

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 145 CS Family Court Efficiency
SPONSOR(S): Planas and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 348

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary Committee	11 Y, 0 N, w/CS	Thomas	Hogge
2) Future of Florida's Families Committee			
3) Justice Appropriations Committee			
4) Justice Council			
5) _____			

SUMMARY ANALYSIS

The bill implements recommendations by the Florida Supreme Court related to the operation of the family court system to:

- Allow the court system to create a unique identifier to identify all court cases related to the same family.
- Provide that specified orders entered in dependency court take precedence over court orders entered in other civil proceedings.
- Provide that final orders and evidence admitted in dependency actions are admissible in evidence in subsequent civil proceedings under certain circumstances.

This bill removes provisions regarding grandparents' visitation rights that have been found unconstitutional by the courts.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower Families: The bill is intended to affect the efficiency and consistency among family court cases.

B. EFFECT OF PROPOSED CHANGES:

Background

Florida's initiative for family court reform began as a result of the 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. During the course of the interim project, it became clear that specific statutory changes could substantially improve the ability of the court to tailor a comprehensive resolution to a child or family's legal matters, in current and other pending related matters, within the existing structure of the family, delinquency, and dependency court divisions.⁵

Under current law, legal issues involving children and families are frequently addressed piecemeal 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. Frequently, due to lack of information sharing, coordination, or case-management, the judge may be unaware of previous or pending related legal matters involving the same children or family before the court. Moreover, the child or family's underlying non-legal issues may go undetected or unaddressed. Consequently, these non-legal matters may have caused or served to exacerbate a child's and family's legal problems, necessitating further judicial intervention or court appearances.

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.

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 and the divergent and evolving nature of family household dynamics.

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.

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 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.

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

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 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.

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.

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

- 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.

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.

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).

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:

To the extent that this bill reduces the number of duplicative hearings and conflicting orders regarding the same family, families may experience cost savings on filing fees and attorney's fees.

D. FISCAL COMMENTS:

To the extent that this bill aids in the avoidance of conflicting orders relating to the same family, and prevents multiple court appearances by the same family on the same issues, it would appear that judicial resources would be maximized.

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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Article V Technology Board has been tasked with reviewing the issues surrounding the creation of a unique identifier as provided under this bill. The Board will be discussing the issue at its meeting in Tampa on March 14–15, 2005.

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 identified 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