

STORAGE NAME: h0599a.jud

DATE: April 7, 1999

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 599

RELATING TO: Dependency Mediation Services

SPONSOR(S): Rep. Casey

COMPANION BILL(S): SB 162(i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CHILDREN & FAMILIES YEAS 8 NAYS 0
- (2) FAMILY LAW AND CHILDREN YEAS 5 NAYS 0
- (3) JUDICIARY YEAS 8 NAYS 0
- (4) CRIMINAL JUSTICE APPROPRIATIONS
- (5)

I. SUMMARY:

HB 599 amends s. 39.4075, F.S., to require each circuit to establish a dependency mediation program. In addition, the bill provides that funding for the dependency mediation programs must come from general revenue. It requires the court to advise the parties that they are responsible for contributing to the cost of the dependency mediation to the extent of their ability to pay.

The bill has a fiscal impact of \$1,467,549 in FY 99/00.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Under current law, a party may request the court to refer the parties in a dependency proceeding to mediation in accordance with chapter 44, F.S., relating to mediation, and with Florida Supreme Court rules and procedures. See 39.4075, F.S. This provision only applies to those courts in counties where there is an existing dependency mediation program.

Thirteen of the 20 judicial circuits offer some form of dependency mediation services which actually impact 15 of the 67 counties in Florida. According to the Office of State Courts Administrator, those counties rely on a variety of local, county, state or federal funding sources of which very few are dependable or long term. Neither agency representatives (e.g., Department of Children & Families) nor volunteer personnel (Guardian Ad Litem) pay for mediation services. Most parties involved in dependency proceedings are indigent, therefore the courts are rarely able to assess fees to offset the cost of providing mediation services.

B. EFFECT OF PROPOSED CHANGES:

HB 599 amends s. 39.4075, F.S., to require each circuit to establish a dependency mediation program. In addition, the bill provides that funding for the dependency mediation programs must come from general revenue. It requires the court, rather than the Department of Children and Family Services, to advise the parties that they are responsible for contributing to the cost of the dependency mediation to the extent of their ability to pay.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The bill requires that each circuit establish a dependency mediation program to provide an option for parties to resolve disputes that arise as a result of dependency proceedings under chapter 39.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

All circuit courts are required to implement a dependency mediation program.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. The court must advise the parties that they are responsible for contributing to the cost of the dependency mediation to the extent of their ability to pay.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 39.4075, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 39.4075, F. S., 1998 Supplement, to:

Require each circuit to establish a dependency mediation program to provide dependency mediation services in that circuit;

Require dependency mediation programs be funded from general revenue funds; and

Require the court, rather than the Department of Children and Family Services, to advise the parties that they are responsible for contributing to the cost of the dependency mediation to the extent of their ability to pay.

Section 2. Provides that the act shall take effect July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See below.

2. Recurring Effects:

According to the Office of State Courts Administrator, the following fiscal impact is anticipated:

<i>A. Non-recurring or First Year Start-Up Effects</i>				
		Year 99-00	Year 00-01	Year 01-02
Revenues:		-0-	-0-	-0-
Expenditures	General Revenue: Operating Capital Outlay Expenses TOTAL:	\$91,200 \$45,576 \$136,776		
<i>B. Recurring or Annualized Continuation Effects</i>				
Revenues:		-0-	-0-	-0-
Expenditures	General Revenue: Salaries & Benefits (FTE 23.5) ¹ OPS (Contract Services) ² Expenses TOTAL	\$646,173, \$593,400 \$91,200 \$1,330,773	\$861,564 \$623,070 \$91,200 \$1,575,834	\$861,564 \$654,223 \$91,200 \$1,606,990
<i>C. Appropriation Consequences</i>				
	General Revenue	\$1,467,549	\$1,575,834	\$1,606,164

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

¹ To handle case coordination and scheduling, positions are based on a funding formula of 1.0 FTE position for every 400 new petitions filed in single county circuits, and 1.0 FTE position for every 150 new petitions filed in multiple county circuits for a total of 23.50 FTEs. Petition filing data is based on 1997 filing (3,956) and assumes a conservative 5 percent increase in filings for years 00-01 and 01-02. Administrative Assistant Class I will also be needed. Standard amounts for operating capital outlay and expenses with new positions are included below. Possible future pay increases and cost-of-living allowances are not considered.

² OPS funds are needed to provide for contract mediators to mediate new filings at \$150 per case.

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

The bill may have a positive impact on the client families by offering an alternative and potentially less costly means of resolving legal matters through mediation.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. **FISCAL COMMENTS:**

Florida voters recently adopted a Constitution Revision Commission amendment to Article V of the Florida Constitution to shift major costs of Florida's judicial system from the counties to the state. See Art. V, § 14, Fla. Const. The amendment provides a phase-in schedule established by general law to be fully effectuated by July 1, 2004. No formal review has yet been made as to what specific judicial areas need to be examined, or what judicial expenditures are to be included in the definition of "Article V costs" which would be assumed by the state. No formal study has yet been completed on those judicial resources being provided by each of the 67 counties, nor has any determination been made as to which judicial resources or court services should be made available statewide and otherwise funded by the state. Currently, each county draws on different federal, state, county, community or private sector resources to fund its primary judicial resources (direct relief to the judge of a judicial duty) and secondary judicial resources (indirect relief of judicial workload). The adoption of this bill would formally recognize the provision of dependency mediation services as a statewide judicial resource to be funded by the state.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to expend funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce revenue raising authority.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Family Law and Children

If the dependency mediation services that are currently offered in thirteen of the 20 judicial circuits only impact 15 of the 67 Florida counties, it cannot necessarily be assumed that by establishing a dependency mediation program in all 20 judicial circuits, mediation services would then be available in all 67 counties.

Judiciary Committee staff comments:

Dependency proceedings are actions in which children are removed from their home because some sort of neglect or abuse has been asserted. At the current time, when the Department prevails on the custody issue the procedure generally involves: (1) an initial "shelter hearing" and order either admitting the child to the shelter or returning the child home; (2) an "arraignment" for the Dependency Petition at which a judge inquires into the families assets and determines if the court will appoint public counsel for the family; (3) a "Disposition" hearing at which it is determined whether the child will go to a relative or foster care; and (4) a "six month" review 6 months from the day the child was initially brought to a shelter.

Proponents of the mediation point out that when a child is taken into custody in the present system, a social worker for the Department issues a list of improvements and changes which must be made in order for the parent(s) to regain custody of their child. The current system, they maintain, is tantamount to the Department dictating to the parent what must occur. Frequently the plan may include unwarranted or unreasonable requests, and the plans put the parent(s) on the defensive and frequently are a source of antagonism between the agency and the family, which are presumably trying to work together for the best interests of the child.

Proponents believe mediation as currently practiced, which includes the extended family and friends of the child in the mediation, frequently has the effect of the extended family insisting that the parent acknowledge the problem(s) and work toward a solution. The involvement of the extended family, it is also maintained, permits the resources of the extended family to be volunteered to assist with things such as babysitting and transportation, for which the parent might otherwise be unwilling or unable to request assistance. The mediator is not an employee of the Department and can assure that unwarranted or unreasonable demands made by the Department are not placed upon the parents. With the parents in a less adversarial situation, they are sometimes better able to truthfully articulate the needs of the family; and the mediator is thus put in a position in which to suggest what resources of the Department could be used to solve the most pressing problems.

Additionally, the Federal Adoption and Safe Families Act of 1997, generally limits the time a child may be in state care to 12 months. In the present adversarial situation, it may take 10 months before the family is required to accept a plan from the Department, and in a case with multiple problems and multiple causes of the problems, the remaining two months may be too little time in which to resolve the problems and return the child to the parental home. Since no admission of "guilt" is required to enter into mediation, mediation is available from the time the child is taken into custody and a full 12 months will be available to remedy the shortcomings in the home situation.

Opponents of the requirement that all circuits establish dependency mediation object to the proposal for various reasons. The requirement is a mandate to local government, and frequently it is best to permit the government closest to the problem to fashion the solution. The bill creates additional expenditures in the judicial branch of government at a time when the legislature must begin to establish a plan to fund local court systems with state funds. A mandatory program such as this one might be better delayed until a comprehensive assessment has been made of the judicial needs of Florida and how to pay for those needs. In addition, mediation will result in the hiring of more people in the judicial branch, which will have an economic impact. If the mediation does not have the effect of significantly reducing the time judges spend hearing dependency matters, judicial costs will increase.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

STORAGE NAME: h0599a.jud

DATE: April 7, 1999

PAGE 8

VII. SIGNATURES:

COMMITTEE ON CHILDREN & FAMILIES:

Prepared by:

Bob Barrios

Staff Director:

Bob Barrios

AS REVISED BY THE COMMITTEE ON Family Law and Children:
Prepared by:

Carol Preston

Staff Director:

Carol Preston

AS FURTHER REVISED BY THE COMMITTEE ON JUDICIARY:
Prepared by:

Jo Ann Levin

Staff Director:

Don Rubottom