

By Senator Ausley

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1 A bill to be entitled
2 An act relating to children and young adults in out-
3 of-home care; amending s. 39.4085, F.S.; revising
4 legislative findings and providing legislative intent;
5 providing construction; specifying the rights of,
6 rather than goals for, children and young adults in
7 out-of-home care; providing the roles and
8 responsibilities of the Department of Children and
9 Families, community-based care lead agencies, and
10 other agency staff; authorizing and encouraging
11 district school boards to establish certain
12 educational programs; requiring the department to
13 adopt rules; creating s. 39.4088, F.S.; designating a
14 children's ombudsman as an autonomous entity within
15 the department; providing responsibilities of the
16 ombudsman; requiring the ombudsman to collect and post
17 on the department's website certain data; requiring
18 the ombudsman, in consultation with the department and
19 other specified entities and by a specified date, to
20 develop standardized information explaining the rights
21 of children and young adults placed in out-of-home
22 care; requiring the department, community-based care
23 lead agencies, and agency staff to use the information
24 provided by the ombudsman in carrying out specified
25 responsibilities; requiring the department to
26 establish a statewide toll-free telephone number for
27 the ombudsman; requiring the department to adopt
28 rules; providing an effective date.

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

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32 Section 1. Section 39.4085, Florida Statutes, is amended to
33 read:

34 (Substantial rewording of section. See
35 s. 39.4085, F.S., for present text.)

36 39.4085 Foster Children's Bill of Rights.-

37 (1) LEGISLATIVE FINDINGS AND INTENT.-

38 (a) The Legislature finds that the design and delivery of
39 child welfare services should be directed by the principle that
40 the health and safety of children, including freedom from abuse,
41 abandonment, or neglect, is of paramount concern.

42 (b) The Legislature also finds that emotional trauma,
43 separation from family, frequent changes in placement, and
44 frequent changes in school enrollment, as well as dependency
45 upon the state to make decisions regarding current and future
46 life options, may contribute to feelings of limited control over
47 life circumstances in children and young adults in out-of-home
48 care.

49 (c) Therefore, it is the intent of the Legislature to
50 empower these children and young adults by helping them become
51 better informed of their rights so they can become stronger
52 self-advocates.

53 (2) CONSTRUCTION.-This section may not be used for any
54 purpose in any civil or administrative action and does not
55 expand or limit any rights or remedies provided under any other
56 law.

57 (3) BILL OF RIGHTS.-Except as otherwise provided in this
58 chapter, the rights of a child or young adult placed in out-of-

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59 home care are:

60 (a) To live in a safe, healthful, and comfortable home
61 where he or she is treated with respect and provided with
62 healthy food, appropriate clothing, and adequate storage space
63 for personal use and where the caregiver is aware of and
64 understands the child's or young adult's history, needs, and
65 risk factors and respects his or her preferences for attending
66 religious services and activities.

67 (b) To be free from physical, sexual, emotional, or other
68 abuse or corporal punishment. This includes the child's or young
69 adult's right to be placed away from other children or young
70 adults who are known to pose a threat of harm.

71 (c) To receive medical, dental, vision, and mental health
72 services as needed; to be free of the administration of
73 psychotropic medication or chemical substances unless the
74 administration of such medication or substances is authorized by
75 a parent or the court; and to be free from being confined in any
76 room, building, or facility unless placed by court order in a
77 residential treatment center.

78 (d) To be able to have contact and visitation with his or
79 her parents, other family members, and fictive kin and to be
80 placed with his or her siblings or, if not placed with his or
81 her siblings, to have frequent visitation and ongoing contact
82 with his or her siblings, unless prohibited by court order; and
83 to be provided with the location of and contact information for
84 siblings and to have the court consider the appropriateness of
85 continued communication with siblings who have left care.

86 (e) To be able to contact the children's ombudsman, as
87 described in s. 39.4088, regarding violations of rights; to

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88 speaks to the ombudsman confidentially; and to be free from
89 threats or punishment for making complaints.

90 (f) To maintain a bank account, to work, and to manage
91 personal income, including any allowance, consistent with his or
92 her age and developmental level, unless prohibited by the case
93 plan, and to be informed about any funds being held in the
94 master trust on behalf of the child or young adult.

95 (g) To attend school and participate in extracurricular,
96 cultural, and personal enrichment activities consistent with his
97 or her age and developmental level and to have social contact
98 with people outside of the foster care system, such as teachers,
99 church members, mentors, and friends.

100 (h) To attend all court hearings and address the court.

101 (i) To have fair and equal access to all available
102 services, placement, care, treatment, and benefits and to be
103 free from discrimination on the basis of race, national origin,
104 color, religion, sex, mental or physical disability, age, or
105 pregnancy.

106 (j) If he or she is 14 years of age or older or, if
107 younger, is of an appropriate age and capacity, to participate
108 in creating and reviewing his or her case plan and receive
109 information about his or her out-of-home placement and case
110 plan, including being told of changes to the plan, and to have
111 the ability to object to provisions of the case plan; and, if he
112 or she is 16 years of age or older, to provide assistance in
113 developing a transition plan.

114 (k) To participate in activities that will help develop the
115 necessary life skills to make the transition to independent
116 living and self-sufficiency as adults; and, for older youth, to

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117 be informed of available independent living services and
118 community resources and how to apply for such services and
119 access resources.

120 (l) To be free from removal from an out-of-home placement
121 by the department or a community-based care lead agency unless
122 the caregiver becomes unable to care for the child, the child
123 achieves permanency, or the move is otherwise in the child's
124 best interest and, if removed, to a transition under s. 39.4023
125 which respects his or her relationships and personal belongings.

126 (m) To have a guardian ad litem appointed to represent his
127 or her best interests and, if appropriate, to have an attorney
128 appointed to represent his or her legal interests.

129 (4) ROLES AND RESPONSIBILITIES OF THE DEPARTMENT,
130 COMMUNITY-BASED CARE LEAD AGENCIES, AND OTHER AGENCY STAFF;
131 AUTHORITY OF DISTRICT SCHOOL BOARDS.-

132 (a) The department shall operate with the understanding
133 that the rights of children in out-of-home care are critical to
134 their safety, permanency, and well-being. The department shall
135 work with all stakeholders to help such children become
136 knowledgeable about their rights.

137 (b) The case manager or other agency staff shall provide
138 verbal and written instructions to a child entering out-of-home
139 care to educate the child on identifying and reporting abuse,
140 abandonment, or neglect and shall explain and provide a copy of
141 the Bill of Rights established in subsection (3). The verbal and
142 written instructions and explanation must use words and phrasing
143 that the child can understand and must occur in a manner that is
144 most effective for that child. The written instructions and Bill
145 of Rights are required only if the child is of a sufficient age

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146 and understanding to receive such instructions and rights. The
147 case manager or other agency staff shall afford each child the
148 opportunity to ask questions about his or her rights and how to
149 identify and report abuse, abandonment, or neglect. The case
150 manager or other agency staff shall document in court reports
151 and case notes the date that such instructions and the Bill of
152 Rights were provided to the child. The case manager or other
153 agency staff must review the information with the child every 6
154 months and upon every placement change until the child leaves
155 shelter or foster care.

156 (c) District school boards are authorized and encouraged to
157 establish educational programs for students ages 5 through 18
158 years relating to identifying and reporting abuse, abandonment,
159 or neglect and the effects of such abuse, abandonment, or
160 neglect on a child. The district school boards may provide such
161 programs in conjunction with the youth mental health awareness
162 and assistance training program required under s. 1012.584, any
163 other mental health education program offered by the school
164 district, or any of the educational instruction required under
165 s. 1003.42(2).

166 (5) RULEMAKING.—The department shall adopt rules to
167 implement this section.

168 Section 2. Section 39.4088, Florida Statutes, is created to
169 read:

170 39.4088 Children's ombudsman.—The children's ombudsman
171 shall serve as an autonomous entity within the department for
172 the purpose of providing children and young adults placed in
173 out-of-home care with a means to resolve issues related to their
174 care, placement, or services without fear of retribution. The

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175 ombudsman must be given access to any record of a state or local
176 agency which is necessary to carry out his or her
177 responsibilities and may meet or communicate with any child or
178 young adult in the child or young adult's placement.

179 (1) GENERAL RESPONSIBILITIES OF THE OMBUDSMAN.—The
180 ombudsman shall:

181 (a) Disseminate information on the rights of children and
182 young adults in out-of-home care established under s. 39.4085
183 and the services provided by the ombudsman.

184 (b) Attempt to resolve complaints informally.

185 (c) Conduct whatever investigation he or she determines is
186 necessary to resolve a complaint.

187 (d) Update the complainant on the progress of the
188 investigation and notify the complainant of the final outcome.

189

190 The ombudsman may not investigate, challenge, or overturn a
191 court order or decision.

192 (2) DATA COLLECTION.—The ombudsman shall:

193 (a) Document the number, source, origin, location, and
194 nature of all complaints.

195 (b) Compile all data collected over the course of the year,
196 including, but not limited to, the number of contacts to the
197 children's ombudsman toll-free telephone number; the number of
198 complaints made, including the type and source of those
199 complaints; the number of investigations performed by the
200 ombudsman; the trends and issues that arose in the course of
201 investigating complaints; the number of referrals made; and the
202 number of pending complaints.

203 (c) Post the compiled data on the department's website.

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204 (3) DEVELOPMENT AND DISSEMINATION OF INFORMATION.—

205 (a) By January 1, 2023, the ombudsman, in consultation with
206 the department, children's advocacy and support groups, and
207 children and young adults in, or persons previously in, out-of-
208 home care, shall develop standardized information explaining the
209 rights granted under s. 39.4085. The information must be age-
210 appropriate, reviewed and updated by the ombudsman annually, and
211 made available through a variety of formats.

212 (b) The department, community-based care lead agencies, and
213 other agency staff must use the information provided by the
214 ombudsman to carry out their responsibilities to inform children
215 and young adults in out-of-home care of their rights pursuant to
216 the duties established under this section.

217 (c) The department shall establish a toll-free telephone
218 number for the children's ombudsman and post the number on the
219 homepage of the department's website.

220 (4) RULEMAKING.—The department shall adopt rules to
221 implement this section.

222 Section 3. This act shall take effect October 1, 2022.