

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 272

INTRODUCER: Senator Garcia

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

DATE: April 3, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Delia | Cox | CF | Pre-meeting |
| 2. | | | AHS | |
| 3. | | | FP | |

I. Summary:

SB 272 creates requirements for the Department of Children and Families (the DCF) to work with children and young adults in out-of-home care to ensure they receive rights-related education on topics including:

- Safety;
- Education;
- Placement, visitation, and contact with siblings, family, and other important persons;
- Court participation;
- Participation in permanency planning, transition planning, and other case planning;
- Access to food, clothing, shelter, and health care; and
- The topic of normalcy and what that means for children and young adults in out-of-home care.

The bill provides legislative findings and intent, establishes the Office of the Children’s Ombudsman (Office), and specifies responsibilities of the Office. The bill also requires the Office to submit a report to the President of the Senate, Speaker of the House of Representatives, and the DCF annually beginning on July 30, 2024 including an analysis of the data collected, a discussion of internal policy changes, and recommendations consistent with such data for improving the child welfare system and delivery of services.

The DCF is directed to adopt rules to implement the bill.

The bill is expected to have a fiscal impact on state government. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2023.

II. Present Situation:

Department of Children and Families

The mission of the DCF 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.¹

Under s. 20.19(4), F.S., the DCF must provide services relating to:

- Adult protection.
- Child care regulation.
- Child welfare.
- Domestic violence.
- Economic self-sufficiency.
- Homelessness.
- Mental health.
- Refugees.
- Substance abuse.

The DCF must also deliver services by contract through private providers to the extent allowed by law and funding.² These private providers include community based care lead agencies (CBCs) delivering child welfare services and managing entities (MEs) delivering behavioral health services.

Florida's Child Welfare System

Chapter 39, F.S., creates the dependency system charged with protecting child welfare. Florida's dependency system identifies children and families in need of services through reports to the central abuse hotline and child protective investigations. DCF and the 18 CBCs throughout Florida³ work with those families to address the problems endangering children, if possible. If the problems are not addressed, the child welfare system finds safe out-of-home placements for these children.

The DCF's practice model is based on the safety of the child within the home by using in-home services, such as parenting coaching and counseling, to maintain and strengthen that child's natural supports in his or her environment.

The DCF contracts with CBCs for case management, out-of-home services, and related services. The outsourced provision of child welfare services is intended to increase local community ownership of service delivery and design. CBCs contract with a number of subcontractors for case management and direct care services to children and their families.

¹ Section 20.19(1), F.S.

² *Id.*

³ These 18 CBCs together serve the state's 20 judicial circuits.

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.⁴ Ultimately, the DCF is responsible for program oversight and the overall performance of the child welfare system.⁵

Rights of and Goals for Delivery of Services to Children in Foster Care

The U.S. and Florida Constitutions provide rights to individuals, including children in foster care, as do certain federal and state laws. Examples include basic rights and a right to privacy under Article I, §2 and Article I, §23 of the Florida Constitution, the right to high quality education under Article IX of the Florida Constitution, and due process rights under the U.S. Constitution.

When a state takes a child into custody, it accepts responsibility for the child's safety.⁶ Courts have found that foster children have a constitutional right to be free from unnecessary pain and a fundamental right to physical safety.⁷ When a state fails to meet that obligation, it deprives the child of a liberty interest under the Fourteenth Amendment.⁸

Section 39.4085, F.S., sets forth goals⁹ for the delivery of services to children in shelter or foster care, including that services should be directed by the principle that the health and safety of children should be of paramount concern and children in shelter or foster care should:

- Receive a copy of these goals and have the goals fully explained to them when they are placed in the custody of the DCF.
- Enjoy individual dignity, liberty, pursuit of happiness, and the protection of their civil and legal rights as a person while in the custody of the state.
- Have their privacy protected, have their personal belongings secure and transported with them, and unless otherwise ordered by the court, have uncensored communication, including receiving and sending unopened communications and having access to a telephone.
- Have personnel providing services who are sufficiently qualified and experienced to assess risk children face prior to removal from their home and to meet the needs of the children once they are in the DCF's custody.
- Remain in the custody of their parents or legal custodians unless and until there has been a determination by a qualified person exercising competent professional judgment that removal is necessary to protect their physical, mental, or emotional health or safety.
- Have a full risk, health, educational, medical, and psychological screening, and, if needed, assessment and testing upon adjudication into foster care; and to have their photograph and fingerprints included in their case management file.

⁴ Ch. 39, F.S.

⁵ *Id.*

⁶ *Ray v. Foltz*, 370 F.3d 1079, 1082 (11th Cir. 2004)(citing *Taylor v. Ledbetter*, 818 F.2d 791-95 (11th Cir. 1987).

⁷ *Id.*

⁸ *Id.*

⁹ The provisions of s. 39.4085, F.S., establish goals, not rights. The section 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. The section does not require the expenditure of funds to meet the goals except funds specifically appropriated for such purpose.

- Be referred to and receive services, including necessary medical, emotional, psychological, psychiatric, and educational evaluations and treatment, as soon as practicable after identification of the need for such services by the screening and assessment process.
- Be placed in a home with no more than one other child, unless part of a sibling group.
- Be placed away from other children known to pose a threat of harm to them, either because of their own risk factors or those of the other child.
- Be placed in a home where the shelter or foster caregiver is aware of and understands the child's history, needs, and risk factors.
- Be the subject of a plan developed by the counselor and the shelter or foster caregiver to deal with identified behaviors that may present a risk to the child or others.
- Be involved and incorporated, where appropriate, in the development of the case plan, to have a case plan that will address their specific needs, and to object to any of the provisions in the case plan.
- Receive meaningful case management and planning that will quickly return the child to the family or move the child on to other forms of permanency.
- Receive regular communication with a case manager, at least once a month, which includes meetings with the child alone and conferring with the caregiver.
- Enjoy regular visitation, at least once a week, with their siblings unless the court orders otherwise.
- Enjoy regular visitation with parents, at least once a month, unless the court orders otherwise.
- Receive a free and appropriate education, minimal disruption to their education, and retention in their home school, if appropriate; referral to the child study team; all special educational services, including, where appropriate, the appointment of a parent surrogate; the sharing of all necessary information between the school board and the DCF, including information on attendance and educational progress.
- Be able to raise grievances with the DCF over the care they are receiving from their caregivers, case managers, or other service providers.
- Be heard by the court, if appropriate, at all review hearings.
- Have a guardian ad litem appointed to represent, within reason, their best interests and, where appropriate, an attorney ad litem appointed to represent their legal interests. Their guardian ad litem and attorney ad litem must have immediate and unlimited access to the children they represent.
- Have all their records available for review by their guardian ad litem and attorney ad litem if they deem such review is necessary.
- Organize as a group for purposes of ensuring they receive the services and living conditions to which they are entitled and to provide support for one another while in the DCF's custody.
- Be afforded prompt access to all available state and federal programs.

In accordance with s. 39.4091, F.S., caregivers for children in out-of-home care must use the "reasonable and prudent parent standard". This means that the caregiver must use sensible parental decision-making that maintains the child's health, safety, and best interests while at the same time encourages the child's emotional and developmental growth when determining

whether to allow a child in out-of-home care to participate in extracurricular, enrichment, and social activities.¹⁰

Public Law 113-183, Preventing Sex Trafficking and Strengthening Families Act, requires that, as part of case planning beginning at age 14, children in foster care must be given a document describing their rights with respect to safety, exploitation, education, health, visitation, and court participation. They must also be informed of their rights to be provided certain specific documents such as copies of consumer credit reports. Children are to sign an acknowledgement that they received these documents.¹¹

The DCF created a 5-page brochure that outlines these expectations and describes the services of the Children's Ombudsman.¹²

Education and Information about Key Topics for Children in the Child Welfare System

Section 39.4085, F.S., requires that the design and delivery of child welfare services must be directed by the principle that the health and safety of children, including the freedom from abuse, abandonment, or neglect, is of paramount concern. The DCF is to operate with the understanding that the rights of children in shelter or foster care are critical to their safety, permanency, and well-being and to work with all stakeholders to help such children become knowledgeable about their rights.

Case managers or other staff must provide verbal and written instructions to a child entering shelter or foster care in an understandable manner on how to identify and report child abuse, abandonment, or neglect. The case manager or other staff must review this information with a child every six months and upon every placement change until the child leaves shelter or foster care. The case manager must document in court reports and case notes the date the child received the information.

Florida Children's Ombudsman

In September of 2016, the DCF created an Ombudsman position which operates within the Office of Child and Family Wellbeing. The position was designed with the intent to listen and be a voice for children and youth involved in the child welfare system. The Ombudsman receives complaints about placement, care, and services, while assisting in mediating those concerns. The Ombudsman is a resource to identify and explain relevant policies or procedures to children, young adults, and their caregivers. The current Ombudsman responds to 450 cases on average each year. Although the Ombudsman is an important piece of the larger child welfare system, this team currently consists of one Ombudsman who serves mostly as a resource for information to the population they serve. As currently structured, the Ombudsman is not responsible for

¹⁰ The DCF, *CFOP 170-11, Ch. 6*, Sept. 2020, available at <https://www.myflfamilies.com/resources/policies-procedures/cfop-170-11-placement> (last visited March 30, 2023).

¹¹ The DCF, *2021 Agency Bill Analysis for SB 272* at p. 2., March 7, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as, "The DCF Analysis").

¹² The DCF, *Youth in Foster Care*, available at <https://www.myflfamilies.com/sites/default/files/2022-12/10-28-Foster-Expectations.pdf> (last visited March 30, 2023).

onsite investigations, reaching complaint resolution, or coordination with Lead Agencies, case workers, or the guardian ad litem.

The DCF currently operates a webpage that explains the Ombudsman's role and displays a toll-free number and email address to be used for children and young adults in out-of-home care who may have questions, concerns, or complaints.

Rule 65C-46.003(5)(d), F.A.C., requires all licensed residential group homes (child-caring agencies) to have written and posted grievance procedures which allow children in care or others to make complaints without fear of retaliation. This includes the requirement for group homes to post the phone number of the DCF's Ombudsman (1-844-KIDS-FLA) in areas frequented by children and where they can read it without scrutiny.¹³

III. Effect of Proposed Changes:

The bill creates s. 39.4084, F.S., and provides for legislative intent that the Legislature recognizes that children and young adults best advocate for themselves when they are aware of the laws that impact them, acknowledges the complexity of Chapter 39 and subsequent child welfare laws in Florida, and expresses the need for an Ombudsperson for youth in out-of-home care. This section also specifies that this section of law does not create a civil or administrative cause of action and does not expand or limit the rights, protections, or remedies provided under any other law.

The bill requires the DCF to work with all stakeholders to ensure proper rights-related education of children and young adults in out-of-home care. This education shall include, but is not limited to:

- Safety
- Education
- Placement, visitation, and contact with siblings, family, and other important persons
- Court participation
- Participation in permanency planning, transition planning, and other case planning
- Access to food, clothing, shelter, and health care
- The topic of normalcy and what that means for children and young adults in out-of-home care

The bill further requires case managers, child protective investigators (CPI), and other staff to provide this population with the educational material produced by the Office, information about the Office, discuss in an age-appropriate way their rights and recourse if they feel their rights have been violated and provide opportunity for questions. The case manager, CPI, or other staff shall document in court reports and case notes the date this discussion occurred. This must be done every six months, or after every placement change, until the children exit out-of-home care. After every placement change, the caregiver must be provided a written copy of the child's rights and protections. A facility licensed to care for six or more children or young adults in out-of-home care shall post materials provided by the Office in a prominent place in the facility.

¹³ The DCF Analysis at p. 3.

The bill also establishes the Office of the Ombudsperson. The Office must be operational by September 1, 2023, to serve as an autonomous entity within the Department to assist children and young adults in out-of-home care with resolving issues related to their rights. The Office will oversee a resolution process, create and disseminate educational material, and ensure this population is educated about their rights. By January 30, 2024, the Office shall distribute standardized information to the DCF and stakeholders regarding training and other processes necessary to comply with requirements of the section.

The duties of the Office include:

- Establishing a process to receive, process, and resolve complaints.
- Educating children and young adults in out-of-home care about their rights and the purpose of the Office.
- Creating standardized material related to a child's rights, relevant protections, and benefits that must be updated annually to reflect changes to statute or rule. These materials must be developed in consultation with the DCF, children's advocacy and support organizations, and those who were, or are, in out-of-home care.
- Providing all educational material to the courts, community-based care lead agencies and their subcontracted providers, case workers, guardians ad litem and program, and others as needed.
- Maintaining a publicly available website that contains contact information, outreach efforts, information about services, and educational material.
- Conducting inquiries and review of relevant records and information deemed necessary for investigations.
- Developing and facilitating training for certain child welfare professionals. All case managers, child protective investigators, and other appropriate staff must complete annual training relating to such rights and protections.

The Office may access all relevant materials maintained by the Department or its contracted and subcontracted providers in relation to complaint investigations. With the child or young adult's permission, the Office may work in conjunction with these entities to resolve complaints.

The bill requires the Office to submit a report to the President of the Senate, Speaker of the House of Representatives, and the department annually beginning on July 30, 2024; it must also be posted on the Office's website. The report must include an analysis of data collected by the Office, a discussion of internal policy changes, and recommendations consistent with such data for improving the child welfare system and delivery of services. The data elements that must be included are:

- Number of contacts with the Office by children and young adults in out-of-home care.
- Number of complaints made, including type and source of complaint.
- Number of investigations.
- Complaint satisfaction and resolution.
- Issues that arose during investigations and any trends associated with those issues.
- Number of referrals to services.
- Number of pending complaints.

The Office must also monitor the distribution of educational material and periodically survey stakeholders to evaluate and improve upon duties.

The bill directs the DCF to adopt rules to implement the section.

The bill is effective July 1, 2023.

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 DCF projects needing 12 additional FTE for the Office of the Ombudsperson to carry out the additional duties under the bill.¹⁴ The fiscal impact is projected to be \$1,171,768 in recurring funding and \$315,100 in nonrecurring funding, for a total fiscal impact of \$1,486,868.¹⁵

¹⁴ The DCF Analysis at p. 6.

¹⁵ The DCF Analysis at pp. 6-7.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 39.4084 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.