

STORAGE NAME: h0163s1.jud

DATE: December 20, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: CS/HB 163

RELATING TO: Elder Division (creation of a specialized court division/pilot programs)

SPONSOR(S): Committee on Judiciary and Reps. Peaden and Byrd

TIED BILL(S): None

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

- (1) JUDICIARY YEAS 8 NAYS 0
 - (2) ELDER AFFAIRS & LONG TERM CARE
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

CS/HB 163 allows the Chief Judge of each Judicial Circuit to establish an elder division within the Judicial Circuit. According to the bill, such a division would fulfill several duties in cases "involving parties who are at least 60 years of age and who require special assistance or accommodation."

The bill raises some constitutional issues related to the Separation of Powers and Delegation of Powers Doctrines.

CS/HB 163 appropriates \$1,050,000 from General Revenue. This money, to be divided between the Tenth, Twelfth, and Thirteenth Circuits, will be used for establishing pilot programs.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

This bill creates a new judicial structure to meet the needs of the elder population of the Tenth, Twelfth, and Thirteenth Circuits.

2. Lower Taxes Yes No N/A

This bill would require a \$1,050,000 appropriation.

3. Individual Freedom Yes No N/A

Proponents of this bill urge that it enhances the freedom enjoyed by elder Floridians by providing more responsive legal services.

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

Currently, no state provides separate court services for elderly citizens. Florida has a high elderly population. Those over 65 years of age comprise more than 18 percent of the state's total population.

1. **The Constitution of the State of Florida**

- a. **General Court Structure** - Article V, Section 1 of the Florida Constitution provides: "The judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts. No other courts may be established by the state, any political subdivision or any municipality." However, Article V, Section 1 also permits the legislature to establish a traffic hearing officer system and authorize military court martial within the Florida National Guard. Sections 3, 4, 5, and 6 of Article V, set forth the jurisdiction of the Supreme Court, the District Courts of Appeal, the Circuit Courts, and the County Courts.
- b. **Creation of Court Divisions** - Article V, Section 20(c), of the Florida Constitution provides: "After this article becomes effective, and until changed by general law consistent with sections 1 through 19 of this article: . . . (10) "All courts except the supreme court may sit in divisions as may be established by local rule established by the supreme court." Section 7 of Article V of the Florida Constitution provides, in part: "All courts except the supreme court may sit in divisions as may be established by general law."

2. **Study on Jury Service Accessibility for Older Persons and Persons With Disabilities in Florida** - The Study on Jury Service Accessibility for Older Persons and Persons With Disabilities in Florida, issued June 4, 1999, was a collaborative project by the Southeast Florida Center on Aging of Florida International University and the Supreme Court Commission on Fairness. The executive summary, in the findings and conclusions section, offers a mixed, but generally positive, assessment of the capacity of the court system to handle matters involving the elderly and disabled.

Overall, the Florida courts generally appear aware of and sensitive to disability issues. A vast majority of the courts have assigned a staff member to function in some capacity as an ADA coordinator; however, this is not necessarily a full-time position. Within the courthouse, this person coordinates efforts to comply with Title II of the act and disseminates information about disability issues.

It seems that many courts have provided training on ADA compliance and other disability issues to staff at a variety of levels. All of the courts note that policies and procedures are in place for identifying cases requiring reasonable accommodations under the ADA. Most courts also feel that these policies and procedures are effective in identifying these cases. Based on their reports, Florida courts appear aware of and informed about their obligations under the ADA.

The executive summary notes, however, that some courts are inexperienced at providing complex and infrequently requested accommodations. Only 43.8 percent of courts report having available a hearing-aid compatible telephone and a telecommunications device for the deaf. Only 59.4 percent of courts report having a wheelchair-accessible jury box. Only 56.3 percent of courts report having assistive listening devices available in the jury deliberation room, while 71.9 percent of courts report having assistive listening devices available in the jury box.

3. **Elder Courts Task Force of the Thirteenth Judicial Circuit** - The Elder Courts Task Force of the Thirteenth Judicial Circuit was formed "to establish a court system that is user friendly to elders of the Thirteenth Judicial Circuit." The task force, scheduled to meet quarterly over a two year period from November 1998 until November 2000, has focused upon "criminal cases involving elders, civil cases involving abuse and neglect, guardianship and incapacity proceedings."
4. **Correspondence Regarding the Establishment of an Elder Court** - Chief Judge F. Dennis Alvarez, of the Thirteenth Judicial Circuit, originally envisioned the Elder Court as a division empowered to "hear cases regarding guardianship, mental health, elder abuse, domestic violence and other crimes and civil litigation involving the elderly." After ascertaining that a full-fledged division would need to be established by local rule, Chief Judge Alvarez scaled back his proposal, instead recommending the creation of a specialized subdivision of the Criminal Division. On May 28, 1998, Chief Justice Kogan concluded that the even the scaled-back version of the Elder Court would constitute a new division within the meaning of Article V, Section 7, of the Florida Constitution and Section 43.30, Florida Statutes. Chief Justice Kogan stated that a local rule would be needed to establish an Elder Court, and cautioned, "this Court has deep concerns about your proposal for an elder division." He explained:

The establishment of an Elder Division will be a policy decision this Court will have to make. Therefore, we have a number of policy concerns: First, we are concerned with the perception that an Elder Division will favor the elderly, and we fail to see the administrative necessity for doing so. Second, because the probate and guardianship division is not ordinarily in a court location close to the criminal justice complex, either the judge to be assigned to the Elder Division or the criminal trials involving the elderly would have to

physically relocate. Third, the establishment of an Elder Division in your circuit will lead to each of the retirement areas of the state wanting such a division for their own circuits. Fourth, it will be difficult to evaluate caseload on a circuit-by-circuit basis if we allow criminal proceedings to be split off into other jurisdictions. And finally, if we allow the establishment of an Elder Division, we will have no justification for preventing the establishment of a "Business Division," or the like.

Chief Judge Alvarez responded to Chief Justice Kogan on May 29, 1998, stating that he had suspended the implementation of the Elder Court by administrative order and would submit a proposed local rule aimed at establishing an Elder Court.

On October 22, 1998, Chief Judge Alvarez, in correspondence directed to Chief Justice Harding, requested that the Supreme Court reconsider whether the proposal actually created a new division. The Elder Court, according to Chief Judge Alvarez, would only handle criminal violations of Chapter 825, Florida Statutes. He reiterated:

My intent was to follow the precedent of Mann v. Chief Judge of the Thirteenth Judicial Circuit, 697 So. 2d 1184 (Fla. 1997) wherein the Florida Supreme Court held that a drug court which I created by administrative order was not a "division," but that it was more properly viewed as a specialized section or subdivision.

Chief Justice Harding disagreed. On February 24, 1999, he wrote to Chief Judge Alvarez stating that the Florida Supreme Court would hold the Elder Courts request in abeyance until it received clarification on several matters. He stated:

As you know, our court has been reluctant to approve the establishment of new divisions; however, we have done so when the need has been adequately shown. In your proposed administrative order, you state that it is necessary for the efficient and proper administration of justice to create an Elder Court. There is no supporting information cited.

On June 1, 1999, Chief Judge Alvarez again wrote to Chief Justice Major B. Harding regarding the establishment of an Elder Court in the Thirteenth Judicial Circuit. He enclosed documentation, including letters of support from the Public Defender, the Clerk of the Circuit Court, and the State Attorney. He continued to urge that the Elder Court would constitute a sub-section rather than a division. Chief Judge Alvarez stated:

Though it has garnered considerable attention, the Elder Court is a rather small project. I anticipate less than one hundred cases will be assigned to the Elder Court at any given time and no more than two hundred cases a year. I believe that this is the time to begin to address the elder issue, before the age wave hits with full force in the next decade. One of the main complaints I have heard from this community is that there is little or no documentation around the country regarding the elderly in courts and elder abuse. Our request was to establish the Elder Court as a pilot project where we could begin to address the perceived needs while providing a venue for study. It appears to me that this is a reasonable and very efficient way to address the concerns of those in our community.

5. **Supreme Court Denial of Request to Establish an Elder Court** - On September 7, 1999, the Supreme Court declined to allow the establishment of an Elder Court within the Thirteenth Judicial Circuit. Chief Justice Harding, explaining the decision, stated "in light of the small number of cases that would be assigned to such a court, and this Court's policies regarding the establishment of new subdivisions within a court, we are not able to approve your request."

C. EFFECT OF PROPOSED CHANGES:

This bill allows the Chief Judge of each judicial circuit to establish an elder division within the circuit. It appropriates \$1,050,000 to set up pilot projects in three circuits.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Allows the chief judge of each circuit to create an elder division; sets forth the duties of the elder division.

Section 2. Appropriates \$1,050,000 from the General Revenue Fund to be divided between the Tenth, Twelfth, and Thirteenth Judicial Circuits to establish pilot projects; imposes reporting requirements; requires the creation of a consumer survey.

Section 3. Provides that the bill shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill would require a \$1,050,000 appropriation from the General Revenue Fund.

The establishment of pilot programs in the three circuits, allowing for three percent annual growth, would result in the following recurring effects over three years:

Year 1 (FY 2000-01)	\$1,050,000
Year 2 (FY 01-02)	\$1,081,500
Year 3 (FY 02-03)	\$1,113,945

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

It is uncertain whether the \$350,000 appropriated to each of the circuits initiating pilot projects would suffice to establish elder divisions within those circuits. The original \$350,000 request would have paid for an "Elder Justice Center" -- a different institution than the "Elder Division" created by the current bill. The original request, moreover, only applied to the Thirteenth Circuit. It is uncertain whether all three circuits affected by the current bill would experience identical fiscal needs when establishing elder-division pilot projects.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Separation of Powers - Florida's Separation of Powers Doctrine aims to avoid excessive concentration of power. Article II, Section 3 of the Florida Constitution provides, "No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." Florida Courts have opted for a formal interpretation of the Separation of Powers Doctrine and, as a result, have found that the Legislature lacks authority to limit the constitutionally-assigned jurisdiction of the courts. State v. Harris, 136 So. 2d 633 (Fla. 1962); see also Simmons v. State, 160 Fla. 626 (Fla. 1948)(noting that legislation which interferes with the exercise of judicial authority is unconstitutional). To some extent, CS/HB 163 directs the activities of those circuit courts opting to establish elder division pilot programs. It sets forth the duties of elder division personnel, requires the circuits to report to executive- and- legislative-branch officials, and requires the elder division to create a "consumer survey." While the constitution permits the Legislature to establish court divisions through general law, it is uncertain to what degree the Legislature can direct the activities of such divisions without violating the Separation of Powers Doctrine. Furthermore, it is uncertain whether the Legislature can redistribute power within the Judicial Branch by granting the chief judge of each circuit the power to establish divisions -- a power previously reserved to the Florida Supreme Court.

Delegation of Powers - CS/HB 163 gives the chief judge of each circuit the ability to establish an elder division. Article V, Section 7, of the Florida Constitution, which permits the Legislature to establish court divisions, does not specifically authorize the Legislature to delegate this decision-making authority. As with the Separation of Powers doctrine, Florida courts have opted for a formal interpretation of the Delegation of Powers doctrine. Askew v. Cross Key Waterways, 372 So. 2d 913 (Fla. 1978). When delegating authority, the Legislature must provide sufficient guidelines and cannot allow intermediaries to determine what the law *should* be. Sarasota County v. Barg, 302 So. 2d 737 (Fla. 1974). CS/HB 163 does not set forth any factors that the chief judge must consider when deciding whether to establish an elder division, nor does it set forth the jurisdiction of the elder division.

Equal Protection - CS/HB 163 sets up a separate judicial mechanism for elderly persons who require special accommodation. Age is not a suspect classification under the Equal Protection Clause. Therefore, any rational basis would permit the Legislature to single out those cases which involve the elderly from those which do not. However, potentially, the Equal Protection Clause could be implicated if individual circuits erect varying thresholds of jurisdiction.

B. RULE-MAKING AUTHORITY:

See above under "Delegation of Powers" and below under "Definition of Elder" and "Jurisdictional Reach"

C. OTHER COMMENTS:

Definition of Elder - CS/HB 163 states that: "The elder division shall be available for cases involving parties who are at least 60 years of age and who require special assistance or accommodation." This language may lead to difficulties in implementation. For example, courts do not regularly require parties or others to divulge their age prior to seeking judicial services. Determining which parties "require special assistance or accommodation" presents parallel difficulties. It is uncertain what procedures would apply if a 60 year old person, who suffers no apparent signs of infirmity, asserts that his or her case falls within the jurisdiction of the elder division. Similarly, it is uncertain what procedures would apply if a 95 year old person, who suffers from an apparent disability, refuses to acknowledge the disability or resists the jurisdiction of the elder division. Finally, it is uncertain what result would occur in a dispute between two elderly persons who disagree over whether their case should be resolved by the elder division.

Jurisdictional Reach - CS/HB 163 does not delineate the jurisdiction of the Elder Court. It simply states that the elder division "shall be available" in cases involving elders who require accommodation. Thus, arguably, commercial disputes, criminal cases not involving abuse or neglect, and other issues only peripherally related to a party's status as an elder might fall within the jurisdiction of the elder division.

Technical Concern - CS/HB 163 lists a series of duties which the elder division must fulfill. The bill might more appropriately permit the chief judge or the judge placed in charge of the elder division to assign these duties to certain personnel. For instance, it would be difficult for the elder division to "make recommendations to the court regarding the need to expedite a case." Perhaps this duty should be carried out by a quasi-independent employee such as the ADA coordinator.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Original Bill - The bill, as filed, would have allowed the Thirteenth Judicial Circuit to establish an "elder justice center." The content of the original bill raised three concerns.

Category of Legislation - The original bill did not apply statewide and only impacted the Thirteenth Judicial Circuit (Hillsborough County). Therefore, it became important to determine whether the original bill constituted a general law, a general law of local application, or a special (local) law. A general law operates uniformly throughout the state. Dept. of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., 434 So. 2d 879 (Fla. 1983). It applies equally to a category of person or entities which have a reasonable relationship to the subject matter of the law. Catogas v. Southern Federal Savings and Loan Assoc., 369 So. 2d 922 (Fla. 1979). A general law of local application applies to a distinct region within the state and uses a classification scheme based on population or some other reasonable characteristic that distinguishes one region from another. Miami Beach v. Frankel, 363 So. 2d 555 (Fla. 1978). However, even laws which distinguish on the basis of population may be classified as special laws if their objectives bear no reasonable relationship to population differences. State ex rel Utilities Operating Co. v. Mason, 172 So. 2d 225 (Fla. 1964). A special law operates only upon designated persons or discrete regions and bears no reasonable relationship to differences in population or other legitimate criteria. See Housing Authority v. City of St. Petersburg, 287 So. 2d 307, 310 (Fla. 1973)(defining a special law). Article III, Section 10 of the Florida Constitution states that special laws require published notice or a referendum. Article III, Section 11 of the Florida Constitution prohibits 21 categories of special laws and general laws of local application.

Definition of Elder - The original bill defined "elder" as "a person who is 60 years of age or older and who suffers from infirmities of aging as manifested by physical, mental, or emotional dysfunction to the extent that the ability of the person to adequately provide for or secure his or her own care, protection, rights, or access to the courts is impaired." The original bill, like the Committee Substitute, did not establish a method for determining whether a person qualifies as an "elder," and did not specify who would make such a decision.

Jurisdictional Reach - The original bill stated that all matters "which involve or relate to elder persons" fell within the "jurisdiction" of the elder justice center. Thus, issues unrelated to a party's status as an elder may have fallen within the jurisdiction of the elder justice center. The original bill stated that the elder justice center shall "process and handle cases in which an elder is a party." This language led to some uncertainty as to whether the elder justice center would actually hear cases or simply oversee administrative matters.

Committee Substitute - The Committee on Judiciary, at its September 7, 1999, meeting, adopted two amendments. A strike-everything amendment replaced the concept of establishing an "elder justice center" with that of establishing a state-wide "elder division" of the courts. The strike-everything amendment set up a pilot program in the Thirteenth Circuit. The Committee on Judiciary also adopted an amendment expanding the pilot program to the Tenth and Twelfth Circuits and increasing the appropriation from \$350,000 to \$1,050,000. The committee rolled these two amendments into a Committee Substitute.

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VII. SIGNATURES:

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