

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.)

Prepared By: Judiciary Committee

BILL: SB 348

SPONSOR: Senator Lynn

SUBJECT: Family Court Efficiency

DATE: January 25, 2005

REVISED: _____

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

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;
- Broadens admissibility of final orders in an adjudicatory hearing to subsequent proceedings beyond chapter 39, F.S., proceedings, to other subsequent civil proceedings relating to children, provided that proper notice is given;
- 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) 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 of the petition filing and any other party within 45 days of 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.¹ 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.² 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.³ 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.⁴

¹ 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.

² See ch. 90-273, L.O.F.

³ 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*.

⁴ 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.

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.⁵ 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.⁶ 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 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.

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).

⁵ See ss. 39.013 and 39.521, F.S.

⁶ See s. 741.30, F.S.

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.⁷ 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.⁸ 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.⁹

Parenting Course for Parents Undergoing Separation or Divorce

A number of services are available (including guardian 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

⁷ 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.

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

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

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 4 hours designed to educate, train, and assist divorcing parents in regard to the consequences of divorce on parents and children.¹⁰ 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 of the petition filing and any other party within 45 days of acknowledgment of paternity, adjudication of paternity, or an order granting visitation to or support from that party;
- 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.

¹⁰ 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.

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 law¹¹ 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.¹² 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 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.

¹¹ 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 5-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.

¹² See s. 119.0721, F.S.

The Department of Children and Families has suggested that a public records exemption provision may be necessary to protect the confidentiality of dependency records and Health Insurance Portability and Accountability Act (HIPAA) information under s. 39.0132 and s. 39.814, F.S.

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:

Courts

This bill is expected to enhance operations of the state courts system as relates to family law matters. The bill should facilitate courts' decision-making abilities, streamline judicial process, improve information flow, maximize existing judicial resources, avoid the entry of conflicting orders, and reduce multiple court appearances by children and families. The Office of State Courts Administrator predicts little or no impact to result from the requirement that judicial circuits provide information on parenting course providers.

Department of Children and Families

This bill charges DCF with oversight authority and various duties relating to parenting courses, and additionally authorizes DCF to adopt rules to administer these provisions. DCF has indicated that the department has cases in court that will need to be assigned the unique identifier number. If so, HomeSafeNet information may need to accommodate these numbers, such that additional programming changes may need to be made.¹³

New authority to allow final dependency adjudicatory hearing orders to be admitted into evidence in subsequent civil proceedings relating to certain child-placement cases may result in an increase in subpoenas for records, but also reduce the frequency of caseworkers being subpoenaed as witnesses in subsequent cases. Therefore, in general

¹³ HomeSafeNet is a computer system used by DCF that contains all child-protection information, such as that related to dependency hearings and foster care.

costs of litigation may decrease. However, responding to subpoenas may increase potential HIPAA liability.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Sections 39.0132 and 39.814, F.S., relate to the same issues governing oaths, records, confidential information, and public records exemption. The first provision (s. 39.0132, F.S.) is a general provision in part I of chapter 39, F.S., which by implication is supposed to be applicable to all proceedings and matters under all 13 parts of chapter 39, F.S.¹⁴ The second provision (s. 39.814, F.S.), which is applicable solely to termination of parental rights proceedings, is substantially similar but slightly narrower in scope as to the confidentiality and public records exemption. Both these confidentiality and public records exemption provisions were grandfathered in before the 1992 constitutional revision governing public records exemption. At some point, these two provisions may have to be reviewed and revised to clarify what the Legislature intended to be confidential and exempt from the public records law as to avoid any ambiguity or conflict.

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

¹⁴ When ch. 39, F.S., underwent a third of a series of annual revisions including statutory re-organization during the 2000 legislative session, the word "part" was universally substituted with the word "chapter" in the general provisions statutes under part I of ch. 39, F.S. This change was intended to clarify that the general provisions in part I of ch. 39, F.S., applied to all the parts of that chapter. See HB 2125; ch. 2000-139 L.O.F. However, the law that passed was based on the House bill and the change to the word "part" in subsection (4) of s. 39.0132, F.S., appears to have been unintentionally omitted even though the amendatory clause in the bill (s. 17) indicated that a change was occurring in that subsection. Senate Bill 2282 did contain the change but that version was not enacted into law. Since subsection (4) of s. 39.0132, F.S., relating to confidentiality and public records exemption for information and records arising out of ch. 39, F.S., was grandfathered in before the 1992 constitutional changes that revised the criteria for enacting public records exemption, it is questionable whether the replacement of the word "part" with the word "chapter" would have been perceived as a technical change or a substantive change.

VIII. Summary of Amendments:

None.

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