

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 777 Supervised Visitation
SPONSOR(S): Civil Justice & Courts Policy Committee; Jones
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1298

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----|---|------------------|-----------|----------------|
| 1) | Civil Justice & Courts Policy Committee | 11 Y, 0 N, As CS | De La Paz | De La Paz |
| 2) | Health Care Services Policy Committee | | | |
| 3) | Criminal & Civil Justice Appropriations Committee | | | |
| 4) | Criminal & Civil Justice Policy Council | | | |
| 5) | | | | |

SUMMARY ANALYSIS

Supervised visitation programs provide an opportunity for nonresidential parents to maintain contact with their children in safe and neutral settings. In 2007, the Florida Legislature created s.753.03 F.S. to authorize the clearinghouse to develop new standards for Florida supervised visitation programs to ensure the safety and quality of each program. The clearinghouse was also required to recommend process for phasing in the implementation of the standards and certification procedures, to develop the criteria for distributing funds to eligible programs, and to determine the most appropriate state entity to certify and monitor supervised visitation programs. A final report containing the recommendations of the clearinghouse was received by the legislature in December 2008.

CS/HB 777 creates s. 753.06, F.S., establishing state standards for supervised visitation and monitoring exchange programs.

Additionally, CS/HB 777 implements four of the ten recommendations contained in the final report to the legislature from the clearinghouse.

First, the bill creates s. 753.06, F.S., requiring courts and child-placing agencies to follow a recommended hierarchy in determining where to refer cases for supervised visitation in both dependency and non-dependency cases.

Second, the bill expressly authorizes programs to alert the court in writing when there are problems with case referrals and to allow the court to set a hearing to address problems that arise.

Third, Ch. 753, F.S., is amended to provide a qualified immunity from liability for those providing services at visitation and monitored exchange programs. Additionally, the bill imposes background screening requirements on visitation program employees and volunteers which are substantially similar to those required for Guardians ad Litem.

Fourth, the bill restricts funding so that only programs that affirm in a written agreement with the court that they abide by, and are in compliance with, the state standards under s. 753.06(1), F.S., are eligible for state funding after January 1, 2011

This bill appears to have no fiscal impact.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Supervised visitation programs provide an opportunity for nonresidential parents to maintain contact with their children in safe and neutral settings. Use of a caseworker, relative, or other third party to oversee such contact has long been recognized as essential in child maltreatment cases in which the child has been removed from the home. Other purposes of supervised visitation include:

- To prevent child abuse;
- To reduce the potential for harm to victims of domestic violence and their children;
- To facilitate appropriate child/parent interaction during supervised contact;
- To help build safe and healthy relationships between parents and children;
- To provide written factual information to the court relating to supervised contact, where appropriate;
- To reduce the risk of parental kidnapping;
- To assist parents with juvenile dependency case plan compliance; and
- To facilitate reunification, where appropriate.¹

The first supervised visitation program in Florida opened in 1993.² By 1996, there were 15 programs in the state, and by 2004, over 60 programs had been established. Currently, every judicial circuit in the state has at least one supervised visitation program.³

The Clearinghouse on Supervised Visitation (clearinghouse)⁴ was created in 1996 through an appropriation from the Office of the State of Courts Administrator (OSCA) to provide statewide technical assistance on issues related to the delivery of supervised visitation services to providers, the judiciary, and the Department of Children and Family Services (DCF or department). Since 1996, the

¹ Clearinghouse on Supervised Visitation, Institute for Family Violence Studies, School of Social Work, Florida State University. Available at: <http://familyvio.csw.fsu.edu/CHVPG.php>. (Last visited March 4, 2010.)

² The Family Nurturing Center of Jacksonville.

³ Clearinghouse on Supervised Visitation, Institute for Family Violence Studies, School of Social Work, Florida State University. *Report to the Florida Legislature, Recommendations of the Supervised Visitation Standards Committee*. Available at: <http://familyvio.csw.fsu.edu/phpBB3/viewtopic.php?f=14&t=79>. (Last visited March 5, 2010).

⁴ The Clearinghouse on Supervised Visitation is housed within the Institute for Family Violence Studies in the School of Social Work of the Florida State University, and serves as a statewide resource on supervised visitation issues by providing technical assistance, training, and research.

clearinghouse has received contracts on an annual basis from the department to continue this provision of technical assistance.⁵ Chapter 753, F.S., relating to supervised visitation, was created in 1996.⁶

The Florida Supreme Court's Family Court Steering Committee began developing a skeletal set of standards for supervised visitation programs in 1998. In an attempt to create uniformity relating to staff training, terminology, and basic practice norms, the committee presented standards to then Chief Justice Harding. Justice Harding endorsed the minimum standards and crafted an administrative order in 1999 mandating that chief judges of each circuit enter into an agreement with local programs to which trial judges referred cases that agreed to comply with the standards.⁷

In 2007, the Florida Legislature created s.753.03 F.S. to authorize the clearinghouse to develop new standards for Florida supervised visitation programs to ensure the safety and quality of each program.⁸ The clearinghouse was also required to recommend process for phasing in the implementation of the standards and certification procedures, to develop the criteria for distributing funds to eligible programs, and to determine the most appropriate state entity to certify and monitor supervised visitation programs.⁹ A final report containing the recommendations of the clearinghouse was received by the legislature in December 2008.¹⁰

Until standards for supervised visitation programs are developed and a certification and monitoring process is fully implemented, each supervised visitation program must have an agreement with the court and comply with the Minimum Standards for Supervised Visitation Programs Agreement adopted by the Supreme Court on November 17, 1999.¹¹

Effect of Bill

CS/HB 777 creates s. 753.06, F.S., establishing state standards for supervised visitation and monitoring exchange programs. This section provides that standards announced in the final report to the Legislature of the Supervised Visitation Standards Committee shall serve as the basis for the state's standards for supervised visitation and monitored exchange programs. Under this section, the clearinghouse is required to publish the standards on their website and the published standards shall be regarded as the state standards for the program. Each program must annually affirm in a written agreement with the court that they abide by the state standards.

CS/HB 777 implements four of the ten recommendations contained in the final report to the legislature from the clearinghouse.

First, the bill creates s. 753.06, F.S., requiring courts and child-placing agencies to follow a recommended priority in determining where to refer cases for supervised visitation in both dependency and non-dependency cases.

For non-dependency cases under chapters 61 or 741, when a court orders supervised visitation, the court should refer the parties to a local certified supervised visitation or monitored exchange program if one exists. If such a program does not exist or is unable to accept the referral, the court may refer the case to a local mental health professional. "Mental health professional" is not defined in the bill or

⁵ Clearinghouse on Supervised Visitation, Institute for Family Violence Studies, School of Social Work, Florida State University. Available at: <http://familyvio.csw.fsu.edu/CHVPG.php>. (Last visited March 4, 2010.)

⁶ Ch. 96-402, L.O.F.

⁷ Clearinghouse on Supervised Visitation, Institute for Family Violence Studies, School of Social Work, Florida State University. *Florida's Supervised Visitation Programs: A Report from the Clearinghouse on Supervised Visitation*. January 2007. The minimum standards can be found at: http://www.flcourts.org/gen_public/family/bin/svnstandard.pdf. (Last visited March 6, 2010).

⁸ Ch. 2007-109, L.O.F.

⁹ *Id.*

¹⁰ Clearinghouse on Supervised Visitation, Institute for Family Violence Studies, School of Social Work, Florida State University. *Report to the Florida Legislature, Recommendations of the Supervised Visitation Standards Committee*. Available at: <http://familyvio.csw.fsu.edu/phpBB3/viewtopic.php?f=14&t=79>. (Last visited March 5, 2010).

¹¹ Ch. 2007-109, L.O.F. The minimum standards can be found at: http://www.flcourts.org/gen_public/family/bin/svnstandard.pdf. (Last visited March 6, 2010).

elsewhere in Florida statute. It is unclear therefore who would qualify for appointment under this provision of the bill. Mental health professionals are exempt from compliance with the standards but must affirm to the court that they have completed the online supervised visitation training program and have read and understood the state standards.

For dependency cases under chapter 39, referring agencies¹² are required to ensure that each family is assessed for problems that could present safety risks during the parent – child contact. If risks are present, agency staff must consider referring the parties to a local certified supervised visitation program if one exists.

If agency staff determines that there is no need for a supervised visitation program, or if one does not exist, or if the local program is unable to accept the referral, the responsible child protection investigator or case manager may supervise any visits. In order for a child protection investigator or case manager to supervise visits themselves they must complete a review of an online training manual for Florida's supervised visitation and certify to his or her agency that he or she has read the and understands the principles and standards in the manual. In those instances where the child protection investigator or case manager is unable to supervise visitation, the person with primary responsibility for the case may refer the case to other qualified individuals. The agency child protective investigator or case manager may alternatively designate a foster parent or relative to supervise parent-child visits.

Agencies with primary responsibility for the case are prohibited from referring the case to a subcontracting agency for supervised visitation unless that agency's child protective investigators or case managers who supervise onsite or offsite visits have completed a review of the online training manual and affirm that they have received training on, or have read and understand, the training manual and the standards.

Second, the bill expressly authorizes programs to alert the court in writing when there are problems with case referrals and to allow the court to set a hearing to address problems that arise. Currently, visitation supervisor's are not parties to the proceeding which resulted in a court ordered visitation and there is no formalized procedure for visitation supervisors to file a pleading or notice in the case which alerts the court that a hearing is necessary. It has been reported that currently letters to the court from a visitation supervisor alerting a judge to problems with visitations may simply be placed in a court file and never set for a hearing before the judge.¹³ Programs regularly report that they have difficulty accessing the court to report problems related to the supervised visitation process, including:

- Children's unwillingness to participate in visits;
- Parental substance abuse;
- Parental mental illness issues interfering with visits;
- Parental misconduct on-site;
- Parental misconduct off-site reported to visitation staff, including but not limited to parental arrests, additional litigation in family/dependency/criminal court, and violations of probation, stalking, and threats; and
- Parental noncompliance with program rules, including no-shows and cancellations without cause.

Third, Ch. 753, F.S., is amended to provide a qualified immunity from liability for those providing services at visitation and monitored exchange programs. This is similar to the immunity provisions that currently protect Guardians ad Litem.¹⁴ Additionally, the bill imposes background screening on requirements on visitation program employees and volunteers substantially similar to those required for Guardians ad Litem.¹⁵

¹² "Referring agencies" are not defined in the bill. Agencies that currently refer cases for visitation supervision are the Department of Children and Family Services, Community-Based Care agencies and Case Management Organizations.

¹³ Telephone discussion with Karen Oehme, Director Institute for Family Violence Studies, Florida State University College of Social Work. March 18, 2010.

¹⁴ s. 39.822(1), F.S.

¹⁵ Section 39.821, F.S.

Fourth, the bill restricts funding so that only programs that affirm in a written agreement with the court that they abide by, and are in compliance with, the state standards under s. 753.06(1), F.S., are eligible for state funding after January 1, 2011.¹⁶

B. SECTION DIRECTORY:

Section 1. Creating section 753.06, F.S., providing state standards for supervised visitation programs.

Section 2. Creating section 753.07, F.S., providing requirements for prioritizing referrals for visitation supervision.

Section 3. Creating section 753.08, F.S., providing immunity for visitation supervisors and requiring background screening for program employees and volunteers.

Section 4. Creating section 753.09, F.S., restricting funding for supervised visitation programs to those that comply with Chapter 753.

Section 5. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

DCF has analyzed the similar companion to this bill and indicated there would be no fiscal impact on the agency.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

¹⁶ *Id.*

This bill does not appear to require counties or municipalities to take an action requiring the expenditure to funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The provision of the bill authorizing visitation supervisors to alert the court to problems with visitation does not provide for a procedural mechanism for a visitation supervisor to initiate a hearing in the matter. A provision directing the court to set a hearing in response to a notice filed under the new section would appear to resolve the issue.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 22, 2010, the Civil Justice & Courts Policy Committee adopted two amendments to the bill. The first amendment was a strike-all amendment that conformed the bill to the language of CS/SB 1298. Most of these revisions were clarifying the language of the original bill. The amendment also provided an option for child protective investigators and case managers to designate foster parents and relatives to be visitation supervisors in parent child visits in appropriate circumstances. In addition, the strike-all amendment added provisions creating a new section of statute establishing state standards for supervised visitation programs. The second amendment limited the immunity provided to visitation supervisors to a qualified immunity from acts performed while in the performance of their duties, and establishing background screening requirements for supervised visitation program employees and volunteers.