

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Comments from the Future of Florida's Families Committee

Provide limited government – The bill has the potential to avoid or at least reduce the number of conflicting orders relating to the same family and prevent multiple court appearances by the same family on the same issues. This may serve to reduce the number of hearings and therefore maximize judicial resources. The bill also requires the Department of Children and Family Services to adopt rules to administer the provisions of the bill related to the parenting course.

B. EFFECT OF PROPOSED CHANGES:

Background

Florida's initiative for family court reform began as a result of increasing demands being placed on the judicial system by the large volume of cases involving children and families. As the number of family court filings significantly increases, the Supreme Court has noted that it must seek to improve productivity and conserve resources.¹ Against this background, the Court created the Family Court Steering Committee in 1994 to, among other things, advise the Court about the circuits' responses to families in litigation and make recommendations on the characteristics of a model family court.²

The Family Court Steering Committee developed a list of recommendations, among which is the guiding principle that:

Cases involving inter-related family law issues should be consolidated or coordinated to maximize use of court resources to avoid conflicting decisions and to minimize inconvenience to the families.³

The Supreme Court endorsed this guiding principle, noting that a family should not have to appear before different judges in different courts, each making possibly conflicting determinations of custody of a minor child.⁴

In 2002, a joint interim project was conducted by the Senate Committee on Judiciary and the Senate Committee on Children and Families. Several recommendations for statutory change were included in the report. One such change was to allow the use of a unique personal identification for people who come before the court.⁵

¹ See *In Re Report of the Family Court Steering Committee*, 794 So.2d 518 (Fla. 2001). The court, at p.520, reports that as of 1998 and 1999, family law cases constituted the largest percentage of all circuit court filings – over 40%. The court also reported that for this same period, these cases overwhelmingly represented the largest percentage of circuit court cases that were reopened - almost 70%.

² See *In Re Report of the Commission on Family Courts*, 633 So.2d 14 (Fla. 1994).

³ See *In Re Report of the Family Court Steering Committee*, 794 So.2d 518, 522 (Fla. 2001), recommendation 4.

⁴ See *In Re Report of the Family Court Steering Committee*, at 526.

⁵ See Senate Interim Project Report 2002-141, Review of Family Courts Division and the Model Family Court: Court Services and System, and Senate Interim Project Report 2002-121, Review of Family Courts Division and the Model Family Court: Other Services and Systems for Children and Families.

Under current law, legal issues involving children and families are frequently addressed by different divisions of the court, particularly in larger judicial circuits. In many cases, the parties are appearing before a different judge in each proceeding. Therefore, it is possible that a judge may be unaware of previous or pending related legal matters involving the same children or family before the court.

Effect of Bill

Judicial Case Coordination and Information Sharing

Present Situation

Presently, there is not a single or uniform system of judicial case coordination in the state. Anecdotal evidence indicates that the components of judicial case management systems vary between counties based on the demographics, resources available, and the nature of cases. Although a number of existing information systems exist throughout the state, many of them are not coordinated or integrated to facilitate information sharing either within or outside the court system. In addition, the courts' current ability to track and coordinate related cases is complicated by the increased mobility of family households between circuits.

Proposed Changes

This bill creates s. 25.375, F.S., to provide statutory authorization for the Supreme Court to create a unique identifier for each individual in order to identify all cases related to the same individual or family, and to collect a portion of an individual's social security number or other personal identification information solely for the purpose of case management and identification of related cases. Failure to provide a social security number for this purpose may not be grounds to deny any services, rights, or remedies otherwise provided by law. The bill also requires the Supreme Court, the Criminal Juvenile Justice Information System Council, and the Article V Technology Board to make recommendations to the Governor and the Legislature by January 2, 2006, for establishing and implementing a unique identifier.

Jurisdictional Conflicts/Precedence of Orders

Present Situation

As the court system moves to implement measures to coordinate all related cases involving a single child or family, sometime a question arises as to which judicial order should take precedence and under what circumstances, and whether the order will continue to take precedence should the dependency court terminate jurisdiction. Since relief for matters such as custody, visitation, and support may arise through a number of different proceedings such as a dependency action, a dissolution of marriage action, and a paternity action, it is not uncommon for each court with respective jurisdiction of the proceedings to enter, without knowledge of the pending actions, an order ruling on the same matter.

Questions sometimes arise as to the continuing precedence of temporary orders on custody and visitation entered in domestic violence proceedings, over other such orders in other civil proceedings. Current law permits a court hearing a domestic violence injunction to include a determination on issues of custody, visitation, or support at the ex parte hearing and the final hearing, but that determination is entered only as a temporary order which suggests that a subsequent separate proceeding must be filed in order to secure a permanent order of custody, visitation, or support.⁶ Additionally, it has been anecdotally

⁶ See s. 741.30(5)(a)3. and (6)(a)3., F.S.

suggested that this process is sometimes manipulated to allow one person to secure a determination on temporary custody and support at the ex parte hearing, before the court with the pending dissolution proceeding has had an opportunity to address custody and support issues. It has also been suggested that temporary orders on custody and support in the domestic violence injunction may then be inappropriately relied upon as permanent determinations of custody and support without satisfying the full evidentiary burden required under a dissolution of marriage or paternity proceeding.

Proposed Changes

This bill amends s. 39.013, F.S., to provide that orders entered under chapter 39, Florida Statutes, which affect the placement of, access to, parental time with, adoption of, or parental rights and responsibilities for a minor child shall take precedence over other orders entered in civil actions or proceedings. The bill further provides that if the dependency court terminates jurisdiction, the dependency order may be subsequently modified in any other civil action affecting the placement of, access to, parental time with, or parental responsibility for the same minor child.

The bill amends s. 741.30, F.S., to provide the continuing precedence of temporary orders relating to custody in domestic violence injunction proceedings. Such temporary orders shall remain effective until a determination of permanent custody is entered in a pending or subsequent civil proceeding affecting the placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the minor child.

Admissibility of Evidence

Present Situation

The admissibility of evidence in civil and criminal proceedings, including workers' compensation proceedings, is generally governed by the Evidence Code set forth in chapter 90, F.S. However, the Legislature created an exception to the Evidence Code as to the admissibility of all orders and evidentiary matters in chapter 39, F.S., and, therefore, current law prohibits their admissibility in any civil or criminal proceeding except under limited exceptions.⁷ As the court system moves towards handling all related cases involving a single child or family, this provision could impede the court's ability to consider all matters relating to a single child or family, and may require unnecessary relitigation of the same facts or evidence in subsequent legal proceedings. The rationale is that if the evidence was admissible in an evidentiary hearing under chapter 39, it ought to have the same presumptive standard of reliability and relevance in a subsequent civil proceeding.⁸

Proposed Changes

This bill amends ss. 39.0132 and 39.814, F.S., to provide for the admissibility of reliable and relevant evidence from a proceeding arising under chapter 39, F.S., to other civil proceedings affecting the same child or sibling of that child. In order to be admissible in a subsequent civil proceeding, the bill requires that notice be given to the opposing party of the intent to offer the evidence, that a copy of such evidence be delivered to the opposing party, and that the evidence is otherwise admissible in the

⁷ See ss. 39.0132 and 39.814, F.S. For example, a termination of parental rights orders may be admissible in a subsequent adoption proceeding of the same child or sibling. Records or portions of a dependency case may be admitted into perjury proceedings.

⁸ See Senate Interim Report 2002-141, Report of Family Courts Division and the Model Family Court: Court Services and System, January 2002, at page 7.

subsequent proceeding. Confidentiality of the evidence is retained, and the evidence is not admissible in criminal proceedings, consistent with current law.⁹

Other provisions

This bill also makes the following changes:

- Amends s. 61.13, F.S., to provide that in any proceeding under chapter 61, the court may at any time order either or both parents who owe a duty of support to a child to pay support; the court's authority to order child support is not limited to dissolution of marriage actions.
- Amends s. 61.13, F.S., to remove the authority of the court to award grandparent visitation rights if it is in the best interests of the child. This provision has been found unconstitutional.¹⁰
- Amends s. 61.13(7), F.S., to delete language giving grandparents equal standing as parents for evaluating custody arrangements, which has been found unconstitutional.¹¹
- Amends s. 61.21, F.S., to specify that a party has 45 days within which to complete a parenting course.

C. SECTION DIRECTORY:

Section 1. Creates s. 25.375, F.S., to allow the Supreme Court to create a unique identifier for each person in order to identify all court cases related to that person or his or her family.

Section 2. Amends s. 39.013, F.S., to provide that specified orders entered by a dependency court take precedence over orders entered in other civil proceedings.

Section 3. Amends s. 39.0132, F.S., to provide that final orders entered by dependency courts pursuant to adjudicatory hearings are admissible in evidence in specified subsequent civil proceedings under specified circumstances.

Section 4. Amends s. 39.521, F.S., to strike the provision that a custody order shall continue unless modified by a subsequent order of the court.

Section 5. Amends s. 39.814, F.S., to provide that final orders entered by dependency courts pursuant to adjudicatory hearings are admissible in evidence in specified subsequent civil proceedings under specified circumstances.

Section 6. Amends s. 61.13, F.S., to provide that in proceedings under chapter 61, the court has jurisdiction to determine all matters relating to child support; and repeals language regarding grandparent visitation that has been held unconstitutional by the courts.

Section 7. Amends s. 61.21, F.S., relating to the completion of a parenting course.

⁹ See ss. 39.0132(3),(4), and (6), F.S.

¹⁰ See *Sullivan v. Sapp*, 866 So.2d 88 (Fla. 2004), in which the Florida Supreme Court held that allowing an award of grandparent visitation based on the child's best interests, absent a showing of harm pursuant to s. 61.13(2)(b)2.b., F.S., is unconstitutional as a violation of the parent's constitutional right to privacy.

¹¹ See *Richardson v. Richardson*, 766 So.2d 1036 (Fla. 2000).

Section 8. Amends s. 741.30, F.S., to provide that an order of temporary custody entered pursuant to a domestic violence injunction remains in effect until it expires, or a specified order is entered in a subsequent civil action.

Section 9. Amends s. 61.1827, F.S., to conform a cross-reference.

Section 10. Amends s. 409.2579, F.S., to conform a cross-reference.

Section 11. Provides a severability clause.

Section 12. Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Office of the State Courts Administrator reports no apparent impact on state revenue.

2. Expenditures:

The Office of the State Courts Administrator reports no apparent impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not affect county or municipal government.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill requires the Department of Children and Family Services to adopt rules to implement the provisions of the bill related to the parenting course.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

Comments from the Future of Florida's Families Committee

Grandparent Visitation

In 1978, the Florida Legislature provided for the courts to award grandparents visitation rights in an existing action for dissolution of marriage.¹² Grandparents, however, could not be made parties and had no legal standing as contestants to the action for dissolution of marriage.

In 1984, the Legislature created s. 61.1301, Florida Statutes, which established a grandparent's freestanding statutory right to exercise visitation with his or her grandchild.¹³ That is, a grandparent could initiate an independent action to exercise grandparent visitation rights. The law required the court to grant visitation "when in the best interest of the child," and if one of the following parental or marital scenarios existed:

- one or both parents are deceased [s. 752.01(1)(a), Florida Statutes (1999)];
- the marriage of the parents has been dissolved [s. 752.01(1)(b), Florida Statutes (1999)]; or
- a parent has deserted the child [s. 752.01(1)(c), Florida Statutes (1999)].

In 1990, the law was amended to provide an additional circumstance under which grandparents could seek visitation:

“if the child was born out of wedlock and not later determined to be a child born within wedlock” [s. 752.01(1)(d), Florida Statutes (1999)].

Factors were also provided for the court to consider in the determination of the best interest of the child, including: the grandparent's willingness to encourage a close parent-child relationship, the length and quality of the prior grandparent-child relationship, the child's preference, the child's mental and physical health, the grandparent's mental and physical health, and other such factors as are necessary in each case.¹⁴

The chapter was further amended in 1993, to add another situation under which grandparents could petition for visitation rights:

- if the minor child was living with both natural parents who were still married to each other and one or both parents have used their parental authority to prohibit a relationship between the child and the grandparents [s. 752.01(e), Florida Statutes (1999)].

There are a number of additional statutory provisions, unconnected with chapter 752, Florida

¹² See chapter 78-5, LOF.

¹³ See chapter 84-64, LOF; statutory revision created chapter 752, Florida Statutes, relating to grandparental visitation rights, rather than leaving the language in the proposed s. 61.1301, Florida Statutes.

¹⁴ See chapter 90-273, LOF.

Statutes, that govern grandparent rights related to their grandchildren. These provisions apply to ongoing proceedings in which the health, welfare, custody, or adoption of a child is already at issue. For example, s. 61.13(2)(b)2.c., Florida Statutes, relating to proceedings involving dissolution of marriage, child support and custody, provides for court-ordered visitation rights. However, a grandparent is not automatically entitled to be made a party to the proceedings, to be given notice of the dissolution of marriage proceedings, or to require the court to order that a child remain in the state for purposes of allowing grandparent visitation. Section 61.13(7), Florida Statutes, further provides that in a case where a child is actually residing with a grandparent in a stable relationship, the court may recognize the grandparents as having the same standing as parents for evaluating what custody arrangements are in the best interest of the child.

Since 1996, the Florida Supreme Court has systematically ruled that certain provisions of chapters 61 and 752, Florida Statutes, were facially unconstitutional.¹⁵ The courts have consistently determined that grandparent visitation rights as were set forth in the Florida Statutes, infringe on a parent's fundamental and constitutional right to parent a child free from governmental interference as implicitly protected under the Fourteenth Amendment of the United States Constitution, and more explicitly protected under the right of privacy provision in article 1, section 23 of the Florida Constitution. The only occasion where states may interfere with privacy rights is when there is a compelling state interest. The Florida Supreme Court expressly found an inherent problem in using the "best interest" standard in lieu of a showing of "demonstrable harm to the child's health or welfare" as the basis for warranting government interference into a parent's constitutional right of privacy in a parenting decision such as grandparent visitation. Only where there is demonstrable harm to the child is the state interest sufficiently compelling to warrant governmental intrusion.

Traditionally, those interests which have been found to be compelling involve the health and safety of children, protection from sexual exploitation and abuse, and education of children.¹⁶ In these areas, states may make laws regulating parental conduct (e.g. state may compel attendance in school until a certain age, states may require that parents inoculate their children in order to attend school). The U.S. Supreme Court has historically found parental rights to be protected, even in the face of a child's illness, giving the parents the right to free exercise of their religious beliefs as concerning their children, and allowing parents, not government, to make the essential choices about how to raise their children. However, several of the privacy cases, even in these areas, accede to the wishes of the parents. For instance, in *Wisconsin v. Yoder*, an Amish father was allowed to remove his child from school, even though he was within the age where school attendance was compulsory. Harm to a child as defined in s. 39.01(30), Florida Statutes, has been found to be a compelling state interest by the Florida Supreme Court.¹⁷ Examples of harm to the child which rise to the level of a compelling state interest and therefore may warrant governmental interference are abuse, abandonment, and neglect of the child. Any lower standard of harm is in danger of rendering a statute constitutionally infirm.

The bill removes the provisions from chapter 61, Florida Statutes, that have been determined to be unconstitutional by the Florida Supreme Court.

¹⁵ See *Beagle v. Beagle*, 678 So.2d 1271 (Fla. 1996), *Von Eiff*, 720 So.2d 510 (Fla. 1998), *Von Eiff v. Azicri*, 699 So.2d 772, 781, *Lonon v. Ferrell*, 739 So. 2d 650 (Fla. 2d DCA 1999), *Saul v. Brunetti*, 753 So.2d 26 (Fla. 2000), *Richardson v. Richardson*, 766 So.2d 1036 (Fla. 2000).

¹⁶ See *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

¹⁷ See *Padgett v. HRS*, 577 So.2d 565 (Fla. 1991).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

This analysis is drawn to the Committee Substitute that was adopted at the February 23, 2005, meeting of the House Judiciary Committee. The Committee Substitute differs from the bill as filed in that the Committee Substitute:

- Provides that the Clerk of Court may only collect a portion of a person's social security number for use as a unique identifier for that person, rather than the whole number
- Repeals s. 61.13(7), F.S., relating to the standing of grandparents in child custody evaluations
- Provides new and more specific language relating to the approval of parenting courses

On March 9, 2005, the Future of Florida's Families Committee adopted an amendment that minimizes the fiscal impact of implementing a unique identifier. The amendment also requires the Supreme Court, the Criminal Juvenile Justice Information System Council, and the Article V Technology Board to make recommendations to the Governor and the Legislature by January 2, 2006, for establishing and implementing a unique identifier.

The bill was then reported favorably with a committee substitute.