

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Children and Families Committee

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BILL: SB 348

SPONSOR: Senator Lynn

SUBJECT: Family Court Efficiency

DATE: February 28, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Maclure</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Sanford</u>	<u>Whiddon</u>	<u>CF</u>	<b>Favorable</b>
3.	_____	_____	<u>HA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill provides for the following:

- Authorizes the Supreme Court to create a unique identifier for each person to identify all court cases related to that person or his or her family by collecting part of the person's social security number;
- Clarifies that orders entered in chapter 39, F.S., cases (Proceedings Related to Children) take precedence over other orders in civil actions or proceedings, and allows for modification of orders;
- Provides that final orders and evidence admitted in dependency actions are admissible in evidence in subsequent civil proceedings under certain circumstances;
- Deletes language that authorizes the court to award grandparents visitation rights with a minor if it is in the minor's best interest;
- Adds language relating to parenting courses, tasking the Department of Children and Family Services (DCF, the department) with additional duties;
- Requires the parent petitioner in a dissolution of marriage action to complete a parenting course within 45 days after the petition filing, and all parties to complete the course within 45 days after the petition is served;
- Requires a petitioner in a paternity action to complete the parenting course within 45 days after the petition filing and any other party within 45 days after acknowledgment, adjudication, or an order; and
- Provides that an order of temporary custody entered pursuant to domestic violence cases stays in effect only until the order expires or an order is entered by a court of competent jurisdiction in certain civil actions affecting a minor child.

This bill creates section 25.375, Florida Statutes.

This bill substantially amends the following sections of the Florida Statutes: 39.013, 39.0132, 39.521, 39.814, 61.13, 61.21, 741.30, 61.1827, and 409.2579.

## II. Present Situation:

### Overview

Current statutory authority relating to children and families is typically addressed in a piecemeal fashion. Presently, no single or uniform system of judicial case management exists in the state. This is so due both to the organizational framework of the court divisions and to laws resulting in fragmented judicial resolution of narrow legal issues. Many family law cases, however, involve the same children or families with prior, concurrent, or subsequent judicial involvement in other related family law cases such as delinquency and dependency. Moreover, many of these cases involve complex family dynamics and social, economic, and psychological factors that create or aggravate legal problems in family law cases. When a court is unaware of other cases involving the same child or family, or is prohibited from considering otherwise admissible information in related court proceedings, comprehensive resolution within the existing structure of the various court divisions is impeded. Frequently duplicate orders are entered, the child or family will require future judicial intervention, or the family may have to make multiple court appearances.

These family law cases place significant demands on the judicial system.<sup>1</sup> More than 12 years ago, the Legislature initiated its own family court reform to address the impact of these cases on the judicial system. A legislatively created Commission on Family Courts was directed to make recommendations including the implementation of a family division in each judicial circuit.<sup>2</sup> In subsequent years, Commission recommendations consistently included the development of a judicial process that coordinated the court's equitable and comprehensive consideration of all matters affecting a child and family, regardless of the child's or family's point of entry into the judicial system. In 2001, the Senate directed a joint project to be conducted by the Committee on Children and Families and the Committee on Judiciary for a review of the family court divisions and the unified family court model.<sup>3</sup> A key recommendation of the interim project focused on identifying specific statutory changes that would substantially improve the courts' current decision-making abilities in tailoring a cohesive resolution to legal matters arising in multiple concurrent or subsequent cases involving the same child or family.<sup>4</sup>

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<sup>1</sup> Since 1990, the volume of family law cases has grown exponentially. According to the Office of State Courts Administrator, domestic relation court filings increased from 1986 to 2000 by almost 70 percent while juvenile delinquency and dependency court filings increased by almost 60 percent. By 2000, these cases accounted for 44.4 percent of all cases heard in circuit courts.

<sup>2</sup> See ch. 90-273, L.O.F.

<sup>3</sup> The Committee on Children and Families took primary oversight in matters relating to other services and systems for children and families. See Senate Interim Project Report 2002-141, *Review of Family Courts Division and the Model Family Court: Court Services and System*. The Committee on Judiciary took primary oversight in matters relating to court services and system. See Senate Interim Project Report 2002-141, *Review of Family Courts Division and the Model Family Court: Court Services and System*.

<sup>4</sup> Two other major interim projects evolved out of the recommendations: public records (accessibility, confidentiality, and privacy) and the representation of children. The public records matter became the subject of ch. 2002-302, L.O.F. (creating the Study Committee on Public Records). See the study committee's final report: *Examination of the Effects of Advanced*.

### **Social Security Number as Identifier**

A number of stakeholders, including the courts, have begun to assess their respective technology and to develop technological parity and uniformity among the courts in all counties and circuits. Integral to any judicial case management system is the ability to identify, coordinate, monitor, and link all related cases affecting one child or family, including referral and linkage to judicially recommended or needed social services available outside the court system. While enhanced technology can facilitate the efficiency of judicial case management and resolution of matters affecting a child and family, judicial case management systems rely on unique identifiers to identify and move those cases expeditiously within the judicial process to final resolution. In practice, the courts and the clerks of court have come to rely, as have other governmental entities, on the social security number, or part thereof, as an identifying number to an individual's record. However, this use of the social security number may not be consistent with the provisions of s. 119.0721, F.S., which prohibits the collection of social security numbers unless doing so is "imperative for the performance of that agency's duties and responsibilities as prescribed by law," s. 119.0721(8), F.S. This same section requires that when these numbers are collected they be easily redacted. While s. 119.0721, F.S. refers to "social security numbers," it is not at all clear that portions of the social security numbers would not also be covered by its provisions.

### **Precedence of Orders**

Since the point of entry for a child or family into the judicial system can occur in one or more proceedings including dependency, dissolution of marriage, delinquency, or paternity, one court may inadvertently enter an order that relates to the same issue of an order entered by another court in another division, resulting in conflicting or overlapping orders. The law has been unclear about the continuing precedence of certain orders entered in one proceeding over orders entered in another proceeding. For example, a dependency order takes statutory precedence over similar orders in pending or subsequent civil matters, but if the court has terminated jurisdiction it is unclear as to the precedence of that order in a subsequent divorce or paternity proceeding if a parent sought to modify custody or visitation.<sup>5</sup> The Office of State Courts Administrator (OSCA) indicates that conflicting orders regarding custody may be entered. Another example involves temporary orders in domestic violence proceedings over such orders in other civil proceedings. A court may enter a temporary order on matters of custody, visitation, or support at an ex parte hearing for a domestic violence injunction on the presumption that permanent orders will be dealt with in pending or subsequent matters under chapter 61, F.S.<sup>6</sup> Some concerns have arisen that the ex parte hearings could and have been used to establish temporary orders on the issues of custody and support, when this is not the primary focus of such a hearing. This custody order may then become the pre-emptive basis for permanent orders of custody and support entered without the attendant evidentiary burden usually required in a dissolution of marriage or paternity proceeding. Additionally, current law does not provide a timeframe for how long these temporary orders remain in effect. In order to assist the court in deciding matters consistently and

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*Technologies on Privacy and Public Access to Court Records and Official Records*, Feb. 15, 2003. The representation of children was the subject of a separate interim project report, 2002-140, *Legal Needs of Children*, and SB 686 (2002).

<sup>5</sup> See ss. 39.013 and 39.521, F.S.

<sup>6</sup> See s. 741.30, F.S.

comprehensively affecting a single child or family, the need arises to clarify the precedence and effect of orders in dependency proceedings and temporary orders in domestic violence injunction proceedings.

### **Admissibility of Dependency Orders and Evidence**

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 Evidence Code does not apply in the same way to allow for the admission of orders and evidentiary matters entered under chapter 39, F.S., in other civil or criminal proceedings.<sup>7</sup> Currently, the court is required to reopen the dependency case even if the case no longer rises to the level of abuse or neglect sufficient to invoke the Department of Children and Families' involvement. Over time, these provisions have impeded the court's access to relevant information and affected its decision-making abilities in handling matters involving a child or family in all related cases, often resulting in unnecessary re-litigation of the same facts or evidence in subsequent legal proceedings. The rationale underlying the request for change is that if the evidence was admissible in an evidentiary hearing under chapter 39, F.S., it should have the same presumptive standard of reliability and relevance in a subsequent civil proceeding. In conjunction with the issue on the precedence of dependency orders, clarification has also been sought on the issue regarding the subsequent admissibility of such orders and their findings of fact and other evidentiary matter in other civil proceedings involving the same child or a sibling of that child.

### **Grandparent Visitation Rights**

Current law recognizes a natural parent's rights as superior to that of any other relative or person over the custody or visitation of the child until or unless it can be demonstrated that the parent is unfit or there is harm to the child. A parent's fundamental right to raise his or her child free from governmental interference is protected under the Fourteenth Amendment of the United States Constitution, and under the explicit right of privacy provision in Article I, Section 23 of the Florida Constitution. In 2000, the Florida Supreme Court declared a provision granting grandparent custodial rights in proceedings under chapter 61, F.S., unconstitutional.<sup>8</sup> The Court in *Richardson v. Richardson* held that s. 61.13(7), F.S., which vested custody rights in grandparents, was facially unconstitutional as it equates grandparents' rights with the rights of natural parents and it permits courts to determine custody disputes using solely the "best interest of the child" standard without first determining detriment to the child. In January 2004, the Florida Supreme Court again ruled that another subsection of s. 61.13, F.S. (s. 61.13(2)(b)2.c., F.S.), contained the same constitutional infirmity because it allowed the court to award grandparents visitation rights in pending cases under chapter 61, F.S., based solely on the child's best interests.<sup>9</sup>

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<sup>7</sup> See s. 39.0132 and s. 39.814, F.S. A few exceptions are made. For example, a termination of parental rights order may be admissible in a subsequent adoption proceeding of the same child or sibling or records or portions of a dependency case may be admitted into perjury proceedings.

<sup>8</sup> See *Richardson v. Richardson*, 766 So.2d 1036 (Fla. 2000).

<sup>9</sup> See *Sullivan v. Sapp*, 866 So.2d 28 (Fla. 2004).

### **Parenting Course for Parents Undergoing Separation or Divorce**

A number of services are available (including guardian ad litem services, supervised visitation programs, parenting courses, and domestic violence assistance services) to assist the courts in resolving matters before them, to assist families in navigating the judicial process, and to promote the safety of children and families, particularly in volatile family scenarios. One such service is the parenting education course which is entitled “Parent Education and Family Stabilization.” The Department of Children and Family Services is required to approve a parenting course which must consist of a minimum of four hours designed to educate, train, and assist divorcing parents in regard to the consequences of divorce on parents and children.<sup>10</sup> Parties who have children and who are separating or in a divorce, or who are part of a paternity action, are required to complete the course before a final judgment is entered.

### **III. Effect of Proposed Changes:**

This bill makes the following changes:

- Authorizes the Supreme Court to create a unique identifier for each person to identify all court cases related to that person or his or her family by collecting part of the person’s social security number or other identifying information;
- Clarifies that orders entered in chapter 39, F.S., cases (Proceedings Related to Children) take precedence over other orders in civil actions or proceedings, and allows for modification of orders in certain subsequent civil actions affecting minor children;
- Authorizes a final order in an adjudicatory hearing, or any chapter 39, F.S., proceeding to be admitted into evidence in subsequent civil proceedings relating to children, provided that proper notice is given and a copy of the evidence is delivered to the opposing party or his or her counsel;
- Removes judicial authority to award grandparents visitation rights with a minor if it is in the minor’s best interest and deletes language that granted court authority to recognize grandparents as having the same standing as parents for purposes of custody;
- Adds language relating to parenting courses, tasking the Department of Children and Family Services (DCF) with additional duties and requiring DCF to provide each judicial circuit with a list of approved providers and sites, to include at least one site that can offer the parent education and family stabilization course on a sliding fee scale, where available, and to offer Internet and correspondence options;
- Authorizes DCF to adopt rules to administer parenting course provisions;
- Authorizes the court to excuse a party from completing the course within the required time but otherwise requires the parent petitioner in a dissolution of marriage action to complete a parenting course within 45 days after the petition filing, and all parties to complete the course within 45 days after the petition is served;
- Requires a petitioner in a paternity action to complete the parenting course within 45 days after the petition filing and any other party within 45 days after acknowledgment of paternity, adjudication of paternity, or an order granting visitation to or support from that party;

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<sup>10</sup> See s. 61.21, F.S. The authority to approve these courses was shifted from the courts to the department in anticipation of Revision 7 to Article V, which shifts major court costs from local government to the state.

- Provides that in domestic violence cases, an order of temporary custody stays in effect until the order expires or an order is entered by a court of competent jurisdiction in certain civil actions affecting a minor child; and
- Clarifies that when the court orders a respondent into a batterers' intervention program, the court must provide the respondent with a list of all certified programs as well as those submitted by application to the DCF, rather than the Department of Corrections.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

##### D. Other Constitutional Issues:

This bill does not appear to implicate the public records law<sup>11</sup> although it authorizes the court for a specified period of time to collect a portion of and use social security numbers to develop unique identifiers to create an efficient judicial case management system to link and track related cases. Like most governmental entities, the courts and the clerks of the court have come to rely on the social security number either in its entirety or partially to develop unique identifier systems for the purpose of facilitating comprehensive case management, processing, and resolution. In response to the concern of the availability and access to personal identifying information in these records, some of which constitute public records, the Legislature recently enacted public records exemptions as to social security numbers.<sup>12</sup> Since October 1, 2002, all social security numbers held by an agency or its agents, employees, or contractors are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. Also, since October 1, 2002, no person preparing or filing a document to be recorded in the official records by the county recorder as provided for in chapter 28, F.S., may include any person's social security

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<sup>11</sup> A constitutional right of access (inspect or copy) to public records exists under Section 24 of Article I of the Florida Constitution. This right of access to public records applies to the legislative, executive, and judicial branches of government; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or by the Constitution. Exemptions may be provided by general law. The corresponding general law is found in ch. 119, F.S. There must be an expressed statement of public necessity which justifies the exemption. The exemption can be no broader than necessary to accomplish the purpose of the law and must satisfy one of three other criterion relating to the sensitivity and confidentiality of the information. The Open Government Sunset Review Act of 1995 provides for the automatic five-year review and repeal of an exemption provided under the Public Records Act. See s. 119.15, F.S. If the Legislature intends to re-enact the new exemption or the substantial amendment of an existing exemption, the Legislature must act to re-enact it in the fifth (and final year) of the exemption period, otherwise, it stands repealed on October 2 of that year.

<sup>12</sup> See s. 119.0721, F.S.

number in that document, unless otherwise expressly required by law. If a social security number is or has been included in a document presented to the county recorder for recording in the official records of the county before, on, or after October 1, 2002, it may be made available as part of the official record available for public inspection and copying.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact::**

The cumulative effect of many provisions in this bill may benefit children and families within the court system by promoting a judicial and collaborative process that comprehensively, judiciously, and effectively addresses a child's and family's legal and non-legal needs through full resolution of legal matters and through referral and linkage to services outside the court system. Facilitating a unified model may result in maximum efficiency in delivery of service to children and families.

**C. Government Sector Impact:**

The bill authorizes the Supreme Court to create a unique identifier that must be used in all court cases. Creating and requiring the court system to use a unique identifier will have a significant fiscal impact on those agencies involved in the court system. The fiscal impact cannot be determined at this time, but would involve collecting data, inputting data into case management systems, and integrating data systems. Both information technology systems as well as manual processes may be impacted. There may also be additional staff resources required, as well as staff training. This could impact several state and local government entities including the court system, the clerk of the courts, the state attorney and public defender, state agencies using the court system, and the county.

State Courts. The requirement for a unique identifier would impact the court system, as its case management systems would have to be revised to collect and/or use this information. Where this information is not already collected, staff would have to collect and enter data in the courts' various case management systems. Court information technology systems would have to be altered to accept and store this information. If this information is already collected, then information technology systems may need to be revised to share this information to allow the matching of various cases before the court. The Article V Technology Board has identified approximately 800 case based application data bases in the court system.

Clerks of the Court. The clerks of the circuit court would also be significantly impacted by this requirement. The clerks have the primary responsibility for maintaining cases on behalf of the court. In those cases where the clerks do not currently collect information

for a unique identifier, the clerk would have to collect and enter the information. Data systems would have to be altered as well. In those areas where unique identifier information is currently collected, the clerks' systems would have to be altered to integrate this information and share it with other data systems.

State Attorney and Public Defender. The state attorneys and public defender would also be impacted by this requirement. Currently the state attorney and public defender get their case numbers from the clerk of the court. To the extent that the unique identifier is additional case information from the clerk or the court, their systems would have to be revised. Where state attorney and public defender staff write the programming for their case management systems, this may not be a significant fiscal impact. But many of the offices use proprietary software where alterations would have to be paid for with state funds.

State Agencies. Other state agencies could be impacted as well. If the unique identifier is required to be used by the Department of Children and Families, their systems may have to be altered. In the criminal justice area, the Florida Department of Law Enforcement is currently working on a project to integrate its criminal history systems. The project has identified the need for a biometric identification procedure using finger prints. The extent to which their system must add additional identifying information would have a fiscal impact on their project.

Counties. Counties could also see a fiscal impact under the requirement for a unique identifier. Under Revision 7 to Article V, the counties continue to have the responsibility to provide the trial court system with information technology services. Some of the larger counties maintain integrated criminal justice information systems. These systems could be expensive to alter to accommodate new requirements for personal identifying information.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

Members of the Florida Bar and others have identified a series of issues relating to the use of the unique identifier in court cases, particularly when the identifier is composed in part of an individual's social security number. These concerns relate to privacy and confidentiality as well as to practical aspects of how the goal of a unique identifier for each court participant might be achieved. The Article V Technology Board, created by the Florida Legislature to address system integration issues, issued its preliminary report on January 19, 2005. The Board has identified the pursuit of a "unique personal identifier," which would be used by all court-related entities, including law enforcement, the clerks of the courts, state agencies, and the courts themselves, as one of its priority issues. The Board is scheduled next to meet in Tampa on March 10-11, 2005.

## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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