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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 629
RELATING TO: Office of Child Advocate
SPONSOR(S): Representative Lerner
TIED BILL(S): none

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

- (1) JUDICIAL OVERSIGHT YEAS 8 NAYS 0
 - (2) CHILD & FAMILY SECURITY
 - (3) FISCAL POLICY & RESOURCES
 - (4) COUNCIL FOR SMARTER GOVERNMENT
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill creates the Office of Child Advocate within the Justice Administrative Commission and provides that the direction and management of the office be added to the duties of the commission. This bill provides legislative intent for establishment of the office, provides for appointment of the child advocate by the Governor with consent of the Senate, provides for staffing and funding for the office, provides for an annual report, and provides for duties of the office.

This bill specifies the rights and powers of the child advocate, provides for confidentiality of certain records and information, and provides for indemnification. This bill provides for the court to award reasonable fees for services and reimbursement for reasonable costs to guardians ad litem under certain specified circumstances and transfers the guardian ad litem program from the Office of the State Courts Administrator to the Office of the Child Advocate.

This bill has a fiscal impact on state government which is indeterminate at this time.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain: This bill creates a new office within the Justice Administrative Commission and requires that this new office provide oversight for numerous executive branch agencies.

B. PRESENT SITUATION:

Office of Child Advocate

There is currently no Office of Child Advocate or any one centralized entity with duties, rights and powers comparable to those proposed by this bill. There are, however, a number of programs and groups that carry out one or more of the same or similar functions as those proposed for the Office of Child Advocate. These include the Guardian ad Litem (GAL) Program, the Statewide Advocacy Councils, and the State Child Abuse Death Review Teams.

Guardian ad Litem Program

The federal government acknowledged the importance of best interests representation for children through the enactment of the Child Abuse Prevention and Treatment Act (CAPTA) in 1974. This legislation required the appointment of a guardian ad litem in all proceedings involving child abuse and neglect. Florida, in turn, enacted the Comprehensive Abuse of Children or Disabled Persons Act which codified the court's authority to appoint guardians ad litem. In 1975 courts were given discretionary authority to appoint GALs, with an appointment being required in all dependency proceedings with abuse allegations in 1978 and all dependency proceedings alleging neglect in 1979. During this time, best interest representation was provided through a number of entities, including the state attorneys' offices, public defenders, and what was then, the Department of Health and Rehabilitative Services (HRS). In 1979, the legislature appropriated funds to the Office of the State Courts Administrator for the development of a model representation program and Florida chose to replicate a national model implemented in Washington in 1977, which combined trained volunteers with program staff to serve as guardians ad litem.

A pilot program was developed in Florida in 1980 with a stated mission to provide children with best interests representation and advocacy. The pilot was independently evaluated in 1981 and the resulting report concluded that the volunteer model was likely to be the most feasible, least expensive, and most effective means of providing neglected and abused children with representation. By 1990 all of the judicial circuits in Florida had established a volunteer GAL program. Orange County, one of two counties comprising the ninth judicial circuit, was the lone exception, choosing to use pro bono attorneys to provide representation to children. Other developments in the GAL program include:

M the development of Standards of Operation and a comprehensive training manual to ensure statewide standardization of volunteer training;
M legislative expansion in 1987 to provide GALs in custody/dissolution of marriage cases;
M further legislative expansion in 1988 to require GAL representation in specified criminal proceedings; and
M legislative funding in 1990 for half-time attorney positions for each GAL program in order to provide adequate representation for all volunteer GALs.

Today there are twenty one programs in Florida's twenty judicial circuits. The GAL Program operates with \$12,845,750 in total funding from a variety of sources and provides a guardian ad litem in approximately 7,900 of the 12,500 cases in which an appointment has been made by the court. Daily program functions are supervised by chief judges. Historically, this relationship has been problematic due to the conflict created by the supervision of program staff by the judges they appear before. In addition, such localized control of programs throughout the circuits results in disparities and lack of uniformity in a number of aspects of the program.

The GAL Program has not been identified as a core element of the judicial branch and is therefore scheduled to be moved out of the branch in 2004 as a result of Article V, Revision 7. In anticipation of a such a transition, a number of entities, including, but not limited to, the Office of Program Policy Analysis and Government Accountability (OPPAGA), the Children's Court Improvement Committee (CCIC) and the Representation of Children Workgroup, have examined potential placement options for the GAL Program. Those options include leaving the program within the judicial branch with some restructuring, moving the program to the executive branch, or creating a not-for-profit network. One of the options explored is a proposal to relocate the GAL Program to the Justice Administrative Commission.

In a letter to the Chief Justice of the Florida Supreme Court, The Honorable Charles Wells, from Judge Daniel Dawson, Chair of the Children's Court Improvement Committee, dated September 28, 2001, Judge Dawson included the following caution related to moving the GAL Program from the Office of the State Courts Administrator to another entity:

As you are aware, the reality in the child protection arena currently is long lengths of stay for children, inadequate services and paltry visitation schedules for sibling groups and families. As both the nation and Florida have moved away from an emphasis on family reunification to a focus on best interests of the child, it has become increasingly important for children to have a voice in court. The Guardian ad Litem Program is, and for the last twenty years has been, the only mechanism for representation of children in Florida. The transition of the Program that is under consideration, therefore, should take these factors into account and steadfastly guard the advocacy of best interests for children. While this may be a statement of the obvious, I believe this fact makes the proposition of transferring the Program different than other program transfers.

The operational realities of a transfer of the Program should be considered in light of their impact upon children. Any transition will cost the Program money – money that would otherwise be used to provide GAL advocacy. If the transition causes great disruption to the provision of advocacy, it will be the children who bear the brunt of this burden. These issues were among the topics discussed ... The committee acknowledged the hallmarks of the Program: its best interests mission, independent advocacy, the dedication and longevity of Program staff, the ability to provide information to the court and the community involvement of lay volunteers. These are the aspects of the Program that must survive if children are to be properly represented in court.

Florida Statewide Advocacy Council

The Statewide and Local Advocacy Councils serve as a systemic consumer protection mechanism for individuals receiving services from state agencies. They were started as a response to abusive conditions at Miami Sunland in 1972, were then implemented at other facilities serving individuals with mental health needs, and were subsequently codified into law in 1975. According to the 2000-2001 annual report of the council,

The 350 plus volunteer members appointed by the Governor, investigate complaints about abuse and deprivations of human and constitutional rights, monitor and investigate reports of abuse, monitor programs and facilities that are operated, funded, or contracted by state agencies, review research projects involving human subjects, and generally advocate for the welfare of individuals who are in the care and custody of state agencies in the social service area or private vendors under contract to the state.

The report also states that the local advocacy councils received 22,713 complaints, reviewed 19,691 and investigated 2,958 of those complaints. In addition, the councils performed 678 on-site visits to state facilities, community programs, and provider agencies and were appointed as first representative for 418 individuals while attending 1,346 Baker Act hearings. This workload required over 50,000 volunteer hours contributed by clients, client representatives, health professionals, attorneys, providers and members-at-large. The annual budget for the councils in FY 2000-2001 was \$303,362.

State and Local Child Abuse Death Review Team

In the fifteen years between 1983 and 1998, there were a number of highly publicized deaths of children from abuse or neglect involving children who had received child protection services from the Department of Children and Family Services. As a result, in 1999, the Florida Legislature enacted ' 383.402, Florida Statutes, mandating that the Department of Health establish a statewide multidisciplinary, multi-agency child abuse death review system, comprised of both state and local review teams. These teams were established to conduct reviews of the facts and circumstances surrounding deaths of children from abuse and neglect in cases where the Department of Children and Family Services Abuse Hotline had accepted at least one prior report of abuse or neglect. The intent of this legislation was to facilitate better understanding of these deaths and to develop strategies for reducing the number of future preventable deaths.

These death review teams are composed of representatives from the Department of Health, the Department of Legal Affairs, the Department of Children and Family Services, the Department of Law Enforcement, the Department of Education, the Florida Prosecuting Attorneys Association and the Florida Medical Examiners Commission. In addition, other appointed members include, among others, a board certified pediatrician, a public health nurse, a mental health professional who specializes in the treatment of children, a child protection team medical director, a member of a child advocacy group, a representative of the Florida Coalition Against Domestic Violence, and a social worker experienced in working with victims and perpetrators of child abuse.

The State Child Abuse Death Review Coordinator reports that during the second year of existence of the team, there were 30 child death reviews conducted with an annual budget of approximately \$85,000.

Justice Administrative Commission

There is some debate as to whether the Justice Administrative Commission (JAC) is an entity within the executive branch or the judicial branch. Section 43.16(1), Florida Statutes, creates "a Justice

Administrative Commission of the Judicial Branch of Florida.” However, 216.011(1)(qq), Florida Statutes, states that:

"State agency" or "agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government. For purposes of this chapter and chapter 215, "state agency" or "agency" includes, but is not limited to, state attorneys, public defenders, the capital collateral regional counsels, the Justice Administrative Commission, the Florida Housing Finance Corporation, and the Florida Public Service Commission. Solely for the purposes of implementing s. 19(h), Art. III of the State Constitution, the terms "state agency" or "agency" include the judicial branch.

The JAC is required to maintain a central state office for administrative services and assistance when possible to an on behalf of the state attorneys and public defenders in the state, the office of the capital collateral representative, and the Judicial Qualifications Commission.

C. EFFECT OF PROPOSED CHANGES:

This bill proposes the creation of an Office of Child Advocate with specified duties and responsibilities (see Section-by-Section analysis for detail).

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends ' 43.16, Florida Statutes, relating to the Justice Administrative Commission (JAC), to add the management and direction of the newly created Office of the Child Advocate to the duties of the JAC.

Section 2. Creates ' 43.165, Florida Statutes, providing for the establishment of an Office of Child Advocate, providing legislative intent for creation of the office, providing for appointment of the child advocate by the Governor with consent of the Senate, providing for funding for the office, providing for an annual report, and providing for duties for the office which include:

- M ensuring that every child in protective custody or care is apprised of his or her rights under the law;
- M reviewing procedures of the Department of Children and Family Services related to children's rights and investigating the death of any child who has received services from the department;
- M reviewing and investigating complaints when it appears that a child may be in need of services from the child advocate;
- M review facilities and procedures of all institutions and residences where a child has been placed by the court or DCF;
- M recommend changes in procedures and systems designed to provide child care and treatment;
- M to protect the rights of children through every available means including education, legislative advocacy, and formal legal action;
- M provide training and technical assistance to GALs and special advocates appointed by the court; and
- M review court orders relating to juveniles with the authority to request reviews when in the best interest of the child.

Section 3. Creates ' 63.406, Florida Statutes, providing that the court may award reasonable fees for services and cost reimbursement to a guardian ad litem appointed in any proceeding related to a dissolution of marriage, paternity, parental responsibility, custody or visitation. The section also provides the process through which a GAL can request and receive payment of such fees.

Section 4. Provides for a transfer of the guardian ad litem program from the Office of the State Courts Administrator to the Office of the Child Advocate through the use of a type two transfer pursuant to chapter 20, Florida Statutes. The section also provides that the GAL Program shall continue to operate in all circuits statewide with the exception of the Orange County Program within the ninth judicial circuit.

Section 5. Provides for an effective date of July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Justice Administrative Commission has estimated that it will cost \$195,000 in FY 01-02 to provide administrative support for the newly created Office of Child Advocate proposed by this bill. This amount includes salaries and benefits for 3 FTE's.

The legislative intent provisions of this bill could be interpreted to contain a number of unfunded, costly mandates. For example, subsection (1), of section 2. of the bill states that it is the intent of the Legislature ... to provide that all children in the state shall be ensured representation individually and as a class of their best interests ... The oversight provisions for agencies and programs can also be anticipated to be costly.

This bill also sets forth a number of duties for the child advocate that have the potential for imposing a significant fiscal impact on state government.

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 spend funds or to take an action requiring the expenditures of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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:

A. CONSTITUTIONAL ISSUES:

Article II, section 3, Florida Constitution, provides that the powers of state government shall be divided into the legislative, judicial, and executive branches, and that no person belonging to one branch shall exercise any powers over either of the other branches. Requiring the Office of Child Advocate, which would be located within the judicial branch, to monitor and review policies and procedures of executive branch agencies appears to violate this constitutional provision.

Article I, section 24, Florida Constitution, provides that laws enacted relating to exemptions from public records requirements shall relate to one subject. This bill contains a confidentiality provision that may require a separate public records bill.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

There are a number of technical difficulties with this bill, including:

M On page 3, line 27, it is unclear whether specified representation is best interest representation, representation of the child's wishes, or both;

M On page 3, line 29, "policies and programs" are not defined or prescribed;

M On page 4, lines 1-10, are unclear in their intent, but appear to violate the separation of powers required by the state constitution;

M On page 4, line 25, the word "Management" should be "Marriage".

M On page 6, lines 1-19, the terms "child" and "juvenile" are both used apparently interchangeably, which may lead to some confusion;

M On page 6, line 14, it is unclear what is included in the term "juvenile problems";

M On page 6, lines 14-15, it is unclear what is meant by the term "child care and treatment";

M On page 6, line 21, the term "special advocates" is used. There is no definition for this term in statute nor is it used anywhere else in existing statute;

M On page 8, lines 30-31, a new section relating to fees for the services of guardians ad litem is created in chapter 63, Florida Statutes. Chapter 63 contains statutes related to adoption;

M On page 9, line 17, there is a reference to "the Office of State Court Administration". This should probably read, "the Office of the State Courts Administrator";

M On page 9, lines 17-18, the GAL program is to be relocated pursuant to a type two transfer. Chapter 20, Florida Statutes, provides for transfers of entities between executive agencies. This transfer would be between entities within the judicial branch and a chapter 20, type two transfer may not be applicable; and

M On page 9, line 22, there is a reference to the "Orange County Circuit". This should probably read, "Orange County within the Ninth Judicial Circuit". The Ninth Judicial Circuit is composed of both Orange and Osceola Counties.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 7, 2002, the Committee on Judicial Oversight adopted a strike everything amendment that does the following:

M Provides for the creation of a statewide guardian ad litem office within the Justice Administrative Commission for administrative service and support;

M Provides for an executive director to be appointed by the Governor;

M Provides for duties of the office; and

M Provides for the budget entity for the existing guardian ad litem programs to be transferred from the Office of the State Courts Administrator to the Judicial Administrative Commission.

The bill was then reported favorably, as amended.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

Carol Preston

Nathan L. Bond, J.D.