

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 879 w/CS Disposition of Civil Penalties by County Courts
SPONSOR(S): Gelber
TIED BILLS: none **IDEN./SIM. BILLS:** SB 1952 (s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	16 Y, 0 N w/CS	Birtman	Havlicak
2) State Administration		Bond	Everhart
3) Appropriations			
4)			
5)			

SUMMARY ANALYSIS

Current law requires certain monies to be paid to Florida foster care citizen review panels through the state courts system. This bill requires those monies to be paid through the Justice Administrative Commission rather than through the state courts system.

This bill does not appear to have a fiscal impact on state or local governments.

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:

Not applicable.

B. EFFECT OF PROPOSED CHANGES:

Background

Section 318.21, F.S., provides for the distribution of civil penalties received by the county courts.¹ Section 318.21(2)(a), F.S., requires that \$300,000 of those monies collected statewide must be deposited into the Grants and Donations Trust Fund in the state courts system for administrative costs, training costs, and costs associated with the implementation and maintenance of Florida foster care citizen review panels in a constitutional charter county.² The only panel that benefits is Foster Care Review, Inc., which is Miami-Dade County's citizen review panel. The panel has reviewed more than 30,000 foster care cases since its inception in 1989; the program has 10 staff and 100-plus volunteers, and was born out of a United Way initiative.³

Citizen review panels are made up of five volunteer members who may conduct hearings to review the status of foster children.⁴ The social service agency is required to make an investigation and social study concerning specified details relating to the child, and is required to furnish the report to the citizen review panel.⁵ The panel is to take into consideration the social investigation and all medical, psychological, and educational records that support the terms of the case plan; testimony by the social services agency, the parent, the foster parent or legal custodian, the guardian ad litem; and any other person deemed appropriate; and any relevant and material evidence submitted.⁶ The panel is required to provide notice, and submits a report and recommended order to the court. The recommended order must be limited to the statutory dispositional options available to the court.⁷ Parties can file exceptions to the report and recommended order of the citizen review panel.⁸

¹ Of all civil penalties received by a county court, one dollar is to be remitted to the Department of Revenue for deposit into the Child Welfare Training Trust Fund for child welfare training, and one dollar is to be remitted to the Department of Revenue for deposit into the Juvenile Justice Training Trust Fund. Of the remainder, twenty and six-tenths percent shall be remitted to the Department of Revenue for deposit into the General Revenue Fund, except that the first \$300,000 shall be deposited into the Grants and Donations Trust Fund in the state courts system to fund citizen review panels in constitutional charter counties. The remainder is distributed pursuant to s. 318.21, F.S.

² Pursuant to Article VIII, section 6 of the State Constitution, the provisions of Article VIII, sections 9, 10, 11, and 24 of the Constitution of 1885, are to remain in full force and affect until each county has expressly adopted a charter or home rule plan. Those counties include Duval, Monroe, Dade, and Hillsborough.

³ See "Lawyers shepherd children through foster care system", The Florida Bar News, November 13, 2003.

⁴ See s. 39.701, F.S., which requires the court to review the status of children in foster care every 6 months.

⁵ See s. 39.701(6)(a), F.S.

⁶ See s. 39.701(7), F.S.

⁷ See s. 39.701(2)(c), F.S.

⁸ See Rule 1.490, Florida Rules of Civil Procedure, which requires exceptions to be filed 10 days from the time the report is served.

Citizen review panels may be established in each judicial circuit and shall be authorized by administrative order executed by the chief judge of each circuit.⁹ Citizen review panels are administered by an independent not-for-profit agency, which has the following statutory duties:

- Develop policies to ensure that citizen review panels comply with all applicable state and federal laws;
- Establish policies for the recruitment, selection, retention, and terms of volunteer panel members;
- Develop, implement, and maintain a training program;
- Ensure that all panel members have read, understood, and signed an oath of confidentiality;
- Establish policies to avoid conflicts of interest;
- Establish policies to ensure ongoing communication with the department and the court;
- Establish policies to ensure adequate communication with the parent, foster parent or legal guardian, the guardian ad litem, and other appropriate persons;
- Establish procedures that encourage attendance of interested persons and parties at hearings;
- Coordinate with existing citizen review panels to ensure consistency of operating procedures and data collection;
- Make recommendations as necessary to the court concerning attendance of essential persons at review hearings; and
- Ensure consistent methods of identifying barriers to the permanent placement of the child.¹⁰

The Justice Administrative Commission is created by statute,¹¹ and consists of two state attorneys and two public defenders as well as an executive director and necessary personnel. The duties of the commission include, but are not limited to maintenance of a central state office for administrative services and assistance to and on behalf of state attorneys, public defenders, the office of capital collateral representative, and the Judicial Qualifications Commission; and shall assist in the preparation of budget requests, voucher schedules, and other forms and reports. The Justice Administrative Commission also compensates private court-appointed counsel,¹² and provides administrative support and service to the Statewide Guardian ad Litem Office.¹³

Effect of bill

This bill requires that the \$300,000 be deposited into the Grants and Donations Trust Fund in the Justice Administrative Commission. The use of the funds remains the same as in current law.

C. SECTION DIRECTORY:

Section 1 amends s. 318.21, F.S., to change state courts system to the Justice Administrative Commission.

Section 2 provides an effective date of July 1, 2004.

⁹ See s. 39.702, F.S. Several circuits have administrative orders authorizing citizen review panels, including the Eleventh Circuit (Miami-Dade County) and the Tenth Circuit (Polk County). The Fifteenth Circuit chose to vacate its authorization of Foster Care Citizen Review of Palm Beach County, finding that there is a need for greater judicial oversight. The Fifteenth Circuit instead uses general masters for this purpose. See Administrative Order No. 7.004-6/01, Fifteenth Judicial Circuit.

¹⁰ See s. 39.702(5), F.S.

¹¹ See s. 43.16, F.S.

¹² See s. 27.5304, F.S.

¹³ See s. 39.8296, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

In November 1998, voters approved Revision 7 to Article V of the Florida Constitution. Generally, the revision allocates state court system funding among the state, counties, and users of courts, and must be fully effectuated by July 1, 2004. Specific to this bill, Revision 7 requires that all funding for the offices of the clerks of the circuit and county courts performing court-related functions shall be provided by users of courts through adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law.¹⁴ Counties are required to pay for the reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.¹⁵ Effective July 1, 2004, 'local requirements' are provided for in s. 29.008, F.S., and in general are specialized programs, nonjudicial staff, and other expenses associated with specialized court programs, specialized prosecution or defense needs, or resources required of a local jurisdiction as a result of special factors or circumstances. Local requirements exist when imposed pursuant to an express statutory directive; or when the county has enacted an ordinance, adopted a local program, or funded activities with a financial or operational impact on the locality or circumstances in a given circuit or county result in or necessitate specialized programs.¹⁶ Foster care citizen review panels are not part of the state court system as currently defined by the legislature.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not affect municipal or county government.

2. Other:

¹⁴ Revision 7 to Article V, section 14 of the State Constitution.

¹⁵ Id. at section 14(c).

¹⁶ See the amendment to s. 29.008(2), F.S., by section 45, ch.2003-402, LOF. The amendment is effective July 1, 2004.

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

At the March 15, 2004 meeting of the Judiciary Committee, an amendment was adopted that changed the effective date to July 1, 2004, to coincide with other fiscal changes necessitated by Revision 7 to Article V of the State Constitution.