

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 439 w/CS Statewide Guardian ad Litem Office  
**SPONSOR(S):** Rich, and others  
**TIED BILLS:** none **IDEN./SIM. BILLS:** SB 1974

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	17Y, 0 N w/CS	Birtman	Havlicak
2) Future of Florida's Families	16 Y, 0 N	Preston	Liem
3) State Administration	6 Y, 0 N	Bond	Everhart
4) Judicial Appropriations (Sub)	8 Y, 0 N	Davis	DeBeaugrine
5) Appropriations			

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### SUMMARY ANALYSIS

This bill provides for the creation of the Statewide Guardian Ad Litem Office within the Justice Administrative Commission. The bill transfers existing Guardian Ad Litem positions and the Attorney Ad Litem pilot program to the new Statewide Guardian Ad Litem Office, and provides duties of the new Office. The Statewide Guardian Ad Litem Office will be headed by an executive director, appointed by the Governor from a list of eligible applicants submitted by the Guardian Ad Litem Qualifications Committee. The bill sets out the duties of the Office and requires specified reports.

This bill would transfer approximately \$23 million for the Guardian and Attorney Ad Litem programs from the State Courts System to the Justice Administrative Commission (JAC). The JAC reports their need for an additional \$195,000 while the Courts suggest \$419,008 is also necessary for staffing the new Statewide Office.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0439g.ap.doc  
**DATE:** April 18, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

**The Guardian Ad Litem (GAL) 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 1978 Comprehensive Abuse of Children or Disabled Persons Act that codified the court’s authority to appoint GAL’s and required appointment in all dependency proceedings with abuse allegations. In 1979, the Legislature appropriated funds to the Office of the State Courts Administrator for the development of a model representation program. Florida chose to replicate a national model implemented in Washington state, 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 interest 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.

The GAL program relies on volunteers who are supervised by paid case coordinators. Staff attorneys provide legal assistance as needed. There are twenty-one programs in Florida’s twenty judicial circuits. For FY 2002-2003, GAL programs employ 344 FTE’s. Counties currently provide office space to all of the GAL program offices; although the status of future provision of office space after the Revision 7 transition is unknown. Some counties provide additional FTE’s and additional funding; and the level of charitable giving to GAL programs is unknown. The programs provide a Guardian Ad Litem in approximately 7,900 of the 12,500 cases in which an appointment has been made by the court. During the 2001 calendar year, 4,701 volunteers donated 666,585 hours of service to the program statewide.<sup>1</sup> A GAL volunteer has the following responsibilities:

- To investigate the allegations of the dependency petition and file a written report which must include a statement of the wishes of the child, and the recommendations of the GAL;
- To be present at all court hearings unless excused by the court; and
- To represent the best interests of the child.<sup>2</sup>

Chief judges supervise daily program functions. Historically, this relationship has been problematic due to the conflict created by the supervision of program staff by judges in front of whom GAL’s appear. In

<sup>1</sup> Data provided by the Office of the State Courts Administrator.

<sup>2</sup> See s. 39.807, F.S.

addition, local control of programs has resulted in a lack of uniformity in a number of aspects of the program. Several aspects of the program have been identified as crucial to the proper representation of children in court, and must be preserved in a transfer of the GAL program:

- The 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.<sup>3</sup>

**Transfer of the GAL Program:** The GAL program is currently part of the judicial branch. The impetus to transfer the GAL Program out of the judicial branch is primarily for two reasons:

1. Revision 7 to Article V of the Florida Constitution directs state government to assume the cost of the state court system, to be fully effectuated by July 1, 2004. The Legislature is in the process of defining the state court system to determine which programs and services are part of the state court system to be paid for by the state.
2. Current placement within the judicial branch creates actual and perceived conflicts of interest. The chief judge in each circuit is responsible for managing program staff and operations. As a result, when a Guardian Ad Litem disagrees with a judge's decision, the program is publicly disagreeing with management, placing the parties in conflict. Alternatively, it can be argued that judges treat Guardian Ad Litem recommendations more favorably because they come from a court program.<sup>4</sup>

Several alternatives for placement have been considered, including the creation of an independent office within the judicial branch, the public defenders' offices<sup>5</sup>, an agency within the executive branch, and a not-for-profit organization. Ultimately, both OPPAGA and the Governor's Guardian Ad Litem Working Group recommended placement in the Justice Administrative Commission (JAC).<sup>6</sup> OPPAGA reports that making the GAL program independent, and administratively served by the JAC, seems to be the second least expensive option (after leaving the GAL program in the Office of the State Courts Administrator) and would resolve concerns over conflict of interest and centralization.

**The Justice Administrative Commission (JAC):** The JAC was statutorily created to provide administrative services and assistance to the offices of the state attorneys, the public defenders, the Capital Collateral Representatives, and the Judicial Qualifications Commission.<sup>7</sup> Members of the JAC consist of two state attorneys selected by the Florida Prosecuting Attorneys Association and two public defenders selected by the Florida Public Defenders Association. The Commission employs an executive director to run the day-to-day business of the JAC.

**Effect of Proposed Changes:** The bill transfers all funds and positions associated with the GAL program in the State Court System by a type two transfer to the Statewide Guardian Ad Litem Office

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<sup>3</sup> 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, September 28, 2001.

<sup>4</sup> See OPPAGA Report No. 02-10, "Guardian Ad Litem Placement May Shift for Reasons of Funding and Conflict of Interest", February, 2002.

<sup>5</sup> See SB 686 (2002), which originally transferred the GAL program to the offices of the public defenders. The bill was amended to provide for transfer of the program to the Department of Elderly Affairs. CS/CS/CS SB 686 died in House Messages.

<sup>6</sup> See OPPAGA Report No. 02-10 and Final Report of the Governor's Guardian Ad Litem Workgroup, submitted to the Governor on September 15, 2002.

<sup>7</sup> See s. 43.16, F.S.

within the JAC.<sup>8</sup> The bill creates a Statewide Guardian Ad Litem Office within the JAC. The JAC is required to provide administrative support and service to the Statewide GAL Office to the extent requested by the executive director within the available resources of the commission. The Statewide GAL Office shall not be subject to the control, supervision, or direction of the JAC in the performance of its duties. The bill also provides for the following:

- **Appointment of the Executive Director:** The bill provides for the appointment of an executive director to head the Statewide Guardian Ad Litem Office. The director is appointed by the Governor from a list of a minimum of three qualified applicants submitted by the Guardian Ad Litem Qualifications Committee, which is composed of five persons: two persons appointed by the Governor, two persons appointed by the Chief Justice of the Florida Supreme Court, and one person appointed by the Statewide Guardian Ad Litem Association. The bill requires the director to have knowledge of dependency law and of social service delivery systems available to meet the needs of dependent children, and to report to the Governor. The director is required to serve on a full-time basis and is required to carry out the duties of the office.
- **Duties of the Statewide GAL Office:** The Office is directed to perform the following duties, within available resources:
  - Provide oversight and technical assistance to GAL programs;
  - Identify resources required to implement methods of reliable and consistent data collection;
  - Review current GAL programs in Florida and other states;
  - Develop statewide performance measures and standards in consultation with local GAL offices;
  - Develop a training program in consultation with a curriculum committee;
  - Review the various methods of funding and maximize the use of funding sources;
  - Conduct or contract for demonstration projects, within funds appropriated or through gifts, grants or contributions, to determine the feasibility or desirability of new concepts of organization, administration, financing, or service delivery designed to preserve the civil and constitutional rights of dependent children; and
  - Submit to the Governor, President of the Senate, and Speaker of the House an interim report describing the progress of meeting the goals as set forth in the bill; submit a proposed plan including alternatives for meeting the state's GAL needs; and a yearly status report.

**The Pilot Programs:** In 2000, the Legislature provided for the creation of a 3-year pilot Attorney Ad Litem Program in the Ninth Judicial Circuit, established by the Office of the State Courts Administrator.<sup>9</sup> The pilot project has three components: the GAL component provided by the Osceola County GAL program modeled after the state program; the GAL component provided by the Legal Aid Society of the Orange County Bar Association; and the Attorney Ad Litem component provided by Barry University School of Law. The Osceola County GAL Program is the only fully funded GAL program in Florida, and uses a blended model of representation. The primary differences between the traditional GAL model and the Attorney Ad Litem model is that in the traditional GAL model, a lay volunteer provides advocacy for the dependent child and is required to report to the court an independent assessment of the child's best interests, in addition to the child's wishes. The GAL staff attorney provides legal assistance for a small percentage of cases in which the lay volunteer requires legal assistance. Conversely, the Attorney Ad Litem model provides an attorney for the dependent child, whose obligation is to follow the direction of the child client.

**Effect of Proposed Changes:** The bill provides for the transfer of the pilot program to the Statewide Guardian Ad Litem Office within the JAC.

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<sup>8</sup> See s. 20.06(2), F.S. A type two transfer is the merging of an existing agency into another agency or department. The transfer includes all statutory powers, duties, and functions, and records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, except those transferred elsewhere or abolished.

<sup>9</sup> See s. 39.4086, F.S.

C. SECTION DIRECTORY:

Section 1 creates the Statewide Guardian Ad Litem Office; provides legislative findings and intent; provides for the appointment of the executive director; and provides duties of the Office.

Section 2 transfers the pilot program created by s. 39.4086, F.S., to the Statewide Guardian Ad Litem Office and transfers all funds and positions associated with the Guardian Ad Litem Program in the State Courts System to the Statewide Guardian Ad Litem Program within the Justice Administrative Commission by a type two transfer.

Section 3 provides an effective date of July 1, 2003.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The JAC reports that in order to provide administrative support to the Statewide Guardian Ad Litem Office it will need an additional 3.0 FTE and \$195,000 to maintain its 1 to 200 FTE ratio.

The Office of the State Courts Administrator suggests that the Statewide Guardian Ad Litem Office be comprised of a director, two lead attorneys, two senior court analysts, an administrative assistant, and a secretary. Total funding for these seven positions, including operating capital outlay and expenses, is \$419,008.<sup>10</sup>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Counties reported that they expended approximately \$3.1 million on circuit GAL programs in 2001.<sup>11</sup> This bill does not require the counties to continue those funding levels, nor to make any new expenditures for the GAL programs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The total amount to be transferred in this type-two transfer from the Courts to the JAC for FY 2003-04, including the Attorney Ad Litem pilot, is approximately \$23 million and 344 FTEs.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

<sup>10</sup> Salaries were calculated using current OSCA rate plus 10%, benefits calculated as an additional 30%.

<sup>11</sup> See Legal Needs of Children Senate Interim Project Report No. 2002-140, published by the Florida Senate Judiciary Committee in November, 2001.

1. Applicability of Municipality/County Mandates Provision:

This bill does not require the counties or cities to spend funds or take an action requiring the expenditure of funds.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The entire transfer will take place effective July 1, 2003, which means that circuit programs will require administrative support before an executive director is on board. The bill references the 'Chief Justice of the Supreme Court' on lines 63 and 123; these references could be clarified to refer to the 'Chief Justice of the Florida Supreme Court.'

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The **Judiciary Committee** adopted a strike-all amendment on **March 18, 2003**. This analysis is drafted to the bill as amended. The major changes made by the amendment are as follows:

- Revised the manner of appointment of the executive director;
- Revised the legislative findings and intent language;
- Required the Statewide Guardian Ad Litem Office to identify resources necessary for reliable and consistent data collection; and
- Corrected the transfer language to provide transfer from the state court system (rather than the Office of the State Courts Administrator).

On April 15, 2003, the Subcommittee on Judicial Appropriations passed an amendment by Rep. Planas, mandating the Attorney Ad Litem pilot project in the Ninth Judicial Circuit continues through at least January 1, 2005. The amendment also requires that the new statewide Guardian Ad Litem office report to the Governor, Senate President, House Speaker and Chief Justice of the Supreme Court by October 1, 2004, a proposed plan for meeting the state's Guardian Ad Litem "and attorney ad litem" needs.