment, and recovery services to students with one or more mental health or co-occurring substance abuse diagnoses and to students at high risk of such diagnoses.

The provision of these services must be coordinated with a student's primary mental health care provider and with other mental health providers involved in the student's care.[34] These plans must include components such as:[35]

- Direct employment of school-based mental health service providers to expand and enhance school-based student services and reduce the ratio of students to staff to align with nationally recommended ratio models.
- Contracts or interagency agreements with one or more local community behavioral health providers or providers of Community Action Team services to provide behavioral health staff presence and services at district schools.
- Policies and procedures which ensure:
    - Students who are referred to a school-based or community-based mental health service provider for mental health screening are assessed within 15 days of referral;
    - School-based mental health services are initiated within 15 days after identification and assessment and community-based mental health services are initiated within 30 days after school or district referral;
    - Parents and of a student receiving services are provided information about other behavioral services available through the student's school or local community-based behavioral health service providers; and
    - Individuals living in a household with a student receiving services are provided information about behavioral health services available through other delivery systems or payors for which the individuals may qualify, if such services appear to be needed or enhancement in such individual's behavioral health would contribute to the improve wellbeing of the student.

[30] *Id*.
[31] Specific Appropriations 5 and 80, s. 2, ch. 2023-239, Laws of Fla.
[32] Section 1011.62(13), F.S.; *See also* Florida Department of Education, Florida Education Finance Program 2023-24 *Second Calculation*, p. 28, available at https://www.fldoe.org/core/fileparse.php/7507/urlt/2324FEFP2ndCalc.pdf (last visited January 27, 2024).
[33] Section 1006.041(1), F.S.
[34] Section 1006.041(2), F.S.
[35] *Id*.

- Strategies or programs to reduce the likelihood of at-risk students developing social, emotional, or behavioral health problems; depression; anxiety disorders; suicidal tendencies; or substance use disorders.
- Strategies to improve the early identification of social, emotional, or behavioral problems or substance use disorders; to improve the provision of early intervention services; and to assist students in dealing with trauma and violence.
- Procedures to assist a mental health services provider or a behavioral health provider, or a school resource officer or school safety officer who has completed mental health crisis intervention training with attempting to verbally de-escalate a student's crisis situation before initiating an involuntary examination.
- Policies requiring that school or law enforcement personnel, prior to initiating an involuntary examination, make a reasonable attempt to contact a mental health professional authorized to initiate an involuntary examination, unless the student in crisis poses an imminent danger to him- or herself or others.

School districts are also required to report program outcomes and expenditures for the previous fiscal year by September 30 each year.[36] The report must, at a minimum, provide the number of each of the following:[37]

- Students who receive screenings or assessments.
- Students who are referred to either school-based or community-based providers for services.
- Students who receive either school-based or community-based interventions, or assistance.
- School-based and community-based mental health providers, including licensure type, that were paid out of the mental health assistance allocation.
- Contract-based or interagency agreement-based collaborative efforts or partnerships with community mental health programs, agencies, or providers.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 397.96, F.S., to reflect the shift in managing complex cases involving children who need substance abuse services from a case management model to care coordination.

The bill requires the DCF to determine if a child receiving substance abuse services has a need for a care coordinator.

The bill defines "care coordination" to mean the same as s. 394.4573(1)(a), F.S. Specifically, "care coordination" is defined to mean the implementation of deliberate and planned organizational relationships and service procedures that improve the effectiveness and efficiency of the behavioral health system by engaging in purposeful interactions with individuals who are not yet effectively connected with services to ensure service linkage.

The bill requires each child to have no more than one care coordinator, and for that care coordinator to periodically review the utilization of children's substance abuse services.

[36] Section 1006.041(4), F.S.
[37] *Id.*

Section 2 of the bill creates s. 1006.05, F.S., to align the coordinated system of care for children that need substance abuse services with the guiding principles of statutory mental health treatment provided under s. 394.491., F.S.

The bill requires managing entities to provide a care coordinator for each school district. The care coordinator's purpose is to implement a coordinated system of care for complex cases involving children receiving substance abuse services. The bill requires the care coordinator to ensure students receive necessary services and that appropriate funds such as Medicaid, governmental or private health care, or insurance are used before accessing school-based mental health treatment and support system funding to purchase community-based services.

The bill requires school districts to:

- Contract with managing entities to provide care coordination for students with complex behavioral health needs who experience adverse outcomes due to unmet needs or an inability to engage.
- Address recommendations from the care coordinator upon a student's return to the school setting after experiencing an involuntary admission to an acute psychiatric care facility.
- Meet the general performance outcomes for the child and adolescent mental health treatment and support system.
- Report annually to the Department of Education on the general performance outcomes for the child and adolescent mental health treatment and support system, and how the funding for the support system is allocated.

Section 3 of the bill provides an effective date of July 1, 2024.

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:

None.

C. Government Sector Impact:

There is an indeterminate negative fiscal impact on school districts, as the bill requires a contract with MEs to provide care coordinators for students with complex behavioral health needs. It is unknown how much of their current appropriation for mental health support may be re-allocated for this purpose.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 397.96 of the Florida Statutes.
This bill creates s. 1006.05 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.

813362

LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment (with title amendment)

Delete lines 20 - 72
and insert:
Section 1. Section 1006.05, Florida Statutes, is created to read:
1006.05 Mental health coordinated system of care.—
(1) For purposes of this section, "care coordinator" means a person who is responsible for participating in the development and implementation of a services plan, linking service providers

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to a child or adolescent and his or her family, monitoring the delivery of services, providing advocacy, collecting information to determine the effect of services and treatment, and performing care coordination as defined in s. 394.4573(1).

(2) Pursuant to s. 394.491 and to further promote the effective implementation of a coordinated system of care pursuant to ss. 394.4573 and 394.495, each school district that provides mental health assessment, diagnosis, intervention, treatment, and recovery services to students diagnosed with one or more mental health or any co-occurring substance use disorder and students at high risk of such diagnoses shall be guided by and adhere to the guiding principles of the mental health treatment and support system as provided under s. 394.491.

(3)(a) School districts shall contract with managing entities to provide care coordinators for students with complex behavioral health needs who continue to experience adverse outcomes due to unmet needs or an inability to engage.

(b) A care coordinator provided by the managing entity shall be placed in each school district implementing a coordinated system of care to ensure students are receiving necessary services and that appropriate funds are being used to support the cost of treatment, including all available public and private health insurance funds, before accessing school-based mental health

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

And the title is amended as follows:

Delete lines 3 - 6

and insert:

813362

children; creating s. 1006.05, F.S.; defining the term "care coordinator"; requiring certain

By Senator Book

35-00441-24 20241432__

A bill to be entitled

An act relating to commercial sexual exploitation of children; amending s. 39.524, F.S.; requiring the Department of Children and Families to include individual-level child placement assessment data in its annual report to the Legislature on the commercial sexual exploitation of children; requiring the department to provide the Legislature with individual-level child placement assessment data in a certain format; providing an effective date.

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

Section 1. Subsection (3) of section 39.524, Florida Statutes, is amended to read:

39.524 Safe-harbor placement.—

(3)(a) By October 1 of each year, the department, with information from community-based care agencies, shall report to the Legislature on the prevalence of ~~child~~ commercial sexual exploitation of children; the specialized services provided and placement of such children; the local service capacity assessed pursuant to s. 409.1754; the placement of children in safe houses and safe foster homes during the year, including the criteria used to determine the placement of children; the number of children who were evaluated for placement; the number of children who were placed based upon the evaluation; the number of children who were not placed; and the department's response to the findings and recommendations made by the Office of Program Policy Analysis and Government Accountability in its

annual study on commercial sexual exploitation of children, as required by s. 409.16791. In addition, the supporting assessments, including individual-level data for children who are assessed for such placement, must be included in this report.

(b) The department shall maintain data specifying the number of children who were verified as victims of commercial sexual exploitation, who were referred to nonresidential services in the community, who were placed in a safe house or safe foster home, and who were referred to a safe house or safe foster home for whom placement was unavailable, and shall identify the counties in which such placement was unavailable. In addition, the department must provide to the Legislature individual-level data for children who are assessed for such placement in an extractable format that allows for aggregation and analysis. The department shall include this data in its report under this subsection so that the Legislature may consider this information in developing the General Appropriations Act.

Section 2. This act shall take effect July 1, 2024.

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.)

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

BILL:	SB 1432
INTRODUCER:	Senator Book
SUBJECT:	Commercial Sexual Exploitation of Children
DATE:	January 29, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rao	Tuszynski	CF	**Pre-meeting**
2.			AHS	
3.			FP	

I. Summary:

Florida law requires the Department of Children and Families (DCF) to annually report specific information about the commercial sexual exploitation of children (CSEC) and the placement of CSEC victims in safe harbor placements.

SB 1432 requires the DCF to include individual-level data for CSEC victims assessed for a safe harbor placement in its annual report. Additionally, the bill requires the DCF to provide the Legislature with individual-level data for CSE victims who are assessed for a safe harbor placement in an extractable format that allows for aggregation and analysis.

The bill will have an indeterminate, but likely insignificant, negative fiscal impact on state government. *See* Section V. Fiscal Impact Statement.

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

II. Present Situation:

The Department of Children and Families

The Legislature recognizes the need for specialized care and services for children who are victims of commercial sexual exploitation.[1] Commercial sexual exploitation of children (CSEC) is defined as the use of any person under the age of 18 years for sexual purposes in exchange for or in the promise of money, goods, or services.[2]

[1] Section 39.001(5), F.S.
[2] Section 409.016, F.S.

When the Department of Children and Families (DCF) receives a report of human trafficking to the Child Abuse Hotline, the DCF investigates this report. If commercial sexual trafficking is suspected or verified, the DCF and community-based care agencies conduct a multidisciplinary staffing on the case.[3] The staffing includes local experts in child protection, child welfare, medical professionals, and law enforcement to assess the needs of the child and determine if the victim needs placement in a "safe house" or "safe foster home."[4] Multidisciplinary staffing teams are also charged with assessing the local services available to victims of CSEC.[5]

Commercial Sexual Exploitation of Children

It is difficult to obtain an accurate count of CSEC victims because these victims are not readily identifiable.[6] CSEC victims do not have immediately recognizable characteristics, many do not have identification, and they are often physically or psychologically controlled by adult traffickers; as such, they rarely disclose or provide information on exploitation.[7]

In 2022, the DCF verified 354 victims of commercial sexual exploitation from 3,408 reports.[8] Of the reports referred for investigation, most came from the Department of Juvenile Justice (DJJ), the Department of Corrections, or criminal justice personnel and law enforcement.[9] Of the 354 verified commercially sexually exploited children, 25% were in out-of-home care.[10]

Safe Houses and Safe Foster Homes

Current law defines and provides for the certification of specialized residential options for CSEC victims.[11] The law defines a "safe foster home" to mean a foster home certified by the DCF to care for sexually exploited children and a "safe house" to mean a group residential placement certified by the DCF to care for sexually exploited children.[12] To be certified, a safe house or safe foster home must:

- Use strength-based and trauma-informed approaches to care, to the extent possible and appropriate.
- Serve exclusively one sex.
- Group CSEC victims by age or maturity level.
- Care for CSEC victims in a manner that separates those children from children with other needs. Safe houses and safe foster homes may care for other populations if the children who

[3] Section 409.1754, F.S.
[4] *Id.*
[5] *Id.*
[6] The Office of Program Policy Analysis and Government Accountability, *Annual Report on the Commercial Sexual Exploitation of Children in Florida, 2016*, p. 2, available at: https://oppaga.fl.gov/Products/ReportDetail?rn=16-04 (last visited 1/24/24).
[7] U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Commercial Sexual Exploitation of Children and Sex Trafficking*, available at: https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/commercial_sexual_exploitation_of_children_and_sex_trafficking.pdf (last visited 1/25/24).
[8] The Office of Program Policy Analysis and Government Accountability, *Annual Report on the Commercial Sexual Exploitation of Children in Florida 2023*, available at: https://oppaga.fl.gov/Products/ReportDetail?rn=23-08 (last visited 1/25/24).
[9] *Id.*
[10] *Id.*
[11] *See* Section 409.1678, F.S.
[12] Section 409.1678(1), F.S.

have not experienced commercial sexual exploitation do not interact with children who have experienced commercial sexual exploitation.
- Have awake staff members on duty 24 hours a day, if a safe house.
- Provide appropriate security through facility design, hardware, technology, staffing, and siting, including, but not limited to, external video monitoring or door exit alarms, a high staff-to-client ratio, or being situated in a remote location that is isolated from major transportation centers and common trafficking areas.
- Meet other criteria established by department rule,[13] including personnel qualifications, staffing ratios, and types of services offered.[14]

Safe Harbor Placement

If a dependent child aged 6 years or older is suspected of being or has been found to be a victim of commercial sexual exploitation, the DCF is required to determine the child's need for services and his or her need for placement in a safe house of safe foster home.[15]

Current law requires the DCF to annually report to the Legislature the following information about the prevalence of CSEC:[16]
- The specialized services provided and placement of victims of CSE;
- The local service capacity to meet the specialized needs of CSE victims;
- The placement of children in safe houses and safe foster homes during the year, including the criteria used to determine the child's placement;
- The number of children who were evaluated for placement;
- The number of children who were placed in safe houses or safe foster homes based upon the evaluation;
- The number of children who were not placed; and
- The DCF's response to the findings and recommendations made by the Office of Program Policy Analysis and Government Accountability in its annual study on CSE.

The DCF is also required to maintain data specifying the number of CSEC victims placed in a safe foster house or safe foster home, the number of CSEC victims who were referred placement in a safe harbor setting but none was available, and the counties in which the safe harbor placements were unavailable.[17]

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 39.524, F.S. to change the term "child commercial sexual exploitation" to the more commonly used "commercial sexual exploitation of children." This change aligns terminology between chs. 39 and 409, F.S.

[13] Rule 65C-46.020, F.A.C.
[14] Section 409.1678(2)(c), F.S.
[15] Section 39.524, F.S.
[16] Section 39.524(3), F.S.
[17] *Id.*

The bill requires the DCF to include supporting assessments that include individual-level data for children who are assessed for placement in safe houses and safe foster homes in its annual report to the Legislature.

The bill also requires the DCF to provide the Legislature with individual-level data for children assessed for placement in safe houses or safe foster homes in an extractable format that allows for aggregation and analysis.

Section 2 of the bill provides an effective date of July 1, 2024.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There is an indeterminate, but likely insignificant, negative fiscal impact on the DCF due to the increased requirement to maintain individual-level data for children assessed for placement in safe harbor homes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 39.524 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.

352090

LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment (with title amendment)

Delete lines 31 - 45
and insert:
required by s. 409.16791; and the redacted supporting assessments, including anonymized individual-level data for children who are assessed for such placement.
(b) The department shall maintain data specifying the number of children who were verified as victims of commercial sexual exploitation, who were referred to nonresidential

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services in the community, who were placed in a safe house or safe foster home, and who were referred to a safe house or safe foster home for whom placement was unavailable, and shall identify the counties in which such placement was unavailable. The department must maintain individual-level data for children who are assessed for such placement in an extractable format that allows for aggregation and analysis upon request by the Legislature. The department shall include this data in its

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

And the title is amended as follows:

Delete lines 5 - 10

and insert:

redacted supporting assessments with anonymized data in its annual report to the Legislature on the commercial sexual exploitation of children; requiring the department to maintain individual-level child placement assessment data in a certain format; providing an effective date

By Senator Grall

29-01321B-24 20241784__

A bill to be entitled

An act relating to mental health and substance abuse; amending s. 394.455, F.S.; conforming a cross-reference; conforming a provision to changes made by the act; amending s. 394.4572, F.S.; providing an exception to background screening requirements for certain licensed physicians and nurses; amending s. 394.459, F.S.; conforming a provision to changes made by the act; specifying a timeframe for recording restrictions in a patient's clinical file; amending s. 394.4599, F.S.; revising written notice requirements relating to filing petitions for involuntary services; amending s. 394.461, F.S.; authorizing the state to establish that a transfer evaluation was performed by providing the court with a copy of the evaluation before the close of the state's case in chief; prohibiting the court from considering substantive information in the transfer evaluation unless the evaluator testifies at the hearing; requiring the Department of Children and Families to post a specified report on its website; deleting requirements to submit the report to specified parties; amending s 394.4615, F.S.; conforming cross-references to changes made by the act; amending s. 394.462, F.S.; conforming cross-references; amending s. 394.4625, F.S.; revising requirements relating to voluntary admissions to a facility for examination and treatment; amending s. 394.463, F.S.; authorizing, rather than requiring, law enforcement officers to take certain persons into

custody for involuntary examinations; requiring written reports by a law enforcement officer to contain certain information; revising the types of documents that the department is required to receive and maintain and that are considered part of the clinical record; requiring the department to post a specified report on its website by a specified date; revising requirements for releasing a patient from a receiving facility; revising when the examination period begins for a patient at a receiving facility; revising requirements for petitions for involuntary services; requiring the department and the Agency for Health Care Administration to analyze certain data, identify patterns and trends, and make recommendations to decrease avoidable admissions; authorizing recommendations to be addressed in a specified manner; requiring the department to publish a specified report on its website by a certain date; making technical changes; conforming provisions to changes made by the act; amending s. 394.4655, F.S.; defining the terms "court", "criminal county court", and "involuntary outpatient placement"; authorizing a criminal county court to order an individual to involuntary outpatient treatment; deleting provisions relating to involuntary outpatient services; amending s. 394.467, F.S.; defining terms; revising the criteria for ordering a person for involuntary inpatient placement; providing that a patient may be recommended and retained for involuntary services; requiring recommendations for

services be supported by the opinions of certain medical professionals within a specified timeframe; revising who may file a petition for involuntary services; requiring such petitions to be filed in the county where the patient is located; providing criteria for what must be in a petition for involuntary services; requiring a service provider to provide a treatment plan if the patient meets the criteria for involuntary services; requiring copies of such petitions be given to specified individuals; requiring the court to appoint counsel for the patient, if the patient meets certain criteria; revising provisions relating to continuances of hearings; revising requirements for hearings on involuntary services; revising the conditions under which a court may waive the requirement for a patient to be present at an involuntary inpatient placement hearing; requiring facilities to make certain clinical records available to a state attorney within a specified timeframe; specifying that such records remain confidential and may not be used for certain purposes; requiring the court to allow testimony from certain individuals; requiring the court to consider testimony and evidence regarding a patient's competence to consent to services and treatment; requiring the court to appoint a guardian advocate if the patient is found to be incompetent; authorizing the court to order a patient to involuntary inpatient or outpatient services, depending on the services

available to the patient in his or her community; requiring service providers to document efforts taken to secure appropriate services for the patient; prohibiting courts from ordering individuals with developmental disabilities to be involuntarily placed in a state treatment facility; conforming provisions to changes made by the act; amending s. 394.468, F.S.; revising requirements for discharge planning; amending ss. 394.495 and 394.496, F.S.; conforming provisions to changes made by the act; amending s. 394.499, F.S.; revising eligibility requirements for children's crisis stabilization unit/juvenile addictions receiving facility services; amending s. 394.875, F.S.; conforming provisions to changes made by the act; deleting a limitation on the size of a crisis stabilization unit; deleting a requirement for the department to implement a certain demonstration project; amending s. 394.9085, F.S.; conforming a cross-reference; amending s. 397.305, F.S.; revising the purpose of ch. 397, F.S.; amending s. 397.311, F.S.; revising and defining terms; amending s. 397.401, F.S.; prohibiting certain service providers from exceeding their licensed capacity by more than a specified percentage or for more than a specified number of days; amending s. 397.4073, F.S.; providing an exception to background screening requirements for certain licensed physicians and nurses; amending s. 397.501, F.S.; revising notice requirements for the right to counsel; amending s. 397.581, F.S.; revising

actions that constitute unlawful activities relating to assessment and treatment; amending s. 397.675, F.S.; revising the criteria for involuntary admissions for purposes of assessment and stabilization, and for involuntary treatment; amending s. 397.681, F.S.; revising where involuntary treatment petitions for substance abuse impaired persons must be filed; revising the portion of such proceedings over which a general or special magistrate may preside; providing an exception to a respondent's right to counsel relating to petitions for involuntary treatment; revising the circumstances under which courts are required to appoint counsel for respondents without regard to respondents' wishes; conforming provisions to changes made by the act; amending s. 397.6751, F.S.; revising service provider responsibilities relating to involuntary admissions; amending s. 397.6818, F.S.; revising provisions relating to court determinations for petitions for involuntary assessment and stabilization; renumbering and amending s. 397.693, F.S.; revising the circumstances under which a person may be the subject of court-ordered involuntary treatment; renumbering and amending s. 397.695, F.S.; authorizing the court or a law enforcement agency to waive or prohibit any service of process fees for petitioners determined to be indigent; renumbering and amending s. 397.6951, F.S.; revising the information required to be included in a petition for involuntary treatment services;

authorizing a petitioner to include a certificate or report of a qualified professional with such petition; requiring such certificate or report to contain certain information; requiring that certain additional information be included if an emergency exists; renumbering and amending s. 397.6955, F.S.; revising when the office of criminal conflict and civil regional counsel represents a person; revising when a hearing must be held on a petition for involuntary treatment; requiring law enforcement agencies to effect service for initial treatment hearings; providing an exception; conforming provisions to changes made by the act; amending s. 397.6957, F.S.; expanding the exemption from the requirement that a respondent be present at a hearing on a petition for involuntary treatment services; requiring the court to hear testimony from family members familiar with the respondent's history; authorizing the court to order drug tests and to permit witnesses to attend and testify remotely at the hearing through certain means; deleting a provision requiring the court to appoint a guardian advocate under certain circumstances; prohibiting a respondent from being involuntarily ordered into treatment unless certain requirements are met; providing requirements relating to involuntary assessment and stabilization orders; providing requirements relating to involuntary treatment hearings; requiring that the assessment of a respondent occur within a specified timeframe;

providing an exception; authorizing service providers to petition the court in writing for an extension of the observation period; providing service requirements for such petitions; authorizing the service provider to continue to hold the respondent if the court grants the petition; requiring a qualified professional to transmit his or her report to the clerk of the court within a specified timeframe; requiring the clerk of the court to enter the report into the court file; providing requirements for the report; providing that the report's filing satisfies the requirements for release of certain individuals if it contains admission and discharge information; providing for the petition's dismissal under certain circumstances; authorizing the court to initiate involuntary proceedings and have the respondent evaluated by the under certain circumstances; requiring that a treatment order, if issued, must include certain findings; amending s. 397.6975, F.S.; authorizing certain entities to file a petition for renewal of an involuntary treatment services order; revising the timeframe during which the court is required to schedule a hearing; conforming provisions to changes made by the act; amending s. 397.6977, F.S.; providing that discharge planning and procedures for a respondent's release from involuntary treatment services address minimum requirements; amending ss. 409.972, 464.012, and 744.2007, F.S.; conforming provisions to changes made by the act; amending s.

916.13, F.S.; requiring the Department of Children and Families to complete and submit a competency evaluation report to the circuit court to determine if a defendant adjudicated incompetent to proceed meets the criteria for involuntary civil commitment if it is determined that the defendant will not or is unlikely to regain competency; requiring a qualified professional to sign such report under penalty of perjury; defining the term "competency evaluation report to the circuit court"; providing requirements for such report; requiring a defendant who meets the criteria for involuntary examination and court witnesses to appear remotely for hearing; conforming provisions to changes made by the act; repealing s. 397.6811, F.S., relating to involuntary assessment and stabilization; repealing s. 397.6814, F.S., relating to petitions for involuntary assessment and stabilization; repealing s. 397.6815, F.S., relating to involuntary assessment and stabilization procedures; repealing s. 397.6819, F.S., relating to the responsibilities of licensed service providers with regard to involuntary assessment and stabilization; repealing s. 397.6821, F.S., relating to extensions of time for completion of involuntary assessment and stabilization; repealing s. 397.6822, F.S., relating to the disposition of individuals after involuntary assessment; repealing s. 397.6978, F.S., relating to the appointment of guardian advocates; providing an effective date.

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

Section 1. Subsection (23) of s. 394.455, Florida Statutes, is amended, to read:

394.455 Definitions.—As used in this part, the term:

(23) "Involuntary examination" means an examination performed under s. 394.463, s. 397.6772, s. 397.679, s. 397.6798, or s. 397.6957 ~~s. 397.6811~~ to determine whether a person qualifies for involuntary services.

Section 2. Paragraph (e) is added to subsection (1) of section 394.4572, Florida Statutes, to read:

394.4572 Screening of mental health personnel.—

(1)

(e) Licensed physicians and nurses who require background screening by Department of Health at initial licensure and renewal of licensure are not subject to background screening pursuant to this section if they are providing a service that is within their scope of licensed practice.

Section 3. Paragraph (d) of subsection (3) and paragraph (d) of subsection (5) of section 394.459, Florida Statutes, are amended to read:

394.459 Rights of patients.—

(3) RIGHT TO EXPRESS AND INFORMED PATIENT CONSENT.—

(d) The administrator of a receiving or treatment facility may, upon the recommendation of the patient's attending physician, authorize emergency medical treatment, including a surgical procedure, if such treatment is deemed lifesaving, or if the situation threatens serious bodily harm to the patient,

and permission of the patient or the patient's guardian or guardian advocate cannot be obtained.

(5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—

(d) If a patient's right to communicate with outside persons; receive, send, or mail sealed, unopened correspondence; or receive visitors is restricted by the facility, a qualified professional must record the restriction and its underlying reasons in the patient's clinical file within 24 hours, and this document must immediately ~~written notice of such restriction and the reasons for the restriction shall~~ be served on the patient, the patient's attorney, and the patient's guardian, guardian advocate, or representative. ~~A qualified professional must document any restriction within 24 hours, and such restriction shall be recorded on the patient's clinical record with the reasons therefor.~~ The restriction of a patient's right to communicate or to receive visitors shall be reviewed at least every 3 days. The right to communicate or receive visitors shall not be restricted as a means of punishment. Nothing in this paragraph shall be construed to limit the provisions of paragraph (e).

Section 4. Paragraph (d) of subsection (2) of section 394.4599, Florida Statutes, is amended to read:

394.4599 Notice.—

(2) INVOLUNTARY ADMISSION.—

(d) The written notice of the filing of the petition for involuntary services for an individual being held must contain the following:

1. Notice that the petition for:

a. Involuntary services ~~inpatient treatment~~ pursuant to s.

394.467 has been filed with the circuit court and the address of such court ~~in the county in which the individual is hospitalized and the address of such court~~; or

b. Involuntary outpatient services pursuant to s. 394.4655 has been filed with the criminal county court, as defined in s. 394.4655(1)~~, or the circuit court, as applicable, in the county in which the individual is hospitalized and the address of such court~~.

2. Notice that the office of the public defender has been appointed to represent the individual in the proceeding, if the individual is not otherwise represented by counsel.

3. The date, time, and place of the hearing and the name of each examining expert and every other person expected to testify in support of continued detention.

4. Notice that the individual, the individual's guardian, guardian advocate, health care surrogate or proxy, or representative, or the administrator may apply for a change of venue for the convenience of the parties or witnesses or because of the condition of the individual.

5. Notice that the individual is entitled to an independent expert examination and, if the individual cannot afford such an examination, that the court will provide for one.

Section 5. Subsection (2) and paragraph (d) of subsection (4) of section 394.461, Florida Statutes, are amended to read:

394.461 Designation of receiving and treatment facilities and receiving systems.—The department is authorized to designate and monitor receiving facilities, treatment facilities, and receiving systems and may suspend or withdraw such designation for failure to comply with this part and rules adopted under

this part. The department may issue a conditional designation for up to 60 days to allow the implementation of corrective measures. Unless designated by the department, facilities are not permitted to hold or treat involuntary patients under this part.

(2) TREATMENT FACILITY.—The department may designate any state-owned, state-operated, or state-supported facility as a state treatment facility. A civil patient shall not be admitted to a state treatment facility without previously undergoing a transfer evaluation. Before the close of the state's case in chief in a ~~court~~ hearing for involuntary placement ~~in a state treatment facility~~, the state may establish that the transfer evaluation was performed and the document properly executed by providing the court with a copy of the transfer evaluation. The court may not ~~shall receive and~~ consider the substantive information ~~documented~~ in the transfer evaluation unless the evaluator testifies at the hearing. Any other facility, including a private facility or a federal facility, may be designated as a treatment facility by the department, provided that such designation is agreed to by the appropriate governing body or authority of the facility.

(4) REPORTING REQUIREMENTS.—

(d) The department shall issue an annual report based on the data required pursuant to this subsection. The report shall include individual facilities' data, as well as statewide totals. The report shall be posted on the department's website ~~submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives~~.

Section 6. Section 394.462, Florida Statutes, is amended to

read:

394.462 Transportation.—A transportation plan shall be developed and implemented by each county in collaboration with the managing entity in accordance with this section. A county may enter into a memorandum of understanding with the governing boards of nearby counties to establish a shared transportation plan. When multiple counties enter into a memorandum of understanding for this purpose, the counties shall notify the managing entity and provide it with a copy of the agreement. The transportation plan shall describe methods of transport to a facility within the designated receiving system for individuals subject to involuntary examination under s. 394.463 or involuntary admission under s. 397.6772, s. 397.679, s. 397.6798, or s. 397.6957 ~~s. 397.6811,~~ and may identify responsibility for other transportation to a participating facility when necessary and agreed to by the facility. The plan may rely on emergency medical transport services or private transport companies, as appropriate. The plan shall comply with the transportation provisions of this section and ss. 397.6772, 397.6795, ~~397.6822,~~ and 397.697.

(1) TRANSPORTATION TO A RECEIVING FACILITY.—

(a) Each county shall designate a single law enforcement agency within the county, or portions thereof, to take a person into custody upon the entry of an ex parte order or the execution of a certificate for involuntary examination by an authorized professional and to transport that person to the appropriate facility within the designated receiving system pursuant to a transportation plan.

(b)1. The designated law enforcement agency may decline to

transport the person to a receiving facility only if:

a. The jurisdiction designated by the county has contracted on an annual basis with an emergency medical transport service or private transport company for transportation of persons to receiving facilities pursuant to this section at the sole cost of the county; and

b. The law enforcement agency and the emergency medical transport service or private transport company agree that the continued presence of law enforcement personnel is not necessary for the safety of the person or others.

2. The entity providing transportation may seek reimbursement for transportation expenses. The party responsible for payment for such transportation is the person receiving the transportation. The county shall seek reimbursement from the following sources in the following order:

a. From a private or public third-party payor, if the person receiving the transportation has applicable coverage.

b. From the person receiving the transportation.

c. From a financial settlement for medical care, treatment, hospitalization, or transportation payable or accruing to the injured party.

(c) A company that transports a patient pursuant to this subsection is considered an independent contractor and is solely liable for the safe and dignified transport of the patient. Such company must be insured and provide no less than $100,000 in liability insurance with respect to the transport of patients.

(d) Any company that contracts with a governing board of a county to transport patients shall comply with the applicable rules of the department to ensure the safety and dignity of

patients.

(e) When a law enforcement officer takes custody of a person pursuant to this part, the officer may request assistance from emergency medical personnel if such assistance is needed for the safety of the officer or the person in custody.

(f) When a member of a mental health overlay program or a mobile crisis response service is a professional authorized to initiate an involuntary examination pursuant to s. 394.463 or s. 397.675 and that professional evaluates a person and determines that transportation to a receiving facility is needed, the service, at its discretion, may transport the person to the facility or may call on the law enforcement agency or other transportation arrangement best suited to the needs of the patient.

(g) When any law enforcement officer has custody of a person based on either noncriminal or minor criminal behavior that meets the statutory guidelines for involuntary examination pursuant to s. 394.463, the law enforcement officer shall transport the person to the appropriate facility within the designated receiving system pursuant to a transportation plan. Persons who meet the statutory guidelines for involuntary admission pursuant to s. 397.675 may also be transported by law enforcement officers to the extent resources are available and as otherwise provided by law. Such persons shall be transported to an appropriate facility within the designated receiving system pursuant to a transportation plan.

(h) When any law enforcement officer has arrested a person for a felony and it appears that the person meets the statutory guidelines for involuntary examination or placement under this

part, such person must first be processed in the same manner as any other criminal suspect. The law enforcement agency shall thereafter immediately notify the appropriate facility within the designated receiving system pursuant to a transportation plan. The receiving facility shall be responsible for promptly arranging for the examination and treatment of the person. A receiving facility is not required to admit a person charged with a crime for whom the facility determines and documents that it is unable to provide adequate security, but shall provide examination and treatment to the person where he or she is held.

(i) If the appropriate law enforcement officer believes that a person has an emergency medical condition as defined in s. 395.002, the person may be first transported to a hospital for emergency medical treatment, regardless of whether the hospital is a designated receiving facility.

(j) The costs of transportation, evaluation, hospitalization, and treatment incurred under this subsection by persons who have been arrested for violations of any state law or county or municipal ordinance may be recovered as provided in s. 901.35.

(k) The appropriate facility within the designated receiving system pursuant to a transportation plan must accept persons brought by law enforcement officers, or an emergency medical transport service or a private transport company authorized by the county, for involuntary examination pursuant to s. 394.463.

(l) The appropriate facility within the designated receiving system pursuant to a transportation plan must provide persons brought by law enforcement officers, or an emergency

medical transport service or a private transport company authorized by the county, pursuant to s. 397.675, a basic screening or triage sufficient to refer the person to the appropriate services.

(m) Each law enforcement agency designated pursuant to paragraph (a) shall establish a policy that reflects a single set of protocols for the safe and secure transportation and transfer of custody of the person. Each law enforcement agency shall provide a copy of the protocols to the managing entity.

(n) When a jurisdiction has entered into a contract with an emergency medical transport service or a private transport company for transportation of persons to facilities within the designated receiving system, such service or company shall be given preference for transportation of persons from nursing homes, assisted living facilities, adult day care centers, or adult family-care homes, unless the behavior of the person being transported is such that transportation by a law enforcement officer is necessary.

(o) This section may not be construed to limit emergency examination and treatment of incapacitated persons provided in accordance with s. 401.445.

(2) TRANSPORTATION TO A TREATMENT FACILITY.—

(a) If neither the patient nor any person legally obligated or responsible for the patient is able to pay for the expense of transporting a voluntary or involuntary patient to a treatment facility, the transportation plan established by the governing board of the county or counties must specify how the hospitalized patient will be transported to, from, and between facilities in a safe and dignified manner.

(b) A company that transports a patient pursuant to this subsection is considered an independent contractor and is solely liable for the safe and dignified transportation of the patient. Such company must be insured and provide no less than $100,000 in liability insurance with respect to the transport of patients.

(c) A company that contracts with one or more counties to transport patients in accordance with this section shall comply with the applicable rules of the department to ensure the safety and dignity of patients.

(d) County or municipal law enforcement and correctional personnel and equipment may not be used to transport patients adjudicated incapacitated or found by the court to meet the criteria for involuntary placement pursuant to s. 394.467, except in small rural counties where there are no cost-efficient alternatives.

(3) TRANSFER OF CUSTODY.—Custody of a person who is transported pursuant to this part, along with related documentation, shall be relinquished to a responsible individual at the appropriate receiving or treatment facility.

Section 7. Subsection (3) of section 394.4615, Florida Statutes, is amended to read:

394.4615 Clinical records; confidentiality.—

(3) Information from the clinical record may be released in the following circumstances:

(a) When a patient has communicated to a service provider a specific threat to cause serious bodily injury or death to an identified or a readily available person, if the service provider reasonably believes, or should reasonably believe

according to the standards of his or her profession, that the patient has the apparent intent and ability to imminently or immediately carry out such threat. When such communication has been made, the administrator may authorize the release of sufficient information to provide adequate warning to the person threatened with harm by the patient.

(b) When the administrator of the facility or secretary of the department deems release to a qualified researcher as defined in administrative rule, an aftercare treatment provider, or an employee or agent of the department is necessary for treatment of the patient, maintenance of adequate records, compilation of treatment data, aftercare planning, or evaluation of programs.

For the purpose of determining whether a person meets the criteria for involuntary outpatient placement or for preparing the proposed treatment plan pursuant to s. 394.4655 or s. 394.467, the clinical record may be released to the state attorney, the public defender or the patient's private legal counsel, the court, and to the appropriate mental health professionals, including the service provider under s. 394.467, ~~identified in s. 394.4655(7)(b)2.,~~ in accordance with state and federal law.

Section 8. Paragraph (a) of subsection (1) of section 394.4625, Florida Statutes, is amended to read:

394.4625 Voluntary admissions.—

(1) AUTHORITY TO RECEIVE PATIENTS.—

(a) A facility may receive for observation, diagnosis, or treatment any adult ~~person 18 years of age or older~~ who applies

by express and informed consent for admission or any minor ~~person age 17 or younger~~ whose parent or legal guardian applies for admission. Such person may be admitted to the facility if found to show evidence of mental illness and to be suitable for treatment, and:~~,~~

1. If the person is an adult, is found to be competent to provide express and informed consent; or

2. If the person is a minor, the parent or legal guardian provides express and informed consent and the facility performs~~,~~ ~~and to be suitable for treatment, such person 18 years of age or older may be admitted to the facility. A person age 17 or younger may be admitted only after~~ a clinical review to verify the voluntariness of the minor's assent.

Section 9. Subsection (1), paragraphs (a) and (e) through (h) of subsection (2), and subsection (4) of section 394.463, Florida Statutes, are amended to read:

394.463 Involuntary examination.—

(1) CRITERIA.—A person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness and because of his or her mental illness:

(a)1. The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; or

2. The person is unable to determine for himself or herself whether examination is necessary; and

(b)1. Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of

substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing, able, and responsible family members or friends or the provision of other services; or

2. There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

1. A circuit or county court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on written or oral sworn testimony that includes specific facts that support the findings. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The order of the court shall be made a part of the patient's clinical record. A fee may not be charged for the filing of an order under this subsection. A facility accepting the patient based on this order must send a copy of the order to the department within 5 working days. The order may be submitted electronically through existing data systems, if available. The order shall be valid only until

the person is delivered to the facility or for the period specified in the order itself, whichever comes first. If a time limit is not specified in the order, the order is valid for 7 days after the date that the order was signed.

2. A law enforcement officer may ~~shall~~ take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for examination. A law enforcement officer transporting a person pursuant to this section ~~subparagraph~~ shall restrain the person in the least restrictive manner available and appropriate under the circumstances. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, which must be made a part of the patient's clinical record. The report must include all emergency contact information for the person that is readily accessible to the law enforcement officer, including information available through electronic databases maintained by the Department of Law Enforcement or by the Department of Highway Safety and Motor Vehicles. Such emergency contact information may be used by a receiving facility only for the purpose of informing listed emergency contacts of a patient's whereabouts pursuant to s. 119.0712(2)(d). Any facility accepting the patient based on this report must send a copy of the report to the department within 5 working days.

3. A physician, a physician assistant, a clinical psychologist, a psychiatric nurse, an advanced practice registered nurse registered under s. 464.0123, a mental health

counselor, a marriage and family therapist, or a clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer shall take into custody the person named in the certificate and deliver him or her to the appropriate, or nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody and containing all emergency contact information required under subparagraph 2. The report must include all emergency contact information for the person that is readily accessible to the law enforcement officer, including information available through electronic databases maintained by the Department of Law Enforcement or by the Department of Highway Safety and Motor Vehicles. Such emergency contact information may be used by a receiving facility only for the purpose of informing listed emergency contacts of a patient's whereabouts pursuant to s. 119.0712(2)(d). The report and certificate shall be made a part of the patient's clinical record. Any facility accepting the patient based on this certificate must send a copy of the certificate to the department within 5 working days. The document may be submitted electronically through existing data systems, if applicable.

When sending the order, report, or certificate to the department, a facility shall, at a minimum, provide information about which action was taken regarding the patient under paragraph (g), which information shall also be made a part of the patient's clinical record.

(e) The department shall receive and maintain ~~the~~ copies of ex parte orders, involuntary ~~outpatient~~ services orders issued pursuant to ss. 394.4655 and 394.467 ~~s. 394.4655, involuntary inpatient placement orders issued pursuant to s. 394.467~~, professional certificates, law enforcement officers' reports, and reports relating to the transportation of patients. These documents shall be considered part of the clinical record, governed by the provisions of s. 394.4615. These documents shall be used to prepare annual reports analyzing the data obtained from these documents, without including patients' personal identifying information ~~identifying patients~~, and the department shall post the reports on its website and provide copies of reports ~~to the department~~, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives by November 30 of each year.

(f) A patient shall be examined by a physician or a clinical psychologist, or by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist at a facility without unnecessary delay to determine if the criteria for involuntary services are met. Emergency treatment may be provided upon the order of a physician if the physician determines that such treatment is necessary for the safety of the patient or others. The patient

may not be released by the receiving facility or its contractor without the documented approval of a psychiatrist, ~~or~~ a clinical psychologist, or, if the receiving facility is owned or operated by a hospital, health system, or nationally accredited community mental health center, the release may also be approved by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist, or an attending emergency department physician with experience in the diagnosis and treatment of mental illness after completion of an involuntary examination pursuant to this subsection. ~~A psychiatric nurse may not approve the release of a patient if the involuntary examination was initiated by a psychiatrist unless the release is approved by the initiating psychiatrist.~~ The release may be approved through telehealth.

(g) The examination period must be for up to 72 hours and begins when a patient arrives at the receiving facility. For a minor, the examination shall be initiated within 12 hours after the patient's arrival at the facility. Within the examination period, one of the following actions must be taken, based on the individual needs of the patient:

1. The patient shall be released, unless he or she is charged with a crime, in which case the patient shall be returned to the custody of a law enforcement officer;

2. The patient shall be released, subject to subparagraph 1., for voluntary outpatient treatment;

3. The patient, unless he or she is charged with a crime, shall be asked to give express and informed consent to placement as a voluntary patient and, if such consent is given, the patient shall be admitted as a voluntary patient; or

4. A petition for involuntary services shall be filed in the circuit court ~~if inpatient treatment is deemed necessary~~ or with the criminal county court, as described in s. 394.4655 ~~defined in s. 394.4655(1)~~, as applicable. When inpatient treatment is deemed necessary, the least restrictive treatment consistent with the optimum improvement of the patient's condition shall be made available. The petition ~~When a petition is to be filed for involuntary outpatient placement, it~~ shall be filed by one of the petitioners specified in s. 394.4655(4)(a)~~.~~ ~~A petition for involuntary inpatient placement shall be filed by the facility administrator~~, and the court shall dismiss an untimely filed petition. If a patient's 72-hour examination period ends on a weekend or holiday, including the hours before the ordinary business hours of the following workday morning, and the receiving facility:

a. Intends to file a petition for involuntary services, such patient may be held at the ~~a receiving~~ facility through the next working day thereafter and the ~~such~~ petition ~~for involuntary services~~ must be filed no later than such date. If the ~~receiving~~ facility fails to file the ~~a~~ petition by ~~for involuntary services at~~ the ordinary close of business on the next working day, the patient shall be released from the receiving facility following approval pursuant to paragraph (f).

b. Does not intend to file a petition for involuntary services, the ~~a receiving~~ facility may postpone release of a patient until the next working day thereafter only if a qualified professional documents that adequate discharge planning and procedures in accordance with s. 394.468, and approval pursuant to paragraph (f), are not possible until the

next working day.

(h) A person for whom an involuntary examination has been initiated who is being evaluated or treated at a hospital for an emergency medical condition specified in s. 395.002 must be examined by a facility within the examination period specified in paragraph (g). The examination period begins when the patient arrives at the hospital and ceases when the attending physician documents that the patient has an emergency medical condition. If the patient is examined at a hospital providing emergency medical services by a professional qualified to perform an involuntary examination and is found as a result of that examination not to meet the criteria for involuntary ~~outpatient~~ services pursuant to s. 394.4655 ~~s. 394.4655(2)~~ or s. 394.467 ~~involuntary inpatient placement pursuant to s. 394.467(1)~~, the patient may be offered voluntary outpatient or inpatient services ~~or placement~~, if appropriate, or released directly from the hospital providing emergency medical services. The finding by the professional that the patient has been examined and does not meet the criteria for involuntary ~~inpatient~~ services ~~or involuntary outpatient placement~~ must be entered into the patient's clinical record. This paragraph is not intended to prevent a hospital providing emergency medical services from appropriately transferring a patient to another hospital before stabilization if the requirements of s. 395.1041(3)(c) have been met.

(4) DATA ANALYSIS.—

(a) Using data collected under paragraph (2)(a) and s. 1006.07(10), the department shall, at a minimum, analyze data on both the initiation of involuntary examinations of children and

the initiation of involuntary examinations of students who are removed from a school; identify any patterns or trends and cases in which involuntary examinations are repeatedly initiated on the same child or student; study root causes for such patterns, trends, or repeated involuntary examinations; and make recommendations to encourage the use of alternatives to eliminate inappropriate initiations of such examinations.

(b) The department and the Agency for Health Care Administration shall analyze service data collected on individuals who, as defined by the department and the agency, are high utilizers of crisis stabilization services provided in designated receiving facilities, and shall, at a minimum, identify any patterns or trends and make recommendations to decrease avoidable admissions. Recommendations may be addressed in the department's contracts with the behavioral health managing entities and in the agency's contracts with the Medicaid managed medical assistance plans.

(c) The department shall publish ~~submit~~ a report on its findings and recommendations on its website and submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 of each odd-numbered year.

Section 10. Section 394.4655, Florida Statutes, is amended to read:

394.4655 Involuntary outpatient services.—

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

(a) "Court" means a circuit court or a criminal county court.

(b) "Criminal county court" means a county court exercising

its original jurisdiction in a misdemeanor case under s. 34.01.

(c) "Involuntary outpatient placement" means involuntary outpatient services as defined in s. 394.476.

(2) INVOLUNTARY PLACEMENT.—A criminal county court may order an individual to involuntary outpatient placement under s. 394.467. ~~CRITERIA FOR INVOLUNTARY OUTPATIENT SERVICES.—A person may be ordered to involuntary outpatient services upon a finding of the court, by clear and convincing evidence, that the person meets all of the following criteria:~~

~~(a) The person is 18 years of age or older.~~

~~(b) The person has a mental illness.~~

~~(c) The person is unlikely to survive safely in the community without supervision, based on a clinical determination.~~

~~(d) The person has a history of lack of compliance with treatment for mental illness.~~

~~(e) The person has:~~

~~1. At least twice within the immediately preceding 36 months been involuntarily admitted to a receiving or treatment facility as defined in s. 394.455, or has received mental health services in a forensic or correctional facility. The 36-month period does not include any period during which the person was admitted or incarcerated; or~~

~~2. Engaged in one or more acts of serious violent behavior toward self or others, or attempts at serious bodily harm to himself or herself or others, within the preceding 36 months.~~

~~(f) The person is, as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment plan and has refused voluntary services for treatment~~

~~after sufficient and conscientious explanation and disclosure of why the services are necessary or is unable to determine for himself or herself whether services are necessary.~~

~~(g) In view of the person's treatment history and current behavior, the person is in need of involuntary outpatient services in order to prevent a relapse or deterioration that would be likely to result in serious bodily harm to himself or herself or others, or a substantial harm to his or her well-being as set forth in s. 394.463(1).~~

~~(h) It is likely that the person will benefit from involuntary outpatient services.~~

~~(i) All available, less restrictive alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate or unavailable.~~

~~(3) INVOLUNTARY OUTPATIENT SERVICES.~~

~~(a)1. A patient who is being recommended for involuntary outpatient services by the administrator of the facility where the patient has been examined may be retained by the facility after adherence to the notice procedures provided in s. 394.4599. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary outpatient services are met. However, if the administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental illness, a physician assistant who has at least 3~~

~~years' experience and is supervised by such licensed physician or a psychiatrist, a clinical social worker, or by a psychiatric nurse. Any second opinion authorized in this subparagraph may be conducted through a face-to-face examination, in person or by electronic means. Such recommendation must be entered on an involuntary outpatient services certificate that authorizes the facility to retain the patient pending completion of a hearing. The certificate must be made a part of the patient's clinical record.~~

~~2. If the patient has been stabilized and no longer meets the criteria for involuntary examination pursuant to s. 394.463(1), the patient must be released from the facility while awaiting the hearing for involuntary outpatient services. Before filing a petition for involuntary outpatient services, the administrator of the facility or a designated department representative must identify the service provider that will have primary responsibility for service provision under an order for involuntary outpatient services, unless the person is otherwise participating in outpatient psychiatric treatment and is not in need of public financing for that treatment, in which case the individual, if eligible, may be ordered to involuntary treatment pursuant to the existing psychiatric treatment relationship.~~

~~3. The service provider shall prepare a written proposed treatment plan in consultation with the patient or the patient's guardian advocate, if appointed, for the court's consideration for inclusion in the involuntary outpatient services order that addresses the nature and extent of the mental illness and any co-occurring substance use disorder that necessitate involuntary outpatient services. The treatment plan must specify the likely~~

~~level of care, including the use of medication, and anticipated discharge criteria for terminating involuntary outpatient services. Service providers may select and supervise other individuals to implement specific aspects of the treatment plan. The services in the plan must be deemed clinically appropriate by a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker who consults with, or is employed or contracted by, the service provider. The service provider must certify to the court in the proposed plan whether sufficient services for improvement and stabilization are currently available and whether the service provider agrees to provide those services. If the service provider certifies that the services in the proposed treatment plan are not available, the petitioner may not file the petition. The service provider must notify the managing entity if the requested services are not available. The managing entity must document such efforts to obtain the requested services.~~

~~(b) If a patient in involuntary inpatient placement meets the criteria for involuntary outpatient services, the administrator of the facility may, before the expiration of the period during which the facility is authorized to retain the patient, recommend involuntary outpatient services. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary outpatient services are met. However, if the administrator certifies that a psychiatrist or clinical~~

~~psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental illness, a physician assistant who has at least 3 years' experience and is supervised by such licensed physician or a psychiatrist, a clinical social worker, or by a psychiatric nurse. Any second opinion authorized in this subparagraph may be conducted through a face-to-face examination, in person or by electronic means. Such recommendation must be entered on an involuntary outpatient services certificate, and the certificate must be made a part of the patient's clinical record.~~

~~(c)1. The administrator of the treatment facility shall provide a copy of the involuntary outpatient services certificate and a copy of the state mental health discharge form to the managing entity in the county where the patient will be residing. For persons who are leaving a state mental health treatment facility, the petition for involuntary outpatient services must be filed in the county where the patient will be residing.~~

~~2. The service provider that will have primary responsibility for service provision shall be identified by the designated department representative before the order for involuntary outpatient services and must, before filing a petition for involuntary outpatient services, certify to the court whether the services recommended in the patient's discharge plan are available and whether the service provider agrees to provide those services. The service provider must develop with the patient, or the patient's guardian advocate, if appointed, a treatment or service plan that addresses the needs~~

~~identified in the discharge plan. The plan must be deemed to be clinically appropriate by a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker, as defined in this chapter, who consults with, or is employed or contracted by, the service provider.~~

~~3. If the service provider certifies that the services in the proposed treatment or service plan are not available, the petitioner may not file the petition. The service provider must notify the managing entity if the requested services are not available. The managing entity must document such efforts to obtain the requested services.~~

~~(4) PETITION FOR INVOLUNTARY OUTPATIENT SERVICES.—~~

~~(a) A petition for involuntary outpatient services may be filed by:~~

~~1. The administrator of a receiving facility; or~~

~~2. The administrator of a treatment facility.~~

~~(b) Each required criterion for involuntary outpatient services must be alleged and substantiated in the petition for involuntary outpatient services. A copy of the certificate recommending involuntary outpatient services completed by a qualified professional specified in subsection (3) must be attached to the petition. A copy of the proposed treatment plan must be attached to the petition. Before the petition is filed, the service provider shall certify that the services in the proposed plan are available. If the necessary services are not available, the petition may not be filed. The service provider must notify the managing entity if the requested services are not available. The managing entity must document such efforts to~~

~~obtain the requested services.~~

~~(c) The petition for involuntary outpatient services must be filed in the county where the patient is located, unless the patient is being placed from a state treatment facility, in which case the petition must be filed in the county where the patient will reside. When the petition has been filed, the clerk of the court shall provide copies of the petition and the proposed treatment plan to the department, the managing entity, the patient, the patient's guardian or representative, the state attorney, and the public defender or the patient's private counsel. A fee may not be charged for filing a petition under this subsection.~~

~~(5) APPOINTMENT OF COUNSEL.—Within 1 court working day after the filing of a petition for involuntary outpatient services, the court shall appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of the appointment. The public defender shall represent the person until the petition is dismissed, the court order expires, or the patient is discharged from involuntary outpatient services. An attorney who represents the patient must be provided access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.~~

~~(6) CONTINUANCE OF HEARING.—The patient is entitled, with the concurrence of the patient's counsel, to at least one continuance of the hearing. The continuance shall be for a period of up to 4 weeks.~~

~~(7) HEARING ON INVOLUNTARY OUTPATIENT SERVICES.—~~

~~(a)1. The court shall hold the hearing on involuntary outpatient services within 5 working days after the filing of the petition, unless a continuance is granted. The hearing must be held in the county where the petition is filed, must be as convenient to the patient as is consistent with orderly procedure, and must be conducted in physical settings not likely to be injurious to the patient's condition. If the court finds that the patient's attendance at the hearing is not consistent with the best interests of the patient and if the patient's counsel does not object, the court may waive the presence of the patient from all or any portion of the hearing. The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioner, as the real party in interest in the proceeding.~~

~~2. The court may appoint a magistrate to preside at the hearing. One of the professionals who executed the involuntary outpatient services certificate shall be a witness. The patient and the patient's guardian or representative shall be informed by the court of the right to an independent expert examination. If the patient cannot afford such an examination, the court shall ensure that one is provided, as otherwise provided by law. The independent expert's report is confidential and not discoverable, unless the expert is to be called as a witness for the patient at the hearing. The court shall allow testimony from individuals, including family members, deemed by the court to be relevant under state law, regarding the person's prior history and how that prior history relates to the person's current condition. The testimony in the hearing must be given under~~

~~oath, and the proceedings must be recorded. The patient may refuse to testify at the hearing.~~

~~(b)1. If the court concludes that the patient meets the criteria for involuntary outpatient services pursuant to subsection (2), the court shall issue an order for involuntary outpatient services. The court order shall be for a period of up to 90 days. The order must specify the nature and extent of the patient's mental illness. The order of the court and the treatment plan must be made part of the patient's clinical record. The service provider shall discharge a patient from involuntary outpatient services when the order expires or any time the patient no longer meets the criteria for involuntary placement. Upon discharge, the service provider shall send a certificate of discharge to the court.~~

~~2. The court may not order the department or the service provider to provide services if the program or service is not available in the patient's local community, if there is no space available in the program or service for the patient, or if funding is not available for the program or service. The service provider must notify the managing entity if the requested services are not available. The managing entity must document such efforts to obtain the requested services. A copy of the order must be sent to the managing entity by the service provider within 1 working day after it is received from the court. The order may be submitted electronically through existing data systems. After the order for involuntary services is issued, the service provider and the patient may modify the treatment plan. For any material modification of the treatment plan to which the patient or, if one is appointed, the patient's~~

~~guardian advocate agrees, the service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which are contested by the patient or the patient's guardian advocate, if applicable, must be approved or disapproved by the court consistent with subsection (3).~~

~~3. If, in the clinical judgment of a physician, the patient has failed or has refused to comply with the treatment ordered by the court, and, in the clinical judgment of the physician, efforts were made to solicit compliance and the patient may meet the criteria for involuntary examination, a person may be brought to a receiving facility pursuant to s. 394.463. If, after examination, the patient does not meet the criteria for involuntary inpatient placement pursuant to s. 394.467, the patient must be discharged from the facility. The involuntary outpatient services order shall remain in effect unless the service provider determines that the patient no longer meets the criteria for involuntary outpatient services or until the order expires. The service provider must determine whether modifications should be made to the existing treatment plan and must attempt to continue to engage the patient in treatment. For any material modification of the treatment plan to which the patient or the patient's guardian advocate, if applicable, agrees, the service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which are contested by the patient or the patient's guardian advocate, if applicable, must be approved or disapproved by the court consistent with subsection (3).~~

~~(c) If, at any time before the conclusion of the initial hearing on involuntary outpatient services, it appears to the~~

~~court that the person does not meet the criteria for involuntary outpatient services under this section but, instead, meets the criteria for involuntary inpatient placement, the court may order the person admitted for involuntary inpatient examination under s. 394.463. If the person instead meets the criteria for involuntary assessment, protective custody, or involuntary admission pursuant to s. 397.675, the court may order the person to be admitted for involuntary assessment for a period of 5 days pursuant to s. 397.6811. Thereafter, all proceedings are governed by chapter 397.~~

~~(d) At the hearing on involuntary outpatient services, the court shall consider testimony and evidence regarding the patient's competence to consent to services. If the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate as provided in s. 394.4598. The guardian advocate shall be appointed or discharged in accordance with s. 394.4598.~~

~~(e) The administrator of the receiving facility or the designated department representative shall provide a copy of the court order and adequate documentation of a patient's mental illness to the service provider for involuntary outpatient services. Such documentation must include any advance directives made by the patient, a psychiatric evaluation of the patient, and any evaluations of the patient performed by a psychologist or a clinical social worker.~~

~~(8) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT SERVICES.—~~

~~(a)1. If the person continues to meet the criteria for involuntary outpatient services, the service provider shall, at~~

~~least 10 days before the expiration of the period during which the treatment is ordered for the person, file in the court that issued the order for involuntary outpatient services a petition for continued involuntary outpatient services. The court shall immediately schedule a hearing on the petition to be held within 15 days after the petition is filed.~~

~~2. The existing involuntary outpatient services order remains in effect until disposition on the petition for continued involuntary outpatient services.~~

~~3. A certificate shall be attached to the petition which includes a statement from the person's physician or clinical psychologist justifying the request, a brief description of the patient's treatment during the time he or she was receiving involuntary services, and an individualized plan of continued treatment.~~

~~4. The service provider shall develop the individualized plan of continued treatment in consultation with the patient or the patient's guardian advocate, if applicable. When the petition has been filed, the clerk of the court shall provide copies of the certificate and the individualized plan of continued services to the department, the patient, the patient's guardian advocate, the state attorney, and the patient's private counsel or the public defender.~~

~~(b) Within 1 court working day after the filing of a petition for continued involuntary outpatient services, the court shall appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of such appointment. The~~

~~public defender shall represent the person until the petition is dismissed or the court order expires or the patient is discharged from involuntary outpatient services. Any attorney representing the patient shall have access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.~~

~~(c) Hearings on petitions for continued involuntary outpatient services must be before the court that issued the order for involuntary outpatient services. The court may appoint a magistrate to preside at the hearing. The procedures for obtaining an order pursuant to this paragraph must meet the requirements of subsection (7), except that the time period included in paragraph (2)(e) is not applicable in determining the appropriateness of additional periods of involuntary outpatient placement.~~

~~(d) Notice of the hearing must be provided as set forth in s. 394.4599. The patient and the patient's attorney may agree to a period of continued outpatient services without a court hearing.~~

~~(e) The same procedure must be repeated before the expiration of each additional period the patient is placed in treatment.~~

~~(f) If the patient has previously been found incompetent to consent to treatment, the court shall consider testimony and evidence regarding the patient's competence. Section 394.4598 governs the discharge of the guardian advocate if the patient's competency to consent to treatment has been restored.~~

Section 11. Section 394.467, Florida Statutes, is amended

to read:

(Substantial rewording of section. See s. 394.467, F.S., for present text.)

394.467 Involuntary services.—

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

(a) "Court" means a circuit court.

(b) "Involuntary inpatient placement" means services provided on an inpatient basis to a person 18 years of age or older who does not voluntarily consent to services under this chapter, or a minor who does not voluntarily assent to services.

(c) "Involuntary outpatient services" means services provided on an outpatient basis to a person who does not voluntarily consent to services under this chapter.

(2) CRITERIA FOR INVOLUNTARY SERVICE.—A person may be ordered to involuntary services upon a finding of the court, by clear and convincing evidence, that the person meets the following criteria:

(a) The person has a mental illness and because of that mental illness:

1.a. Is unlikely to voluntarily participate in the recommended treatment plan and has refused voluntary services or voluntary inpatient placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of treatment; or

b. Is unable to determine for himself or herself whether services or inpatient placement is necessary; and

2.a. Is unlikely to survive safely in the community without supervision, based on clinical determination; or

b. Is incapable of surviving alone or with the help of

willing, able, and responsible family or friends, including available alternative services, and, without treatment, is likely to suffer from neglect or refuse to care for himself or herself, and such neglect or refusal poses a real and present threat of substantial harm to the person's well-being; or

c. Without treatment, there is a substantial likelihood that in the near future the person will inflict serious bodily harm on self or others, as evidenced by recent behavior causing, attempting, or threatening such harm;

(b) In view of the person's treatment history and current behavior, the person is in need of involuntary outpatient services to prevent a relapse or deterioration of his or her mental health which would likely result in serious bodily harm to himself or others, or a substantial harm to his or her well-being as set forth in s. 394.463(1);

(c) The person has a history of lack of compliance with treatment for mental illness;

(d) It is likely that the person will benefit from involuntary services; and

(e) All available less restrictive treatment alternatives that would offer an opportunity for improvement of the person's condition have been deemed inappropriate or unavailable.

(3) RECOMMENDATION FOR INVOLUNTARY SERVICES AND TREATMENT.—A patient may be recommended for involuntary inpatient placement, involuntary outpatient services, or a combination of both.

(a) A patient may be retained by a facility for involuntary services upon the recommendation of the administrator of the facility where the patient has been examined and after adherence

to the notice and hearing procedures provided in s. 394.4599. However, if a patient who is being recommended for only involuntary outpatient services has been stabilized and no longer meets the criteria for involuntary examination pursuant to s. 394.463(1), the patient must be released from the facility while awaiting the hearing for involuntary outpatient services.

(b) The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary services are met.

(c) If a psychiatrist or a clinical psychologist is not available to provide a second opinion, the administrator shall certify that a psychiatrist or a clinical psychologist is not available, and the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental illness or by a psychiatric nurse. If the patient is being recommended for involuntary outpatient services only, the second opinion may also be provided by a physician assistant who has at least 3 years' experience and is supervised by a licensed physician or a psychiatrist, or a clinical social worker.

(d) Any opinion authorized in this subsection may be conducted through a face-to-face examination, in person, or by electronic means. Recommendations for involuntary services must be entered on an involuntary services certificate, which shall be made a part of the patient's clinical record. The certificate must either authorize the facility to retain the patient pending completion of a hearing or authorize the facility to retain the

patient pending transfer to a treatment facility or completion of a hearing.

(4) PETITION FOR INVOLUNTARY SERVICES.—

(a) A petition for involuntary services may be filed by:

1. The administrator of a receiving facility; or

2. The administrator of a treatment facility.

(b) A petition for involuntary inpatient placement, or inpatient placement followed by outpatient services, must be filed in the court in the county where the patient is located.

(c) A petition for involuntary outpatient services must be filed in the county where the patient is located, unless the patient is being placed from a state treatment facility, in which case the petition must be filed in the county where the patient will reside.

(d)1. The petitioner must state in the petition:

a. Whether the petitioner is recommending inpatient placement, outpatient services, or both;

b. The length of time recommended for each type of involuntary services; and

c. The reasons for the recommendation.

2. If recommending involuntary outpatient services, or a combination of involuntary inpatient placement and outpatient services, the petitioner must identify the service provider that will have primary responsibility for service provision under an order for involuntary outpatient services, unless the person is otherwise participating in outpatient psychiatric treatment and is not in need of public financing for that treatment, in which case the individual, if eligible, may be ordered to involuntary treatment pursuant to the existing psychiatric treatment

relationship.

3. If recommending an immediate order to involuntary outpatient services, the service provider shall prepare a written proposed treatment plan in consultation with the patient or the patient's guardian advocate, if appointed, for the court's consideration for inclusion in the involuntary outpatient services order that addresses the nature and extent of the mental illness and any co-occurring substance use disorder that necessitate involuntary outpatient services. The treatment plan must specify the likely level of care, including the use of medication, and anticipated discharge criteria for terminating involuntary outpatient services. Service providers may select and supervise other individuals to implement specific aspects of the treatment plan. The services in the plan must be deemed clinically appropriate by a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker who consults with, or is employed or contracted by, the service provider. The service provider must certify to the court in the proposed plan whether sufficient services for improvement and stabilization are currently available and whether the service provider agrees to provide those services. If the service provider certifies that the services in the proposed treatment plan are not available, the petitioner may not file the petition. The service provider must notify the managing entity if the requested services are not available. The managing entity must document such efforts to obtain the requested service.

(e) Each required criterion for the recommended involuntary services must be alleged and substantiated in the petition. A

copy of the certificate recommending involuntary services completed by a qualified professional specified in subsection (3) and, if applicable, a copy of the proposed treatment plan must be attached to the petition.

(f) When the petition has been filed, the clerk of the court shall provide copies of the petition and, if applicable, the proposed treatment plan to the department, the managing entity, the patient, the patient's guardian or representative, the state attorney, and the public defender or the patient's private counsel. A fee may not be charged for filing a petition under this subsection.

(5) APPOINTMENT OF COUNSEL.—Within 1 court working day after the filing of a petition for involuntary services, the court shall appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel or ineligible. The clerk of the court shall immediately notify the public defender of such appointment. The public defender shall represent the person until the petition is dismissed, the court order expires, or the patient is discharged from involuntary services. Any attorney who represents the patient shall be provided access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.

(6) CONTINUANCE OF HEARING.—The patient and the state are independently entitled to at least one continuance of the hearing. The patient's continuance may be for a period of up to 4 weeks and requires the concurrence of the patient's counsel. The state's continuance may be for a period of up to 5 court

working days and requires a showing of good cause and due diligence by the state before requesting the continuance. The state's failure to timely review any readily available document or failure to attempt to contact a known witness does not warrant a continuance.

(7) HEARING ON INVOLUNTARY SERVICES.—

(a)1. The court shall hold a hearing on the involuntary services petition within 5 court working days after the filing of the petition, unless a continuance is granted.

2. The court shall hold any hearing on involuntary outpatient services in the county where the petition is filed. A hearing on involuntary inpatient placement, or a combination or involuntary inpatient placement and involuntary outpatient services, must be held in the county or the facility, as appropriate, where the patient is located, except for good cause documented in the court file.

3. A hearing on involuntary services must be as convenient to the patient as is consistent with orderly procedure, and shall be conducted in a physical setting not likely to be injurious to the patient's condition. If the court finds that the patient's attendance at the hearing is not consistent with the best interests of the patient, or the patient knowingly, intelligently, and voluntarily waives his or her right to be present, and if the patient's counsel does not object, the court may waive the presence of the patient from all or any portion of the hearing. The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioner, as the real party in interest in the proceeding. The facility shall make the respondent's clinical records available

to the state attorney and the respondent's attorney so that the state can evaluate and prepare its case. However, these records shall remain confidential, and the state attorney may not use any record obtained under this part for criminal investigation or prosecution purposes, or for any purpose other than the patient's civil commitment under this chapter.

(b) At the hearing, the court shall consider testimony and evidence regarding the patient's competence to consent to services and treatment. If the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate as provided in s. 394.4598.

(8) ORDERS OF THE COURT.—

(a)1. If the court concludes that the patient meets the criteria for involuntary services, the court may order a patient to involuntary inpatient placement, involuntary outpatient services, or a combination of involuntary services depending on the criteria met and which type of involuntary services best meet the needs of the patient. However, if the court orders the patient to involuntary outpatient services, the court may not order the department or the service provider to provide services if the program or service is not available in the patient's local community, if there is no space available in the program or service for the patient, or if funding is not available for the program or service. The service provider must notify the managing entity if the requested services are not available. The managing entity must document such efforts to obtain the requested services. A copy of the order must be sent to the managing entity by the service provider within 1 working day after it is received from the court.

2. The order must specify the nature and extent of the patient's mental illness.

3.a. An order for only involuntary outpatient services shall be for a period of up to 90 days.

b. An order for involuntary inpatient placement, or a combination of inpatient placement and outpatient services, may be up to 6 months.

4. An order for a combination of involuntary services must specify the length of time the patient shall be ordered for involuntary inpatient placement and involuntary outpatient services.

5. The order of the court and the patient's treatment plan must be made part of the patient's clinical record.

(b) If the court orders a patient into involuntary inpatient placement, the court may order that the patient be transferred to a treatment facility, or if the patient is at a treatment facility, that the patient be retained there or be treated at any other appropriate facility, or that the patient receive services on an involuntary basis. The court may not order an individual with a developmental disability as defined in s. 393.063, a traumatic brain injury, or dementia who lacks a co-occurring mental illness to be involuntarily placed in a state treatment facility.

(c) If at any time before the conclusion of a hearing on involuntary services, it appears to the court that the patient instead meets the criteria for involuntary admission or treatment pursuant to s. 397.675, the court may order the person to be admitted for involuntary assessment pursuant to s.

397.675. Thereafter, all proceedings are governed by chapter 397.

(d) The administrator of the petitioning facility or the designated department representative shall provide a copy of the court order and adequate documentation of a patient's mental illness to the service provider for involuntary outpatient services or the administrator of a treatment facility if the patient is ordered for involuntary inpatient placement. The documentation must include any advance directives made by the patient, a psychiatric evaluation of the patient, and any evaluations of the patient performed by a psychiatric nurse, a clinical psychologist, a marriage and family therapist, a mental health counselor, or a clinical social worker. The administrator of a treatment facility may refuse admission to any patient directed to its facilities on an involuntary basis, whether by civil or criminal court order, who is not accompanied by adequate orders and documentation.

(9) TREATMENT PLAN MODIFICATION.—After the order for involuntary outpatient services is issued, the service provider and the patient may modify the treatment plan. For any material modification of the treatment plan to which the patient or, if one is appointed, the patient's guardian advocate agrees, the service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which are contested by the patient or the patient's guardian advocate, if applicable, must be approved or disapproved by the court consistent with subsection (4).

(10) NONCOMPLIANCE WITH INVOLUNTARY OUTPATIENT SERVICES.—If, in the clinical judgment of a physician, a patient receiving

involuntary outpatient services has failed or has refused to comply with the treatment ordered by the court, and, in the clinical judgment of the physician, efforts were made to solicit compliance and the patient may meet the criteria for involuntary examination, a person may be brought to a receiving facility pursuant to s. 394.463. If, after examination, the patient does not meet the criteria for involuntary inpatient placement under this section, the patient must be discharged from the facility. The involuntary outpatient services order shall remain in effect unless the service provider determines that the patient no longer meets the criteria for involuntary outpatient services or until the order expires. The service provider must determine whether modifications should be made to the existing treatment plan and must attempt to continue to engage the patient in treatment. For any material modification of the treatment plan to which the patient or the patient's guardian advocate, if applicable, agrees, the service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which are contested by the patient or the patient's guardian advocate, if applicable, must be approved or disapproved by the court consistent with subsection (4).

(11) PROCEDURE FOR CONTINUED INVOLUNTARY SERVICES.—

(a) A petition for continued involuntary services shall be filed if the patient continues to meets the criteria for involuntary services.

(b)1. If a patient receiving involuntary outpatient services continues to meet the criteria for involuntary outpatient services, the service provider shall file in the court that issued the order for involuntary outpatient services

a petition for continued involuntary outpatient services.

2. If the patient in involuntary inpatient placement continues to meet the criteria for involuntary inpatient placement and is being treated at a treatment facility, the administrator shall, before the expiration of the period the treatment facility is authorized to retain the patient, file a petition requesting authorization for continued involuntary inpatient placement.

3. The court shall immediately schedule a hearing on the petition to be held within 15 days after the petition is filed.

4. The existing involuntary services order shall remain in effect until disposition on the petition for continued involuntary services.

(c) A certificate for continued involuntary services must be attached to the petition and shall include a statement from the patient's physician, psychiatrist, psychiatric nurse, or clinical psychologist justifying the request, a brief description of the patient's treatment during the time he or she was receiving involuntary services, and, if requesting involuntary outpatient services, an individualized plan of continued treatment. The individualized plan of continued treatment must be developed in consultation with the patient or the patient's guardian advocate, if applicable. When the petition has been filed, the clerk of the court shall provide copies of the certificate and the individualized plan of continued services to the department, the patient, the patient's guardian advocate, the state attorney, and the patient's private counsel or public defender.

(d) The court shall appoint counsel to represent the person

who is the subject of the petition for continued involuntary services in accordance to the provisions set forth in subsection (5), unless the person in otherwise represented by counsel or eligible.

(e) Hearings on petitions for continued involuntary outpatient services must be before the court that issued the order for involuntary outpatient services. However, the patient and the patient's attorney may agree to a period of continued outpatient services without a court hearing.

(f) Hearings on petitions for continued involuntary inpatient placement must be held in the county or the facility, as appropriate, where the patient is located.

(g) Notice of the hearing must be provided as set forth in s. 394.4599.

(h) If a patient's attendance at the hearing is voluntarily waived, the judge shall determine that the waiver is knowing and voluntary before waiving the presence of the patient from all or a portion of the hearing. Alternatively, if at the hearing the judge finds that attendance at the hearing is not consistent with the best interests of the patient, the judge may waive the presence of the patient from all or any portion of the hearing, unless the patient, through counsel, objects to the waiver of presence. The testimony in the hearing must be under oath and the proceedings must be recorded.

(i) Hearings on petitions for continued involuntary inpatient placement of an individual placed at any treatment facility are administrative hearings and must be conducted in accordance with s. 120.57(1), except that any order entered by the judge is final and subject to judicial review in accordance

with s. 120.68. Orders concerning patients committed after successfully pleading not guilty by reason of insanity are governed by s. 916.15.

(j) If at a hearing it is shown that the patient continues to meet the criteria for involuntary services, the court shall issue an order for continued involuntary services for up to 90 days. However, any order for involuntary inpatient placement, or a combination of involuntary services, may be for up to 6 months. The same procedure must be repeated before the expiration of each additional period the patient is retained.

(k) If the patient has been ordered to undergo involuntary services and has previously been found incompetent to consent to treatment, the court shall consider testimony and evidence regarding the patient's competence. If the patient's competency to consent to treatment is restored, the discharge of the guardian advocate shall be governed by s. 394.4598. If the patient has been ordered to undergo involuntary inpatient placement only and the patient's competency to consent to treatment is restored, the administrative law judge may issue a recommended order to the court that found the patient incompetent to consent to treatment, that the patient's competence be restored and that any guardian advocate previously appointed be discharged.

(l) If continued involuntary inpatient placement is necessary for a patient in involuntary inpatient placement who was admitted while serving a criminal sentence, but his or her sentence is about to expire, or for a minor involuntarily placed, but who is about to reach the age of 18, the administrator shall petition the administrative law judge for an

order authorizing continued involuntary inpatient placement.

The procedure required in this section must be followed before the expiration of each additional period the patient is involuntarily receiving services.

(12) RETURN TO FACILITY.—If a patient has been ordered to undergo involuntary inpatient placement held at a treatment facility under this part and leaves the facility without the administrator's authorization, the administrator may authorize a search for the patient and his or her return to the facility. The administrator may request the assistance of a law enforcement agency in this regard.

(13) DISCHARGE.—The patient shall be discharged upon expiration of the court order or at any time the patient no longer meets the criteria for involuntary services, unless the patient has transferred to voluntary status. Upon discharge, the service provider or facility shall send a certificate of discharge to the court.

Section 12. Subsection (2) of section 394.468, Florida Statutes, is amended, and subsections (4) and (5) are added to that section, to read:

394.468 Admission and discharge procedures.—

(2) Discharge planning and procedures for any patient's release from a receiving facility or treatment facility must include and document the patient's needs, and actions to address such needs, for ~~consideration of~~, at a minimum:

(a) Follow-up behavioral health appointments;

(b) Information on how to obtain prescribed medications; and

(c) Information pertaining to:

1. Available living arrangements;

2. Transportation; and

(d) Referral to:

1. Care coordination services. The patient must be referred for care coordination services if the patient meets the criteria as a member of a priority population as determined by the department under s. 394.9082(3)(c); and

2.~~3.~~ Recovery support opportunities under s. 394.4573(2)(l), including, but not limited to, connection to a peer specialist.

(4) During the discharge transition process and while the patient is present, unless determined inappropriate by a physician, a receiving facility shall coordinate, face to face or through electronic means, ongoing treatment and discharge plans to a less restrictive community behavioral health provider, a peer specialist, a case manager, or a care coordination service. The transition process must include all of the following criteria:

(a) Implementation of policies and procedures outlining strategies for how the receiving facility will comprehensively address the needs of patients who demonstrate a high utilization of receiving facility services to avoid or reduce future use of crisis stabilization services;

(b) Developing, and including in discharge paperwork, a personalized crisis prevention plan that identifies stressors, early warning signs or symptoms, and strategies to deal with crisis; and

(c) Requiring a master's-level or licensed professional-

level staff member to engage a family member, legal guardian, legal representative, or natural support in discharge planning and meet face to face or through electronic means to review the discharge instructions, including prescribed medications, follow-up appointments, and any other recommended services or follow-up resources, and document the outcome of such meeting.

(5) When the recommended level of care at discharge is not immediately available to the patient, the receiving facility must initiate a referral to an appropriate provider to meet the needs of the patient and make appointments for interim services to continue care until the recommended level of care is available.

Section 13. Subsection (3) of section 394.495, Florida Statutes, is amended to read:

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

(3) Assessments must be performed by:

(a) A clinical psychologist, clinical social worker, physician, psychiatric nurse, or psychiatrist, as those terms are defined in s. 394.455 ~~professional as defined in s. 394.455(5), (7), (33), (36), or (37)~~;

(b) A professional licensed under chapter 491; or

(c) A person who is under the direct supervision of a clinical psychologist, clinical social worker, physician, psychiatric nurse, or psychiatrist, as those terms are defined in s. 394.455, ~~qualified professional as defined in s. 394.455(5), (7), (33), (36), or (37)~~ or a professional licensed under chapter 491.

Section 14. Subsection (5) of section 394.496, Florida

Statutes, is amended to read:

394.496 Service planning.—

(5) A clinical psychologist, clinical social worker, physician, psychiatric nurse, or psychiatrist, as those terms are defined in s. 394.455, ~~professional as defined in s. 394.455(5), (7), (33), (36), or (37)~~ or a professional licensed under chapter 491 must be included among those persons developing the services plan.

Section 15. Paragraph (a) of subsection (2) of section 394.499, Florida Statutes, is amended to read:

394.499 Integrated children's crisis stabilization unit/juvenile addictions receiving facility services.—

(2) Children eligible to receive integrated children's crisis stabilization unit/juvenile addictions receiving facility services include:

(a) A minor whose parent makes ~~person under 18 years of age for whom~~ voluntary application based on the parent's express and informed consent, and the requirements of s. 394.4625(1)(a) are met ~~is made by his or her guardian, if such person is found to show evidence of mental illness and to be suitable for treatment pursuant to s. 394.4625. A person under 18 years of age may be admitted for integrated facility services only after a hearing to verify that the consent to admission is voluntary~~.

Section 16. Paragraphs (a) and (d) of subsection (1) of section 394.875, Florida Statutes, are amended to read:

394.875 Crisis stabilization units, residential treatment facilities, and residential treatment centers for children and adolescents; authorized services; license required.—

(1)(a) The purpose of a crisis stabilization unit is to

stabilize and redirect a client to the most appropriate and least restrictive community setting available, consistent with the client's needs. Crisis stabilization units may screen, assess, and admit for stabilization persons who present themselves to the unit and persons who are brought to the unit under s. 394.463. Clients may be provided 24-hour observation, medication prescribed by a physician or psychiatrist, and other appropriate services. Crisis stabilization units shall provide services regardless of the client's ability to pay ~~and shall be limited in size to a maximum of 30 beds~~.

~~(d) The department is directed to implement a demonstration project in circuit 18 to test the impact of expanding beds authorized in crisis stabilization units from 30 to 50 beds. Specifically, the department is directed to authorize existing public or private crisis stabilization units in circuit 18 to expand bed capacity to a maximum of 50 beds and to assess the impact such expansion would have on the availability of crisis stabilization services to clients.~~

Section 17. Subsection (6) of section 394.9085, Florida Statutes, is amended to read:

394.9085 Behavioral provider liability.—

(6) For purposes of this section, the terms "detoxification services," "addictions receiving facility," and "receiving facility" have the same meanings as those provided in ss. 397.311(26)(a)3., 397.311(26)(a)1., and 394.455(41) ~~394.455(40)~~, respectively.

Section 18. Subsection (3) of section 397.305, Florida Statutes, is amended to read:

397.305 Legislative findings, intent, and purpose.—

(3) It is the purpose of this chapter to provide for a comprehensive continuum of accessible and quality substance abuse prevention, intervention, clinical treatment, and recovery support services in the most appropriate and least restrictive environment which promotes long-term recovery while protecting and respecting the rights of individuals, primarily through community-based private not-for-profit providers working with local governmental programs involving a wide range of agencies from both the public and private sectors.

Section 19. Subsections (19) and (23) of section 397.311, Florida Statutes, are amended to read:

397.311 Definitions.—As used in this chapter, except part VIII, the term:

(19) "Impaired" or "substance abuse impaired" means having a substance use disorder or a condition involving the use of alcoholic beverages, illicit or prescription drugs, or any psychoactive or mood-altering substance in such a manner as to induce mental, emotional, or physical problems and cause socially dysfunctional behavior.

(23) "Involuntary treatment services" means an array of behavioral health services that may be ordered by the court for persons with substance abuse impairment or co-occurring substance abuse impairment and mental health disorders.

Section 20. Subsection (6) is added to section 397.401, Florida Statutes, to read:

397.401 License required; penalty; injunction; rules waivers.—

(6) A service provider operating an addictions receiving facility or providing detoxification on a non-hospital inpatient

basis may not exceed its licensed capacity by more than 10 percent and may not exceed its licensed capacity for more than 3 consecutive working days or for more than 7 days in 1 month.

Section 21. Paragraph (i) is added to subsection (1) of section 397.4073, Florida Statutes, to read:

397.4073 Background checks of service provider personnel.—

(1) PERSONNEL BACKGROUND CHECKS; REQUIREMENTS AND EXCEPTIONS.—

(i) Licensed physicians and nurses who require background screening by the Department of Health at initial licensure and renewal of licensure are not subject to background screening pursuant to this section if they are providing a service that is within their scope of licensed practice.

Section 22. Subsection (8) of section 397.501, Florida Statutes, is amended to read:

397.501 Rights of individuals.—Individuals receiving substance abuse services from any service provider are guaranteed protection of the rights specified in this section, unless otherwise expressly provided, and service providers must ensure the protection of such rights.

(8) RIGHT TO COUNSEL.—Each individual must be informed that he or she has the right to be represented by counsel in any judicial ~~involuntary~~ proceeding for involuntary substance abuse ~~assessment, stabilization, or~~ treatment and that he or she, or if the individual is a minor his or her parent, legal guardian, or legal custodian, may apply immediately to the court to have an attorney appointed if he or she cannot afford one.

Section 23. Section 397.581, Florida Statutes, is amended to read:

397.581 Unlawful activities relating to assessment and treatment; penalties.—

(1) A person may not knowingly and willfully:

(a) Furnish ~~Furnishing~~ false information for the purpose of obtaining emergency or other involuntary admission of another person ~~for any person is a misdemeanor of the first degree, punishable as provided in s. 775.082 and by a fine not exceeding $5,000~~.

(b) ~~(2)~~ Cause or otherwise secure, or conspire with or assist another to cause or secure ~~Causing or otherwise securing, or conspiring with or assisting another to cause or secure, without reason for believing a person to be impaired~~, any emergency or other involuntary procedure of another ~~for the~~ person under false pretenses ~~is a misdemeanor of the first degree, punishable as provided in s. 775.082 and by a fine not exceeding $5,000~~.

(c) ~~(3)~~ Cause, or conspire with or assist another to cause, without lawful justification ~~Causing, or conspiring with or assisting another to cause~~, the denial to any person of any right accorded pursuant to this chapter.

(2) A person who violates subsection (1) commits ~~is~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 and by a fine not exceeding $5,000.

Section 24. Section 397.675, Florida Statutes, is amended to read:

397.675 Criteria for involuntary admissions, including protective custody, emergency admission, and other involuntary assessment, involuntary treatment, and alternative involuntary assessment for minors, for purposes of assessment and

stabilization, and for involuntary treatment.—A person meets the criteria for involuntary admission if there is good faith reason to believe that the person is substance abuse impaired or has a substance use disorder and a co-occurring mental health disorder and, because of such impairment or disorder:

(1) Has lost the power of self-control with respect to substance abuse; and

(2)(a) Is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that he or she is incapable of appreciating his or her need for such services and of making a rational decision in that regard, although mere refusal to receive such services does not constitute evidence of lack of judgment with respect to his or her need for such services; or

(b) Without care or treatment, is likely to suffer from neglect or refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that it is not apparent that such harm may be avoided through the help of willing, able, and responsible family members or friends or the provision of other services, or there is substantial likelihood that the person has inflicted, or threatened to or attempted to inflict, or, unless admitted, is likely to inflict, physical harm on himself, herself, or another.

Section 25. Section 397.681, Florida Statutes, is amended to read:

397.681 Involuntary petitions; general provisions; court jurisdiction and right to counsel.—

(1) JURISDICTION.—The courts have jurisdiction of

~~involuntary assessment and stabilization petitions and~~ involuntary treatment petitions for substance abuse impaired persons, and such petitions must be filed with the clerk of the court in the county where the person resides ~~is located~~. The clerk of the court may not charge a fee for the filing of a petition under this section. The chief judge may appoint a general or special magistrate to preside over all or part of the proceedings related to the petition or any ancillary matters thereto. The alleged impaired person is named as the respondent.

(2) RIGHT TO COUNSEL.—Unless the respondent is present and the court finds he or she knowingly, intelligently, and voluntarily waived legal representation, a respondent has the right to counsel at every stage of a judicial proceeding relating to a petition for his or her ~~involuntary assessment and a petition for his or her~~ involuntary treatment for substance abuse impairment. A respondent who desires counsel and is unable to afford private counsel has the right to court-appointed counsel and to the benefits of s. 57.081. If the court believes that the respondent needs or desires the assistance of counsel, the court shall appoint such counsel for the respondent without regard to the respondent's wishes. If the respondent is a minor not otherwise represented in the proceeding, the court shall immediately appoint a guardian ad litem to act on the minor's behalf.

Section 26. Subsection (1) of section 397.6751, Florida Statutes, is amended to read:

397.6751 Service provider responsibilities regarding involuntary admissions.—

(1) It is the responsibility of the service provider to:

(a) Ensure that a person who is admitted to a licensed service component meets the admission criteria specified in s. 397.675;

(b) Ascertain whether the medical and behavioral conditions of the person, as presented, are beyond the safe management capabilities of the service provider;

(c) Provide for the admission of the person to the service component that represents the most appropriate and least restrictive available setting that is responsive to the person's treatment needs;

(d) Verify that the admission of the person to the service component does not result in a census in excess of its licensed service capacity;

(e) Determine whether the cost of services is within the financial means of the person or those who are financially responsible for the person's care; and

(f) Take all necessary measures to ensure that each individual in treatment is provided with a safe environment, and to ensure that each individual whose medical condition or behavioral problem becomes such that he or she cannot be safely managed by the service component is discharged and referred to a more appropriate setting for care.

Section 27. Section 397.6818, Florida Statutes, is amended to read:

397.6818 Court determination.—

(1) When the petitioner asserts that emergency circumstances exist, or when upon review of the petition the court determines that an emergency exists, the court may rely solely on the contents of the petition and, without the

appointment of an attorney, enter an ex parte order for the respondent's involuntary assessment and stabilization which must be executed during the period when the hearing on the petition for treatment is pending.

(2) The court may further order a law enforcement officer or another designated agent of the court to:

(a) Take the respondent into custody and deliver him or her for evaluation to either the nearest appropriate licensed service provider or a licensed service provider designated by the court; and

(b) Serve the respondent with the notice of hearing and a copy of the petition.

(3) The service provider may not hold the respondent for longer than 72 hours of observation, unless:

(a) The service provider seeks additional time under s. 397.6957(1)(c) and the court, after a hearing, grants a motion allowing such additional time;

(b) The respondent shows signs of withdrawal, or a need to be either detoxified or treated for a medical condition, which shall extend the amount of time the respondent may be held for observation until the issue is resolved but no later than the scheduled hearing date, absent a court-approved extension; or

(c) The original or extended observation period ends on a weekend or holiday, including the hours before the ordinary business hours of the following workday morning, in which case the provider may hold the respondent until the next court working day.

(4) If the ex parte order was not executed by the initial hearing date, it shall be deemed void. However, should the

respondent not appear at the hearing for any reason, including lack of service, and upon reviewing the petition, testimony, and evidence presented, the court reasonably believes the respondent meets this chapter's commitment criteria and that a substance abuse emergency exists, the court may issue or reissue an ex parte assessment and stabilization order that is valid for 90 days. If the respondent's location is known at the time of the hearing, the court:

(a) Shall continue the case for no more than 10 court working days; and

(b) May order a law enforcement officer or another designated agent of the court to:

1. Take the respondent into custody and deliver him or her for evaluation to either the nearest appropriate licensed service provider or a licensed service provider designated by the court; and

2. If a hearing date is set, serve the respondent with notice of the rescheduled hearing and a copy of the involuntary treatment petition if the respondent has not already been served.

Otherwise, the petitioner must inform the court that the respondent has been assessed so that the court may schedule a hearing as soon as is practicable. However, if the respondent has not been assessed within 90 days, the court must dismiss the case. At the hearing initiated in accordance with s. 397.6811(1), the court shall hear all relevant testimony. The respondent must be present unless the court has reason to believe that his or her presence is likely to be injurious to

him or her, in which event the court shall appoint a guardian advocate to represent the respondent. The respondent has the right to examination by a court-appointed qualified professional. After hearing all the evidence, the court shall determine whether there is a reasonable basis to believe the respondent meets the involuntary admission criteria of s. 397.675.

~~(1) Based on its determination, the court shall either dismiss the petition or immediately enter an order authorizing the involuntary assessment and stabilization of the respondent; or, if in the course of the hearing the court has reason to believe that the respondent, due to mental illness other than or in addition to substance abuse impairment, is likely to injure himself or herself or another if allowed to remain at liberty, the court may initiate involuntary proceedings under the provisions of part I of chapter 394.~~

~~(2) If the court enters an order authorizing involuntary assessment and stabilization, the order shall include the court's findings with respect to the availability and appropriateness of the least restrictive alternatives and the need for the appointment of an attorney to represent the respondent, and may designate the specific licensed service provider to perform the involuntary assessment and stabilization of the respondent. The respondent may choose the licensed service provider to deliver the involuntary assessment where possible and appropriate.~~

~~(3) If the court finds it necessary, it may order the sheriff to take the respondent into custody and deliver him or her to the licensed service provider specified in the court~~

~~order or, if none is specified, to the nearest appropriate licensed service provider for involuntary assessment.~~

~~(4) The order is valid only for the period specified in the order or, if a period is not specified, for 7 days after the order is signed.~~

Section 28. Section 397.693, Florida Statutes, is renumbered as 397.68111, Florida Statutes, and amended to read:

397.68111 ~~397.693~~ Involuntary treatment.—A person may be the subject of a petition for court-ordered involuntary treatment pursuant to this part~~,~~ if that person:

(1) Reasonably appears to meet ~~meets~~ the criteria for involuntary admission provided in s. 397.675; ~~and:~~

(2)~~(1)~~ Has been placed under protective custody pursuant to s. 397.677 within the previous 10 days;

(3)~~(2)~~ Has been subject to an emergency admission pursuant to s. 397.679 within the previous 10 days; or

(4)~~(3)~~ Has been assessed by a qualified professional within 30 ~~5~~ days~~;~~

~~(4) Has been subject to involuntary assessment and stabilization pursuant to s. 397.6818 within the previous 12 days; or~~

~~(5) Has been subject to alternative involuntary admission pursuant to s. 397.6822 within the previous 12 days~~.

Section 29. Section 397.695, Florida Statutes, is renumbered as section 397.68112, Florida Statutes, and amended to read:

397.68112 ~~397.695~~ Involuntary treatment services; persons who may petition.—

(1) If the respondent is an adult, a petition for

involuntary treatment services may be filed by the respondent's spouse or legal guardian, any relative, a service provider, or an adult who has direct personal knowledge of the respondent's substance abuse impairment and his or her prior course of assessment and treatment.

(2) If the respondent is a minor, a petition for involuntary treatment services may be filed by a parent, legal guardian, or service provider.

(3) The court may prohibit, or a law enforcement agency may waive, any service of process fees if a petitioner is determined to be indigent.

Section 30. Section 397.6951, Florida Statutes, is renumbered as 397.68141, Florida Statutes, and amended to read:

397.68141 ~~397.6951~~ Contents of petition for involuntary treatment services.—A petition for involuntary services must contain the name of the respondent; the name of the petitioner ~~or petitioners~~; the relationship between the respondent and the petitioner; the name of the respondent's attorney, if known; ~~the findings and recommendations of the assessment performed by the qualified professional;~~ and the factual allegations presented by the petitioner establishing the need for involuntary ~~outpatient~~ services for substance abuse impairment. The factual allegations must demonstrate:

(1) The reason for the petitioner's belief that the respondent is substance abuse impaired;

(2) The reason for the petitioner's belief that because of such impairment the respondent has lost the power of self-control with respect to substance abuse; and

(3)(a) The reason the petitioner believes that the

respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless the court orders the involuntary services; or

(b) The reason the petitioner believes that the respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.

(4) The petition may be accompanied by a certificate or report of a qualified professional who examined the respondent within 30 days before the petition was filed. This certificate or report must include the qualified professional's findings relating to his or her assessment of the patient and his or her treatment recommendations. If the respondent was not assessed before the filing of a treatment petition or refused to submit to an evaluation, the lack of assessment or refusal must be noted in the petition.

(5) If there is an emergency, the petition must also describe the respondent's exigent circumstances and include a request for an ex parte assessment and stabilization order that must be executed pursuant to s. 397.6818(4).

Section 31. Section 397.6955, Florida Statutes, is renumbered as section 397.68151, Florida Statutes, and amended to read:

397.68151 ~~397.6955~~ Duties of court upon filing of petition for involuntary services.—

(1) Upon the filing of a petition for involuntary services for a substance abuse impaired person with the clerk of the court, the court shall immediately determine whether the

respondent is represented by an attorney or whether the appointment of counsel for the respondent is appropriate. If the court appoints counsel for the person, the clerk of the court shall immediately notify the office of criminal conflict and civil regional counsel, created pursuant to s. 27.511, of the appointment. The office of criminal conflict and civil regional counsel shall represent the person until the petition is dismissed, the court order expires, or the person is discharged from involuntary treatment services, or the office is otherwise discharged by the court. An attorney that represents the person named in the petition shall have access to the person, witnesses, and records relevant to the presentation of the person's case and shall represent the interests of the person, regardless of the source of payment to the attorney.

(2) The court shall schedule a hearing to be held on the petition within 10 court working ~~5~~ days unless a continuance is granted. The court may appoint a magistrate to preside at the hearing.

(3) A copy of the petition and notice of the hearing must be provided to the respondent; the respondent's parent, guardian, or legal custodian, in the case of a minor; the respondent's attorney, if known; the petitioner; the respondent's spouse or guardian, if applicable; and such other persons as the court may direct. If the respondent is a minor, a copy of the petition and notice of the hearing must be personally delivered to the respondent. The clerk ~~court~~ shall ~~also~~ issue a summons to the person whose admission is sought and unless a circuit court's chief judge authorizes disinterested private process servers to serve parties under this chapter, a

law enforcement agency must effect such service on the person whose admission is sought for the initial treatment hearing.

Section 32. Section 397.6957, Florida Statutes, is amended to read:

397.6957 Hearing on petition for involuntary treatment services.—

(1)(a) The respondent must be present at a hearing on a petition for involuntary treatment services~~,~~ unless the court finds he or she knowingly, intelligently, and voluntarily waives his or her right to be present or, upon receiving proof of service and evaluating the circumstances of the case, that his or her presence is inconsistent with his or her best interests or is likely to be injurious to himself or herself or others. The court shall hear and review all relevant evidence, including testimony from individuals such as family members familiar with the respondent's prior history and how it relates to his or her current condition, and the ~~review of~~ results of the assessment completed by the qualified professional in connection with this chapter. The court may also order drug tests. Upon finding of good cause, the court may permit all witnesses, including, but not limited to, medical professionals who are or have been involved with the respondent's treatment, to remotely attend and testify at the hearing under oath via audio-video teleconference. A witness intending to remotely attend and testify must provide the parties with all relevant documents by the close of business on the day before the hearing ~~the respondent's protective custody, emergency admission, involuntary assessment, or alternative involuntary admission. The respondent must be present unless the court finds that his~~

~~or her presence is likely to be injurious to himself or herself or others, in which event the court must appoint a guardian advocate to act in behalf of the respondent throughout the proceedings~~.

(b) A respondent may not be involuntarily ordered into treatment under this chapter without a clinical assessment being performed, unless he or she is present in court and expressly waives the assessment. In nonemergency situations, if the respondent was not, or had previously refused to be, assessed by a qualified professional and, based on the petition, testimony, and evidence presented, it reasonably appears that the respondent qualifies for involuntary treatment services, the court shall issue an involuntary assessment and stabilization order to determine the appropriate level of treatment the respondent requires. Additionally, in cases where an assessment was attached to the petition, the respondent may request, or the court on its own motion may order, an independent assessment by a court-appointed or otherwise agreed-upon qualified professional. If an assessment order is issued, it is valid for 90 days, and if the respondent is present or there is either proof of service or his or her location is known, the involuntary treatment hearing shall be continued for no more than 10 court working days. Otherwise, the petitioner must inform the court that the respondent has been assessed so that the court may schedule a hearing as soon as is practicable. The assessment must occur before the new hearing date, and if there is evidence indicating that the respondent will not voluntarily appear at the forthcoming hearing or is a danger to self or others, the court may enter a preliminary order committing the

respondent to an appropriate treatment facility for further evaluation until the date of the rescheduled hearing. However, if after 90 days the respondent remains unassessed, the court shall dismiss the case.

(c)1. The respondent's assessment by a qualified professional must occur within 72 hours after his or her arrival at a licensed service provider unless the respondent shows signs of withdrawal or a need to be either detoxified or treated for a medical condition, which shall extend the amount of time the respondent may be held for observation until such issue is resolved but no later than the scheduled hearing date, absent a court-approved extension. If the respondent is a minor, such assessment must be initiated within the first 12 hours of the minor's admission to the facility. The service provider may also move to extend the 72 hours of observation by petitioning the court in writing for additional time. The service provider must furnish copies of such motion to all parties in accordance with applicable confidentiality requirements, and after a hearing, the court may grant additional time. If the court grants the service provider's petition, the service provider may continue to hold the respondent, and if the original or extended observation period ends on a weekend or holiday, including the hours before the ordinary business hours of the following workday morning, the provider may hold the respondent until the next court working day.

2. No later than the ordinary close of business on the day before the hearing, the qualified professional shall transmit, in accordance with any applicable confidentiality requirements, his or her clinical assessment to the clerk of the court, who

shall enter it into the court file. This report must contain a recommendation on the level of substance abuse treatment the respondent requires, if any, and the relevant information on which the qualified professional's findings are based. This document must further note whether the respondent has any co-occurring mental health or other treatment needs. For adults subject to an involuntary assessment, the report's filing with the court satisfies s. 397.6758 if it also contains the respondent's admission and discharge information. The qualified professional's failure to include a treatment recommendation, much like a recommendation of no treatment, shall result in the petition's dismissal.

(2) The petitioner has the burden of proving by clear and convincing evidence that:

(a) The respondent is substance abuse impaired and has a history of lack of compliance with treatment for substance abuse; and

(b) Because of such impairment the respondent is unlikely to voluntarily participate in the recommended services or is unable to determine for himself or herself whether services are necessary and:

1. Without services, the respondent is likely to suffer from neglect or refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that there is a substantial likelihood that without services the respondent will cause serious bodily harm to himself, herself, or another in the near future, as evidenced by recent behavior; or

2. The respondent's refusal to voluntarily receive care is

based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.

(3) ~~One of the qualified professionals who executed the involuntary services certificate must be a witness. The court shall allow testimony from individuals, including family members, deemed by the court to be relevant under state law, regarding the respondent's prior history and how that prior history relates to the person's current condition. The~~ Testimony in the hearing must be taken under oath, and the proceedings must be recorded. The respondent ~~patient~~ may refuse to testify at the hearing.

(4) If at any point during the hearing the court has reason to believe that the respondent, due to mental illness other than or in addition to substance abuse impairment, meets the involuntary commitment provisions of part I of chapter 394, the court may initiate involuntary examination proceedings under such provisions.

(5) At the conclusion of the hearing the court shall either dismiss the petition or order the respondent to receive involuntary treatment services from his or her chosen licensed service provider if possible and appropriate. Any treatment order must include findings regarding the respondent's need for treatment and the appropriateness of other less restrictive alternatives.

Section 33. Section 397.6975, Florida Statutes, is amended to read:

397.6975 Extension of involuntary treatment services

period.—

(1) Whenever a service provider believes that an individual who is nearing the scheduled date of his or her release from involuntary treatment services continues to meet the criteria for involuntary treatment services in s. 397.693 or s. 397.6957, a petition for renewal of the involuntary services order must ~~may~~ be filed with the court at least 10 days before the expiration of the court-ordered services period. The petition may be filed by the service provider or by the person who filed the petition for the initial treatment order if the petition is accompanied by supporting documentation from the service provider. The court shall immediately schedule a hearing within 10 court working days to be held not more than 15 days after filing of the petition. The court shall provide the copy of the petition for renewal and the notice of the hearing to all parties and counsel to the proceeding. The hearing is conducted pursuant to ss. 397.6957 and 397.697 and must be before the circuit court unless referred to a magistrate ~~s. 397.6957~~.

(2) If the court finds that the petition for renewal of the involuntary treatment services order should be granted, it may order the respondent to receive involuntary treatment services for a period not to exceed an additional 90 days. When the conditions justifying involuntary treatment services no longer exist, the individual must be released as provided in s. 397.6971. When the conditions justifying involuntary treatment services continue to exist after an additional 90 days of service, a new petition requesting renewal of the involuntary treatment services order may be filed pursuant to this section.

~~(3) Within 1 court working day after the filing of a~~

~~petition for continued involuntary services, the court shall appoint the office of criminal conflict and civil regional counsel to represent the respondent, unless the respondent is otherwise represented by counsel. The clerk of the court shall immediately notify the office of criminal conflict and civil regional counsel of such appointment. The office of criminal conflict and civil regional counsel shall represent the respondent until the petition is dismissed or the court order expires or the respondent is discharged from involuntary services. Any attorney representing the respondent shall have access to the respondent, witnesses, and records relevant to the presentation of the respondent's case and shall represent the interests of the respondent, regardless of the source of payment to the attorney.~~

~~(4) Hearings on petitions for continued involuntary services shall be before the circuit court. The court may appoint a magistrate to preside at the hearing. The procedures for obtaining an order pursuant to this section shall be in accordance with s. 397.697.~~

~~(5) Notice of hearing shall be provided to the respondent or his or her counsel. The respondent and the respondent's counsel may agree to a period of continued involuntary services without a court hearing.~~

~~(6) The same procedure shall be repeated before the expiration of each additional period of involuntary services.~~

~~(7) If the respondent has previously been found incompetent to consent to treatment, the court shall consider testimony and evidence regarding the respondent's competence.~~

Section 34. Section 397.6977, Florida Statutes, is amended

to read:

397.6977 Disposition of individual upon completion of involuntary services.—

(1) At the conclusion of the 90-day period of court-ordered involuntary services, the respondent is automatically discharged unless a motion for renewal of the involuntary services order has been filed with the court pursuant to s. 397.6975.

(2) Discharge planning and procedures for any respondent's release from involuntary treatment services must include and document the respondent's needs and actions to address such needs for, at a minimum:

(a) Follow-up behavioral health appointments;

(b) Information on how to obtain prescribed medications;

(c) Information pertaining to available living arrangements and transportation; and

(d) Referral to recovery support opportunities, including, but not limited to, connection to a peer specialist.

Section 35. Paragraph (b) of subsection (1) of section 409.972, Florida Statutes, is amended to read:

409.972 Mandatory and voluntary enrollment.—

(1) The following Medicaid-eligible persons are exempt from mandatory managed care enrollment required by s. 409.965, and may voluntarily choose to participate in the managed medical assistance program:

(b) Medicaid recipients residing in residential commitment facilities operated through the Department of Juvenile Justice or a treatment facility as defined in s. 394.455 ~~s. 394.455(49)~~.

Section 36. Paragraph (e) of subsection (4) of section 464.012, Florida Statutes, is amended to read:

464.012 Licensure of advanced practice registered nurses; fees; controlled substance prescribing.—

(4) In addition to the general functions specified in subsection (3), an advanced practice registered nurse may perform the following acts within his or her specialty:

(e) A psychiatric nurse, who meets the requirements in s. 394.455 ~~s. 394.455(36)~~, within the framework of an established protocol with a psychiatrist, may prescribe psychotropic controlled substances for the treatment of mental disorders.

Section 37. Subsection (7) of section 744.2007, Florida Statutes, is amended to read:

744.2007 Powers and duties.—

(7) A public guardian may not commit a ward to a treatment facility, as defined in s. 394.455 ~~s. 394.455(49)~~, without an involuntary placement proceeding as provided by law.

Section 38. Paragraph (c) of subsection (2) of section 916.13, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

916.13 Involuntary commitment of defendant adjudicated incompetent.—

(2) A defendant who has been charged with a felony and who has been adjudicated incompetent to proceed due to mental illness, and who meets the criteria for involuntary commitment under this chapter, may be committed to the department, and the department shall retain and treat the defendant.

(c)1. If the department determines at any time that a defendant will not or is unlikely to regain competency to proceed, the department shall, within 30 days after the determination, complete and submit a competency evaluation

report to the circuit court to determine if the defendant meets the criteria for involuntary commitment under s. 394.467. A qualified professional, as defined in s. 394.455, shall sign the competency evaluation report for the circuit court under penalty of perjury. A copy of the report must be provided, at a minimum, to the court, state attorney, and counsel for the defendant before initiating any transfer of the defendant back to the committing jurisdiction.

2. For the purposes of this paragraph, the term "competency evaluation report to the circuit court" means a report by the department regarding a defendant's incompetence to proceed in a criminal proceeding due to mental illness as set forth in this section. The report must include, at a minimum, the following information regarding the defendant:

a. A description of mental, emotional, and behavioral disturbances;

b. An explanation to support the opinion of incompetence to proceed;

c. The rationale to support why the defendant is unlikely to gain competence to proceed in the foreseeable future;

d. A clinical opinion regarding whether the defendant no longer meets the criteria for involuntary forensic commitment pursuant to this section; and

e. A recommendation on whether the defendant meets the criteria for involuntary services pursuant to s. 394.467.

(d) The defendant must be transported, in accordance with s. 916.107, to the committing court's jurisdiction within 7 days after ~~of~~ notification that the defendant is competent to proceed or no longer meets the criteria for continued commitment. A

determination on the issue of competency must be made at a hearing within 30 days of the notification. If the defendant is receiving psychotropic medication at a mental health facility at the time he or she is discharged and transferred to the jail, the administering of such medication must continue unless the jail physician documents the need to change or discontinue it. To ensure continuity of care, the referring mental health facility must transfer the patient with up to 30 days of medications and assist in discharge planning with medical teams at the receiving county jail. The jail and facility's department physicians shall collaborate to ensure that medication changes do not adversely affect the defendant's mental health status or his or her ability to continue with court proceedings; however, the final authority regarding the administering of medication to an inmate in jail rests with the jail physician. Notwithstanding this paragraph, a defendant who meets the criteria for involuntary examination pursuant to s. 394.463 as determined by an independent clinical opinion shall appear remotely for the hearing. Court witnesses may appear remotely.

Section 39. Section 397.6811, Florida Statutes, is repealed.

Section 40. Section 397.6814, Florida Statutes, is repealed.

Section 41. Section 397.6815, Florida Statutes, is repealed.

Section 42. Section 397.6819, Florida Statutes, is repealed.

Section 43. Section 397.6821, Florida Statutes, is repealed.

Section 44. Section 397.6822, Florida Statutes, is repealed.

Section 45. Section 397.6978, Florida Statutes, is repealed.

Section 46. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7021 PCB CFS 24-01 Mental Health and Substance Abuse
SPONSOR(S): Health Care Appropriations Subcommittee, Children, Families & Seniors Subcommittee, Maney and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1784

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Children, Families & Seniors Subcommittee	18 Y, 0 N	Curry	Brazzell
1) Health Care Appropriations Subcommittee	14 Y, 0 N, As CS	Fontaine	Clark
2) Health & Human Services Committee			

SUMMARY ANALYSIS

In Florida, the Baker Act provides a legal procedure for voluntary and involuntary mental health examination and treatment. The Marchman Act addresses substance abuse through a comprehensive system of prevention, detoxification, and treatment services. The Department of Children and Families (DCF) is the single state authority for substance abuse and mental health treatment services in Florida.

The bill modifies the Baker Act and makes significant changes to the Marchman Act, the statutory processes for mental health and substance abuse examinations and treatment, respectively.

The bill amends the Baker Act in that it:

- Combines processes for courts to order individuals to involuntary outpatient services and involuntary inpatient placement in the Baker Act, to streamline the process for obtaining involuntary services, and providing more flexibility for courts to meet individuals' treatment needs.
- Grants law enforcement officers discretion on initiating involuntary examinations.

The bill amends the Marchman Act in that it:

- Repeals existing provisions for court-ordered involuntary assessments and stabilization in the Marchman Act, and creates a new consolidated involuntary treatment process.
- Prohibits courts from ordering an individual with a developmental disability who lacks a co-occurring mental illness to a state mental health treatment facility for involuntary inpatient placement.
- Revises the voluntariness provision under the Baker Act to allow a minor's voluntary admission after a clinical review, rather than a hearing, has been conducted.
- Authorizes a witness to appear remotely upon a showing of good cause and with consent by all parties.
- Allows an individual to be admitted as a civil patient in a state mental health treatment facility without a transfer evaluation and prohibits a court, in a hearing for placement in a treatment facility, from considering substantive information in the transfer evaluation unless the evaluator testifies at the hearing.

The bill amends both acts in that it:

- Creates a more comprehensive and personalized discharge planning process.
- Requires DCF to publish certain specified reports on its website.
- Removes limitations on advance practice registered nurses and physician assistants serving the physical health needs of individuals receiving psychiatric care.
- Allows a psychiatric nurse to release a patient from a receiving facility if certain criteria are met.
- Removes the 30-bed cap for crisis stabilization units.
- Appropriates the sum of $50,000,000 of recurring funds from the General Revenue Fund for the 2024-25 fiscal year to the Department of Children and Families to implement the bill.

The bill appropriates $50,000,000 to the Department of Children and Families to implement certain provisions of the bill.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Mental Health and Mental Illness

Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community.[1] The primary indicators used to evaluate an individual's mental health are:[2]

- **Emotional well-being**- Perceived life satisfaction, happiness, cheerfulness, peacefulness;
- **Psychological well-being**- Self-acceptance, personal growth including openness to new experiences, optimism, hopefulness, purpose in life, control of one's environment, spirituality, self-direction, and positive relationships; and
- **Social well-being**- Social acceptance, beliefs in the potential of people and society as a whole, personal self-worth and usefulness to society, sense of community.

Mental illness is collectively all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.[3] Thus, mental health refers to an individual's mental state of well-being whereas mental illness signifies an alteration of that well-being. Mental illness affects millions of people in the United States each year. Nearly one in five adults lives with a mental illness.[4] During their childhood and adolescence, almost half of children will experience a mental disorder, though the proportion experiencing severe impairment during childhood and adolescence is much lower, at about 22%.[5]

Mental Health Safety Net Services

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults who are otherwise unable to obtain these services. SAMH programs include a range of prevention, acute interventions (e.g. crisis stabilization), residential treatment, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.

Current Situation - Behavioral Health Managing Entities

In 2001, the Legislature authorized DCF to implement behavioral health managing entities (ME) as the management structure for the delivery of local mental health and substance abuse services.[6] The implementation of the ME system initially began on a pilot basis and, in 2008, the Legislature authorized DCF to implement MEs statewide.[7] MEs were fully implemented statewide in 2013, serving all geographic regions.

[1] World Health Organization, *Mental Health: Strengthening Our Response,* https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response (last visited January 3, 2024).
[2] Centers for Disease Control and Prevention, *Mental Health Basics*, http://medbox.iiab.me/modules/en-cdc/www.cdc.gov/mentalhealth/basics.htm (last visited January 3, 2024).
[3] *Id*.
[4] National Institute of Mental Health (NIH), *Mental Illness*, https://www.nimh.nih.gov/health/statistics/mental-illness (last visited January 3, 2024).
[5] *Id*.
[6] Ch. 2001-191, Laws of Fla.
[7] Ch. 2008-243, Laws of Fla

DCF currently contracts with seven MEs for behavioral health services throughout the state. These entities do not provide direct services; rather, they allow the department's funding to be tailored to the specific behavioral health needs in the various regions of the state.[8]

Current Situation - Coordinated System of Care

Managing entities are required to promote the development and implementation of a coordinated system of care.[9] A coordinated system of care means a full array of behavioral and related services in a region or community offered by all service providers, participating either under contract with a managing entity or by another method of community partnership or mutual agreement.[10] A community or region provides a coordinated system of care for those with a mental illness or substance abuse disorder through a no-wrong-door model, to the extent allowed by available resources. If funding is provided by the Legislature, DCF may award system improvement grants to managing entities.[11] MEs must submit detailed plans to enhance crisis services based on the no-wrong-door model or to meet specific needs identified in DCF's assessment of behavioral health services in this state.[12] DCF must use performance-based contracts to award grants.[13]

There are several essential elements which make up a coordinated system of care, including:[14]

- Community interventions;
- Case management;
- Care coordination;
- Outpatient services;
- Residential services;
- Hospital inpatient care;
- Aftercare and post-discharge services;
- Medication assisted treatment and medication management; and
- Recovery support.

A coordinated system of care must include, but is not limited to, the following array of services:[15]

- Prevention services;
- Home-based services;
- School-based services;
- Family therapy;
- Family support;
- Respite services;
- Outpatient treatment;
- Crisis stabilization;
- Therapeutic foster care;
- Residential treatment;
- Inpatient hospitalization;
- Case management;
- Services for victims of sex offenses;
- Transitional services; and

[8] DCF, *Managing Entities,* available at https://www.myflfamilies.com/services/samh/prov/*d*ers/managing-entities, (last visited January 8, 2024).
[9] S. 394.9082(5)(d), F.S.
[10] S. 394.4573(1)(c), F.S.
[11] S. 394.4573(3), F.S. The Legislature has not funded system improvement grants.
[12] *Id.*
[13] *Id.*
[14] S. 394.4573(2), F.S.
[15] S. 394.495(4), F.S

- Trauma-informed services for children who have suffered sexual exploitation.

DCF must define the priority populations which would benefit from receiving care coordination.[16] In defining priority populations, DCF must consider the number and duration of involuntary admissions, the degree of involvement with the criminal justice system, the risk to public safety posed by the individual, the utilization of a treatment facility by the individual, the degree of utilization of behavioral health services, and whether the individual is a parent or caregiver who is involved with the child welfare system.

MEs are required to conduct a community behavioral health care needs assessment once every three years in the geographic area served by the managing entity, which identifies needs by sub-region.[17] The assessments must be submitted to DCF for inclusion in the state and district substance abuse and mental health plan.[18]

The Baker Act

The Florida Mental Health Act, commonly referred to as the Baker Act, was enacted in 1971 to revise the state's mental health commitment laws.[19] The Act includes legal procedures for mental health examination and treatment, including voluntary and involuntary examinations. It additionally protects the rights of all individuals examined or treated for mental illness in Florida.[20]

The Department of Children and Families (DCF) is responsible for the operation and administration of the Baker Act, including publishing an annual Baker Act report. According to the Fiscal Year (FY) 2021-2022 Baker Act annual report, over 170,000 individuals were involuntarily examined under the Baker Act; of those, just over 11,600 individuals were 65 years of age or older. This age group is the most likely to include individuals with Alzheimer's disease or related dementia. It is important to note the number of Baker Acts per year decreased during FY 2018-2019, FY 2019-2020, and FY 2020-2021, across all age groups.[21]

Rights of Patients

Current Situation

The Baker Act protects the rights of patients examined or treated for mental illness in Florida, including, but not limited to, the right to give express and informed consent for admission or treatment and the right to communicate freely and privately with persons outside a facility, unless the facility determines that such communication is likely to be harmful to the patient or others.[22]

Each patient entering treatment must be asked to give express and informed consent for admission or treatment.[23] If the patient has been adjudicated incapacitated or found to be incompetent to consent to treatment, express and informed consent to treatment must be obtained from the patient's guardian or guardian advocate. If the patient is a minor, consent must be requested from the patient's guardian unless the minor is seeking outpatient crisis intervention services.[24] In situations where emergency medical treatment is needed and the patient or the patient's guardian or guardian advocate are unable to provide consent, the administrator of the facility may, upon the recommendation of the patient's

[16] S. 394.9082(3)(c), F.S.
[17] S. 394.9082(5)(b), F.S.
[18] S. 394.75(3), F.S.
[19] The Baker Act is contained in Part I of ch. 394, F.S.
[20] S. 394.459, F.S.
[21] DCF, *Agency Bill Analysis,* (2023), on file with the House Children, Families, and Seniors Subcommittee.
[22] Ss.394.459(3), and 394.459(5), F.S. Other patient rights include the right to dignity; treatment regardless of ability to pay; express and informed consent for admission or treatment; quality treatment; possession of his or her clothing and personal effects; vote in elections, if eligible; petition the court for a writ of habeas corpus to question the cause and legality of their detention in a receiving or treatment facility; and participate in their treatment and discharge planning. See, s. 394.459 (1)-11), F.S. Current law imposes liability for damages on those who violate or abuse patient rights or privileges. See, s. 394.459 (10), F.S.
[23] S. 394.459(3).
[24] S. 394.4784, F.S.

attending physician, authorize treatment, including a surgical procedure, if such treatment is deemed lifesaving, or if the situation threatens serious bodily harm to the patient.[25]

Currently, a facility must provide immediate patient access to a patient's family members, guardian, guardian advocate, representative, Florida statewide or local advocacy council, or attorney, unless such access would be detrimental to the patient or the patient exercises their right not to communicate or visit with the person.[26] If a facility restricts a patient's right to communicate or receive visitors, the facility must provide written notice of the restriction and the reasons for it to the patient, the patient's attorney, and the patient's guardian, guardian advocate, or representative.[27] A qualified professional[28] must document the restriction within 24 hours, and a record of the restriction and the reasons thereof must be recorded in the patient's clinical record. Under current law, a facility must review patient communication restrictions at least every three days.[29]

Effect of Bill – Rights of Patients

The bill authorizes the facility administrator to authorize emergency medical treatment for a patient upon the recommendation of the patient's licensed medical practitioner.[30]

If a facility restricts a patient's right to communicate, the bill requires a qualified professional to record the restriction and its underlying reasons in the patient's clinical file within 24 hours and to immediately serve the document of record to the patient, the patient's attorney, and the patient's guardian, guardian advocate, or representative.

Receiving Facilities and Involuntary Examination

Current Situation – Receiving Facilities

Individuals in an acute mental or behavioral health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a voluntary or involuntary basis.[31] Individuals receiving services on an involuntary basis must be taken to a facility that has been designated by Department of Children and Families (DCF) as a receiving facility.

Receiving facilities, often referred to as Baker Act receiving facilities, are public or private facilities designated by DCF to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate service provider.[32] A public receiving facility is a facility that has contracted with a managing entity to provide mental health services to all persons, regardless of their ability to pay, and is receiving state funds for such purpose.[33] Funds appropriated for Baker Act services may only be used to pay for services to diagnostically and financially eligible persons, or those who are acutely ill, in need of mental health services, and the least able to pay.[34] Currently, there are 126 DCF designed receiving facilities.[35]

Crisis Stabilization Units

[25] S. 394.459(3)(d), F.S.
[26] S. 394.459(5)(c), F.S.
[27] *S. 394.459(5)(d), F.S.*
[28] A qualified professional is a physician or a physician assistant, a psychiatrist licensed, a psychologist, or a psychiatric nurse. See s. 394.455(39), F.S.
[29] *Id*.
[30] The bill defines a "licensed medical practitioner" as a medical provider who is a physician licensed under chapters 458 or 459, an advanced practiced registered nurse, or a physician assistant who works under the supervision of a licensed physician and an established protocol pursuant to ss. 458.347, 458.348, 464.003, and 464.0123, F.S.
[31] Ss. 394.4625 and 394.463, F.S.
[32] S. 394.455(40), F.S. This term does not include a county jail.
[33] S. 394.455(38), F.S
[34] R. 65E-5.400(2), F.A.C.
[35] DCF, *Agency Bill Analysis,* (2023), on file with the House Children, Families, and Seniors Subcommittee.

Crisis Stabilization Units (CSUs) are public receiving facilities that receive state funding and provide a less intensive and less costly alternative to inpatient psychiatric hospitalization for individuals presenting as acutely mentally ill. CSUs screen, assess, and admit individuals brought to the unit under the Baker Act, as well as those individuals who voluntarily present themselves, for short-term services. CSUs provide services 24 hours a day, seven days a week, through a team of mental health professionals. The purpose of the CSU is to examine, stabilize, and redirect people to the most appropriate and least restrictive treatment settings, consistent with their mental health needs.[36] Individuals often enter the public mental health system through CSUs. Managing entities must follow current statutes and rules that require CSUs to be paid for bed availability rather than utilization.

Although involuntary examinations under the Baker Act have recently been decreasing statewide, the population of Florida continues to grow, and there are counties where the number of involuntary examinations remain the same or are slightly increasing, while some receiving facilities within communities are closing. There has been some demonstrated success with mobile response teams diverting individuals from the receiving facilities, resulting in those persons who are admitted to a receiving facility for an involuntary examination having higher acuity and longer lengths of stay.

In 2011, statute directed DCF to implement a demonstration project in circuit 18 to assess the impact of expanding the number of authorized CSU beds from 30 to 50. The facility in circuit 18 reported that by adding 20 additional beds, they were able to alleviate capacity issues within the county through 2021. The facility also reported that there are days that they exceed 100% capacity. Additionally, the facility reported that the bed capacity expansion has allowed them to serve clients with complex needs (e.g., clients served by APD).[37]

Current Situation – Involuntary Examination

An involuntary examination is required if there is reason to believe that the person has a mental illness and, because of his or her mental illness, has refused voluntary examination, is likely to refuse to care for him or herself to the extent that such refusal threatens to cause substantial harm to that person's well-being, and such harm is unavoidable through help of willing family members or friends, or will cause serious bodily harm to him or herself or others in the near future based on recent behavior.[38]

An involuntary examination may be initiated by:

- A court entering an ex parte order stating that a person appears to meet the criteria for involuntary examination, based on sworn testimony;[39] or
- A physician, clinical psychologist, psychiatric nurse, an autonomous advanced practice registered nurse, mental health counselor, marriage and family therapist, or clinical social worker executing a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination, including a statement of the professional's observations supporting such conclusion.[40]

Unlike the discretion afforded courts and medical professionals, current law mandates that law enforcement officers must initiate an involuntary examination of a person who appears to meet the criteria by taking him or her into custody and delivering or having the person delivered to a receiving facility for examination.[41] When transporting, officers are currently required to restrain the person in the least restrictive manner available and appropriate under the circumstances.[42] The officer must execute a written report detailing the circumstances under which the person was taken into custody, and the report must be made a part of the patient's clinical record. The report must also include all emergency

[36] S. 394.875, F.S.
[37] DCF, *Agency Bill Analysis,* (2023), on file with the House Children, Families, and Seniors Subcommittee.

[38] S. 394.463(1), F.S.
[39] S. 394.463(2)(a)1., F.S. The order of the court must be made a part of the patient's clinical record.
[40] S. 394.463(2)(a)3., F.S. The report and certificate shall be made a part of the patient's clinical record.
[41] S. 394.463(2)(a)2., F.S. The officer must execute a written report detailing the circumstances under which the person was taken into custody, and the report must be made a part of the patient's clinical record.
[42] *Id.*

contact information for the person that is readily accessible to the law enforcement officer, including information available through electronic databases maintained by the Department of Law Enforcement or by the Department of Highway Safety and Motor Vehicles.

Involuntary patients must be taken to either a public or a private facility that has been designated by DCF as a Baker Act receiving facility. Under the Baker Act, a receiving facility has up to 72 hours to examine an involuntary patient.[43] During that 72 hours, an involuntary patient must be examined by a physician or a clinical psychologist, or by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist at a facility, to determine if the criteria for involuntary services are met.[44] Current law does not indicate when the examination period begins for an involuntary patient. However, if the patient is a minor, a receiving facility must initiate the examination within 12 hours of arrival.[45]

Within that 72-hour examination period, one of the following must happen:[46]

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will assume custody;
- The patient must be released for voluntary outpatient treatment;
- The patient, unless charged with a crime, must give express and informed consent to be placed and admitted as a voluntary patient; or
- A petition for involuntary placement must be filed in circuit court for involuntary outpatient or inpatient treatment.

If the patient's 72-hour examination period ends on a weekend or holiday, and the receiving facility:[47]

- Intends to file a petition for involuntary services, the patient may be held at a receiving facility through the next working day and the petition for involuntary services must be filed no later than such date. If the receiving facility fails to file a petition at the close of the next working day, the patient must be released from the receiving facility upon documented approval from a psychiatrist or a clinical psychologist.
- Does not intend to file a petition for involuntary services, the receiving facility may postpone release of a patient until the next working day if a qualified professional documents that adequate discharge planning and procedures and approval from a psychiatrist or a clinical psychologist are not possible until the next working day.

The receiving facility may not release an involuntary examination patient without the documented approval of a psychiatrist or a clinical psychologist. However, if the receiving facility is owned or operated by a hospital or health system, or a nationally accredited community mental health center, a psychiatric nurse performing under the framework of an established protocol with a psychiatrist is permitted to release a Baker Act patient in specified community settings. However, a psychiatric nurse is prohibited from approving a patient's release if the involuntary examination was initiated by a psychiatrist unless the release is approved by the initiating psychiatrist.[48]

Current Situation - Baker Act Reporting Requirements

Section 394.461(4), F.S., directs facilities designated as public receiving or treatment facilities to report certain data to DCF on an annual basis. DCF must issue an annual report based on the data received, including individual facility data and statewide totals. The report is submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

[43] S. 394.463(2)(g), F.S.
[44] S. 394.463(2)(f), F.S.
[45] S. 394.463(2)(g), F.S.
[46] *Id*.
[47] S. 394.463(2)(g)4., F.S.
[48] S. 394.463(2)(f), F.S.

Section 394.463(2)(e), F.S., requires DCF to prepare and provide annual reports to the agency itself, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives. The annual reports analyze data obtained from ex parte orders, involuntary orders issued under the Baker Act, professional certificates, law enforcement officers' reports, and reports relating to the transportation of patients.[49] Current law does not provide a due date for the report.

Section 394.463(4), F.S., also requires DCF to submit reports detailing findings on repeated involuntary Baker Act examinations of minors using data submitted by receiving facilities.[50] DCF must analyze the data on both the initiation of involuntary examinations of children and the initiation of involuntary examinations of students who are removed from a school; identify any patterns or trends and cases in which involuntary examinations are repeatedly initiated on the same child or student; study root causes for such patterns, trends, or repeated involuntary examinations; and make recommendations to encourage the use of alternatives to eliminate inappropriate initiations of such examinations. The report must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 of each odd-numbered year.

Effect of Bill – Involuntary Examination

One of the criteria for involuntary examination requires that the person to be likely to refuse to care for him or herself to the extent that such refusal threatens to cause substantial harm to their well-being and such harm is unavoidable through the help of "willing" family members or friends. The bill amends this criteria to add that such family members or friends being considered for offering help also be able and responsible.

The bill authorizes, rather than requires as in current law, law enforcement officers to transport those who appear to meet Baker Act criteria to receiving facilities. This gives law enforcement officers the same discretion that courts and medical professionals have to initiate an involuntary examination. By removing the legal mandate to initiate an involuntary examination, there could be a reduction in involuntary examinations, especially in cases involving minors and schools. This may lead to greater use of alternatives to involuntary examinations, such as mobile response teams.

The bill removes the restriction prohibiting a psychiatric nurse from approving a patient's release from involuntary examination when the examination was initiated by a psychiatrist.

Effect of Bill – Receiving Facilities

The bill:

- Specifies that the 72 hour Baker Act examination period begins when a patient arrives at the receiving facility.
- Prohibits a receiving facility from releasing a patient from involuntary examination outside of the facility's ordinary business hours if the 72 hour examination period ends on a weekend or holiday.
- Removes facility bed caps for CSUs. This change will allow receiving facilities to expand to meet the need created by population growth, receiving facility closures, and longer lengths of stay.

The bill requires the court to dismiss a petition for involuntary services if the petitioner fails to file the petition within the 72 hour Baker Act examination period.

[49] S. 394.463(2)(e). F.S.
[50] S. 394.463(4), F.S.

Effect of Bill - Baker Act Reports

The bill amends the reporting requirements in s. 394.461, F.S., to require DCF to publish the report on designated public receiving and treatment facility data on the department's website.

The bill amends s. 394.463(2)(e), F.S., to require DCF to publish the annual reports analyzing ex parte, involuntary outpatient services, and involuntary inpatient placement orders, and the professional certificates, law enforcement officers' reports, and reports relating to the transportation of patients on the agency's website by November 30 of each year and eliminates the current requirement for DCF to provide annual reports to the department itself.

The bill also amends s. 394.463(4), F.S., to requires DCF and the Agency for Health Care Administration to analyze service data collected on individuals who are high utilizers of crisis stabilization services provided in designated receiving facilities and identify patterns or trends and make recommendations to decrease avoidable admissions. The bill permits recommendations to be addressed in contracts with managing entities or with Medicaid managed medical assistance plans.

Involuntary Services

Involuntary services are defined as court-ordered outpatient services or inpatient placement for mental health treatment.[51]

Current Situation – Involuntary Outpatient Services

A person may be ordered to involuntary outpatient services upon a finding of the court that by clear and convincing evidence, all of the following factors are met:[52]

- The person is 18 years of age or older;
- The person has a mental illness;
- The person is unlikely to survive safely in the community without supervision, based on a clinical determination;
- The person has a history of lack of compliance with treatment for mental illness;
- The person has, within the immediately preceding 36 months:
    - Been involuntarily admitted to a receiving or treatment facility, or has received mental health services in a forensic or correctional facility, at least twice; or
    - Engaged in one or more acts of serious violent behavior toward self or others, or attempts at serious bodily harm to himself or herself or others;
- The person is, as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment plan and either he or she has refused voluntary placement for treatment or he or she is unable to determine for himself or herself whether placement is necessary;
- The person is in need of involuntary outpatient services in order to prevent a relapse or deterioration that would be likely to result in serious bodily harm to himself or herself or others, or a substantial harm to his or her well-being;[53]
- It is likely that the person will benefit from involuntary outpatient services; and
- All available, less restrictive alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate or unavailable.

A petition for involuntary outpatient services may be filed by the administrator of either a receiving facility or a treatment facility. [54] The petition must allege and sustain each of the criterion for involuntary

[51] S. 394.455(23), F. S.
[52] S. 394.4655(2), F.S.
[53] This factor is evaluated based on the person's treatment history and current behavior.
[54] S. 394.4655(4)(a), F.S.

outpatient services and be accompanied by a certificate recommending involuntary outpatient services by a qualified professional and a proposed treatment plan.[55]

The petition for involuntary outpatient services must be filed in the county where the patient is located. However, if the patient is being placed from a state treatment facility, the petition must be filed in the county where the patient will reside.[56] The petition must be based on the opinion of two professionals who have personally examined the individual within the preceding 72 hours.[57] When the petition has been filed, the clerk of the court must provide copies of the petition and the proposed treatment plan to DCF, the managing entity, the patient, the patient's guardian or representative, the state attorney, and the public defender or the patient's private counsel.[58]

Once a petition for involuntary outpatient services has been filed with the court, the court must hold a hearing within five business days, unless a continuance is granted.[59] Under current law, the patient is entitled to a maximum four-week continuance, with the concurrence of their counsel.[60] The court may waive a patient's presence from all or any portion of the hearing if it finds the patient's presence is not in the patient's best interests and the patient's counsel does not object.[61] Otherwise, the patient must be present. The state attorney for the circuit in which the patient is located represents the state, rather than the petitioner, as the real party in interest in the proceeding.[62] The court must appoint the public defender to represent the person who is the subject of the petition, unless that person is otherwise represented by counsel.[63]

At the hearing on involuntary outpatient services, the court must consider testimony and evidence regarding the patient's competence to consent to treatment; if the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate.[64] If the court concludes that the patient meets the criteria for involuntary outpatient services, it must issue an order for those services.[65] The order must specify the duration of involuntary outpatient services, which may be up to 90 days, and the nature and extent of the patient's mental illness.[66] The order of the court and the treatment plan are to be made part of the patient's clinical record.[67]

If, at any time before the conclusion of the initial hearing on involuntary outpatient services, it appears to the court that the person does not meet the criteria for involuntary outpatient services, but instead meets the criteria for involuntary inpatient placement, the court may order the person admitted for involuntary inpatient examination.[68]

Current Situation - Involuntary Inpatient Placement

A person may be placed in involuntary inpatient placement for treatment upon a finding of the court by clear and convincing evidence that: [69]

- He or she is mentally ill and because of his or her mental illness:

[55] S. 394.4655(4)(b), F.S.
[56] S. 394.4655(4)(c), F.S.
[57] S. 394.4655(3)(a)1., F.S.
[58] *Id*.
[59] S. 394.4655(7)(a)1., F.S.
[60] S. 394.4655(7)(a)1., F.S.
[61] S. 394. 4655(7)(a)1, F.S.
[62] *Id*.
[63] S. 394.4655(5), F.S. This must be done within one court working day of filing of the petition.
[64] S. 394.4655(7)(d), F.S.
[65] S. 394.4655(7)(b)1., F.S.
[66] *Id*.
[67] *Id*.
[68] S. 394.4655(7)(c), F.S. Additionally, if the person instead meets the criteria for involuntary assessment, protective custody, or involuntary admission pursuant to the Marchman Act, the court may order the person to be admitted for involuntary assessment pursuant to the statutory requirements of the Marchman Act.
[69] S. 394.467(1), F.S.

    - He or she has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement or is unable to determine for himself or herself whether placement is necessary; and
    - He or she is incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services; and
    - Without treatment, is likely to suffer from neglect or refuse to care for himself or herself; and
    - Such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; or
    - There is a substantial likelihood that in the near future he or she will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; and
- All available less restrictive treatment alternatives which would offer an opportunity for improvement of his or her condition have been judged to be inappropriate.

The administrator of the receiving or treatment facility that is retaining a patient for involuntary inpatient treatment must file a petition for involuntary inpatient placement in the court in the county where the patient is located.[70] The petition must be based on the opinions of two professionals who have personally examined the individual within the past 72 hours.[71] Upon filing, the clerk of the court must provide copies to DCF, the patient, the patient's guardian or representative, and the state attorney and public defender of the judicial circuit in which the patient is located.[72] Unlike the procedures for involuntary outpatient services, current law does not require a proposed treatment plan to be filed with the petition for involuntary inpatient placement.

Current Situation - Involuntary Inpatient Placement Hearing

The court proceedings for involuntary inpatient placement closely mirror those for involuntary outpatient services.[73] However, the laws governing involuntary inpatient placement are silent regarding the court's order becoming part of the patient's clinical record. Once a petition for involuntary inpatient placement has been filed, the court must hold a hearing within five business days in the county or facility where the patient is located, unless a continuance is granted.[74] Presently, only the patient is entitled to a maximum four-week continuance, with the concurrence of their counsel.[75] Similar to the procedures for involuntary outpatient services, the court may waive a patient's presence from all or any portion of the hearing if it finds the patient's presence is not in their best interests, and the patient's counsel does not object.[76] Otherwise, the patient must be present.

Current law permits the court to appoint a magistrate to preside at the hearing, in general.[77] At the hearing, the state attorney must represent the state, rather than the petitioning facility administrator, as the real party in interest in the proceeding.[78] Although the state attorney has the evidentiary burden in Baker Act cases, current law does not require a facility to make the patient's clinical records available to the state attorney so that the state can evaluate and prepare its case before the hearing. Additionally, there is no requirement that the court allow testimony from family members regarding the patient's prior history and how it relates to their current condition.

If, at any time before the conclusion of the hearing, it appears to the court that the person does not meet the criteria for involuntary inpatient placement, but rather meets the criteria for involuntary outpatient services, the court may order the person evaluated for involuntary outpatient services.[79]

[70] S. 394.467(2) and (3), F.S.
[71] S. 394.467(2), F.S.
[72] S. 394.467(3), F.S.
[73] *See* s. 394.467(6) and (7), F.S.
[74] S. 394.467(6), F.S.
[75] S. 394.467(5), F.S.
[76] S. 394.467(6), F.S.
[77] *Id*.
[78] *Id*.
[79] S. 394.467(6)(c), F.S.

If the court concludes that the patient meets the criteria for involuntary inpatient placement, it has discretion to issue an order for involuntary inpatient services at a receiving facility for up to 90 days or in a state treatment facility[80] for up to six months.[81]

Current law prohibits a state treatment facility from admitting a civil patient unless he or she has undergone a transfer evaluation, the process by which the patient is evaluated for appropriateness of placement in a treatment facility.[82] Current law also requires the court to receive and consider the transfer evaluation's documented information before the involuntary placement hearing is held, but it does not specify that the evaluator must testify at the hearing in order for the court to consider any substantive information within it.[83] Under Florida law, if a court were to consider substantive information in the transfer evaluation without the evaluator testifying at the hearing, it would be a violation of the hearsay rule contained in Florida's Evidence Code.[84]

Current law requires the court's order to specify the nature and extent of the patient's illness and prohibits the court from ordering individuals with traumatic brain injuries or dementia who lack a co-occurring mental illness to be involuntarily committed to a state treatment facility.[85] However, there is currently no prohibition against involuntarily committing individuals with developmental disabilities who also lack a co-occurring mental illness to these facilities.

Current Situation - Remote Hearings

In response to the COVID-19 pandemic, on March 21, 2020, the Chief Justice of the Florida Supreme Court issued Supreme Court of Florida Administrative Order AOSC20-23, Amendment 2, authorizing courts to conduct hearings remotely. However, on January 8, 2022, Supreme Court of Florida Administrative Order AOSC21-17 was issued, requiring in-person hearings unless the facility where the individual is located is closed to hearing participants due to the facility's COVID-19 protocols or the individual waives the right to physical presence at the hearing.

Current Situation - Discharge Planning

Under current law, before a patient is released from a receiving or treatment facility, certain discharge planning procedures must be followed. Each facility must have discharge planning and procedures that include and document consideration of, at a minimum:

- follow-up behavioral health appointments,
- information on how to obtain prescribed medications, and
- information pertaining to available living arrangements, transportation, and recovery support services.[86]

Additionally, for minors, information related to the Suicide and Crisis Lifeline must be provided.

Effect of Bill - Involuntary Services

The process and criteria for involuntary outpatient services and involuntary inpatient placement are very similar. The bill combines these statutes and creates an "Involuntary Services" statute to remove duplicative functions, simplify procedures and to create a more streamlined and patient-tailored process

[80] A treatment facility is any state-owned, state-operated, or state-supported hospital, center, or clinic designated by DCF to provide mentally ill patients treatment and hospitalization that extends beyond that provided for by a receiving facility. Treatment facilities also include federal government facilities and any private facility designated by DCF. Only VA patients may be treated in federal facilities S. 394.455(48), F.S. A receiving facility is any public or private facility or hospital designated by DCF to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate service provider. County jails are not considered receiving facilities. S. 394.455(40), F.S.
[81] S. 394.467(6)(b), F.S.
[82] S. 394.461(2), F.S.
[83] *Id*.
[84] S. 90.802, F.S. The basic hearsay rule states that courts cannot rely on out-of-court, unsworn statements (written or spoken) as proof of the matter asserted in the statement.
[85] S. 394.467(6), F.S.
[86] S. 394.468, F.S.

for committing individuals to involuntary services. The new statute largely maintains current law for involuntary outpatient services and involuntary inpatient placement. However, the bill does make some substantive changes to the process, which are discussed below.

The bill allows those under age 18 access to all involuntary services. This will increase access to services, as current law required the individual be 18 or older for involuntary outpatient services.

The bill removes the involuntary outpatient services 36-month involuntary commitment criteria which required the person to have been committed to a receiving or treatment facility or received mental health services in a forensic or correctional facility within the preceding 36-month period.

The bill creates a single petition process for involuntary services. This gives the court more flexibility and authority to order a person to either involuntary outpatient services, involuntary inpatient placement, or a combination of both. The bill also creates a single certificate for petitioning for involuntary services. The bill requires a court order for both involuntary outpatient services and involuntary inpatient placement be included in the patient's clinical record.

The bill authorizes civil patients to be admitted to state treatment facilities without undergoing a transfer evaluation. This could result in a greater number of admissions to state treatment facilities. The bill also removes the requirement that the court receive and consider a transfer evaluation before a hearing for involuntary placement. Instead, it allows the state attorney to establish that a transfer evaluation was performed and that the document was properly executed by providing the court with a copy of the transfer evaluation before the close of the state's case. This change will likely improve court efficiencies as hearings will not need to be delayed because a transfer evaluation is unavailable before the hearing. The bill codifies current hearsay rules by specifying that the court may not consider substantive information in the transfer evaluation unless the evaluator testifies at the hearing.

The bill prohibits the court from ordering an individual with a developmental disability as defined under s. 393.063, F.S., who lacks a co-occurring mental illness, into a state treatment facility. This expands current law which prohibits such orders for persons with traumatic brain injury or dementia and ensures that limited state treatment facility beds remain for individuals who are appropriate for treatment.

The bill makes technical and conforming changes and updates cross references.

Effect of Bill - Involuntary Services Hearing

The bill expands the grounds under which a patient's presence at the hearing may be waived. Specifically, the bill authorizes the court to waive a patient's presence if the patient knowingly, intelligently and voluntarily waives the right to be present. However, the bill maintains the requirement that the patient's counsel have no objections for the waiver to take effect.

The bill states that magistrates may preside over hearings for the petition for involuntary inpatient placement and ancillary proceedings. The bill also allows the state attorney to have access to records to litigate at the hearing. However, the bill requires that the records remain confidential and may not be used for criminal investigation or prosecution purposes or any purpose other than civil commitment. Additionally, the bill requires the court to allow testimony deemed relevant from family members regarding the patient's prior history and how it relates to their current condition and from other specified individuals, including medical professions, which aligns this provision with the Marchman Act.

Effect of Bill - Remote Hearing

The bill allows for all witnesses to appear and testify remotely under oath at a hearing via audio-video teleconference, upon a showing of good cause and if all parties consent. The bill further requires any witness appearing remotely to provide all parties with all relevant documents by the close of business the day prior to the hearing.

Effect of Bill - Discharge Planning

The bill amends the discharge procedures to require receiving and treatment facilities to include in their discharge planning and procedures documentation of the patient's needs and actions to address those needs. The bill requires the facilities to refer patients being discharged to care coordination services if the patient meets certain criteria and to recovery support opportunities through coordinated specialty care programs, including, but not limited to, connection to a peer specialist.

During the discharge transition process, the bill requires the receiving facility to coordinate face-to-face or through electronic means, while in the presence of the patient, discharge plans to a less restrictive community behavioral health provider, a peer specialist, a case manager, or a care coordination service.

To further enhance the discharge planning process, the bill requires receiving facilities to implement policies and procedures outlining strategies for how they will comprehensively address the needs of the individuals who demonstrate a high utilization of receiving facility services to avoid or reduce future use of crisis stabilization services. More specifically, the bill requires the provider to develop and include in discharge paperwork a personalized crisis prevention plan for the patient that identifies stressors, early warning signs of symptoms, and strategies to manage crisis.

The bill requires receiving facilities to have a staff member engage a family member, legal guardian, legal representative, or a natural support of the patient's in discharge planning and meet with them face to face or through other electronic means to review the discharge plan. Further, the bill provides direction to initiate a referral to an appropriate provider to continue care for instances where certain levels of care are not immediately available at discharge.

Health Care Practitioners

Current Situation

Current law authorizes an advanced practice registered nurse (APRN) who meets certain criteria to engage in autonomous practice and primary care practice without a supervisory protocol or supervision by a physician.[87] Physician assistants (PAs) are authorized to practice under the supervision of a physician with whom they have a working relationship with and may perform medical services that are delegated to them that are within the supervising physician's scope of practice.[88]

Chapters 394 and 916, F.S., only authorize physicians to perform certain clinical services within mental health facilities and programs. Many of these services, often relating the physical health care needs of the patients receiving psychiatric care, can lawfully be performed by APRNs and PAs outside of mental health facilities and programs. Recent changes to chapters 458 and 464, F.S., have allowed these medical practitioners more flexibility to work within their full scope of practice. However, these changes have not been made to chapters 394 and 916, F.S., governing mental health services in the community and in the criminal justice system. This has resulted in unnecessary limits to the scope of practice for APRNs and PAs under these chapters.

Effect of Bill – Health Care Practitioners

The bill amends s. 394.455, F.S., to define the term "licensed medical practitioner" to mean a medical provider who is a physician licensed under chapters 458 or 459, an advanced practiced registered nurse, or a physician assistant who works under the supervision of a licensed physician and an established protocol pursuant to ss. 458.347, 458.348, 464.003, and 464.0123, F.S. This will allow additional licensed medical providers recognized by the DOH to provide clinical services within the current scope of practice for APRNs as defined in chapter 464, F.S. and PAs in accordance with s. 458.347, F.S.

[87] S. 464.0123, F.S.
[88] S. 458.347, F.S.

The bill makes necessary conforming changes in chapters 394 and 916 due to the statutory changes made by the bill.

Current Situation - Background Screening for Mental Health Care Personnel

Chapter 435, F.S., establishes standards procedures and requirements for criminal history background screening of prospective employees. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,[89] and may include criminal records checks through local law enforcement agencies.[90] A level 2 background screening includes, but, is not limited to, fingerprinting for statewide criminal history records checks through FDLE and national criminal history checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies.[91]

Mental health personnel are required to complete level 2 background screening. Mental health personnel include all program directors, professional clinicians, staff members, and volunteers working in public or private mental health programs and facilities who have direct contact with individuals held for examination or admitted for mental health treatment.[92]

Section 456.0135, F.S., requires physicians, physician assistants, nurses, and other specified medical professionals to undergo a level 2 background screening as part of the licensure process.[93] The appropriate regulatory board reviews the background screening results to determine if the applicant or licensee has any offenses that would disqualify them from state licensure. A health care practitioner must also complete an additional level 2 background check as a condition of employment in mental health programs and facilities.

Effect of the Bill - Background Screening for Mental Health Care Personnel

The bill exempts licensed physicians and nurses who undergo background screening at initial licensure and licensure renewal from the background screening requirements for employment for mental health and substance use programs when providing service within their scope of practice. Currently, these licensed medical professionals must undergo level 2 screening once for licensure and then again for employment purposes, which can cause delays for onboarding personnel. The bill will allow background screening for licensure of these medical professionals to satisfy employment screening when providing a service within their scope of practice.

Substance Abuse

Approximately, 48.7 million people in the U.S. aged 12 and older had a substance use disorder (SUD).[94] It is estimated that 1.1 million Floridians have a substance use disorder.[95] Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[96] Abuse can result when a person uses a substance[97] in a way that is not intended or recommended, or because they are using more than prescribed. Drug abuse can cause individuals to experience one or

[89] The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. The website is available at https://www.nsopw.gov/ (last visited January 4, 2024).
[90] S. 435.03(1), F.S.
[91] S. 435.04, F.S.
[92] S. 394.4572(1)(a), F.S.
[93] S. 456.0135, F.S.
[94] SAMHSA, *key Substance Use and Mental Health Indicators in the United States: Results from the 2022 National Survey on Drug Use and Health*, available at https://www.samhsa.gov/data/sites/default/files/reports/rpt42731/2022-nsduh-nnr.pdf, (last visited on January 5, 2024).
[95] Substance Abuse and Mental Health Administration, *Behavioral Health Barometer, Florida, Volume 6,* (2020), https://www.samhsa.gov/data/sites/default/files/reports/rpt32826/Florida-BH-Barometer_Volume6.pdf (last visited January 5, 2024).
[96] *World Health Organization, Substance Abuse*, https://www.afro.who.int/health-topics/substance-abuse (last visited January 5, 2024).
[97] Substances can include alcohol and other drugs (illegal or not), as well as substances that are not drugs at all, such as coffee and cigarettes.

more symptoms of another mental illness or even trigger new symptoms.[98] Additionally, individuals with mental illness may abuse drugs as a form of self-medication. Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance use disorder.[99]

A substance use disorder is determined by specified criteria included in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). According to the DSM-5, a SUD diagnosis is based on evidence of impaired control, social impairment, risky use, and pharmacological indicators (tolerance and withdrawal). Substance use disorders occur when the chronic use of alcohol or drugs cause significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[100] Symptoms can range from moderate to severe, with addiction being the most severe form of SUDs.[101] Brain imaging studies of persons with addiction show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.[102] The most common substance use disorders in the U.S. are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.[103]

According to the National Institute on Mental Health, a SUD is a mental disorder that affects a person's brain and behavior, leading to a person's inability to control their use of substances such as legal or illegal drugs, alcohol, or medications.[104] SUDs may co-occur with other mental disorders.[105] Approximately 19.4 million adults in the U.S. have co-occurring disorders.[106] Examples of co-occurring disorders include the combinations of major depression with cocaine addiction, alcohol addiction with panic disorder, alcoholism and drug addiction with schizophrenia, and borderline personality disorder with episodic drug abuse.[107]

The Marchman Act

In the early 1970s, the federal government furnished grants for states "to develop continuums of care for individuals and families affected by substance abuse."[108] The grants provided separate funding streams and requirements for alcoholism and drug abuse.[109] In response, the Florida Legislature enacted ch. 396, F.S., (alcohol) and ch. 397, F.S. (drug abuse).[110] In 1993, legislation combined chapters 396 and 397, F.S., into a single law, entitled the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).[111] The Marchman Act supports substance abuse prevention and remediation through a system of prevention, detoxification, and treatment services to assist individuals at risk for or affected by substance abuse.

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[98] Robinson, L, Smith, M, and Segal, J, (October 2023). *Dual Diagnosis: Substance Abuse and Mental Health*, HealthGuide.org, available at https://www.helpguide.org/articles/addictions/substance-abuse-and-mental-health.htm#:~:text=Substance%20abuse%20may%20sharply%20increase,symptoms%20and%20delaying%20your%20recovery. (last visited January 5, 2024).
[99] National Institute on Drug Abuse, *Drugs, Brains, and Behavior: The Science of Addiction*, https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction (last visited January 5, 2024).
[100] Substance Abuse and Mental Health Services Administration, *Mental Health and Substance Use Disorders,* http://www.samhsa.gov/disorders/substance-use (last visited January 5, 2024).
[101] National Institute of Mental Health, *Substance Use and Co-Occurring Mental Disorders*, https://www.nimh.nih.gov/health/topics/substance-use-and-mental-health (last visited January 5, 2024).
[102] National Institute on Drug Abuse, Drugs, Brains, and Behavior: The Science of Addiction, https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction (last visited January 5, 2024).
[103] The Rural Health Information Hub, *Defining Substance Abuse and Substance Use Disorders*, available at https://www.ruralhealthinfo.org/toolkits/substance-abuse/1/definition (last visited January 5, 2024).
[104] National Institute of Mental Health, Substance Use and Co-Occurring Mental Disorders, https://www.nimh.nih.gov/health/topics/substance-use-and-mental-health (last visited January 5, 2024).
[105] *Id*.
[106] Substance Abuse and Mental Health Services Administration, *Key Substance Use and Mental Health Indicators in the U.S.: Results from the 2021 National Survey on Drug Use and Health,* (December 2022), https://www.samhsa.gov/data/sites/default/files/reports/rpt39443/2021NSDUHFFRRev010323.pdf, (last visited January 5, 2024).
[107] *Id*.
[108] Darran Duchene & Patrick Lane, *Fundamentals of the Marchman Act,* Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Program, *available at* http://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/ (last visited January 5, 2024).
[109] *Id.*
[110] *Id*.
[111] Ch. 93-39, Laws of Fla., codified in Chapter 397, F.S. Reverend Hal S. Marchman was an advocate for persons who suffer from alcoholism and drug abuse.

An individual may receive services under the Marchman Act through either voluntary[112] or involuntary admission.[113] The Marchman Act establishes a variety of methods under which substance abuse assessment, stabilization, and treatment can be obtained on an involuntary basis. The Marchman Act encourages individuals to seek services on a voluntary basis within the existing financial and space capacities of a service provider.[114] However, denial of addiction is a prevalent symptom of a SUD, creating a barrier to timely intervention and effective treatment.[115] As a result, a third party must typically provide a person the intervention needed to receive SUD treatment.[116]

Rights of Individuals

Current Situation

The Marchman Act protects the rights of individuals receiving substance abuse services in Florida, including, but not limited to the right to receive quality treatment at a state-funded facility, regardless of ability to pay and the right to counsel.[117] Under the Marchman Act, an individual must be informed that he or she has the right to be represented by counsel in any involuntary proceeding for assessment, stabilization, or treatment and that he or she may apply immediately to the court to have an attorney appointed if he or she cannot afford one. If the individual is a minor, the minor's parent, legal guardian, or legal custodian may apply to the court to have an attorney appointed.[118]

Effect of Bill – Rights of Individuals

The bill amends s. 397.501, F.S., to require each individual receiving substance abuse services to be informed that the individual has the right to be represented by counsel in any judicial proceeding for involuntary substance abuse treatment.

Involuntary Admissions

Current Situation - Definitions

There are five involuntary admission procedures that can be broken down into two categories: non-court involved admissions and court involved admissions. Regardless of the nature of the proceedings, an individual meets the criteria for an involuntary admission under the Marchman Act when there is good faith reason to believe the individual is substance abuse impaired and, because of such impairment:[119]

- Has lost the power of self-control with respect to substance use; and
- The person's judgment has been so impaired because of substance abuse that he or she is incapable of appreciating the need for substance abuse services and of making a rational decision in regard to substance abuse services; or
- Without care or treatment, is likely to suffer from neglect or refuse to care for him or herself to the extent that such refusal threatens to cause substantial harm to their well-being and such harm is unavoidable through help of willing family members or friends; or

[112] *See* s. 397.601, F.S.
[113] *See* ss. 397.675 – 397.6978, F.S.
[114] *See* s. 397.601(1) and (2), F.S. An individual who wishes to enter treatment may apply to a service provider for voluntary admission. Within the financial and space capabilities of the service provider, the individual must be admitted to treatment when sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider.
[115] SAMHSA, *key Substance Use and Mental Health Indicators in the United States: Results from the 2022 National Survey on Drug Use and Health*, available at https://www.samhsa.gov/data/sites/default/files/reports/rpt42731/2022-nsduh-nnr.pdf, (last visited on January 5, 2024).
[116] *Id*.
[117] S. 397.501, F.S.
[118] *Id*.
[119] S. 397.675, F.S.

- The person has either inflicted, attempted or threatened to inflict, or unless admitted, is likely to inflict physical harm on himself or herself or another.

Under the Marchman Act, to be "impaired" or "substance abuse impaired", a person must have a condition involving the use alcoholic beverages or any psychoactive or mood-altering substance, in a way that induces mental, emotional, or physical problems and causes socially dysfunctional behavior.[120] Examples of psychoactive or mood-altering substances include alcohol and illicit or prescription drugs, however, only alcohol is explicitly named under current law. Although having a substance use disorder often leads to being impaired or substance abuse impaired, it is not presently included in the "impaired" or "substance abuse impaired" definition.

Current Situation - Unlawful activities relating to assessment and treatment

It is unlawful to give false information for the purpose of obtaining emergency or other involuntary admission for assessment and treatment. It is also, unlawful to cause, conspire, or assist with conspiring: to have a person involuntarily admitted without a reason to believe the person is actually impaired; or to deny a person the right to treatment.[121]

Effect of Bill – Definitions

The bill updates and expands the definition of "impaired" or "substance abuse impaired" to include having a substance use disorder or a condition involving the use of illicit or prescription drugs. This change reflects current DSM-5 criteria and takes into consideration the use of drugs other than alcohol by substance abuse impaired individuals.

This change will likely grant courts more latitude in who may be ordered for involuntary treatment.

Effect of Bill - Unlawful activities relating to assessment and treatment

The bill amends s. 397.581, F.S., to make it unlawful for a person to *knowingly and willfully* (as opposed to just *willfully* under current law):

- Furnish false information for the purpose of obtaining emergency or other involuntary admission of another person;
- Cause or otherwise secure, or conspire with or assist another to cause or secure, any emergency or other involuntary procedure of another person under false pretenses; or
- Cause, or conspire with or assist another to cause, without lawful justification, the denial to any person of the right to involuntary procedures under chapter 397.

The bill expands the scope of law and makes it not only unlawful for an individual to knowingly and willfully provide false information, or to conspire or assist with conspiring, to obtain involuntary admission for his or herself, but also makes it unlawful for the individual to commit such acts against another person.

Current Situation - Non-Court Involved Involuntary Admissions

The three types of non-court procedures for involuntary admission for substance abuse treatment under the Marchman Act are:

- **Protective Custody**: This procedure is used by law enforcement officers when an individual is substance-impaired or intoxicated in public and is brought to the attention of the officer.[122]

[120] S. 397.311, F.S.
[121] S. 397.581, F.S. Committing an unlawful activity relating to assessment and treatment is misdemeanor of the first degree, punishable by law and by a fine not exceeding $5,000.
[122] Ss. 397.6771 – 397.6772, F.S. A law enforcement officer may take the individual to his or her residence, to a hospital, a detoxification center, or addiction receiving facility, or in certain circumstances, to jail. Minors, however, cannot be take n to jail.

- **Emergency Admission**: This procedure permits an individual who appears to meet the criteria for involuntary admission to be admitted to a hospital, an addiction receiving facility, or a detoxification facility for emergency assessment and stabilization. Individuals admitted for involuntary assessment and stabilization under this provision must have a physician's certificate for admission, demonstrating the need for this type of placement and recommending the least restrictive type of service that is appropriate to the needs of the individual.[123]
- **Alternative Involuntary Assessment for Minors**: This procedure provides a way for a parent, legal guardian, or legal custodian to have a minor admitted to an addiction receiving facility to assess the minor's need for treatment by a qualified professional.[124]

Court Involved Involuntary Admissions

Current Situation – General Provisions

Under current law, courts have jurisdiction over involuntary assessment and stabilization, which provides for short-term court-ordered substance abuse services to assess and stabilize an individual, and involuntary services,[125] which provides for long-term court-ordered substance abuse treatment. Both types of involuntary admissions involve filing a petition with the clerk of court in the county where the person is located, which may be different from where he or she resides. Current law permits the chief judge in Marchman Act cases to appoint a general or special magistrate to preside over all or part of the proceedings. Although this may include ancillary matters, such as writs of habeas corpus issued under the Marchman Act, this is not explicitly stated in current law.

Effect of Bill – Court Involved Involuntary Admissions

The bill revises language to specify that courts have jurisdiction over involuntary treatment petitions, rather than involuntary assessment and stabilization petitions. The bill also specifies that petitions may be filed with the clerk of court in the county where the subject of the petition resides instead of where he or she is located. The bill specifies that the chief judge may appoint a general or special magistrate to preside over all, or part, of the proceedings related to the petition or any ancillary matters, including but not limited to, writs of habeas corpus issued under the Marchman Act, rather than just over the proceedings.

Current Situation - Involuntary Assessment and Stabilization

A petition for involuntary assessment and stabilization must contain identifying information for all parties and attorneys and facts necessary to support the petitioner's belief that the respondent is in need of involuntary assessment and stabilization.[126] Once the petition is filed, the court issues a summons to the respondent and the court must schedule a hearing to take place within 10 days, or can issue an ex parte order immediately.[127] The court may appoint a magistrate to preside over all or part of the proceedings.[128]

After hearing all relevant testimony, the court determines whether the respondent meets the criteria for involuntary assessment and stabilization and must immediately enter an order that either dismisses the petition or authorizes the involuntary assessment and stabilization of the respondent.[129]

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[123] S. 397.679, F.S.
[124] S. 397.6798, F.S.
[125] The term "involuntary services" means "an array of behavioral health services that may be ordered by the court for a person with substance abuse impairment or co-occurring substance abuse impairment and mental health disorders." S. 397.311(23), F.S. SB 12 (2016), ch. 2016-241, Laws of Fla., renamed "involuntary treatment" as "involuntary services" in ss. 397.695 – 397.6987, F.S., however some sections of the Marchman Act continue to refer to "involuntary treatment." For consistency, this analysis will use the term involuntary services.
[126] S. 397.6951, F.S.
[127] S. 397.6815, F.S. Under the ex parte order, the court may order a law enforcement officer or other designated agent of the court to take the respondent into custody and deliver him or her to the nearest appropriate licensed service provider.
[128] S. 397.681, F.S., F.S.
[129] S. 397.6818, F.S.

If the court determines the respondent meets the criteria, it may order him or her to be admitted for a period of 5 days[130] to a hospital, licensed detoxification facility, or addictions receiving facility, for involuntary assessment and stabilization.[131] During that time, an assessment is completed on the individual.[132] The written assessment is sent to the court. Once the written assessment is received, the court must either: [133]

- Release the individual and, if appropriate, refer the individual to another treatment facility or service provider, or to community services;
- Allow the individual to remain voluntarily at the licensed provider; or
- Hold the individual if a petition for involuntary services has been initiated.

Effect of the Bill - Involuntary Assessment and Stabilization

The bill repeals all provisions relating to court-ordered, involuntary assessments and stabilization under the Marchman Act and consolidates them into a new involuntary treatment process under ss. 397.6951-397.6975, F.S.

Current Situation - Involuntary Services

Involuntary services, synonymous with involuntary treatment, allows the court to require an individual to be admitted for treatment for a longer period if the individual meets the eligibility criteria for involuntary admission and has previously been involved in at least one of the four other involuntary admissions procedures within a specified period, including having been assessed by a qualified professional within five days.[134] Similar to a petition for involuntary assessment and stabilization, a petition for involuntary services must contain identifying information for all parties and attorneys and facts necessary to support the petitioner's belief that the respondent is in need of involuntary services.[135] Under current law, the petition must also contain the findings and recommendations of the qualified professional that performed the assessment.

An individual's spouse, legal guardian, any relative, or service provider, or any adult who has direct personal knowledge of the individual's substance abuse impairment or prior course of assessment and treatment may file a petition for involuntary services on behalf of the individual. If the individual is a minor, only a parent, legal guardian, or service provider may file such a petition.[136] Current law does not permit the court or clerk of court to waive or prohibit process service fees for indigent petitioners.

A hearing on a petition for involuntary services must be held within five days unless a continuance is granted.[137] A copy of the petition and notice of hearing must be provided to all parties and anyone else the court determines. Current law specifies that the court, not the clerk, must issue a summons to the person whose admission is sought.[138] However, typically the clerk of court, not the court, issues summons. Current law does not specify who must effectuate service (i.e., a law enforcement agency or

[130] If a licensed service provider is unable to complete the involuntary assessment and, if necessary, stabilization of an individual within 5 days after the court's order, it may, within the original time period, file a request for an extension of time to complete its assessment. The court may grant additional time, not to exceed 7 days after the date of the renewal order, for the completion of the involuntary assessment and stabilization of the individual. The original court order authorizing the involuntary assessment and stabilization, or a request for an extension of time to complete the assessment and stabilization that is timely filed, constitutes legal authority to involuntarily hold the individual for a period not to exceed 10 days in the absence of a court order to the contrary. S. 397.6821, F.S.
[131] S. 397.6811, F.S. The individual may also be ordered to a less restrictive component of a licensed service provider for assessment only upon entry of a court order or upon receipt by the licensed service provider of a petition.
[132] S. 397.6819, F.S., The licensed service provider must assess the individual without unnecessary delay using a qualified professional. If an assessment is performed by a qualified professional who is not a physician, the assessment must be reviewed by a physician before the end of the assessment period.
[133] S. 397.6822, F.S. The timely filing of a Petition for Involuntary Services authorizes the service provider to retain physical custody of the individual pending further order of the court.
[134] S. 397.693, F.S.
[135] S. 397.6951, F.S.
[136] S. 397.695 (5), F.S.
[137] S. 397.6955, F.S.
[138] S. 397.6955(3), F.S.

private process servers). Current law requires the respondent to be present, unless the court finds appearance to be harmful, in which case the court must appoint a guardian advocate to appear on the respondent's behalf.[139]

In a hearing for involuntary services, the petitioner must prove by clear and convincing evidence that:[140]

- The individual is substance abuse impaired and has a history of lack of compliance with treatment for substance abuse; and
- Because of such impairment the person is unlikely to voluntarily participate in the recommended services or is unable to determine for himself or herself whether services are necessary and:
    - Without services the individual is likely to suffer from neglect or refuse to care for himself or herself and such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that there is a substantial likelihood that without services the individual will cause serious bodily harm to himself, herself, or another in the near future, as evidenced by recent behavior; or
    - The individual's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.

At the hearing, the court must hear and review all relevant evidence, including the results of the involuntary assessment by a qualified professional, and either dismiss the petition or order the individual to receive involuntary services from his or her chosen licensed service provider, if possible and appropriate.[141]

If the court finds that the conditions for involuntary services have been proven, it may order the respondent to receive services from a publicly funded licensed service provider for up to 90 days.[142] If an individual continues to need involuntary services, at least 10 days before the 90-day period expires, the service provider can petition the court to extend services an additional 90 days.[143] A hearing must be then held within 15 days.[144] Unless an extension is requested, the individual is automatically released after 90 days.[145] Current law does not require facilities to offer discharge planning to assist the respondent with post-discharge care.

However, substance abuse treatment facilities other than addictions receiving facilities are not locked; therefore, individuals receiving treatment in such unlocked facilities under the Marchman Act may voluntarily leave treatment at any time, and the only legal recourse is for a judge to issue a contempt of court charge and impose brief jail time.[146] Current law does not permit courts to drug test respondents in Marchman Act cases.

Effect of the Bill - Involuntary Services

The bill amends the involuntary services criteria to allow the court to involuntarily admit an individual who *reasonably appears to meet*, rather than meets, the eligibility criteria and has previously been involved in at least one of the four other involuntary admissions procedures within a specified period. However, it amends the period for when the person has been assessed by a qualified professional to within the past 30 days, rather than five days.

The bill allows a petition to be accompanied by a certificate or report of a qualified professional or licensed physician who has examined the respondent within 30 days before the petition was filed. The

[139] S. 397.6957(1), F.S.
[140] S. 397.6957(2), F.S.
[141] S. 397.6957(4), F.S.
[142] S. 397.697(1), F.S.
[143] S. 397.6975, F.S.
[144] *Id*.
[145] S. 397.6977, F.S.
[146] If the respondent leaves treatment, the facility will notify the court and a status conference hearing may be set. If the respondent does not appear at this hearing, a show cause hearing may be set. If the respondent does not appear for the show cause hearing, the court may find the respondent in contempt of court.

certificate must contain the professional's findings and, if the respondent refuses to submit to an examination, must document the refusal. The bill specifies that in the event of an emergency requiring an expedited hearing, the petition must contain documented reasons for expediting the hearing.

The bill amends the time period in which the court is required to schedule a hearing on the petition to within 10 court working days, rather than five, unless a continuance is granted. With the elimination of the separate involuntary assessment and stabilization procedures, this means the total time for when a court would have to hear a petition for involuntary assessment and stabilization (within 10 days) and a petition for involuntary services (within 5 days) has been reduced from 15 to 10 court working days under the consolidated procedure.

The bill specifies that the clerk, rather than the court, must issue the summons to the respondent and requires a law enforcement agency to effectuate service for the initial hearing, unless the court authorizes disinterested private process servers to serve parties. The bill authorizes the court to waive or prohibit service of process fees for respondents deemed indigent under current law.

In light of the consolidation of the court involved involuntary admission procedures, the bill provides that, in the case of an emergency, or when upon review of the petition the court determines that an emergency exists, the court may rely exclusively upon the contents of the petition and, without an attorney being appointed, enter an ex parte order for the respondent's involuntary assessment and stabilization which must be executed during the period when the hearing on the petition for treatment is pending. The court may further order a law enforcement officer or other designated agent of the court to:

- Take the respondent into custody and deliver him or her to either the nearest appropriate licensed service provider or a licensed service provider designated by the court to be evaluated; and
- Serve the respondent with the notice of hearing and a copy of the petition.

In such instances, the bill requires a service provider to promptly inform the court and parties of the respondent's arrival and refrain from holding the respondent for longer than 72 hours of observation thereafter, unless:

- The service provider seeks additional time in accordance with the law and the court, after a hearing, grants that motion;
- The respondent shows signs of withdrawal, or a need to be either detoxified or treated for a medical condition, which will serve to extend the amount of time the respondent may be held for observation until the issue is resolved; or
- The original or extended observation period ends on a weekend or holiday, in which case the provider may hold the respondent until the next court working day.

Under the bill, if the ex parte order was not executed by the initial hearing date, it is deemed void. If the respondent does not appear at the hearing for any reason, including lack of service, and upon reviewing the petition, testimony, and evidence presented, the court reasonably believes the respondent meets the Marchman Act commitment criteria and that a substance abuse emergency exists, the bill allows the court to issue or reissue an ex parte assessment and stabilization order that is valid for 90 days. If the respondent's location is known at the time of the hearing, the court:

- Must continue the case for no more than 10 court working days; and
- May order a law enforcement officer or other designated agent of the court to:
    - Take the respondent into custody and deliver him or her to be evaluated either by the nearest appropriate licensed service provider or by a licensed service provider designated by the court; and
    - If a hearing date is set, serve the respondent with notice of the rescheduled hearing and a copy of the involuntary treatment petition if the respondent has not already been served.

The bill requires the petitioner and the service provider to promptly inform the court that the respondent has been assessed so that the court can schedule a hearing as soon as is reasonable. The bill requires the service provider to serve the respondent, before his or her discharge, with the notice of hearing and a copy of the petition. If the respondent has not been assessed within 90 days, the bill requires the court to dismiss the case.

The bill provides an exception to the requirement that a respondent be present at the hearing, allowing absence from the hearing if he or she knowingly, intelligently, and voluntarily waives their right to appear, or upon proof of service, the court finds that the respondent's presence is inconsistent with their best interests or will likely be harmful to the respondent.

To be consistent with the changes in the Baker Act, the bill allows for all witnesses to appear and testify remotely under oath at a hearing via audio-video teleconference, upon a showing of good cause and if all parties consent. The bill further requires any witness appearing remotely to provide all parties with all relevant documents by the close of business the day prior to the hearing. The bill requires the court to hear and review all relevant evidence, including testimony from family members familiar with the respondent's history and how it relates to the respondent's current condition.

The bill prohibits a respondent from being involuntarily ordered into treatment if a clinical assessment is not performed, unless the respondent is present in court and expressly waives the assessment. Outside of emergency situations, if the respondent is not, or previously refused to be, assessed by a qualified professional and, based on the petition, testimony, and evidence presented, it appears that the respondent qualifies for involuntary treatment services, the bill requires the court to issue an involuntary assessment and stabilization order to determine the correct level of treatment for the respondent. In Marchman Act cases where an assessment was attached to the petition, the bill allows the respondent to request, or the court on its own motion to order, an independent assessment by a court-appointed physician or another physician agreed to by the court and the parties.

An assessment order issued in accordance with the bill is valid for 90 days, and if the respondent is present or there is either proof of service or the respondent's whereabouts are known, the bill provides that the involuntary treatment hearing may be continued for no more than 10 court working days. Otherwise, the petitioner and the service provider are required to promptly inform the court that the respondent has been assessed in order for the court to schedule a hearing as soon as practicable. The bill mandates that the service provider serve the respondent, before his or her discharge, with the notice of hearing and a copy of the petition. The bill requires the assessment to occur before the new hearing date. However, if there is evidence indicating that the respondent will not voluntarily appear at the hearing, or is a danger to self or others, the bill permits the court to enter a preliminary order committing the respondent to an appropriate treatment facility for further evaluation until the new hearing date. As stated above, the bill requires the court to dismiss the case if the respondent still has not been assessed after 90 days.

Assessments conducted by a qualified professional under the bill must occur within 72 hours after the respondent arrives at a licensed service provider unless the respondent displays signs of withdrawal or a need to be either detoxified or treated for a medical condition. In such cases, the amount of time the respondent may be held for observation is extended until that issue is resolved. If the assessment is conducted by someone other than a licensed physician, the bill requires review by a licensed physician within the 72-hour period.

If the respondent is a minor, the bill requires the assessment to begin within the first 12 hours after the respondent is admitted, in alignment with the Baker Act, and the service provider may file a motion to extend the 72 hours of observation by petitioning the court in writing for additional time. The bill requires a service provider to provide copies of the motion to all parties in accordance with applicable confidentiality requirements. After the hearing, the bill permits the court to grant additional time or expedite the respondent's involuntary treatment hearing. However, the involuntary treatment hearing can only be expedited by agreement of the parties on the hearing date or if there is notice and proof of service. If the court grants the service provider's petition, the service provider is permitted to hold the respondent until its extended assessment period expires or until the expedited hearing date. In cases

where the original or extended observation period ends on a weekend or holiday, the provider is only permitted to hold the respondent until the next court working day.

The bill requires the qualified professional, in accordance with applicable confidentiality requirements, to provide copies of the completed report to the court and all relevant parties and counsel. The report is required to contain a recommendation on the level, if any, of substance abuse and any co-occurring mental health treatment the respondent may need. The qualified professional's failure to include a treatment recommendation results in the petition's dismissal.

The bill provides that the court may initiate involuntary examination proceedings at any point during the hearing if it has reason to believe that the respondent, due to mental illness other than or in addition to substance abuse impairment, is likely to neglect or injure himself, herself, or another if not committed, or otherwise meets the involuntary commitment provisions covered under the Baker Act. The bill requires any treatment order to include findings regarding the respondent's need for treatment and the appropriateness of other less restrictive alternatives.

The bill permits the court to order drug tests for respondents in Marchman Act cases. The bill expands who may file a petition to extend treatment to include the person who filed the petition for the initial treatment order if the petition includes supporting documentation from the service provider. The bill removes the current requirement that the petition be filed at least 10 days before the expiration of the current court-ordered treatment period. The bill also reduces the court's requirement for scheduling a hearing from 15 days to within 10 court working days of the petition to extend being filed.

The bill requires the treatment facility to implement discharge planning and procedures for a respondent's release from involuntary treatment services. In alignment with the bill's new Baker Act requirements, discharge planning and procedures must include and document the respondent's needs, and actions to address those needs, for, at a minimum:

- follow-up behavioral health appointments,
- information on how to obtain prescribed medications, and
- information pertaining to available living arrangements, transportation, and referral to recovery support opportunities, including but not limited to, connection to a peer specialist.

Substance Abuse Treatment in Florida

Current Situation

DCF provides treatment for substance abuse through a community-based provider system that offers detoxification, treatment and recovery support for adolescents and adults affected by substance misuse, abuse or dependence:[147]

- **Detoxification Services:** Detoxification focuses on the elimination of substance use. Detoxification services use medical and clinical procedures to assist individuals and adults as they withdraw from the physiological and psychological effects of substance abuse.
- **Treatment Services:** Treatment services[148] include a wide array of assessment, counseling, case management, and support services that are designed to help individuals who have lost their abilities to control their substance use on their own and require formal, structured intervention and support. Some of these services may also be offered to the family members of the individual in treatment.
- **Recovery Support:** Recovery support services, including transitional housing, life skills training, parenting skills, and peer-based individual and group counseling, are offered during and following treatment to further assist individuals in their development of the knowledge and skills necessary to maintain their recovery.

[147] Department of Children and Families, *Treatment for Substance Abuse*, https://www.myflfamilies.com/services/samh/treatment, (last visited January 5, 2024).
[148] *Id*. Research indicates that persons who successfully complete substance abuse treatment have better post-treatment outcomes related to future abstinence, reduced use, less involvement in the criminal justice system, reduced involvement in the child protective system, employment, increased earnings, and better health.

Licensed Bed Capacity for Substance Abuse Service Providers

Current Situation

DCF regulates substance abuse treatment providers, establishing licensure requirements and licensing service providers and individual service components under ch. 397, F.S., and rule 65D-30, F.A.C. Currently, there are over 2,800 DCF licensed substance abuse providers.[149] Licensed service components include a continuum of substance abuse prevention,[150] intervention,[151] and clinical treatment services, including, but not limited to:[152]

- Addictions receiving facilities;
- Detoxification;
- Intensive inpatient treatment;
- Residential treatment;
- Day or night treatment, including, day or night treatment with host homes, and community housing;
- Intensive outpatient treatment;
- Outpatient treatment;
- Continuing care;
- Intervention;
- Prevention; and
- Medication-assisted treatment for opiate addiction.

For licenses issued to addictions receiving facilities, inpatient detoxification, intensive inpatient treatment, and residential treatment, DCF must certify and include on the service provider's license, the licensed bed capacity for each facility.[153] The licensed bed capacity is the total bed capacity, [154] or total number of operational beds, within the facility. The service provider must notify DCF of any change in the provider's licensed bed capacity equal to or greater than 10 percent, within 24 hours of the change.[155] Upon notification DCF must update the service provider's license to reflect the increased licensed bed capacity.[156]

Effect of Bill - Licensed Bed Capacity for Substance Abuse Service Providers

The bill prohibits a service provider operating an addictions receiving facility or providing detoxification on a non-hospital inpatient basis from exceeding its licensed capacity by more than 10 percent. A service provider also may not exceed its licensed capacity for more than three consecutive working days or for more than 7 days in a month. This is similar to requirements for crisis stabilization units under the Baker Act.

[149] DCF, *Agency Bill Analysis,* (2023), on file with the House Children, Families, and Seniors Subcommittee.
[150] S. 397.311(26)(c), F.S. Prevention is a process involving strategies that are aimed at the individual, family, community, or substance and that preclude, forestall, or impede the development of substance use problems and promote responsible lifestyles.
[151] S. 397.311(26)(b), F.S. Intervention is structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related pr oblems.
[152] S. 397.311(26), F.S.
[153] *Id.*
[154] Bed capacity is total number of operational beds and the number of those beds purchased by DCF. DCF, *Substance Abuse and Mental Health Financial and Service Accountability Management System (FASAMS), Pamphlet 155-2 Chapter 8 Acute Care Data* (May 2021), available at https://www.myflfamilies.com/sites/default/files/2022-12/chapter_08_acute_care.pdf, (last visited January 8, 2024).
[155] *Id.*
[156] DCF, *Operating Procedures,* CF Operating Procedure No. 155-31 Mental Health/Substance Abuse, available at https://www.myflfamilies.com/sites/default/files/2022-12/cfop_155-31_district_substance_abuse_licensing_and_regulatory_policies_and_procedures.pdf, (last visited January 8, 2024).

State Forensic System

Criminal Defendants and Competency to Stand Trial

Current Situation

The Due Process Clause of the 14th Amendment to the United State Constitution prohibits the states from trying and convicting criminal defendants who are incompetent to stand trial.[157] The states must have procedures in place that adequately protect the defendant's right to a fair trial, which includes his or her participation in all material stages of the process.[158] Defendants must be able to appreciate the range and nature of the charges and penalties that may be imposed, understand the adversarial nature of the legal process, and disclose to counsel facts pertinent to the proceedings. Defendants also must manifest appropriate courtroom behavior and be able to testify relevantly.[159]

If a defendant is suspected of being mentally incompetent, the court, counsel for the defendant, or the state may file a motion for examination to have the defendant's cognitive state assessed.[160] If the motion is well-founded, the court will appoint experts to evaluate the defendant's cognitive state. The defendant's competency is then determined by the judge in a subsequent hearing.[161] If the defendant is found to be mentally competent, the criminal proceeding resumes.[162] If the defendant is found to be mentally incompetent to proceed, the proceeding may not resume unless competency is restored.[163]

Involuntary Commitment of a Defendant Adjudicated Incompetent

Current Situation

Chapter 916, F.S., governs the state forensic system, which is a network of state facilities and community services for persons who have mental health issues, an intellectual disability, or autism, and who are involved with the criminal justice system. Offenders who are charged with a felony and adjudicated incompetent to proceed due to mental illness[164] and offenders who are adjudicated not guilty by reason of insanity may be involuntarily committed to state civil[165] and forensic[166] treatment facilities by the circuit court.[167] However, in lieu of such commitment, the offender may be released on conditional release[168] by the circuit court if the person is not serving a prison sentence.[169] The

[157] *Pate v. Robinson*, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed. 815 (1966); *Bishop v. U.S.*, 350 U.S.961, 76 S.Ct. 440, 100 L.Ed. 835 (1956); *Jones v. State*, 740 So.2d 520 (Fla. 1999).
[158] *Id*. See also Rule 3.210(a)(1), Fla.R.Crim.P.
[159] *Id*. See also s. 916.12, 916.3012, and 985.19, F.S.
[160] Rule 3.210, Fla.R.Crim.P.
[161] *Id*.
[162] Rule 3.212, Fla.R.Crim.P.
[163] *Id*.
[164] "Incompetent to proceed" means "the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding" or "the defendant has no rational, as well as factual, understanding of the proceedings against her or him." S. 916.12(1), F.S.
[165] A "civil facility" is a mental health facility established within the Department of Children and Families (DCF) or by contract with DCF to serve individuals committed pursuant to chapter 394, F.S., and defendants pursuant to chapter 916, F.S., who do not require the security provided in a forensic facility; or an intermediate care facility for the developmentally disabled, a foster care facility, a group home facility, or a supported living setting designated by the Agency for Persons with Disabilities (APD) to serve defendants who do not require the security provided in a forensic facility. Section 916.106(4), F.S. The DCF oversees two state-operated forensic facilities, Florida State Hospital and North Florida Evaluation and Treatment Center, and two privately-operated, maximum security forensic treatment facilities, South Florida Evaluation and Treatment Center and Treasure Coast Treatment Center.
[166] S. 916.106(10), F.S.
[167] S. 916.13, 916.15, and 916.302, F.S.
[168] Conditional release is release into the community accompanied by outpatient care and treatment. Section 916.17, F.S.
[169] S. 916.17(1), F.S.

committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment or conditional release.[170]

A civil facility is, in part, a mental health facility established within DCF or by contract with DCF to serve individuals committed pursuant to ch. 394, F.S., and defendants pursuant to ch. 916, F.S., who do not require the security provided in a forensic facility.[171]

A forensic facility is a separate and secure facility established within DCF or the Agency for Persons with Disabilities (APD) to service forensic clients committed pursuant to ch. 916, F.S.[172] A separate and secure facility means a security-grade building for the purpose of separately housing individuals with mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed from non-forensic residents.[173]

A court may only involuntarily commit a defendant adjudicated incompetent to proceed for treatment upon finding, based on clear and convincing evidence, that:[174]

- The defendant has a mental illness and because of the mental illness:
  - The defendant is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, the defendant is likely to suffer from neglect or refuse to care for herself or himself and such neglect or refusal poses a real and present threat of substantial harm to the defendant's well-being; or
  - There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on herself or himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm.
- All available, less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient or outpatient settings, which would offer an opportunity for improvement of the defendant's condition have been judged to be inappropriate; and
- There is a substantial probability that the mental illness causing the defendant's incompetence will respond to treatment and the defendant will regain competency to proceed in the reasonably foreseeable future.

If a person is committed pursuant to chapter 916, F.S., the administrator at the commitment facility must submit a report to the court: [175]

- No later than 6 months after a defendant's admission date and at the end of any period of extended commitment; or
- At any time the administrator has determined that the defendant has regained competency or no longer meets the criteria for involuntary commitment.

Incompetent and Non-Restorable Defendants

If after being committed, the defendant does not respond to treatment and is deemed non-restorable, the administrator of the commitment facility must notify the court by filing a report in the criminal case.[176] Those who are found to be non-restorable must be civilly committed or released.[177]

[170] S. 916.16(1), F.S.
[171] S. 916.106(4), F.S.
[172] S. 916.106(10), F.S. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons who have intellectual disabilities or autism and separately housing persons who have bee n involuntarily committed pursuant to chapter 916, F.S., from non-forensic residents.
[173] *Id*.
[174] S. 916.13(1), F.S.
[175] S. 916.13(2), F.S.
[176] S. 916.13(2)(b), F.S.
[177] *Mosher v. State*, 876 So.2d 1230 (Fla. 1st DCA 2004).

Current Situation - Non-Restorable Competency

An individual's competency is considered non-restorable when it is not likely that he or she will regain competency in the foreseeable future.[178] The DCF must make every effort to restore the competency of those committed pursuant to chapter 916, F.S., as incompetent to proceed. To ensure that all possible treatment options have been exhausted, all competency restoration attempts in less restrictive, step-down facilities should be considered prior to making a recommendation of non-restorability, particularly for individuals with violent charges.

Individuals who are found to be non-restorable in less than five years of involuntary commitment under section 916.13, F.S., require civil commitment proceedings or release. After an evaluator of competency has completed a competency evaluation and determined that there is not a substantial probability of competency restoration in the current environment in the foreseeable future, the evaluator must notify the appropriate recovery team[179] coordinator that the individual's competency does not appear to be restorable.

After notification, the recovery team's psychiatrist and clinical psychologist members must complete an independent evaluation to examine suitability for involuntary placement. Once the evaluation to examine suitability for involuntary placement is complete, the recovery team meets to consider the following:[180]

- Mental and emotional symptoms affecting competency to proceed;
- Medical conditions affecting competency to proceed;
- Current treatments and activities to restore competency to proceed;
- Whether relevant symptoms and conditions are likely to demonstrate substantive improvement;
- Whether relevant and feasible treatments remain that have not been attempted, including competency restoration training in a less restrictive, step-down facility; and
- Additional information as needed (including barriers to discharge, pending warrants and detainers, dangerousness, self-neglect).

The recovery team must document the team meeting and considerations for review, and, if applicable, the extent to which the individual meets the criteria for involuntary examination pursuant to s. 394.463, F.S., or involuntary inpatient placement pursuant to s. 394.467(1), F.S. Each member of the recovery team must provide a recommendation for disposition. Individuals with competency reported as non-restorable may be considered, as appropriate, for recommendations of release without legal conditions or involuntary examination or inpatient placement.[181]

Current Situation - Competency Evaluation Report

Following the completion of the competency evaluation, the evaluation to examine suitability for involuntary placement, and consideration of restorability, the evaluator of competency must complete a competency evaluation report to the circuit court.[182] A competency evaluation report to the circuit court is a standardized mental health document that addresses relevant mental health issues and the individual's clinical status regarding competence to proceed. The report is completed, pursuant to s.

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[178] DCF Operating Procedures No. 155-13, *Mental Health and Substance Abuse: Incompetent to Proceed and Non-Restorable Status*, September 2021, at https://www.myflfamilies.com/sites/default/files/2022-12/cfop_155-13_incompetence_to_proceed_and_non-restorable_status.pdf (last visited March 13, 2023).

[179] A recovery team is an assigned group of individuals with specific responsibilities identified on the recovery plan including the resident, psychiatrist, guardian/guardian advocate (if resident has a guardian/guardian advocate), community case manager, family member and other treatment professionals commensurate with the resident's needs, goals, and preferences. DCF Operating Procedures No. 155-16, *Recovery Planning and Implementation in Mental Health Treatment Facilities*, May 16, 2019, at https://www.myflfamilies.com/sites/default/files/2022-12/cfop_155-16_recovery_planning_and_implementation_in_mental_health_treatment_facilities.pdf (last visited March 20, 2023).

[180] *Id*.

[181] Chapter 394, F.S., or Mosher v. State, 876 So. 2d 1230 (Fla. 1st DCA 2004).

[182] DCF's Operating Procedure 155-19, *Evaluation and Reporting of Competency to Proceed*, February 15, 2019, at https://www.myflfamilies.com/sites/default/files/2022-12/cfop_155-19_evaluation_and_reporting_of_competency_to_proceed.pdf (last visited March 20, 2023).

916.13(2), F.S., and DCF Operating Procedure 155-19 (Evaluation and Reporting of Competency to Proceed).[183] The operating procedures provide guidelines for the format and minimal content that must be included in the report. Evaluators may add other relevant and appropriate information as necessary to report on the individual's status and needs.[184] The report must include the following:

- A description of mental, emotional, and behavioral disturbances;
- An explanation to support the opinion of incompetence to proceed;
- The rationale to support why the individual is unlikely to gain competence to proceed in the foreseeable future;
- A clinical opinion that the individual no longer meets the criteria for involuntary forensic commitment pursuant to s. 916.13, F.S.; and
- A recommendation whether the individual meets the criteria for involuntary examination pursuant to s. 394.463, F.S.

In order for a criminal court to order an involuntary examination under the Baker Act, there must be sworn evidence that the defendant is believed to meet the Baker Act criteria. Reports from mental health treatment facilities, such as the competency evaluation report, provide the court with sufficient basis/evidence to enter an order for involuntary examination. These reports may be sworn upon request of the court.[185]

A competency evaluation report is used in the process of a forensic commitment becoming a civil commitment. However, to be considered in a criminal court proceeding as evidence that the defendant meets Baker Act criteria, the report must be sworn. Currently, competency evaluation reports are not sworn.

Current Situation - Civil Commitment after Determination of Non-Restorable Defendant

Civil commitment is initiated in accordance with Part I of Chapter 394, F.S. The procedures in that part ensure the due process rights of a person are protected and require examination of a person believed to meet Baker Act criteria at a designated receiving facility.

If a non-restorable defendant is returned to court in accordance with ch. 916, F.S., the criminal court has authority to enter an order for involuntary Baker Act examination, and the defendant is taken to the nearest receiving facility. If found to meet criteria, a separate civil case is opened and the criminal case may be dismissed.[186]

Effect of Bill - Involuntary Commitment of a Defendant Adjudicated Incompetent

Current law requires DCF to conduct a competency evaluation and submit a report to the circuit court, upon determination that a defendant will not, or is unlikely to, regain competency to proceed. The bill requires DCF to submit this report within 30 days of the determination. The bill also requires the report to be sworn and provided to counsel in addition to the court. Further, the bill establishes the minimum information that must be included in the competency evaluation report. The minimum reporting requirements are current DCF procedures in which the bill codifies into law, except that the bill authorizes the defendant to be considered for involuntary services, rather than an involuntary examination.[187] The report must include, at a minimum, the following information regarding the defendant:

- A description of mental, emotional, and behavioral disturbances;
- An explanation to support the opinion of incompetency to proceed;
- The rationale to support why the defendant is unlikely to gain competence to proceed in the foreseeable future;
- A clinical opinion regarding whether the defendant no longer meets the criteria for involuntary forensic commitment; and

[183] *Id*.
[184] *Id*.
[185] DCF, *Agency Bill Analysis HB 201 (2023), p. 2 (on file with the House Children Families, & Seniors Subcommittee).*
[186] S.916.145, F.S.
[187] *Id*, note 26.

- A recommendation on whether the defendant meets the criteria for involuntary services pursuant to s. 394.467, F.S.

These provisions ensure that the appropriate report is submitted to the court to initiate the process of moving a forensic commitment to a civil commitment. They also ensure that all relevant information is received timely and that the court may respond to the information in a timely manner.

The bill authorizes a defendant, who meets the criteria for involuntary examination as determined by an independent clinical opinion, to appear remotely for the hearing. The bill also authorized the remote appearance of witnesses.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 394.455, F.S., relating to definitions.
Section 2: Amends s. 394.4572, relating to screening of mental health personnel.
Section 3: Amends s. 394.459, F.S., relating to rights of patients.
Section 4: Amends s. 394.4598, F.S., relating to guardian advocate.
Section 5: Amends s. 394.4599, F.S., relating to notice.
Section 6: Amends s. 394.461, F.S., relating to designation of receiving and treatment facilities and receiving systems.
Section 7: Amends s. 394, 4615, F.S., relating to clinical records; confidentiality.
Section 8: Amends s. 394.462, F.S., relating to transportation.
Section 9: Amends s. 394.4625, F.S., relating to voluntary admissions.
Section 10: Amends s. 394.463, F.S., relating to involuntary examination.
Section 11: Amends s. 394.4655, F.S., relating to involuntary outpatient services.
Section 12: Amends s. 394.467, F.S., relating to involuntary inpatient placement.
Section 13: Amends s. 394.468, F.S., relating to admission and discharge procedures.
Section 14: Amends s. 394.495, F.S., relating to child and adolescent mental health system of care; programs and services.
Section 15: Amends s. 394.496, F.S., relating to service planning.
Section 16: Amends s. 394.499, F.S., relating to integrated children's crisis stabilization unit/juvenile addictions receiving facility services.
Section 17: Amends s. 394.875, F.S., relating to crisis stabilization units.
Section 18: Amends. S. 394.9085, F.S., relating to behavioral provider liability.
Section 19: Amends s. 397.305, F.S., relating to legislative findings, intent, and purpose.
Section 20: Amends s. 397.311, F.S., relating to definitions.
Section 21: Amends s. 397.401, F.S., relating to license required; penalty; injunction; rules waivers.
Section 22: Amends s. 397.4073, F.S., relating to personnel background checks; requirements and exceptions.
Section 23: Amends s. 397.501, F.S., relating to rights of individuals.
Section 24: Amends s. 397.581, F.S., relating to unlawful activities relating to assessment and treatment; penalties.
Section 25: Amends s. 397.675, F.S., relating to criteria for involuntary admissions.
Section 26: Amends s. 397.6751, F.S., relating to service provider responsibilities regarding involuntary admissions.
Section 27: Amends s. 397.681, F.S., relating to involuntary petitions; general provisions; court jurisdiction and right to counsel.
Section 28: Amends s. 397.693, F.S., relating to involuntary treatment.
Section 29: Amends s. 397.695, F.S., relating to involuntary services; persons who may petition.
Section 30: Amends s. 397.6951, F.S., relating to contents of petition for involuntary services.
Section 31: Amends s. 397.6955, F.S., relating to duties of court upon filing of petition for involuntary services.
Section 32: Amends s. 397.6818, F.S., relating to court determination.
Section 33: Amends s. 397.6957, F.S., relating to hearing on petition for involuntary services.
Section 34: Amends s. 397.6975, F.S., relating to extension of involuntary services period.

Section 35: Amends s. 397.6977, F.S., relating to disposition of individual upon completion of involuntary services.
Section 36: Repeals s. 397.6811, F.S., relating to involuntary assessment and stabilization.
Section 37: Repeals s. 397.6814, F.S., relating to involuntary assessment and stabilization; contents of petition.
Section 38: Repeals s. 397.6815, F.S., relating to involuntary assessment and stabilization; procedure.
Section 39: Repeals s. 397.6819, F.S., relating to involuntary assessment and stabilization; responsibility of licensed service provider.
Section 40: Repeals s. 397.6821, F.S., relating to extension of time for completion of involuntary assessment and stabilization.
Section 41: Repeals s. 397.6822, F.S., relating to disposition of individual after involuntary assessment.
Section 42: Repeals s. 397.6978, F.S., relating to guardian advocate; patient incompetent to consent; substance abuse disorder.
Section 43: Amends s. 916.106, F.S., relating to definitions.
Section 44: Amends s. 916.13, F.S., relating to involuntary commitment of defendant adjudicated incompetent.
Section 45: Amends s. 40.29, F.S., relating to payment of due-process costs; reimbursement for petitions and orders.
Section 46: Amends s. 409.972, F.S., relating to mandatory and voluntary enrollment.
Section 47: Amends s. 464.012, F.S., relating to licensure of advanced practice registered nurses; fees; controlled substance prescribing.
Section 48: Amends s. 744.2007, F.S., relating to powers and duties.
Section 49: Amends s. 916.107, F.S., relating to rights of forensic clients.
Section 50: Amends s. 916.15, F.S., relating to involuntary commitment of a defendant adjudicated not guilty by reason of insanity.
Section 51: Provides an appropriation.
Section 52: 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:

   The bill has a significant fiscal impact to DCF and the state court system as delineated below. The bill provides $50,000,000 to DCF with the flexibility to fund the various provisions of the bill as there is an impact to the department and among providers that offer different behavioral health services.

   - Reporting Requirements- DCF will be required to create and publish a report on Marchman Act services. The bill also requires DCF and the Agency for Health Care Administration to analyze the service data collected on individuals who are high users of crisis stabilization services. There is a resulting workload cost associated with these provisions.

   - Involuntary Services- The bill provides judges with greater flexibility regarding the type of involuntary services to which to order a person, rather than being required to order the specific services for which the petition was filed or no services at all. This is likely to increase demand for involuntary outpatient services, as these services have lower utilization rates.

   - Marchman Act Services- The bill makes it easier for family and friends of individuals with substance use disorder to successfully file pro se for Marchman Act services by streamlining

the complicated two-petition process. This may result in increased demand for substance abuse treatment services as judges act on these petitions to order individuals into those services.

- Discharge Planning- The bill modifies the discharge procedures for receiving facilities by requiring the referral of patients to follow-up supports and services; face-to-face or electronic interaction with the patient and persons in their support system to communicate about follow-up care; and development of a personalized crisis prevention plan for the patient in an effort to mitigate repeated utilization of receiving facility services. There is an expected workload increase to the facilities to implement these provisions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority to implement the bill. However, the department has sufficient rulemaking authority to comply with the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 24, 2024, the Health Care Appropriations Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Revised discharge requirements by:
  - requiring a referral to care coordination only if the person needs the service,

    - removing the requirement for a masters' level or licensed staff member to handle the discharge meeting with the patient and family,
    - requiring facility staff to seek to engage the patient's family and friends, rather than requiring the staff member to engage them, and
    - removing the requirement for a receiving facility to coordinate ongoing treatment or make appointments.
- Appropriated the sum of $50,000,000 of recurring funds from the General Revenue Fund for the 2024-25 fiscal year to the Department of Children and Families to implement the bill.

The analysis is drafted to the committee substitute as passed by the Health Care Appropriations Subcommittee.

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.)

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

BILL:	SB 1784
INTRODUCER:	Senator Grall
SUBJECT:	Mental Health and Substance Abuse
DATE:	January 29, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hall	Tuszynski	CF	**Pre-meeting**
2.			FP	

I. Summary:

In Florida, the Baker Act provides a legal procedure for voluntary and involuntary mental health examination and treatment. The Marchman Act addresses substance abuse through a comprehensive system of prevention, detoxification, and treatment services. The Department of Children and Families (DCF) is the single state authority for substance abuse and mental health treatment services in Florida. The bill modifies the Baker Act and makes significant changes to the Marchman Act.

The bill amends the Baker Act by combining processes for courts to order individuals to involuntary outpatient services and involuntary inpatient placement in the Baker Act, to streamline the process for obtaining involuntary services, and providing more flexibility for courts to meet individuals' treatment needs. The bill also grants law enforcement officers discretion on initiating involuntary examinations.

The bill substantially amends the Marchman Act to:

- Repeal existing provisions for court-ordered involuntary assessments and stabilization in the Marchman Act, and creates a new consolidated involuntary treatment process.
- Prohibit courts from ordering an individual with a developmental disability who lacks a co-occurring mental illness to a state mental health treatment facility for involuntary inpatient placement.
- Revise the voluntariness provision under the Baker Act to allow a minor's voluntary admission after a clinical review, rather than a hearing, has been conducted.
- Authorize a witness to appear remotely upon a showing of good cause and with consent by all parties.
- Allow an individual to be admitted as a civil patient in a state mental health treatment facility without a transfer evaluation and prohibits a court, in a hearing for placement in a treatment facility, from considering substantive information in the transfer evaluation unless the evaluator testifies at the hearing.

For both the Baker and Marchman Acts, the bill:

- Creates a more comprehensive and personalized discharge planning process.
- Requires DCF to publish certain specified reports on its website.
- Removes limitations on advance practice registered nurses and physician assistants serving the physical health needs of individuals receiving psychiatric care.
- Allows a psychiatric nurse to release a patient from a receiving facility if certain criteria are met.
- Removes the 30-bed cap for crisis stabilization units.

The bill will have an indeterminate negative fiscal impact on state government.

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

II. Present Situation:

Mental Health and Mental Illness

Mental health is a state of well-being in which the individual realizes his or her own abilities can cope with normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community.[1] The primary indicators used to evaluate an individual's mental health are:[2]

- Emotional well-being: perceived life satisfaction, happiness, cheerfulness, peacefulness;
- Psychological well-being: self-acceptance, personal growth including openness to new experiences, optimism, hopefulness, purpose in life, control of one's environment, spirituality, self-direction, and positive relationships; and
- Social well-being: social acceptance, beliefs in the potential of people and society as a whole, personal self-worth and usefulness to society, sense of community.

Mental illness is collectively all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.[3] Thus, mental health refers to an individual's mental state of well-being whereas mental illness signifies an alteration of that well-being. Mental illness affects millions of people in the United States each year. More than one in five adults lives with a mental illness.[4] Young adults aged 18-25 had the highest prevalence of any mental illness[5] (33.7%) compared to adults aged 26-49 (28.1%) and aged 50 and older (15.0%).[6]

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[1] World Health Organization, Mental Health: Strengthening Our Response, available at: https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response (last visited Jan. 26, 2024).
[2] Centers for Disease Control and Prevention, Mental Health Basics, available at: http://medbox.iiab.me/modules/en-cdc/www.cdc.gov/mentalhealth/basics.htm (last visited Jan. 26, 2024).
[3] *Id.*
[4] National Institute of Mental Health (NIH), Mental Illness, available at: https://www.nimh.nih.gov/health/statistics/mental-illness (last visited Jan. 26, 2024).
[5] Any mental illness (AMI) is defined as a mental, behavioral, or emotional disorder. AMI can vary in impact, ranging from no impairment to mild, moderate, and even severe impairment (e.g., individuals with serious mental illness).
[6] National Institute of Mental Health (NIH), Mental Illness, available at: https://www.nimh.nih.gov/health/statistics/mental-illness (last visited Jan. 26, 2024).

Mental Health Safety Net Services

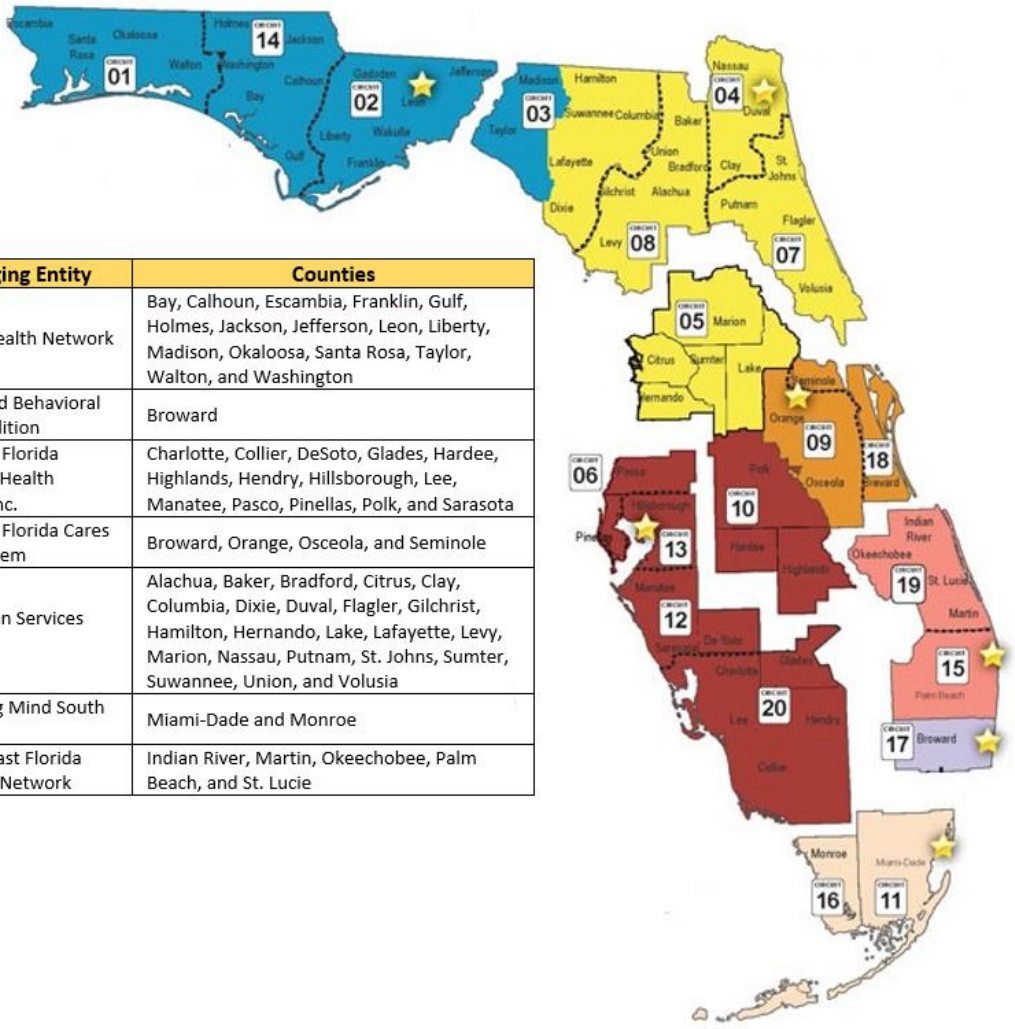
The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults who are otherwise unable to obtain these services. SAM programs include a range of prevention, acute interventions (e.g., crisis stabilization), residential treatment, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.

Behavioral Health Managing Entities

In 2001, the Legislature authorized DCF to implement behavioral health managing entities (ME) as the management structure for the delivery of local mental health and substance abuse services.[7] The implementation of the ME system initially began on a pilot basis and, in 2008, the Legislature authorized DCF to implement MEs statewide.[8] MEs were fully implemented statewide in 2013, serving all geographic regions.

DCF currently contracts with seven MEs for behavioral health services throughout the state. These entities do not provide direct services; rather, they allow the department's funding to be tailored to the specific behavioral health needs in the various regions of the state. The regions are divided as follows:[9]

[7] Ch. 2001-191, Laws of Fla.
[8] Ch. 2008-243, Laws of Fla.
[9] DCF, Managing Entities, available at: https://www.myflfamilies.com/services/samh/providers/managing-entities (last visited Jan. 26, 2024).



Managing Entity	Counties
NWF Health Network	Bay, Calhoun, Escambia, Franklin, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Walton, and Washington
Broward Behavioral Health Coalition	Broward
Central Florida Behavioral Health Network, Inc.	Charlotte, Collier, DeSoto, Glades, Hardee, Highlands, Hendry, Hillsborough, Lee, Manatee, Pasco, Pinellas, Polk, and Sarasota
Central Florida Cares Health System	Broward, Orange, Osceola, and Seminole
Lutheran Services Florida	Alachua, Baker, Bradford, Citrus, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Hernando, Lake, Lafayette, Levy, Marion, Nassau, Putnam, St. Johns, Sumter, Suwannee, Union, and Volusia
Thriving Mind South Florida	Miami-Dade and Monroe
Southeast Florida Behavioral Network	Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie

Coordinated System of Care

Managing entities are required to promote the development and implementation of a coordinated system of care.[10] A coordinated system of care means a full array of behavioral and related services in a region or community offered by all service providers, participating either under contract with a managing entity or by another method of community partnership or mutual agreement.[11] A community or region provides a coordinated system of care for those with a mental illness or substance abuse disorder through a no-wrong-door model, to the extent allowed by available resources. If funding is provided by the Legislature, DCF may award system improvements grants to managing entities.[12] MEs must submit detailed plans to enhance crisis services based on the no-wrong-door model or to meet specific needs identified in DCF's assessment of behavioral health services in this state.[13] DCF must use performance-based contracts to award grants.[14]

[10] Section 394.9082(5)(d), F.S.
[11] Section 394.4573(1)(c), F.S.
[12] Section 394.4573(3), F.S. The Legislature has not funded system improvement grants.
[13] *Id.*
[14] *Id.*

There are several essential elements which make up a coordinated system of care, including:[15]

- Community interventions;
- Case management;
- Care coordination;
- Outpatient services;
- Residential services;
- Hospital inpatient care;
- Aftercare and post-discharge services;
- Medication assisted treatment and medication management; and
- Recovery support.

A coordinated system of care must include, but is not limited to, the following array of services:[16]

- Prevention services;
- Home-based services;
- School-based services;
- Family therapy;
- Family support;
- Respite services;
- Outpatient treatment;
- Crisis stabilization;
- Therapeutic foster care;
- Residential treatment;
- Inpatient hospitalization;
- Case management;
- Services for victims of sex offenses;
- Transitional services; and
- Trauma-informed services for children who have suffered sexual exploitation.

DCF must define the priority populations which would benefit from receiving care coordination.[17] In defining priority populations, DCF must consider the number and duration of involuntary admissions, the degree of involvement with the criminal justice system, the risk to public safety posed by the individual, the utilization of a treatment facility by the individual, the degree of utilization of behavioral health services, and whether the individual is a parent or caregiver who is involved with the child welfare system.

MEs are required to conduct a community behavioral health care needs assessment once every three years in the geographic area served by the managing entity, which identifies needs by sub-

[15] Section 394.4573(2), F.S.
[16] Section 394.495(4), F.S.
[17] Section 394.9082(3)(c), F.S.

region.[18] The assessments must be submitted to DCF for inclusion in the state and district substance abuse and mental health plan.[19]

The Baker Act

The Florida Mental Health Act, commonly referred to as the Baker At, was enacted in 1971 to revise the state's mental health commitment laws.[20] The Act includes legal procedures for mental health examination and treatment, including voluntary and involuntary examinations. It, additionally, protects the rights of all individuals examined or treated for mental illness in Florida.[21]

The Department of Children and Families (DCF) is responsible for the operation and administration of the Baker Act, including publishing an annual Baker Act report. According to the Fiscal Year (FY) 2021-2022 Baker Act Annual Report, over 170,000 individuals were involuntarily examined under the Baker Act; of those, just over 11,600 individuals were 65 years of age or older. This age group is the most likely to include individuals with Alzheimer's disease or related dementia. It is important to note the number of Baker Acts per year decreased during FY 2018-2019, FY 2019-2020, FY 2020-2021, across all age groups.[22]

Rights of Patients

The Baker Act protects the rights of patients examined or treated for mental illness in Florida, including, but not limited to, the right to give express and informed consent for admission or treatment and the right to communicate freely and privately with persons outside a facility, unless the facility determines that such communication is likely to be harmful to the patient or others.[23]

Each patient entering treatment must be asked to give express and informed consent for admission or treatment.[24] If the patient has been adjudicated incapacitated or found to be incompetent to consent to treatment, express and informed consent must be obtained from the patient's guardian or guardian advocate. If the patient is a minor, consent must be requested from the patient's guardian unless the minor is seeking outpatient crisis intervention services.[25] In situations where emergency medical treatment is needed and the patient or the patient's guardian or guardian advocate are unable to provide consent, the administrator of the facility may, upon the recommendation of the patient's attending physician, authorize treatment, including a

[18] Section 394.9082(5)(b), F.S.
[19] Section 394.75(3), F.S.
[20] The Baker Act is contained in Part I of Ch. 394, F.S.
[21] Section 394.459, F.S.
[22] DCF, *Agency Bill Analysis* (2023), on file with the Senate Children, Families, and Elder Affairs Committee.
[23] Sections 394.459(3), F.S. and 394.459(5), F.S. Other patients' rights include the right to dignity; treatment regardless of ability to pay; express and informed consent for admission or treatment; quality treatment; possession of his or her clothing and personal effects; vote in elections, if possible; petition the court for a writ of habeas corpus to question the cause and legality of their detention in a receiving or treatment facility; and participate in their treatment and discharge planning. See, s. 394.456(1)-(11), F.S. Current law imposes liability for damages on those who violate or abuse patient rights or privileges. *See* s. 394.459(10), F.S.
[24] Section 394.459(3), F.S.
[25] Section 394.4784, F.S.

surgical procedure, if such treatment is deemed lifesaving, or if the situation threatens serious bodily harm to the patient.[26]

Currently, a facility must provide immediate patient access to a patient's family members, guardian, guardian advocate, representative, Florida statewide or local advocacy council, or attorney, unless such access would be detrimental to the patient or the patient exercises their right not to communicate or visit with the person.[27] If a facility restricts a patient's right to communicate or restrict visitors, the facility must provide written notice of the restriction and the reasons for it to the patient, the patient's attorney, and the patient's guardian, guardian advocate, or representative.[28] A qualified professional[29] must document the restriction within 24 hours, and a record of the restrictions and the reasons for the restrictions must be recorded in the patient's clinical record. Under current law, a facility must review patient communication restrictions at least every three days.[30]

Receiving Facilities and Involuntary Examination

Individuals in an acute mental or behavioral health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a voluntary or involuntary basis.[31] Individuals receiving services on an involuntary basis must be taken to a facility that has been designated by DCF as a receiving facility.

Receiving facilities, often referred to as Baker Act receiving facilities, are public or private facilities designated by DCF to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate service provider.[32] A public receiving facility is a facility that has contracted with a managing entity to provide mental health services to all persons, regardless of their ability to pay, and is receiving state funds for such purpose.[33] Funds appropriated for Baker Act services may only be used to pay for services diagnostically and financially eligible persons, or those who are acutely ill, in need of mental health services, and the least able to pay.[34] Currently, there are 126 DCF designated receiving facilities.[35]

Crisis Stabilization Units

Crisis Stabilization Units (CSUs) are public receiving facilities that receive state funding and provide a less intensive and less costly alternative to inpatient psychiatric hospitalization for individuals presenting as acutely mentally ill. CSUs screen, assess, and admit individuals brought to the unit under the Baker Act, as well as those individuals who voluntarily present themselves, for short-term services. CSUs provide services 24 hours a day, seven days a week,

[26] Section 394.459(3)(d), F.S.
[27] Section 394.459(5)(c), F.S.
[28] Section 394.495(5)(d), F.S.
[29] A qualified professional is a physician or a physician assistant, a psychiatrist, a psychologist, or a psychiatric nurse. See s. 394.455(39), F.S.
[30] Section 394.459, F.S.
[31] Sections 394.4625 and 394.463, F.S.
[32] Section 394.455(40), F.S. This term does not include a county jail.
[33] Section 394.455(38), F.S.
[34] R. 65E-5.400(2), F.A.C.
[35] DCF, *Agency Bill Analysis* (2023), on file with the Senate Children Families, and Elder Affairs Committee.

through a team of mental health professionals. The purpose of the CSU is to examine, stabilize, and redirect people to the most appropriate and least restrictive treatment settings, consistent with their mental health needs.[36] Individuals often enter the public mental health system through CSUs. Managing entities must follow current statutes and rules that require CSUs to be paid for bed availability rather than utilization.

Although involuntary examinations under the Baker Act have recently been decreasing statewide, the population of Florida continues to grow, and there are counties where the number of involuntary examinations remain the same or are slightly increasing, while some receiving facilities within communities are closing. There has been some demonstrated success with mobile response teams diverting individuals from the receiving facilities, resulting in those persons who are admitted to a receiving facility for an involuntary examination having higher acuity and longer lengths of stay.

In 2011, statute directed DCF to implement a demonstration project in circuit 18 to assess the impact of expanding the number of authorized CSU beds from 30 to 50. The facility in circuit 18 reported that by adding 20 additional beds, they were able to alleviate capacity issues within the county through 2021. The facility also reported that there are days that they exceed 100% capacity. Additionally, the facility reported that the bed capacity expansion has allowed them to serve clients with complex needs (e.g., clients served by APD).[37]

Involuntary Examination

An involuntary examination is required if there is reason to believe that the person has a mental illness and, because of his or her mental illness, has refused voluntary examination, is likely to refuse to care for him or herself to the extent that such refusal threatens to cause substantial harm to that person's well-being, and such harm is unavoidable through the help of willing family members or friends, or will cause serious bodily harm to him or herself or others in the near future based on recent behavior.[38]

An involuntary examination may be initiated by:

- A court entering an ex parte order stating that a person appears to meet the criteria for involuntary examination, based on sworn testimony;[39] or
- A physician, clinical psychologist, psychiatric nurse, an autonomous advanced practice registered nurse, mental health counselor, marriage and family therapist, or clinical social worker executing a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination, including a statement of the professional's observations supporting such conclusion.[40]

Unlike the discretion afforded courts and medical professionals, current law mandates that law enforcement officers must initiate an involuntary examination of a person who appears to meet

[36] Section 394.875, F.S.
[37] DCF, Agency Bill Analysis (2023), on file with the Senate Children, Families, and Elder Affairs Committee.
[38] Section 394.463(1), F.S.
[39] Section 394.463(2)(a)1., F.S. The order of the court must be made a part of the patient's clinical record.
[40] Section 394.463(2)(a)3., F.S. The report and certificate must be made a part of the patient's clinical record.

the criteria by taking him or her into custody and delivering or having the person delivered to a receiving facility for examination.[41] When transporting, officers are currently required to restrain the person in the least restrictive manner available and appropriate under the circumstances.[42] The officer must execute a written report detailing the circumstances under which the person was taken into custody, and the report must be made part of the patient's clinical record. The report must also include all emergency contact information for the person that is readily accessible to the law enforcement officer, including information available through electronic databases maintained by the Department of Law Enforcement or by the Department of Highway Safety and Motor Vehicles.

Involuntary patients must be taken to either a public or private facility that has been designated by DCF as a Baker Act receiving facility. Under the Baker Act, a receiving facility has up to 72 hours to examine an involuntary patient.[43] During those 72 hours, an involuntary patient must be examined by a physician, clinical psychologist, or by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist at a facility to determine if the criteria for involuntary services are met.[44] Current law does not indicate when the examination period begins for an involuntary patient. However, if the patient is a minor, a receiving facility must initiate the examination within 12 hours of arrival.[45]

Within that 72-hour examination period, one of the following must happen:[46]

- The patient must be released, unless he or she is charged with a crime, in which case, law enforcement will assume custody;
- The patient must be released for voluntary outpatient treatment;
- The patient, unless charged with a crime, must give express and informed consent to be placed and admitted as a voluntary patient; or
- A petition for involuntary placement must be filed in circuit court for involuntary outpatient or inpatient treatment.

If the patient's 72-hour examination period ends on a weekend or holiday, and the receiving facility:[47]

- Intends to file a petition for involuntary services, the patient may be held at a receiving facility through the next working day and the petition for involuntary services must be filed no later than such date. If the receiving facility fails to file a petition at the close of the next working day, the patient must be released from the receiving facility upon documented approval from a psychiatrist or clinical psychologist.
- Does not intend to file a petition for involuntary services, the receiving facility may postpone release of a patient until the next working day if a qualified professional documents that adequate discharge planning and procedures and approval from a psychiatrist or clinical psychologist are not possible until the next working day.

[41] Section 394.463(2)(a)2., F.S.
[42] *Id.*
[43] Section 394.463(2)(g), F.S.
[44] Section 394.463(2)(f), F.S.
[45] Section 394.463(2)(g), F.S.
[46] *Id.*
[47] Section 394.463(2)(g)4., F.S.

The receiving facility may not release an involuntary examination patient without the documented approval of a psychiatrist or a clinical psychologist. However, if the receiving facility is owned or operated by a hospital or health system, or a nationally accredited community mental health center, a psychiatric nurse performing under the framework of an established protocol with a psychiatrist is permitted to release a Baker Act patient in specified community settings. However, a psychiatric nurse is prohibited from approving a patient's release if the involuntary examination was initiated by a psychiatrist unless the release is approved by the initiating psychiatrist.[48]

Baker Act Reporting Requirements

Section 394.461(4), F.S., directs facilities designated as public receiving or treatment facilities to report certain data to DCF on an annual basis. DCF must issue an annual report based on the data received, including individual facility data and statewide totals. The report is submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 394.463(2)(e), F.S., requires DCF to prepare and provide annual reports to the agency itself, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the senate and the House of Representatives. The annual reports analyze data obtained from ex parte orders, involuntary orders issued under the Baker Act, professional certificates, law enforcement officers' reports, and reports relating to the transportation of patients.[49] Current law does not provide a due date for the report.

Section 394.463(4), F.S., also requires DCF to submit reports detailing findings on repeated involuntary Baker Act examinations of minors using data submitted by receiving facilities. DCF must analyze the data on:

- Both the initiation of involuntary examinations of children and the initiation of involuntary examination of students who are removed from a school;
- Identify any patters or trends and cases in which involuntary examinations are repeatedly initiated on the same child or student;
- Study root causes for such patterns, trends, or repeated involuntary examinations; and
- Make recommendations to encourage the use of alternatives to eliminate inappropriate initiations of such examinations.

The report must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 of each odd-numbered year.

Involuntary Services

Involuntary services are defined as court-ordered outpatient services or inpatient placement for mental health treatment.[50]

[48] Section 394.463(2)(f). F.S.
[49] Section 394.463(2)(e), F.S.
[50] Section 394.455(23), F.S.

Involuntary Outpatient Services

A person may be ordered to involuntary outpatient services upon a finding of the court that by clear and convincing evidence, all of the following factors are met:[51]

- The person is 18 years of age or older;
- The person has a mental illness;
- The person is unlikely to survive safely in the community without supervision, based on a clinical determination;
- The person has a history of lack of compliance with treatment for mental illness;
- The person has, within the immediately preceding 36 months:
  - Been involuntarily admitted to a receiving or treatment facility, or has received mental health services in a forensic or correctional facility, at least twice; or
  - Engaged in one or more acts of serious violent behavior towards self or others, or attempts at serious bodily harm to himself or herself or others;
- The person is, as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment plan and either he or she has refused voluntary placement for treatment or her or she is unable to determine for himself or herself whether placement is necessary;
- The person is in need of involuntary outpatient services in order to prevent a relapse or deterioration that would be likely to result in serious bodily harm to himself or herself or others, or a substantial harm to his or her well-being;[52]
- It is likely that the person will benefit from involuntary outpatient services; and
- All available, less restrictive alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate or unavailable.

A petition for involuntary outpatient services may be filed by the administrator of either a receiving facility or a treatment facility.[53] The petition must allege and sustain each of the criterion for involuntary outpatient services and be accompanied by a certificate recommending involuntary outpatient services by a qualified professional and a proposed treatment plan.[54]

The petition for involuntary outpatient services must be filed in the county where the patient is located. However, if the patient is being placed from a state treatment facility, the petition must be filed in the county where the patient will reside.[55] The petition must be based on the opinions of two professionals who have personally examined the individual within the preceding 72 hours.[56] When the petition has been filed, the clerk of the court must provide copies of the petition and the proposed treatment plan to DCF, the managing entity, the patient, the patient's guardian or representative, the state attorney, and the public defender or the patient's private counsel.[57]

[51] Section 394.4655(2), F.S.
[52] This factor is evaluated based on the person's treatment history and current behavior.
[53] Section 394.4655(4)(a), F.S.
[54] Section 394.4655(4)(b), F.S.
[55] Section 394.4655(4)(c), F.S.
[56] Section 394.4655(3)(a)1., F.S.
[57] *Id.*

Once a petition for involuntary outpatient services has been filed with the court, the court must hold a hearing within five business days, unless a continuance is granted.[58] Under current law, the patient is entitled to a maximum four-week continuance, with the concurrence of their counsel.[59] The court may waive a patient's presence from all or any portion of the hearing if it finds the patient's presence is not in the patient's best interests and the patient's counsel does not object.[60] Otherwise, the patient must be present. The state attorney for the circuit in which the patient is located represents the state, rather than the petitioner, as the real party in interest in the proceeding.[61] The court must appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel.[62]

At the hearing on involuntary outpatient services, the court must consider testimony and evidence regarding the patient's competence to consent to treatment; if the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate.[63] If the court concludes that the patient meets the criteria for involuntary outpatient services, it must issue an order for those services.[64] The order must specify the duration of involuntary outpatient services, which may be up to 90 days, and the nature and extent of the patient's mental illness.[65] The order of the court and the treatment plan are to be made part of the patient's clinical record.[66]

If, at any time before the conclusion of the initial hearing on involuntary outpatient services, it appears to the court that the person does not meet the criteria for involuntary outpatient services, but instead meets the criteria for involuntary inpatient placement, the court may order the person admitted for involuntary inpatient examination.[67]

<u>Involuntary Inpatient Placement</u>

A person may be placed in involuntary inpatient placement for treatment upon a finding of the court by clear and convincing evidence that:[68]

- He or she is mentally ill and because of his or her mental illness:
  - He or she has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement or is unable to determine for himself or herself whether placement is necessary; and
  - He or she is incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services; and
  - Without treatment, is likely to suffer from neglect or refuse to care for himself or herself; and

[58] Section 394.4655(7)(a)1., F.S.
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] Section 394.4655(5), F.S. This must be done within one court working day of filing the petition.
[63] Section 394.4655(7)(d), F.S.
[64] Section 394.4655(7)(b)1., F.S.
[65] *Id.*
[66] *Id.*
[67] Section 394.4655(7)(c), F.S. Additionally, if the person, instead, meets the criteria for involuntary assessment, protective custody, or involuntary admission pursuant to the Marchman Act, the court may order the person to be admitted for involuntary assessment pursuant to the statutory requirements of the Marchman Act.
[68] Section 394.467(1), F.S.

- Such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; or
- There is a substantial likelihood that in the near future he or she will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; and

- All available less restrictive treatment alternatives which would offer an opportunity for improvement of his or her condition have been judged to be appropriate.

The administrator of the receiving or treatment facility that is retaining a patient for involuntary inpatient treatment must file a petition for involuntary inpatient placement in the court in the county where the patient is located.[69] The petition must be based on the opinions of two professionals who have personally examined the individual within the past 72 hours.[70] Upon filing, the clerk of the court must provide copies to DCF, the patient, the patient's guardian or representative, and the state attorney and public defender of the judicial circuit in which the patient is located.[71] Unlike the procedures for involuntary outpatient services, current law does not require a proposed treatment plan to be filed with the petition for involuntary inpatient placement.

Involuntary Inpatient Placement Hearing

The court proceedings for involuntary inpatient placement closely mirror those for involuntary outpatient services.[72] However, the laws governing involuntary inpatient placement are silent regarding the court's order becoming part of the patient's clinical record. Once a petition for involuntary inpatient placement has been field, the court must hold a hearing within five business days in the county or facility where the patient is located, unless a continuance is granted.[73] Presently, only the patient is entitled to a maximum four-week continuance, with the concurrence of their counsel.[74] Similar to the procedures for involuntary outpatient services, the court may waive a patient's presence from all or any portion of the hearing if it finds the patient's presence is not in their best interests, and the patient's counsel does not object.[75] Otherwise, the patient must be present.

Current law permits the court to appoint a magistrate to preside at the hearing, in general.[76] At the hearing, the state attorney must represent the state, rather than the petitioning facility administrator, as the real party in interest in the proceeding.[77] Although the state attorney has the evidentiary burden in Baker Act cases, current law does not require a facility to make the patient's clinical records available to the state attorney so that the state can evaluate and prepare its case before the hearing. Additionally, there is no requirement that the court allow testimony from family members regarding the patient's prior history and how it relates to their current condition.

[69] Section 394.467(2) and (3), F.S.
[70] Section 394.467(2), F.S.
[71] Section 394.467(3), F.S.
[72] *See* section 394.467(6) and (7), F.S.
[73] Section 394.467(6), F.S.
[74] Section 394.467(5), F.S.
[75] Section 394.467(6), F.S.
[76] *Id.*
[77] *Id.*

If, at any time before the conclusion of the hearing, it appears to the court that the person does not meet the criteria for involuntary inpatient placement, but rather meets the criteria for involuntary outpatient services, the court may order the person evaluated for involuntary outpatient services.[78] If the court concludes that the patient meets the criteria for involuntary inpatient placement, it has discretion to issue an order for involuntary inpatient services at a receiving facility for up to 90 days or in a state treatment facility[79] for up to six months.[80]

Current law prohibits a state treatment facility from admitting a civil patient unless he or she has undergone a transfer evaluation, the process by which the patient is evaluated for appropriateness of placement in a treatment facility.[81] Current law also requires the court to receive and consider the transfer evaluation's documented information before the involuntary placement hearing is held, but it does not specify that the evaluator must testify at the hearing in order for the court to consider any substantive information within it.[82] Under Florida law, if a court were to consider substantive information in the transfer evaluation without the evaluator testifying at the hearing, it would be a violation of the hearsay rule contained in Florida's Evidence Code.[83]

Current law requires the court's order to specify the nature and extent of the patient's illness and prohibits the court from ordering individuals with traumatic brain injuries or dementia who lack a co-occurring mental illness to be involuntary committed to a state treatment facility.[84] However, there is currently no prohibition against involuntarily committing individuals with developmental disabilities who also lack a co-occurring mental illness to these facilities.

Remote Hearings

In response to the COVID-19 pandemic, on March 21, 2020, the Chief Justice of the Florida Supreme Court issued Supreme Court of Florida Administrative Order AOSC20-23, Amendment 2, authorizing courts to conduct hearings remotely. However, on January 8, 2022, Supreme Court of Florida Administrative Order AOSC21-17 was issued, requiring in-person hearings unless the facility where the individual is located is closed to hearing participants due to the facility's COVID-19 protocols or the individual waives the right to physical presence at the hearing.

[78] Section 394.467(6)(c), F.S.

[79] A treatment facility is any state-owned, state-operated, or state-supported hospital, center, or clinic designated by DCF to provide mentally ill patients treatment and hospitalization that extends beyond that provided for by a receiving facility. Treatment facilities also include federal government facilities and any private facility designated by DCF. Only VA patients may be treated in federal facilities S. 394.455(48), F.S. A receiving facility is any public or private facility or hospital designated by DCF to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate service provider. County jails are not considered receiving facilities. S. 394.455(40), F.S.

[80] Section 394.467(6)(b), F.S.

[81] Section 394.461(2), F.S.

[82] *Id.*

[83] Section 90.802, F.S. The basic hearsay rule states that courts cannot rely on out-of-court, unsworn statements (written or spoken) as proof of the matter asserted in the statement.

[84] Section 394.467(6), F.S.

Discharge Planning

Under current law, before a patient is released from a receiving or treatment facility, certain discharge planning procedures must be followed. Each facility must have discharge planning and procedures that include and document consideration of, at a minimum:

- Follow-up behavioral health appointments,
- Information on how to obtain prescribed medications, and
- Information pertaining to available living arrangements, transportation, and recovery support services.[85]

Additionally, for minors, information related to the Suicide and Crisis Lifeline must be provided.

Background Screening of Mental Health Care Personnel

Chapter 435, F.S., establishes standard procedures and requirements for criminal history background screening of prospective employees. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of Dru Sjodin National Sex Offender Public Website[86], and may include criminal records checks through local law enforcement agencies.[87] A level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through FDLE and national criminal history checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies.[88]

Mental health personnel are required to complete a level 2 background screening. Mental health personnel include all program directors, professional clinicians, staff members, and volunteers working in public or private mental health programs and facilities who have direct contact with individuals held for examination or admitted for mental health treatment.[89]

Section 456.0135, F.S., requires physicians, physician assistants, nurses, and other specified medical professionals to undergo a level 2 background screening as part of the licensure process.[90] The appropriate regulatory board reviews the background screening results to determine if the applicant or licensee has any offenses that would disqualify them from state licensure. A health care practitioner must also complete an additional level 2 background check as a condition of employment in mental health programs and facilities.

[85] Section 394.468, F.S.
[86] The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. The website is available at https://www.nsopw.gov/ (last visited Jan. 26, 2024).
[87] Section 435.04, F.S.
[88] Section 435.04, F.S.
[89] Section 394.4572(1)(a), F.S.
[90] Section 456.0135, F.S.

Substance Abuse

Approximately 48.7 million people in the U.S. aged 12 and older had a substance use disorder (SUD).[91] It is estimated that 1.1 million Floridians have a substance use disorder.[92] Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[93] Abuse can result when a person uses a substance[94] in a way that is not intended or recommended, or because they are using more than prescribed. Drug abuse can cause individuals to experience one or more symptoms of another mental illness or even trigger new symptoms.[95] Additionally, individuals with mental illness may abuse drugs as a form of self-medication. Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance use disorder.[96]

A substance use disorder is determined by specified criteria included in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). According to the DSM-5, a SUD diagnosis is based on evidence of impaired control, social impairment, risky use, and pharmacological indicators (tolerance and withdrawal). Substance use disorders occur when the chronic use of alcohol or drugs cause significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[97] Symptoms can range from moderate to severe, with addiction being the most severe form of SUDs.[98] Brain imaging studies of persons with addiction show physical changes in areas of the brain that are critical to judgment, decision-making, learning and memory, and behavior control.[99] The most common substance use disorders in the U.S. are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.[100]

According to the National Institute on Mental Health, a SUD is a mental disorder that affects a person's brain and behavior, leading to a person's inability to control their use of substances such

[91] SAMHSA, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2022 National Survey on Drug Use and Health*, available at https://www.samhsa.gov/data/sites/default/files/reports/rpt42731/2022-nsduh-nnr.pdf (last visited Jan. 26, 2024).
[92] Substance Abuse and Mental Health Administration, *Behavioral Health Barometer, Florida, Volume 6*, (2020), available at: https://www.samhsa.gov/data/sites/default/files/reports/rpt32826/Florida-BH-Barometer_Volume6.pdf (last visited Jan. 26, 2024).
[93] World Health Organization, *Substance Abuse*, available at: https://www.afro.who.int/health-topics/substance-abuse (last visited Jan. 26, 2024).
[94] Substances can include alcohol and other drugs (illegal or not), as well as substances that are not drugs at all, such as coffee and cigarettes.
[95] Robinson, L, Smith, M, and Segal, J, (October 2023). *Dual Diagnosis: Substance Abuse and Mental Health*, HealthGuide.org, available at https://www.helpguide.org/articles/addictions/substance-abuse-and-mental-health.htm#:~:text=Substance%20abuse%20may%20sharply%20increase,symptoms%20and%20delaying%20your%20recovery (last visited Jan. 26, 2024).
[96] National Institute on Drug Abuse, *Drugs, Brains, and Behavior: the Science of Addition*, available at: https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/drug-misuse-addiction (last visited Jan. 26, 2024).
[97] Substance Abuse and Mental Health Services Administration, *Mental Health and Substance Use Disorders*, available at: https://www.samhsa.gov/find-help/disorders (last visited Jan. 26, 2024).
[98] National Institute of Mental Health, *Substance Use and Co-Occurring Mental Disorders*, available at: https://www.nimh.nih.gov/health/topics/substance-use-and-mental-health (last visited Jan. 26, 2024).
[99] National Institute on Drug Abuse, Drugs, Brains, and Behavior: The Science of Addiction, available at: https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/drug-misuse-addiction (last visited Jan. 26, 2024).
[100] The Rural Health Information Hub, *Defining Substance Abuse and Substance Use Disorders*, available at https://www.ruralhealthinfo.org/toolkits/substance-abuse/1/definition (last visited Jan. 26, 2024).

as legal or illegal drugs, alcohol, or medications.[101] SUDs may co-occur with other mental disorders.[102] Approximately 19.4 million adults in the U.S. have co-occurring disorders.[103] Examples of co-occurring disorders include the combinations of major depression with cocaine addiction, alcohol addiction with panic disorder, alcoholism and drug addiction with schizophrenia, and borderline personality disorder with episodic drug use.[104]

The Marchman Act

In the early 1970s, the federal government furnished grants for states "to develop continuums of care for individuals and families affected by substance abuse."[105] The grants provided separate funding streams and requirements for alcoholism and drug abuse.[106] In response, the Florida Legislature enacted ch. 396, F.S., (alcohol) and ch. 397, F.S. (drug abuse).[107] In 1993, legislation combined chapters 396 and 397, F.S., into a single law, entitled the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).[108] The Marchman Act supports substance abuse prevention and remediation through a system of prevention, detoxification, and treatment services to assist individuals at risk for or affected by substance abuse.

An individual may receive services under the Marchman Act through either voluntary[109] or involuntary admission.[110] The Marchman Act establishes a variety of methods under which substance abuse assessment, stabilization, and treatment can be obtained on an involuntary basis. The Marchman Act encourages individuals to seek services on a voluntary basis within the existing financial and space capacities of a service provider.[111] However, denial of addiction is a prevalent symptom of a SUD, creating a barrier to timely intervention and effective treatment.[112] As a result, a third party must typically provide a person the intervention needed to receive SUD treatment.[113]

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[101] National Institute of Mental Health, *Substance Use and Co-Occurring Mental Disorders*, available at: https://www.nimh.nih.gov/health/topics/substance-use-and-mental-health (last visited Jan. 26, 2024).
[102] *Id.*
[103] Substance Abuse and Mental Health Services Administration, Key Substance Use and Mental Health Indicators in the U.S.: Results from the 2021 National Survey on Drug Use and Health, (December 2022), available at: https://www.samhsa.gov/data/sites/default/files/reports/rpt39443/2021NSDUHFFRRev010323.pdf (last visited Jan. 26, 2024).
[104] *Id.*
[105] Darran Duchene & Patrick Lane, *Fundamentals of the Marchman Act*, Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Program, available at https://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/ (last visited Jan. 26, 2024).
[106] *Id.*
[107] *Id.*
[108] Ch. 93-39, Laws of Fla., codified in Chapter 397, F.S. Reverend Hal S. Marchman was an advocate for persons who suffer from alcoholism and drug abuse.
[109] Section 397.601, F.S.
[110] Sections 397.675 – 397.6978, F.S.
[111] See section 397.601(1) and (2), F.S. An individual who wishes to enter treatment may apply to a service provider for voluntary admission. Within the financial and space capabilities of the service provider, the individual must be admitted to treatment when sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider.
[112] SAMHSA, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2022 National Survey on Drug Use and Health*, available at https://www.samhsa.gov/data/sites/default/files/reports/rpt42731/2022-nsduh-nnr.pdf (last visited on Jan. 26, 2024).
[113] *Id.*

Rights of Individuals

The Marchman Act protects the rights of individuals receiving substance abuse services in Florida, including, but not limited to the right to receive quality treatment at a state-funded facility, regardless of ability to pay and the right to counsel.[114] Under the Marchman Act, an individual must be informed that he or she has the right to be represented by counsel in any involuntary proceeding for assessment, stabilization, or treatment and that he or she may apply immediately to the court to have an attorney appointed if he or she cannot afford one. If the individual is a minor, the minor's parent, legal guardian, or legal custodian may apply to the court to have an attorney appointed.[115]

Involuntary Admissions

There are five voluntary admission procedures that can be broken down into two categories: non-court involved admissions and court involved admissions. Regardless of the nature of the proceedings, an individual meets the criteria for an involuntary admission under the Marchman Act where there is good faith reason to believe the individual is substance abuse impaired and, because of such impairment:[116]

- Has lost the power of self-control with respect to substance abuse; and
- The person's judgment has been so impaired because of substance abuse that he or she is incapable of appreciating the need for substance abuse services and of making a rational decision in regard to substance abuse services; or
- Without care or treatment, is likely to suffer from neglect or refuse to care for him or herself to the extent that such refusal threatens to cause substantial harm to their well-being and such harm is unavoidable through help of willing family members or friends; or
- The person has either inflicted, attempted or threatened to inflict, or unless admitted, is likely to inflict physical harm on himself or herself or another.

Under the Marchman Act, the be "impaired" or "substance abuse impaired," a person must have a condition involving the use of alcoholic beverages or any psychoactive or mood-altering substance, in a way that induces mental, emotional ,or physical problems and causes socially dysfunctional behavior.[117] Examples of psychoactive or mood-altering substances including alcohol and illicit or prescription drugs; however, only alcohol is explicitly named under current law. Although having a substance use disorder often leads to being impaired or substance abuse impaired, it is not presently included in the "impaired" or "substance abuse impaired" definition.

Unlawful activities relating to assessment and treatment

It is unlawful to give false information for the purpose of obtaining emergency or other involuntary admission for assessment and treatment. It is also unlawful to cause, conspire, or

[114] Section 397.501, F.S.
[115] *Id.*
[116] Section 397.675, F.S.
[117] Section 397.311, F.S.

assist with conspiring: to have a person involuntarily admitted without a reason to believe the person is actually impaired, or to deny the person the right to treatment.[118]

Non-Court Involved Involuntary Admissions

The three types of non-court procedures for involuntary admission for substance abuse treatment under the Marchman Act are:

- Protective custody: this procedure is used by law enforcement officers when an individual is substance-impaired or intoxicated in public and is brought to the attention of the officer.[119]
- Emergency Admission: this procedure permits an individual who appears to meet the criteria for involuntary admission to be admitted to a hospital, an addiction receiving facility, or a detoxification facility for emergency assessment and stabilization. Individuals admitted for involuntary assessment and stabilization under this provision must have a physician's certificate for admission, demonstrating the need for this type of placement and recommending the least restrictive type of service that is appropriate to the needs of the individual.[120]
- Alternative Involuntary Assessment for Minors: this procedure provides a way for a parent, legal guardian, or legal custodian to have a minor admitted to an addiction receiving facility to assess the minor's need for treatment by a qualified professional.[121]

Court Involved Involuntary Admissions

Under Current law, courts have jurisdiction over involuntary assessment and stabilization, which provides for short-term court-ordered substance abuse services to assess and stabilize an individual, and involuntary services[122], which provides for long-term court-ordered substance abuse treatment. Both types of involuntary admissions involve filing a petition with the clerk of court in the county where the person is located, which may be different from where he or she resides. Current law permits the chief judge in Marchman Act cases to appoint a general or special magistrate to preside over all or part of the proceedings. Although this may include ancillary matters, such as writs of habeas corpus issued under the Marchman Act, this is not explicitly stated in current law.

Involuntary Assessment and Stabilization

A petition for involuntary assessment and stabilization must contain identifying information for all parties and attorneys and facts necessary to support the petitioner's belief that the respondent is in need of involuntary assessment and stabilization.[123] Once the petition is filed, the court

[118] Section 397.581, F.S. Committing an unlawful activity relating to assessment and treatment is a misdemeanor of the first degree, punishable by law and by a fine not exceeding $5,000.
[119] Sections 397.6771 – 397.6772, F.S. A law enforcement officer may take the individual to his or her residence, to a hospital, a detoxification center, or addiction receiving facility, or in certain circumstances, to jail. Minors, however, cannot be taken to jail.
[120] Section 397.679, F.S.
[121] Section 397.6798, F.S.
[122] The term "involuntary services" means "an array of behavioral health services that may be ordered by the court for a person with substance abuse impaired or co-occurring substance abuse impairment and mental health disorders." Section 397.311(23), F.S. SB 12 (2016), ch. 2016-241, Laws of Fla., renamed "involuntary treatment." For consistency, this analysis will use the term involuntary services.
[123] Section 397.6951, F.S.

issues a summons to the respondent and the court must schedule a hearing to take place within 10 days, or can issue an ex parte order immediately.[124] The court may appoint a magistrate to preside over all or part of the proceedings.[125]

After hearing all relevant testimony, the court determines whether the respondent meets the criteria for involuntary assessment and stabilization and must immediately enter an order that either dismisses the petition or authorizes the involuntary assessment and stabilization of the respondent.[126]

If the court determines the respondent meets the criteria, it may order him or her to be admitted for a period of five days[127] to a hospital, licensed detoxification facility, or addictions receiving facility, for involuntary assessment and stabilization.[128] During that time, an assessment is completed on the individual.[129] The written assessment is sent to the court. Once the written assessment is received, the court must either:[130]

- Release the individual and, if appropriate, refer the individual to another treatment facility or service provider, or to community services;
- Allow the individual to remain voluntarily at the licensed provider; or
- Hold the individual if a petition for involuntary services has been initiated.

Involuntary services

Involuntary services, synonymous with involuntary treatment, allows the court to require an individual to be admitted for treatment for a longer period if the individual meets the eligibility criteria for involuntary admission and has previously been involved in at least one of the four other involuntary admissions procedures within a specified period, including having been assessed by a qualified professional within five days.[131] Similar to a petition for involuntary assessment and stabilization, a petition for involuntary services must contain identifying information for all parties and attorneys and facts necessary to support the petitioner's belief that the respondent is in need of involuntary services.[132] Under current law, the petition must also

[124] Section 397.6815, F.S. Under the ex parte order, the court may order a law enforcement officer or other designated agent of the court to take the respondent into custody and deliver him or her to the nearest appropriate licensed service provider.
[125] Section 397.681, F.S.
[126] Section 397.6818, F.S.
[127] If a licensed service provider is unable to complete the involuntary assessment and, if necessary, stabilization of an individual within five days after the court's order, it may, within the original time period, file a request for an extension of time to complete its assessment. The court may grant additional time, not to exceed seven days after the date of the renewal order, for the completion of the involuntary assessment and stabilization of the individual. The original court order authorizing the involuntary assessment and stabilization, or a request for an extension of time to complete the assessment and stabilization that is timely filed, constitutes legal authority to involuntarily hold the individual for a period not to exceed ten days in the absence of a court order to the contrary. S. 397.6821, F.S.
[128] Section 397.6811, F.S. The individual may also be ordered to a less restrictive component of a licensed service provider for assessment only upon entry of a court order or upon receipt by the licensed service provider of a petition.
[129] Section 397.6819, F.S. The licensed service provider must assess the individual without unnecessary delay using a qualified professional. If an assessment performed by a qualified professional who is not a physician, the assessment must be reviewed by a physician before the end of the assessment period.
[130] Section 397.6822, F.S. The timely filing of a Petition for Involuntary Services authorizes the service provider to retain physical custody of the individual pending further order of the court.
[131] Section 397.693, F.S.
[132] Section 397.6951, F.S.

contain the findings and recommendations of the qualified professional that performed the assessment.

An individual's spouse, legal guardian, any relative, or service provider, or any adult who has direct personal knowledge of the individual's substance abuse impairment or prior course of assessment and treatment may file a petition for involuntary services on behalf of the individual. If the individual is a minor, only a parent, legal guardian, or service provider may file such a petition. [133] Current law does not permit the court or clerk of court to waive or prohibit process service fees for indigent petitioners.

A hearing on a petition for involuntary services must be held within five days unless a continuance is granted.[134] A copy of the petition and notice of hearing must be provided to all parties and anyone else the court determines. Current law specifies that the court, not the clerk, must issue a summons to the person whose admission is sought.[135] However, typically the clerk of course, not the court, issues summons. Current law does not specify who must effectuate service (i.e., a law enforcement agency or private process servers). Current law requires the respondent to be present, unless the court finds appearance to be harmful, in which case the court must appoint a guardian advocate to appear on the respondent's behalf.[136]

In a hearing for involuntary services, the petitioner must prove by clear and convincing evidence that:[137]

- The individual is substance abuse impaired and has a history of a lack of compliance with treatment for substance abuse; and
- Because of such impairment the person is unlikely to voluntarily participate in the recommended services or is unable to determine for himself or herself whether services are necessary and:
    - Without services the individual is likely to suffer from neglect or refuse to care for himself or herself and such neglect or refusal proses a real and present threat of substantial harm to his or her well-being; and that there is a substantial likelihood that without services the individual will cause serious bodily harm to himself, herself, or another in the near future, as evidenced by recent behavior; or
    - The individual's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.

At the hearing, the court must hear and review all relevant evidence, including the results of the involuntary assessment by a qualified professional, and either dismiss the petition or order the individual to receive involuntary services from his or her chosen licensed service provider, if possible and appropriate.[138]

[133] Section 397.695(5), F.S.
[134] Section 397.6955, F.S.
[135] Section 397.6955(3), F.S.
[136] Section 397.6957(1), F.S.
[137] Section 397.6957(2), F.S.
[138] Section 397.6957(4), F.S.

If the court finds that the conditions for involuntary services have been proven, it may order the respondent to receive services from a publicly funded licensed service provider for up to 90 days.[139] If an individual continues to need involuntary services, at least ten days before the 90-day period expires, the service provider can petition the court to extent the services an additional 90 days.[140] A hearing must, then, be held within fifteen days.[141] Unless an extension is requested, the individual is automatically released after 90 days.[142] Current law does not require facilities to offer discharge planning to assist the respondent with post-discharge care.

However, substance abuse treatment facilities other than addictions receiving facilities are not locked; therefore, individuals receiving treatment in such unlocked facilities under the Marchman Act may voluntarily leave treatment at any time, and the only legal recourse is for a judge to issue a contempt of court charge and impose brief jail time.[143] Current law does not permit courts to drug test respondents in Marchman Act cases.

Substance Abuse Treatment in Florida

DCF provides treatment for substance abuse through a community-based provider system that offers detoxification, treatment and recovery support for adolescents and adults affected by substance misuse, abuse, or dependence:[144]

- Detoxification Services: detoxification focuses on the elimination of substance use. Detoxification services use medical and clinical procedures to assist individuals and adults as they withdraw from the physiological and psychological effects of substance abuse.
- Treatment Services: treatment services[145] include a wide array of assessment, counseling, case management, and support services that are designed to help individuals who have lost their abilities to control their substance use on their own and require formal, structured intervention and support. Some of these services may also be offered to the family members of the individual in treatment.
- Recovery Support: recovery support services, including transitional housing, life skills training, parenting skills, and peer-based individual and group counseling, are offered during and following treatment to further assist individuals in their development of the knowledge and skills necessary to maintain their recovery.

Licensed Bed Capacity for Substance Abuse Service Providers

DCF regulates substance abuse treatment providers, establishing licensure requirements and licensing service providers and individual service components under ch. 397, F.S. and rule 65D-

[139] Section 397.697(1), F.S.
[140] Section 397.6975, F.S.
[141] *Id.*
[142] Section 397.6977, F.S.
[143] If the respondent leaves treatment, the facility will notify the court and a status conference hearing may be set. If the respondent does not appear at the hearing, a show cause hearing may be set. If the respondent does not appear at the show cause hearing, the court may find the respondent in contempt of court.
[144] Department of Children and Families, *Treatment for Substance Abuse*, available at: https://www.myflfamilies.com/services/samh/treatment (last visited Jan. 26, 2024).
[145] Id. Research that persons who successfully complete substance abuse treatment have better post-treatment outcomes related to future abstinence, reduced use, less involvement in the criminal justice system, reduced involvement in the child protective system, employment, increased earnings, and better health.

30, F.A.C. Currently, there are over 2,800 DCF licensed substance abuse providers.[146] Licensed service components include a continuum of substance abuse prevention[147], intervention[148], and clinical treatment services, including, but not limited to:[149]

- Addictions receiving facilities;
- Detoxification;
- Intensive inpatient treatment;
- Residential treatment;
- Day or night treatment, including, day or night treatment with host homes, and community housing;
- Intensive outpatient treatment;
- Outpatient treatment;
- Continuing care;
- Intervention;
- Prevention; and
- Medication-assisted treatment for opiate addiction.

For licenses issued to addictions receiving facilities, inpatient detoxification, intensive inpatient treatment, and residential treatment, DCF must certify and include on the service provider's license, the licensed bed capacity for each facility.[150] The licensed bed capacity is the total bed capacity[151], or total number of operational beds, within the facility. The service provider must notify DCF of any change in the provider's licensed bed capacity equal to or greater than 10 percent, within 24 hours of the change.[152] Upon notification, DCF must update the service provider's license to reflect the increased licensed bed capacity.[153]

State Forensic System

Criminal Defendants and Competency to Stand Trial

The Due Process Clause of the 14th Amendment to the United States Constitution prohibits the states from trying and convicting criminal defendants who are incompetent to stand trial.[154] The

[146] DCF, Agency Bill analysis (2023), on file with the Senate Children, Families, and Elder Affairs Committee.
[147] Section 297.311(26)(c), F.S. Prevention is a process involving strategies that are aimed at the individual, family, community, or substance and that preclude, forestall, or impede the development of substance use problems and promote responsible lifestyles.
[148] Section 397.311(2)(b), F.S. Intervention is structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related problems.
[149] Section 397.311(26), F.S.
[150] *Id.*
[151] Bed capacity is total number of operational beds and the number of those beds purchased by DCF. *DCF, substance Abuse and Mental Health Financial and Service Accountability Management System (FASAMS), Pamphlet 155-2 Chapter 8 Acute Care Data* (May 2021), available at https://www.myflfamilies.com/sites/default/files/2022-12/chapter_08_acute_care.pdf (last visited Jan. 26, 2024).
[152] *Id.*
[153] DCF, *Operating Procedures*, CF Operating Procedure No. 155-31 Mental Health/Substance Abuse, available at https://www.myflfamilies.com/sites/default/files/2022-12/cfop_155-31_district_substance_abuse_licensing_and_regulatory_policies_and_procedures.pdf (last visited Jan. 26, 2024).
[154] *Pate v. Robinson*, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed. 815 (1966); *Bishop v. U.S.*, 350 U.S. 961, 76 S.Ct. 440, 100 L.Ed. 835 (1956); *Jones v. State*, 740 So.2d 520 (Fla. 1999).

states must have procedures in place that adequately protect the defendant's right to a fair trial, which includes his or her participation in all material stages of the process.[155] Defendants must be able to appreciate the range and nature of the charges and penalties that may be imposed, understand the adversarial nature of the legal process, and disclose to counsel facts pertinent to the proceedings. Defendants must also manifest appropriate courtroom behavior and be able to testify relevantly.[156]

If a defendant is suspected of being mentally incompetent, the court, counsel for the defendant, or the state may file a motion for examination to have the defendant's cognitive state assessed.[157] If the motion is well-founded, the court will appoint experts to evaluate the defendant's cognitive state. The defendant's competency is then determined by the judge in a subsequent hearing.[158] If the defendant is found to be mentally competent, the criminal proceeding resumes.[159] If the defendant is found to be mentally incompetent to proceed, the proceeding may not resume unless competency is restored.[160]

Involuntary Commitment of a Defendant Adjudicated Incompetent

Chapter 916, F.S., governs the state forensic system, which is a network of state facilities and community services for persons who have mental health issues, an intellectual disability, or autism, and who are involved with the criminal justice system. Offenders who are charged with a felony and adjudicated incompetent to proceed due to mental illness[161] and offenders who are adjudicated not guilty by reason of insanity may be involuntarily committed to state civil[162] and forensic[163] treatment facilities by the circuit court.[164] However, in lieu of such commitment, the offender may be released on conditional release[165] by the circuit court if the person is not serving a prison sentence.[166] The committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment or conditional release.[167]

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[155] *Id. See also* Rule 3.210(a)(1), Fla.R.Crim.P.
[156] *Id. See also* s. 916.12, 916.3012, and 985.19, F.S.
[157] Rule 3.210, Fla.R.Crim.P.
[158] *Id.*
[159] Rule 3.212, Fla.R.Crim P.
[160] *Id.*
[161] "Incompetent to proceed" means "the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding" or "the defendant has no rational, as well as factual, understanding of the proceedings against her or him." S. 916.12(1), F.S.
[162] A "civil facility" is a mental health facility established within the Department of Children and Families (DCF) or by contract with DCF to serve individuals committed pursuant to chapter 394, F.S., and defendants pursuant to chapter 916, F.S., who do not require the security provided in a forensic facility; or an intermediate care facility for the developmentally disabled, a foster care facility, a group home facility, or a supported living setting designated by the Agency for Persons with Disabilities (APD) to serve defendants who do not require the security provided in a forensic facility. Section 916.106(4), F.S. The DCF oversees two state-operated forensic facilities, Florida State Hospital and North Florida Evaluation and Treatment Center, and two privately-operated, maximum security forensic treatment facilities, South Florida Evaluation and Treatment Center and Treasure Coast Treatment Center.
[163] Section 916.106(10), F.S.
[164] Sections 916.13, 916.15, and 916.302, F.S.
[165] Conditional release in release into the community accompanied by outpatient care and treatment. Section 916.17, F.S.
[166] Section 916.17(1), F.S.
[167] Section 916.16(1), F.S.

A civil facility is, in part, a mental health facility established within DCF or by contract with DCF to serve individuals committed pursuant to ch. 394, F.S., and defendants pursuant to ch. 916, F.S., who do not require the security provided in a forensic facility.[168]

A forensic facility is a separate and secure facility established within DCF or the Agency for Persons with Disabilities (APD) to service forensic clients committed pursuant to ch. 916, F.S.[169] A separate and secure facility means a security-grade building for the purpose of separately housing individuals with mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed from non-forensic residents.[170]

A court may only involuntarily commit a defendant adjudicated incompetent to proceed for treatment upon finding, based on clear and convincing evidence, that:[171]

- The defendant has a mental illness and because of that mental illness:
  - The defendant is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative service, and, without treatment, the defendant is likely to suffer from neglect or refuse to care for herself or himself and such neglect or refusal poses a real and present threat of substantial harm to the defendant's well-being; or
  - There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on herself or himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm.
- All available, less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient or outpatient settings, which would offer an opportunity for improvement of the defendant's condition have been judged to be inappropriate; and
- There is a substantial probability that the mental illness causing the defendant's incompetence will respond to treatment and the defendant will regain competency to proceed in the reasonably foreseeable future.

If a person is committed pursuant to chapter 916, F.S., the administrator at the commitment facility must submit a report to the court:[172]

- No later than 6 months after a defendant's admission date and at the end of any period of extended commitment; or
- At any time the administrator has determined that the defendant has regained competency or no longer meets the criteria for involuntary commitment.

[168] Section 916.106(4), F.S.
[169] Section 916.106(10), F.S. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed pursuant to chapter 916, F.S., from non-forensic residents.
[170] *Id.*
[171] Section 916.13(1), F.S.
[172] Section 916.13(2), F.S.

Incompetent and Non-Restorable Defendants

If, after being committed, the defendant does not respond to treatment and is deemed non-restorable, the administrator of the commitment facility must notify the court by filing a report in the criminal case.[173] Those who are found to be non-restorable must be civilly committed or released.[174]

Non-Restorable Competency

An individual's competency is considered non-restorable when it is not likely that he or she will regain competency in the foreseeable future.[175] The DCF must make every effort to restore the competency of those committed pursuant to chapter 916, F.S., as incompetent to proceed. To ensure that all possible treatment options have been exhausted, all competency restoration attempts in less restrictive, step-down facilities should be considered prior to making a recommendation of non-restorability, particularly for individuals with violent charges.

Individuals who are found to be non-restorable in less than five years of involuntary commitment under section 916.13, F.S., require civil commitment proceedings or release. After an evaluator of competency has completed a competency evaluation and determined that there is not a substantial probability of competency restoration in the current environment in the foreseeable future, the evaluator must notify the appropriate recovery team[176] coordinator that the individual's competency does not appear to be restorable.

After notification, the recovery team's psychiatrist and clinical psychologist members must complete an independent evaluation to examine suitability for involuntary placement. Once the evaluation to examine suitability for involuntary placement is complete, the recovery team meets to consider the following:[177]

- Mental and emotional symptoms affecting competency to proceed;
- Medical conditions affecting competency to proceed;
- Current treatments and activities to restore competency to proceed;
- Whether relevant symptoms and conditions are likely to demonstrate substantive improvement;
- Whether relevant and feasible treatments remain that have not been attempted, including competency restoration training in a less restrictive, step-down facility; and
- Additional information as needed (including barriers to discharge, pending warrants and detainers, dangerousness, self-neglect).

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[173] Section 916.13(2)(b), F.S.
[174] *Mosher v. State*, 876 So.2d 1230 (Fla. 1st DCA 2004).
[175] DCF Operating Procedures No. 155-13, *Mental Health and Substance Abuse: Incompetent to Proceed and Non-Restorable Status*, September 2021, at https://www.myflfamilies.com/sites/default/files/2022-12/cfop_155-13_incompetence_to_proceed_and_non-restorable_status.pdf (last visited Jan. 26, 2024).
[176] A recovery team is an assigned group of individuals with specific responsibilities identified on the recovery plan including the resident, psychiatrist, guardian/guardian advocate (if resident has a guardian/guardian advocate), community case manager, family member, and other treatment professionals commensurate with the resident's needs, goals, and preferences. DCF Operating Procedures, No. 155-16, *Recovery Planning and Implementation in Mental Health Treatment Facilities*, May 16, 2019, available at: https://www.myflfamilies.com/sites/default/files/2022-12/cfop_155-16_recovery_planning_and_implementation_in_mental_health_treatment_facilities.pdf (last visited Jan. 26, 2024).
[177] *Id.*

The recovery team must document the team meeting and considerations for review, and, if applicable, the extent to which the individual meets the criteria for involuntary examination pursuant to s. 394.463, F.S., or involuntary inpatient placement pursuant to s. 394.467(1), F.S. Each member of the recovery team must provide a recommendation for disposition. Individuals with competency reported as non-restorable may be considered, as appropriate, for recommendations of release without legal conditions or involuntary examination or inpatient placement.[178]

Competency Evaluation Report

Following the completion of the competency evaluation, the evaluation to examine suitability for involuntary placement, and consideration of restorability, the evaluator of competency must complete a competency evaluation report to the circuit court.[179] A competency evaluation report to the circuit court is a standardized mental health document that addresses relevant mental health issues and the individual's clinical status regarding competence to proceed. The report is completed, pursuant to s. 916.13(2), F.S., and DCF Operating Procedure 155-19 (Evaluation and Reporting of Competency to Proceed).[180] The operating procedures provide guidelines for the format and minimal content that must be included in the report. Evaluators may add other relevant and appropriate information as necessary to report on the individual's status and needs.[181] The report must include the following:

- A description of mental, emotional, and behavioral disturbances;
- An explanation to support the opinion of incompetence to proceed;
- The rationale to support why the individual is unlikely to gain competence to proceed in the foreseeable future;
- A clinical opinion that the individual no longer meets the criteria for involuntary forensic commitment pursuant to s. 916.13, F.S.; and
- A recommendation whether the individual meets the criteria for involuntary examination pursuant to s. 394.463, F.S.

In order for a criminal court to order an involuntary examination under the Baker Act, there must be sworn evidence that the defendant meets the Baker Act criteria. Reports from mental health treatment facilities, such as the competency evaluation report, provide the court with sufficient basis/evidence to enter an order for involuntary examination. These reports may be sworn upon request of the court.[182]

A competency evaluation report is used in the process of a forensic commitment becoming a civil commitment. However, to be considered in a criminal court proceeding as evidence that the defendant meets Baker Act criteria, the report must be sworn. Currently, competency evaluation reports are not sworn.

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[178] Chapter 394, F.S. or *Mosher v. State*, 876 So.2d 1230 (Fla. 1st DCA 2004).
[179] DCF's Operating Procedure 155-19, *Evaluation and Reporting of Competency to Proceed*, February 15, 2019, available at: https://www.myflfamilies.com/sites/default/files/2022-12/cfop_155-19_evaluation_and_reporting_of_competency_to_proceed.pdf (last visited Jan. 26, 2024).
[180] *Id.*
[181] *Id.*
[182] DCF, Agency Bill analysis HB 201 (2023), p. 2 (on file with the Senate Children Families, and Elder Affairs committee).

Civil Commitment after Determination of Non-Restorable Defendant

Civil commitment is initiated in accordance with Part I of Chapter 394, F.S. The procedures in that part ensure the due process rights of a person are protected and require examination of a person believed to meet Baker Act criteria at a designated receiving facility.

If a non-restorable defendant is returned to court in accordance with ch. 916, F.S., the criminal court has authority to enter an order for involuntary Baker Act examination, and the defendant is taken to the nearest receiving facility. If found to meet criteria, a separate civil case is opened and the criminal case may be dismissed.[183]

III. Effect of Proposed Changes:

Streamlining and Coordinating Baker Act Processes and Standards.

The bill makes numerous changes to ch. 394, the Baker Act. These changes streamline court processes, requirements, and allow for more coordinated service provision.

Section 5 of the bill amends s. 394.461, F.S., related to Baker Act transfer evaluations to receiving and treatment facilities by:

- Removing the requirement that the court receive and consider a transfer evaluation before a hearing for involuntary placement. Instead, it allows the state attorney to establish that a transfer evaluation was performed and that the document was properly executed by providing the court with a copy of the transfer evaluation before the close of the state's case in chief.
- Codifying current hearsay rules by specifying that the court may not consider substantive information in the transfer evaluation unless the evaluator testifies at the hearing.

The bill also removes the requirement for the annual Baker Act receiving facility and system report from being provided to the Governor, President of the Senate, and Speaker of the House of Representatives and instead requires the report be posted on the DCF's website.

Section 8 of the bill amends s. 394.4625, F.S., related to voluntary admissions to require the parent or legal guardian of a minor to provide express and informed consent for that minor's admission to a facility for observation, diagnosis, or treatment along with a clinical review by the facility to verify the voluntariness of the minor's consent.

Section 9 of the bill amends s. 394.463, F.S., related to involuntary examinations under the Baker Act and makes the following changes:

- Sets the start time for the required 72 hour examination period as when the patient arrives at the receiving facility and includes the hours before the ordinary business hours of the following workday morning when clarifying the procedure for what happens when a patient's 72-hour hold ends during a weekend or holiday.
- Allows discretion for law enforcement officers when deciding whether to take a person for involuntary examination.

[183] Section 916.145, F.S.

- Removes the prohibition of psychiatric nurses approving the release of a patient if the involuntary examination was initiated by a psychiatrist unless the release was approved by the psychiatrist.
- Removes the requirement that a petition may only be filed by the facility administrator and, instead, cites to who may file a petition in s. 394.4655(4)(a) and adds the requirement that the court dismiss untimely filed petitions.
- Requires the DCF and AHCA to analyze service data of those defined as "high utilizers of crisis stabilization services" and identify patterns or trends and make recommendations to decrease admissions. These recommendations may be addressed in the DCF's contracts with MEs and in AHCA's contracts with Medicaid MMA plans.
- Requires the DCF to publish a report on its findings and recommendations to its website along with submitting the report to the Governor, President of the Senate, and Speaker of the House of Representatives by November 1 each odd-numbered year.

Section 10 of the bill amends s. 394.4655, F.S., to delete almost the entirety of the "involuntary outpatient services" section and combine that language with the "involuntary inpatient placement" section of statute as the titled "Involuntary Services" section of the Baker Act (section 11 of the bill).

Section 11 amends s. 394.467, F.S., to substantially reword the section and combine the language for the criteria and processes for involuntary inpatient placement and involuntary outpatient services as "involuntary services." As these two sections were very similar, the newly drafted section contains mainly current law. However, the bill does make multiple substantive changes:

- Clarifies that a patient can be recommended for either inpatient or outpatient involuntary services or a combination of both.
- Criteria for involuntary services:
  - Allows those under age 18 access to all involuntary services. This will increase access to services, as current law required the individual be 18 or older for involuntary outpatient services.
  - Removes the involuntary outpatient services 36-month involuntary commitment criteria, which required the person to have been committed to a receiving or treatment facility or received mental health services in a forensic or correctional facility within the preceding 36-month period.
  - Expands the requirement that a recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have examined the patient in the preceding 72 hours, to all involuntary services, not just inpatient services.
  - For outpatient services only, includes a physician assistant or social worker may provide a second opinion on a recommendation should a psychiatrist or clinical psychologist not be available.
  - Changes the requirement that a recommendation for involuntary services be entered on a petition for involuntary inpatient placement certificate that authorizes the facility to retain the patient pending transfer to a facility or completion of a hearing. Instead, recommendations are must be on the certificate and included in the clinical record.
  - Adds in a requirement for outpatient services only: if the individual has been stabilized, and no longer meets the criteria, the patient must be released while waiting for a hearing.

- Hearings for Involuntary Services:
  - Creates a single petition process for involuntary services. This gives the court more flexibility and authority to order a person to either involuntary outpatient services, involuntary inpatient placement, or a combination of both.
  - Creates a single certificate for petitioning for involuntary services.
  - Clarifies that the hearing must be within 5 court working days of the filing of the petition.
  - Requires the facility to make the patient's clinical records available to the state attorney and the patient's attorney for preparation for the hearing.
  - Requires the documents to maintain confidentiality and prohibits the use of the documents for prosecution, investigation, or any other purpose than the hearing.
  - Expands the grounds under which a patient's presence at the hearing may be waived. Specifically, the bill authorizes the court to waive a patient's presence if the patient knowingly, intelligently, and voluntarily waives the right to be present. However, the language maintains the requirement that the patient's counsel have no objections for the waiver to take effect.
  - Prohibits the court from ordering an individual with a developmental disability as defined under s. 393.063, F.S., who lacks a co-occurring mental illness, into a state treatment facility. This expands current law which prohibits such orders for persons with traumatic brain injury or dementia and ensures that limited state treatment facility beds remain for individuals who are appropriate for treatment.
- Petition for Involuntary Services:
  - Expands who may be allowed to file a petition for involuntary services to both administrators of receiving and treatment facilities.
  - Provides what must be in the petition, including, but not limited to:
    - Whether the petitioner is recommending inpatient, outpatient, or both services.
    - The length of time recommended for each type.
    - Requires the services in the plan be deemed clinically appropriate by a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker who consults with, or is employed/contracted by, the service provider.
    - Requires certification to the court that services are currently available and whether the service provider agrees to provide the services.
  - Prohibits the petition from being filed if the recommended services are not available and requires the managing entity be notified if the services are not available.
  - Requires the managing entity to document efforts to obtain the requested service.
  - Requires each criterion be included in the petition as well as substantiated. Requires a copy of the certificate and the proposed plan be attached to the petition.
  - Requires the clerk to provide a copy of the filed petition, along with all attachments, to:
    - The department
    - Managing entity
    - Patient
    - Patient's guardian or representative
    - State attorney
    - Public defender or private counsel.
  - Allows the State at least one continuance of the hearing for a period of up to 5 court working days and requires a showing of good cause and due diligence before the request

is made. Clarifies the state's failure to timely review the documents or failure to attempt to contact a witness does not warrant a continuance.

- Orders of the court:
  - Allows the court to order a patient to involuntary inpatient, outpatient or a combination based on the criteria met and which meets the needs of the patient best.
  - Allows an order for inpatient placement or combination of inpatient and outpatient be for up to six months.
  - Requires an order to specify the length of time a patient shall be ordered for inpatient and outpatient when a combination of both has been ordered.
  - For inpatient placement, the court is allowed to:
    - Order the patient be transferred to the facility;
    - Order the patient be retained at the facility if they are already there;
    - Order the patient receive services on an involuntary basis.
  - Allows documentation of the patient's illness to the service provider for outpatient services to include evaluations of the patient performed by a psychiatric nurse, marriage and family therapist, mental health counselor, and not just psychologists and clinical social workers as under current law.
  - Allows the administrator of a facility to refuse admission to a patient whom has been ordered to be there if they do not have the proper documentation.

- Procedure for Continued Involuntary services:
  - Requires a copy of the petition and its attachments be provided to the department, the patient, the patient's guardian advocate, the state attorney, and the patient's private counsel or public defender.
  - Requires the court to appoint counsel to represent the patient unless they have their own counsel or are ineligible.
  - Requires a petition for an order authorizing continued involuntary inpatient placement if the patient was admitted while serving a criminal sentence and the sentence is about to expire or a patient who was a minor and is about to reach the age of 18.
  - Requires this procedure to be followed prior to the expiration of each additional time period.

Section 12 of the bill amends s. 394.468, F.S., to amend the discharge procedures for an individual that was ordered to involuntary inpatient placement. These changes include:

- Revising discharge procedures to require receiving and treatment facilities to include in their discharge planning and procedures documentation of the patient's needs and actions to address those needs and also refer patients being discharged to care coordination services if the patient meets certain criteria and to recovery support opportunities through coordinated specialty care programs, including, but not limited to, connection to a peer specialist.
- Requires the receiving facility to coordinate face-to-face or through electronic means, while in the presence of the patient, ongoing treatment and discharge plans to a less restrictive community behavioral health provider, a peer specialist, a case manager, or a care coordination service.
- Requires receiving facilities to implement policies and procedures outlining strategies for how they will comprehensively address the needs of the individuals who demonstrate a high utilization of receiving facility services to avoid or reduce future use of crisis stabilization

services. More specifically, the bill requires the provider to develop and include in discharge paperwork a personalized crisis prevention plan for the patient that identifies stressors, early warning signs of symptoms, and strategies to manage crisis.
- Requires receiving facilities to have a master's level or licensed professional staff engage a family member, legal guardian, legal representative, or a natural support in discharge planning and meet with them face to face or through other electronic means to review the discharge plan.
- Requires the receiving facility to set up interim outpatient services to continue care for instances where certain levels of care are not immediately available at discharge.

Section 15 of the bill amends s. 394.499, F.S., to allow eligibility for voluntary crisis stabilization for a minor upon the parent's express and informed consent and removes the requirement for the minor's consent and the hearing to verify the voluntariness of that minor's consent.

Section 16 of the bill amends s. 394.875, F.S., to remove the requirement in s. 394.875, F.S., that crisis stabilization units are limited to a maximum of 30 beds and removes the requirement for a DCF demonstration project in Circuit 18 to test the impact of expanding the authorized amount of beds from 30 to 50.

Marchman Act

The bill makes numerous changes to ch. 397, the Marchman Act. These changes change the court processes of Marchman act by removing the two-petition process; closer aligning the petition, hearing, and order requirements with the Baker Act; and making court proceedings more efficient and streamlined.

Sections 18 and 26 of the bill amend ss. 397.305 and 397.6751, F.S., to require services be provided that are **most appropriate** and least restrictive, instead of just least restrictive

Section 20 of the bill amends s. 397.401, F.S., related to licensed service providers to prohibit the operators of addictions receiving facilities or providing detoxification in a non-hospital setting from exceeding licensed capacity by more than ten percent and exceeding licensed capacity for more than three consecutive working days or more than seven days in one month.

Currently these service providers are required to notify DCF within 24 hours of any change to bed capacity equal to or greater than 10 percent. DCF then must update the service provider's license to reflect increased bed capacity.

Section 24 of the bill amends s. 397.675, F.S., to add substance use disorder to the list of criteria for admission to involuntary treatment.

One of the criteria for involuntary admission for substance abuse treatment requires a person to be likely to refuse to care for him or herself to the extent that such refusal threatens to cause substantial harm to their well-being and it is not apparent that such harm may be avoided through the help of **willing** family members or friends. This section amends this criteria to add that such family members or friends being considered for offering help also be **able and responsible**.

Section 25 of the bill amends s. 397.681, F.S., related to general provisions of the Marchman Act to:

- Allow the chief judge to appoint a magistrate to all or part of the proceedings related to the petition or any ancillary matters thereto.
- Clarify that a respondent has the right to counsel at every state of a judicial proceeding in they need or desire counsel, unless the respondent was present and the court finds he or she knowingly, intelligently, and voluntarily waived legal representation.

Section 27 of the bill amends s. 397.6818, F.S., related to court determinations under the Marchman Act as follows:

- In the case of an emergency, or when upon review of the petition the court determines that an emergency exists, the court may rely exclusively upon the contents of the petition and, without an attorney being appointed, enter an ex parte order for the respondent's involuntary assessment and stabilization which must be executed during the period when the hearing on the petition for treatment is pending.
- The court may further order a law enforcement officer or other designated agent of the court to:
  - Take the respondent into custody and deliver him or her to either the nearest appropriate licensed service provider or a licensed service provider designated by the court to be evaluated; and
  - Serve the respondent with the notice of hearing and a copy of the petition.
- In such instances, a service provider must promptly inform the court and parties of the respondent's arrival and refrain from holding the respondent for longer than 72 hours of observation thereafter, unless:
  - The service provider seeks additional time in accordance with the law and the court, after a hearing, grants that motion;
  - The respondent shows signs of withdrawal, or a need to be either detoxified or treated for a medical condition, which will serve to extend the amount of time the respondent may be held for observation until the issue is resolved; or
  - The original or extended observation period ends on a weekend or holiday, in which case the provider may hold the respondent until the next court working day.
- If an ex parte order is not executed by the initial hearing date, it is deemed void. If the respondent does not appear at the hearing for any reason, including lack of service, and upon reviewing the petition, testimony, and evidence presented, the court reasonably believes the respondent meets the Marchman Act commitment criteria and that a substance abuse emergency exists, the court is allowed to issue or reissue an ex parte assessment and stabilization order that is valid for 90 days. If the respondent's location is known at the time of the hearing, the court:
  - Must continue the case for no more than 10 court working days; and
  - May order a law enforcement officer or other designated agent of the court to:
- Take the respondent into custody and deliver him or her to be evaluated; and
- If a hearing date is set, serve the respondent with notice of the rescheduled hearing and a copy of the involuntary treatment petition if the respondent has not already been served.

- If the respondent has not been assessed within 90 days, the bill requires the court to dismiss the case.

Section 29 of the bill amends and renumbers s. 397.695 to s. 397.68112, F.S., to allow the court to prohibit service of process fees if a petitioner is indigent and allows a law enforcement agency to waive the fee for the same reason.

Section 30 of the bill amends and renumbers s. 397.6951 to s. 397.68141, F.S., to change the requirements for a petition for involuntary treatment services to:
- Remove the requirement that findings and recommendations of the qualified professional's assessment be in the petition; and instead
- Requires the petition to be accompanied by a certificate or report of a qualified professional who examined the respondent within 30 days before the petition was filed. If the respondent was not assessed before the petition or refused to submit to an evaluation this lack of assessment or refusal must be noted in the petition.

If an emergency, the bill requires the petition to describe the exigent circumstances and include a request for an ex parte assessment and stabilization order.

Section 31 of the bill amends and renumbers s. 397.6955 to s. 397.68151, F.S., to make changes to the duties of the court upon the filing of a petition for involuntary services. These changes:
- Allow the office of criminal conflict and civil regional counsel to stop representation once the office is discharged by the court;
- Increase of the time in which the court is required to hold a hearing on the petition to within 10 working days from 5 days; and
- Require law enforcement to serve a person whose admission is sought for initial hearing unless the chief judge authorizes private process servers.

Section 32 of the bill amends s. 397.6957, F.S., to make multiple substantive changes to the hearing on a petition for involuntary treatment under the Marchman Act. The bill requires the respondent be present at a hearing, unless the court finds a knowing, intelligent, and voluntary waiver of the right to be present. The other substantive changes the bill makes:
- Requires relevant evidence to include testimony from individuals familiar with the respondent's history and how it relates to his or her current condition.
- Allows the court to order drug testing.
- Allows, upon good cause, medical professionals involved with respondent's treatment to appear remotely.
- Prohibits a respondent from being involuntarily ordered into treatment if a clinical assessment is not performed, unless the respondent is present in court and expressly waives the assessment. Outside of emergency situations, if the respondent is not, or previously refused to be, assessed by a qualified professional and, based on the petition, testimony, and evidence presented, it appears that the respondent qualifies for involuntary treatment services, the bill requires the court to issue an involuntary assessment and stabilization order to determine the correct level of treatment for the respondent. In Marchman Act cases where an assessment was attached to the petition, the bill allows the respondent to request, or the

court on its own motion to order, an independent assessment by a court-appointed physician or another physician agreed to by the court and the parties.

- An assessment order issued by the court is valid for 90 days. If the respondent is present or there is proof of service or the respondent's whereabouts are known the involuntary treatment hearing may be continued for no more than 10 court working days. Otherwise, the petitioner and the service provider are required to promptly inform the court that the respondent has been assessed in order for the court to schedule a hearing as soon as practicable.
- If there is evidence indicating that the respondent will not voluntarily appear at the hearing, or is a danger to self or others, the bill permits the court to enter a preliminary order committing the respondent to an appropriate treatment facility for further evaluation until the new hearing date.
- Requires the court to dismiss the case if the respondent still has not been assessed after 90 days.
- An assessment conducted by a qualified professional must occur within 72 hours after the respondent arrives at a licensed service provider unless the respondent displays signs of withdrawal or a need to be either detoxified or treated for a medical condition. In such cases, the amount of time the respondent may be held for observation is extended until that issue is resolved.
- If the respondent is a minor, the bill requires the assessment to begin within the first 12 hours after the respondent is admitted, in alignment with the Baker Act, and the service provider may file a motion to extend the 72 hours of observation by petitioning the court in writing for additional time.
- Requires a service provider to provide copies of the motion to all parties in accordance with applicable confidentiality requirements. After the hearing, the court may grant additional time or expedite the respondent's involuntary treatment hearing. If the court grants the service provider's petition, the service provider is permitted to hold the respondent until its extended assessment period expires or until the expedited hearing date. In cases where the original or extended observation period ends on a weekend or holiday, the provider is only permitted to hold the respondent until the next court working day.
- Requires the qualified professional, in accordance with applicable confidentiality requirements, to provide copies of the completed report to the court and all relevant parties and counsel no later than ordinary close of business the day before the hearing. The report is required to contain a recommendation on the level, if any, of substance abuse and any co-occurring mental health treatment the respondent may need. The qualified professional's failure to include a treatment recommendation results in the petition's dismissal.
- Allows the court to initiate involuntary examination proceedings at any point during the hearing if it has reason to believe that the respondent, due to mental illness other than or in addition to substance abuse impairment, is likely to neglect or injure himself, herself, or another if not committed, or otherwise meets the involuntary commitment provisions covered under the Baker Act.

Section 33 of the bill amends s. 397.6975, F.S., to allow a petition for the extension of involuntary services to be filed by the service provider or the person who filed the initial petition for treatment if accompanied by supporting documentation from the service provider. This petition must be filed with the court at least 10 days before expiration of the current court-

ordered services period. The bill requires the court to immediately schedule a hearing within 10 court working days, to be held not more than 15 days after filing of the petition. The bill requires counsel be noticed with the petition and notice of hearing. The bill also deletes multiple subsections to conform with the overall substantive changes in the bill.

Section 34 of the bill amends s. 397.6977, F.S., to require discharge planning and procedures for any respondent's release from involuntary treatment services to include and document the respondent's needs and actions to address such needs for, at a minimum:

- Follow-up behavioral health appointments;
- Information on how to obtain prescribed medications;
- Information pertaining to available living arrangements and transportation; and
- Referral to recovery support opportunities, including, but not limited to, connection to a peer specialist.

Forensic System Changes

Section 38 of the bill amends s. 916.13, F.S., to make changes related to the involuntary commitment of a defendant adjudicated incompetent. The DCF is currently required to conduct a competency evaluation and submit a report upon determination that a defendant will not, or is unlikely to, regain competency. The bill language:

- Requires the DCF to submit this report within 30 days of the determination.
- Requires the report to be sworn and provided to counsel in addition to the court.
- Establishes the minimum information that must be included in the competency evaluation report. The report must include, at a minimum, the following information regarding the defendant:
  - A description of mental, emotional, and behavioral disturbances;
  - An explanation to support the opinion of incompetency to proceed;
  - The rationale to support why the defendant is unlikely to gain competence to proceed in the foreseeable future;
  - A clinical opinion regarding whether the defendant no longer meets the criteria for involuntary forensic commitment; and
  - A recommendation on whether the defendant meets the criteria for involuntary services pursuant to s. 394.467, F.S.
- Authorizes a defendant, who meets the criteria for involuntary examination as determined by an independent clinical opinion, to appear remotely for the hearing

Other Changes

Sections 2 and 21 of the bill amend ss. 394.4572 (Baker Act) and 397.4073 (Marchman Act) F.S., to exempt physicians and nurses from background screenings by both DCF and AHCA if providing a service within their scope of practice.

Sections 39 through 45 of the bill repeal sections of law related to the Marchman Act. The requirements of these repealed sections have been included in the substantive changes throughout the bill streamlining the processes of the Baker and Marchman acts.

Sections 1, 3, 4, 6, 7, 13, 14, 17, 19, 22, 23, 28, 35, 36, and 37 of the bill are amended to make non-substantive style and language changes or conforming and cross-reference changes to put into effect the substantive provisions of the bill.

Section 46 of the bill provides an effective date of July 1, 2024.

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:

None.

C. Government Sector Impact:

The bill has an indeterminate significant fiscal impact to DCF and the state court system as a result of the following provisions:

Reporting Requirements
DCF will be required to create and publish a report on Marchman Act services. The bill also requires DCF and the Agency for Health Care Administration to analyze the service data collected on individuals who are high users of crisis stabilization services. There is an indeterminate, likely significant, negative fiscal impact as workload for the DCF and AHCA associated with these provisions.

Involuntary Services
The bill provides judges with greater flexibility regarding the order of involuntary services, rather than being required to order the specific services for which the petition was filed or no services at all. This will likely increase demand for involuntary outpatient services. There is an indeterminate, likely significant, negative fiscal impact for the likely increase in orders for these services.

Marchman Act Services
The bill makes it easier for family and friends of individuals with substance use disorder to file pro se for Marchman Act services by streamlining the two-petition process. There is an indeterminate, likely significant, negative fiscal impact for the likely increase in orders for services as judges act on these petitions.

Discharge Planning
The bill modifies the discharge procedures for receiving facilities by requiring the referral of patients to follow-up supports and services; face-to-face or electronic interaction with the patient and persons in their support system to communicate about follow-up care; and development of a personalized crisis prevention plan for the patient in an effort to mitigate repeated utilization of receiving facility services. There is an indeterminate, likely significant, negative fiscal impact as workload to the facilities to implement these provisions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: ss. 394.455, 394.4572, 394.459, 394.4599, 394.461, 394.4615, 394.462, 394.4625, 394.463, 394.4655, 394.467, 394.468, 394.495, 394.496, 394.499, 394.875, 394.9085, 397.305, 397.311, 397.401, 397.4073, 397.501, 397.581, 397.675, 397.681, 397.6751, 397.6818, 397.693, 397.695, 397.6951, 397.6955, 397.6957, 397.6975, 397.6977, 409.972, 464.012, 744.2007, 916.13, F.S.

This bill creates the following sections of the Florida Statutes: ss. 397.68111, 397.68112, 397.68141, and 397.68151, F.S.

This bill repeals the following sections of the Florida Statutes: ss. 397.6811, 397.6814, 397.6815, 397.6819, 397.6821, 397.6822, 397.6978, F.S.

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.