



State of Florida
Department of Children and Families

Rick Scott
Governor

Mike Carroll
Interim Secretary

DATE: July 11, 2014

TO: DCF Regional Managing Directors
Grainne O'Sullivan, Children's Legal Services Statewide Director
Community-Based Care Lead Agency CEO's

THROUGH: Pete Digre, Deputy Secretary
Janice Thomas, Assistant Secretary for Child Welfare

FROM: Keith Perlman, Performance Management Manager
Kellie Sweat Darnell, Director of Child Welfare Operations

SUBJECT: New report available in FSFN to Support Implementation of 39.01305, Florida Statutes

PURPOSE: This memorandum is to announce the availability of a report in the FSFN Reporting Environment which identifies children currently receiving services who may be eligible for attorney representation due to certain special needs.

The report, which contains three tabs, is available in the FSFN Reporting Environment in the following folder: Public Folders/OCWDRU Reports/Services. The tabs are:

1. Report Description- This provides a detailed explanation of the report contents, and the selection criteria that were used to create the list of potentially eligible children.
2. Children and Young Adults Potentially Eligible for Appointed Attorney Representation- This is the list of children and young adults (under age 21) who meet the selection criteria.
3. Young Adults Not Eligible but Potentially Needing Attorney Representation- This is the list of young adults who are 21 and in Extended Foster Care who meet the selection criteria. Technically these young adults are not eligible due to age, but they may need attorney representation.

It is important to note that this report, titled "Dependent Children and Young Adults Potentially Eligible for Attorney Representation" is not an all-inclusive list, as the eligibility criteria in statute includes some standards that are not captured in FSFN (e.g. a child who is being considered for placement in a skilled nursing facility). This report is intended to be used as a guide, and results should be reviewed and validated by appropriate staff in the field before actions are taken.

1317 Winewood Boulevard, Tallahassee, Florida 32399-0700

Mission: Protect the Vulnerable, Promote Strong and Economically Self-Sufficient Families, and Advance Personal and Family Recovery and Resiliency

BACKGROUND: The 2014 Florida Legislature created Section 39.01305, Florida Statutes, requiring the appointment of an attorney to represent children with certain special needs. See attached Laws of Florida, Chapter 2014-227 for full statute.

ACTION REQUIRED: Please share this information with your subcontracted organizations, case managers, sheriff's providing Child Protective Investigations, Children's Legal Services attorneys, and other interested parties.

CONTACT INFORMATION: For questions about this report, please contact Keith Perlman, Office of Child Welfare at (850) 717-4675 or email keith_perlman@dcf.state.fl.us.

ATTACHMENT:

Laws of Florida, Chapter 2014-227

cc: Pete Digre, Deputy Secretary
Alan Abramowitz, Executive Director, Florida Guardian ad Litem Program
Janice Thomas, Assistant Secretary for Child Welfare
Traci Leavine, Director of Child Welfare Practice
JoShonda Guerrier, Director of Child Welfare Strategic Operations
Pat Badland, Operations Director
Center for Child Welfare, University of South Florida
Marisela Bravo, CBC Contract Liaison
Family and Community Services Directors

CHAPTER 2014-227

Committee Substitute for Committee Substitute for House Bill No. 561

An act relating to attorneys for dependent children with special needs; creating s. 39.01305, F.S.; providing legislative findings and intent; defining the term “dependent child”; requiring appointment of an attorney to represent a dependent child who meets one or more specified criteria; requiring that, if one is available, an attorney who is willing to represent a child without additional compensation be appointed; requiring that the appointment be in writing; requiring that the appointment continue in effect until the attorney is allowed to withdraw or is discharged by the court or until the case is dismissed; requiring that an attorney not acting in a pro bono capacity be adequately compensated for his or her services and have access to funding for certain costs; providing for financial oversight by the Justice Administrative Commission; providing a limit on attorney fees; requiring the Department of Children and Families to develop procedures to identify dependent children who qualify for an attorney; providing rulemaking authority; providing applicability; providing an effective date.

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

Section 1. Section 39.01305, Florida Statutes, is created to read:

39.01305 Appointment of an attorney 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.

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).

(4)(a) Before a court may appoint an attorney, 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 it will not be able to recommend an attorney within that time period.

(b) After an attorney is appointed, the appointment continues in effect until the attorney is allowed to withdraw or is discharged by the court or until the case is dismissed. An attorney who is appointed under this section 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 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.

(5) Except if the attorney has agreed to provide pro bono services, an appointed attorney or organization must be adequately compensated and provided with access to funding for expert witnesses, depositions, and other costs of litigation. Payment to an attorney is subject to appropriations and subject to review by the Justice Administrative Commission for reasonableness. The Justice Administrative Commission shall contract with

attorneys 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.

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

Section 2. This act shall take effect July 1, 2014.

Approved by the Governor June 25, 2014.

Filed in Office Secretary of State June 25, 2014.