

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1144

SPONSOR: Senator Diaz-Balart

SUBJECT: Representation of Dependent Children

DATE: March 16, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barnes</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

CS/SB 1144 directs the Statewide Public Guardianship Office within the Department of Elderly Affairs to establish a three-year pilot Attorney Ad Litem Program in Broward, Escambia, and Sarasota counties by October 1, 2000, to represent the rights of children who require a shelter hearing pursuant to s. 39.402, F. S. The Office may contract with a private entity for the pilot program but that entity must have the appropriate expertise in representing the rights of children, and the pilots must operate independently of any other state agency responsible for the care of children taken into custody.

The bill specifies that the Statewide Public Guardianship Office designate an attorney within each of the three counties to conduct the administrative oversight of the pilot program. The attorney must be a member in good standing with The Florida Bar and must have five years or more of experience in the area of child advocacy, child welfare, or juvenile law. The bill requires that the Statewide Public Guardianship Office identify measurable outcomes for the pilot programs.

The bill requires that the court appoint the Statewide Public Guardianship Office or the entity under contract with the office to represent all children in the counties under the pilot program who are continued in out of home care at the shelter hearing conducted under s. 39.402, F.S. The bill provides that the Statewide Public Guardianship Office develop a training program for all attorneys ad litem that includes, at a minimum, appropriate standards of practice for attorneys who represent children. All children for whom an attorney ad litem is appointed must also have a guardian ad litem appointed pursuant to s. 39.822, F.S.

The Supreme Court is requested, by October 2000, to develop rules of juvenile procedure outlining the duties, responsibilities, and conduct of attorneys at litem that are consistent with the Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases of the American Bar Association.

The bill requires that the Office of the State Court Administrator evaluate the establishment, operation, and impact of the pilot programs in meeting the legal needs of dependent children and submit a report to the Legislature by October 1, 2001, and October 1, 2002, regarding its findings. A final evaluation report is due October 1, 2003, that includes not only the evaluation information but also the feasibility of a statewide program and recommendations, if any, on locating, establishing, and operating a statewide program.

The bill requires an appropriation for each pilot program that will be used exclusively for establishing and operating the program and paying for the attorneys ad litem.

II. Present Situation:

Appointment of Attorneys for Children

Currently, s. 39.4085, F.S., establishes as legislative intent certain goals for dependent children, including that children in shelter or foster care have a guardian ad litem appointed to represent their best interests and where appropriate, an attorney ad litem be appointed to represent their legal interests.

Section 39.822(1), F.S., requires that a guardian ad litem be appointed for any child involved in a child abuse, neglect, or abandonment proceeding; however, unofficial reports indicate that as few as 50 percent of eligible children are appointed a guardian ad litem. The 1998 Legislature provided parents involved in any judicial proceeding under ch. 39, F.S., the right to counsel (ch. 98-403, L.O.F.), but children involved in such proceedings are not guaranteed counsel under current law.

Current law does not include a definition of “attorney ad litem” nor instructions or procedures about circumstances in which an attorney ad litem is appointed to represent a child’s legal interests under ch. 39, F.S.

Attorney-Client Privilege

Section 39.204, F.S., specifies the attorney-client privilege between an attorney and a perpetrator or alleged perpetrator, but does not include provisions for an attorney and a child-victim client.

Appointment of Guardians Ad Litem

Section 39.820(1), F.S., defines a “guardian ad litem” as a person who is appointed by the court as a representative of the child, to represent the *best* interests (as opposed to *expressed* interests) of a child in a proceeding under ch. 39, F.S., or in any judicial proceeding. The law specifies that a guardian ad litem serves until discharged by the court and can be one of the following: a certified guardian ad litem program, a duly certified volunteer, a state attorney, contract attorney, or certified pro bono attorney working on behalf of a guardian ad litem or the program; staff members of a program office; a court-appointed attorney; or a responsible adult.

Section 39.822, F.S., provides that a guardian ad litem be appointed by the court at the earliest possible time to represent the child in any civil or criminal child abuse, abandonment, or neglect

judicial proceeding. Any person participating in a civil or criminal judicial proceeding resulting from the appointment must be presumed prima facie to be acting in good faith and in so doing is immune from civil or criminal liability that otherwise might be incurred or imposed. In cases in which the parents are financially able, the parent or parents of the child must reimburse the court, in part or in whole, for the cost of provision of guardian ad litem services. Reimbursement to the individual providing guardian ad litem services is not contingent upon successful collection by the court from the parent or parents. The guardian ad litem or the program representative must review all disposition recommendations and changes in placements, and must be present at all critical stages of the dependency proceeding or submit a written report of recommendations to the court. Written reports are filed with the court and served on all parties whose whereabouts are known at least 72 hours prior to the hearing.

Section 39.402(8)(c), F.S., requires that, whenever a shelter hearing is held for a child in the custody of the department, the court must appoint a guardian ad litem to represent the child unless the court finds that representation is unnecessary.

Section 39.001(3), F.S., specifies the general protections to be provided for children which include an independent, trained advocate whenever that intervention is necessary and a skilled guardian or caregiver in a safe environment whenever an alternative placement is necessary.

Florida Rules of Juvenile Procedure

The Florida Rules of Juvenile Procedure do not contain provisions relating to attorneys ad litem. The rules address the appointment of guardians ad litem in several instances, most notably in Rule 2.215, which provides that a guardian ad litem may (or may not) be an attorney, and which lists the responsibilities of a guardian ad litem. These duties specifically include representing the best interests of the child.

Parents' Right to Counsel

Section 39.013, F.S., requires that all parents of children involved in dependency proceedings be informed of their right to counsel at each stage of the proceedings, and that parents be appointed counsel when they are unable to afford counsel. This law requires that the court determine whether waivers of counsel by parents are knowing and intelligent and must make its findings on this issue in writing. It also requires that once counsel has been appointed or has entered an appearance, the attorney continues to represent the parent throughout the proceedings. If the attorney-client relationship is discontinued, the court must advise the parent of the right to have new counsel retained or appointed for the remainder of the proceedings.

Section 39.0134, F.S., includes provisions relating to compensation. If counsel is entitled to receive compensation for representation pursuant to a court appointment in a dependency proceeding pursuant to ch. 39, F.S., the compensation is established by each county. Section 39.0134(2), F.S., specifies that compensation must not exceed \$1,000 at the trial level and \$2,500 at the appellate level for representation pursuant to court appointment in a termination of parental rights proceeding.

ABA Standards

The American Bar Association Standards of Practice for Lawyers Representing a Child in Abuse and Neglect Cases (ABA Standards) defines a “child’s attorney” as a lawyer who provides legal services for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client. These standards contemplate representation of the child’s *expressed interest*, in all cases except those children with exceptional problems such as children with limited language development, mental retardation, or serious mental illness. Section B-3 of the ABA Standards rejects the idea that children of certain ages are incapable of effectively directing representation on their behalf. In cases when an attorney ad litem is unable to ascertain the child’s legal interests, the ABA Standards state the attorney may seek the advice and consultation of experts and other knowledgeable people in making the determination.

According to the ABA Standards, a lawyer appointed as “guardian ad litem” for a child is an officer of the court appointed to protect the child’s interests without being bound by the child’s expressed preferences. The standards state that in those circumstances in which a child is unable to express a position, as in the case of a preverbal child, or may not be capable of understanding the legal or factual issues involved, the child’s attorney should continue to represent the child’s legal interests and request appointment of a guardian ad litem. This limitation distinguishes the scope of independent decision-making of the child’s attorney and a person acting as guardian ad litem.

The ABA Standards recognize that there may be occasions when a child’s expressed preferences would be injurious to the child. The standards state that if the child’s attorney determines that the child’s expressed preference would be seriously injurious to the child (as opposed to merely being contrary to the lawyer’s opinion of what would be in the child’s best interest), the lawyer may request appointment of a separate guardian ad litem and continue to represent the child’s expressed preference, unless the child’s position is prohibited by law or without any factual foundation. The child’s attorney shall not reveal the basis of the request for appointment of a guardian ad litem which would compromise the child’s position.

Statewide Public Guardianship Office

Public Guardianship is addressed in Part IX of ch. 744, F.S. The Statewide Public Guardianship Office was established in 1999, and was given oversight responsibilities for all public guardians which are included in s. 744.7021(2), F.S. This office is placed under the Department of Elderly Affairs which has responsibility for providing administrative support to it.

III. Effect of Proposed Changes:

CS/SB 1144 directs the Statewide Public Guardianship Office within the Department of Elderly Affairs to establish a 3-year pilot Attorney Ad Litem Program in Broward, Escambia, and Sarasota counties by October 1, 2000, to represent the rights of children who are maintained in out of home care by court order under s. 39.402, F.S. The Office may contract with a private entity for the pilot program but that entity must have the appropriate expertise in representing the rights of children.

The bill specifies that the Statewide Public Guardianship Office designate an attorney within each of the three counties to conduct the administrative oversight of the pilot program. The Office would, however, be responsible for supervising that oversight function. The attorney responsible for administrative oversight of the pilot program must be a member in good standing with The Florida Bar and must have 5 years or more of experience in the area of child advocacy, child welfare, or juvenile law.

The bill requires that the Statewide Public Guardianship Office identify measurable outcomes including but not limited to: the impact of counsel on child safety, improvements in the provisions of appropriate services, and any reduction in the length of stay of children in state care. These pilots must operate independently of any other state agency responsible for the care of children taken into custody.

The bill requires that the court appoint the Statewide Public Guardianship Office or the entity under contract with the office to represent all children in the counties under the pilot program who are continued in out of home care at the shelter hearing conducted under s. 39.402, F.S. The bill requires that an attorney ad litem be assigned by the attorney who has oversight responsibility for the program to represent the child's wishes. The child's attorney must in all circumstances fulfill the same duties of advocacy, loyalty, confidentiality, and competent representation which are due an adult client. The bill specifies that the attorney ad litem represents the child until the program is discharged by order of the court because permanency has been achieved or the court believes that the attorney ad litem is no longer necessary.

A training program must be established for attorneys ad litem by the Statewide Public Guardianship Office that includes, at a minimum, appropriate standards of practice for attorneys who represent children.

The bill requires that upon the court appointing the Statewide Public Guardianship Office or its entity to represent the child, the Department of Children and Family Services must provide information to the pilot program administrator that includes, at minimum, the name of the child, the location and placement of the child, the name of the department's authorized agent and contact information, copies of all notices sent to the parent or legal custodian of the child, and other information or records concerning the child.

The bill specifies that the court must appoint a guardian ad litem pursuant to s. 39.822 F. S., for all children who have been appointed an attorney ad litem.

The bill requests that the Florida Supreme Court adopt rules of juvenile procedure which include the duties, responsibilities, and conduct of an attorney ad litem that must be consistent with the American Bar Association's Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (ABA Standards).

The bill requires that the Office of the State Court Administrator evaluate the establishment, operation, and impact of the pilot programs in meeting the legal needs of dependent children and submit reports to the Legislature by October 1, 2001 and October 1, 2002, regarding its findings. A final evaluation report is due October 1, 2003, that includes not only the evaluation information

but also must include findings on the feasibility of a statewide program and recommendations, if any, on locating, establishing, and operating a statewide program.

The bill specifies that each pilot program will receive an appropriation to be used solely for establishing and operating that program. Each attorney ad litem will be paid from funds appropriated for the pilot programs to the Statewide Public Guardianship Office.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill provides additional employment and appointment opportunities for private-sector attorneys.

C. Government Sector Impact:

The Department of Children and Family Services reports that during FY 1998-99, 1,089 children were admitted to emergency shelter in Broward (708 children), Escambia (315 children) and Sarasota (66 children) Counties .

This cost analysis for CS/SB 1144 requires that each of the three pilot counties have an attorney administrator, training capacity, and administrative support personnel. The Department of Elderly Affairs estimates that the Statewide Public Guardianship Office would need three additional full time equivalent positions costing \$218,650 to implement CS/SB 1144. This cost analysis does not include any staff for the central Statewide Public Guardianship Office in the Department of Elderly Affairs but includes additional staff for the pilot programs in the three counties and funds for developing training materials that would be delivered in each pilot program.

According to the Department of Children and Family Services, there will be costs associated with providing access to the Statewide Automated Child Welfare Information System (SACWIS) in order for the pilots to retrieve information from and enter data into the system. For each terminal needed at a pilot site, the department estimates a system cost of \$4,348 in non-recurring operating capital outlay and \$40 of recurring line connection cost per terminal.

The State Court Administrator’s Office estimates that the greatest impact on the judiciary will be the increase of information available to judges when hearing dependency cases with attorney ad litem involvement. Judges currently appoint guardians ad litem to advocate for best interests of the child in dependency cases. Each circuit’s guardians ad litem program has at least one staff attorney to assist lay volunteers and to address the legal issues in cases to which the Program is assigned. According to the Office of the State Court Administrator, CS/SB 1144 would require an increase in resources for the Guardian ad Litem Program, with an emphasis on legal resources. The State Court estimates that in order to increase the guardian ad litem program to support children with an attorney ad litem, the Program would need five additional attorneys, 14 case coordinators, and five support staff (total of \$1,104,764) to handle the additional caseload.

Based on these estimates from the State Court Administrator Office, Department of Elderly Affairs, and the Department of Children and Family Services, the following table summarizes the costs associated with CS/SB 1144:

Pilot Attorney Ad Litem Program in Broward, Escambia, and Sarasota counties	Cost
Sr. Attorney (Rate is \$55,000)	\$68,396
Operations Management Consultant	\$48,438
Salary Sub-total	\$116,834
Expenses	\$43,002
Operating Capital Outlay	\$9,561
Total for Each Pilot Office	\$169,397
Statewide Attorney Training Costs	\$30,000
Number of children in shelter care during FY 98-99	1,089

Attorney compensation using attorney fees of \$2,500 as in parental rights proceedings for 1,089 children	\$2,722,500
Cost of SACWIS for each pilot county	
Non-recurring \$4,348	\$13,044
Recurring \$40	\$120
Additional guardians ad litem	\$1,104,764
Evaluation costs for pilots	\$75,000
Total cost for CS/SB 1148	\$4,453,619

These costs may vary due to the actual number of children in shelter care for the counties included in the pilot program and the actual amount of attorney compensation fees. The compensation to attorneys is calculated at \$2,500 which is the maximum amount statutorily required in s. 39.0134(2), F.S., in termination of parental rights proceedings. Attorney fees could be much lower when compensation is calculated closer to the lower or mid point in the range. The compensation range specified in law is between \$1,000 and \$2,500.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In February, 1996, the American Bar Association House of Delegates adopted standards of practice for lawyers representing children in abuse and neglect cases. The standards are not binding on lawyers but represent the aspirational recommendations of the largest bar association in the world. State and local bar associations and courts may choose to hold children’s lawyers to the standards, and the standards may become the de facto standard of practice in the field. The standards were developed by a committee within the ABA’s Family Law Section in an attempt to provide guidance in this area. The standards emphasize the need for the child’s lawyer to be specially trained and to make use of multidisciplinary resources, particularly regarding issues of child development.

VIII. Amendments:

None.