

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/SB 628
 INTRODUCER: Senator Rich
 SUBJECT: Court Actions Involving Families
 DATE: February 22, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Jameson	CF	Fav/CS
2.			JU	
3.			JA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:	
A. COMMITTEE SUBSTITUTE.....	<input checked="" type="checkbox"/> Statement of Substantial Changes
B. AMENDMENTS.....	<input type="checkbox"/> Technical amendments were recommended
	<input type="checkbox"/> Amendments were recommended
	<input type="checkbox"/> Significant amendments were recommended

I. Summary:

This bill amends and creates several sections of law to reflect legislative intent regarding the goal of implementing unified family court programs in the circuit courts. These additional provisions of legislative intent are added to statutory sections involving children and families.

Additionally, the bill provides that a citizen certified by a not-for-profit legal aid organization, may act as a guardian ad litem in a ch. 61, F.S., proceeding, after the legal aid organization has conducted a security background investigation on the citizen.

This bill substantially amends the following sections of the Florida Statutes: 39.001, 61.001, 61.402, 63.022, 68.07, 741.2902, 984.01, and 985.02. This bill creates the following sections of the Florida Statutes: 88.1041, 742.016, 743.001, and 1003.269.

II. Present Situation:

Unified Family Court

Families come before the courts in a variety of ways: through divorce, domestic violence, substance abuse, abandonment or abuse of children, or delinquency of children.¹ These families often move from courtroom to courtroom, where substantial expenditures in time and money are made, although core problems are not necessarily addressed.² In many cases, the parties are appearing before a different judge in each proceeding, making it possible for a judge to be unaware of previous or pending related legal matters involving the same children or family. The purpose of the unified family court is to bring the child and his or her family before one specialized court to solve problems.³ The American Bar Association describes a unified family court in the following way:

A unified family court combines all the essential elements of traditional family and juvenile courts into one entity and contains other resources, such as social services, critical to the resolution of a family's problems. It is a comprehensive court with jurisdiction over all family-related legal matters. The structure of a unified family court promotes the resolution of family disputes in a fair, comprehensive, and expeditious way. It allows the court to address the family and its long-term needs as well as the problems of the individual litigant. Through its insistence on collaboration among court staffs and units, its "team approach," and its outreach to social service providers and local volunteers, a unified family court can provide the highest quality of service to its clients and its community.⁴

Family Court in Florida includes domestic relations, juvenile delinquency and juvenile dependency cases. In FY 2005-2006, more than 360,000 cases were filed in Family Court.⁵ These cases constituted the largest percentage of all circuit court filings in Florida – over 42 percent.⁶

In 1994, the Florida Supreme Court created the Family Court Steering Committee to, among other things, advise the Court about the circuit courts' responses to families in litigation and to make recommendations on the characteristics of a model family court.⁷ In its May 3, 2001, order adopting the findings of the Report of the Family Court Steering Committee, the Florida Supreme Court declared:

If the judicial system encourages alternatives to the adversarial process, empowers litigants to reach their own solutions, and assists in crafting

¹ Claudia Wright, *Representation of Children in a Unified Family Court System in Florida*, 14 U. FLA. J.L. & PUB. POL'Y 179, 180 (2003).

² *Id.*

³ *Id.*

⁴ AMERICAN BAR ASSOCIATION, WHAT IS A UNIFIED FAMILY COURT?, <http://www.abanet.org/unifiedfamcrt/about.html#top> (last visited January 10, 2008).

⁵ Florida Office of the State Courts Administrator, *Florida's Trial Courts, Statistical Reference Guide FY2005-06* (February 2007) at 4-1

⁶ *Id.* at 1-5.

⁷ *In re Report of the Commission on Family Courts*, 633 So. 2d 14, 18-19 (Fla. 1994).

solutions that promote long-term stability in matters involving children and families, the likelihood of future court intervention in the family should be decreased – whether this be through minimizing post-judgment litigation or preventing the dependent child of today from becoming the delinquent child of tomorrow. Our ultimate goal remains to facilitate the resolution of disputes involving children and families in a fair, timely, effective, and cost-efficient manner.⁸

The Court continued, “We therefore reaffirm our continued commitment to the broad principles espoused for a model family court in Florida. . . .”⁹

In 2005, the Legislature supported the Supreme Court’s recommendations by:

- Authorizing the Court to create a unique identifier for each person by which to identify all court cases related to that person or his or her family;
- Providing that specified orders entered pursuant to ch. 39, F.S., take precedence over court orders entered in other civil proceedings; and
- Providing that final orders and evidence admitted in proceedings under ch. 39, F.S., are admissible as evidence in subsequent civil proceedings under certain circumstances.¹⁰

In November 2006, the Committee on Judiciary released an interim project report entitled “Implementation of the Unified Family Court Model,” indicating that all 20 judicial circuits have implemented some form of a unified family court.¹¹ According to the report, each circuit’s unified family court is unique, but all circuits have implemented some of the best practices endorsed by the Supreme Court, such as case management/coordination, increased use of alternative dispute resolution, and use of magistrates and hearing officers. Factors influencing which elements of a unified family court that circuits have implemented include the size of the circuit, technology available to the courts in the circuit, and the availability of related services in the circuit. The reasons most frequently cited by circuits for limited implementation of a unified family court included lack of technology and funding.

Appointment of Guardian ad Litem

Section 61.401, F.S., allows a court to appoint a guardian ad litem (GAL) in domestic relations cases, if the court finds it is in the best interest of the child, and requires a court to appoint a GAL in such cases if they also involve a verified and well-founded allegation of child abuse, neglect or abandonment.¹²

⁸ *In re Report of the Family Court Steering Committee*, 794 So. 2d at 535-36.

⁹ *Id.* at 536.

¹⁰ Chapter 2005-239, L.O.F.

¹¹ COMM. ON JUDICIARY., FLA. SENATE, IMPLEMENTATION OF THE UNIFIED FAMILY COURT MODEL (Interim Project Report 2007-133) (November 2006), http://www.flsenate.gov/data/Publications/2007/Senate/reports/interim_reports/pdf/2007-133ju.pdf (last visited January 10, 2008).

¹² Section 39.822(1), F.S., requires the court to appoint a guardian ad litem to represent the child at the earliest possible time in any abuse, abandonment, or neglect judicial proceeding.

In order to be a GAL, a person must be either a citizen certified by the GAL program to act in family law cases or an attorney who is a member in good standing of the Florida Bar.¹³ The GAL program must conduct a security background investigation as provided in s. 39.821, F.S., prior to certifying a person to be appointed as a GAL under ch. 61, F.S.¹⁴

Section 39.821(1), F.S., provides that a security background investigation must ensure that a person is not certified to be a GAL if he or she has been convicted of, or entered a plea of *nolo contendere* or guilty to, any offense prohibited under s. 435.04(2), F.S.¹⁵ The investigation must include, but is not limited to, employment history checks, checks of references, local criminal records checks through local law enforcement agencies, and statewide criminal records checks through the Department of Law Enforcement.¹⁶ The GAL program may also request a federal criminal records check of a GAL applicant through the Federal Bureau of Investigation, giving particular emphasis to past activities of the applicant involving children. The GAL program has the sole discretion to determine whether to certify a person based on his or her security background investigation.¹⁷

The Statewide GAL Office (the Office) oversees the operation of the GAL programs in the 20 judicial circuits.¹⁸ Since FY 2004-2005, the Office has operated under proviso language stating that "[f]unds and positions ... shall not be used to represent children in dissolution of marriage proceedings unless the child is also subject to dependency proceedings."¹⁹ As a result of this limitation, the Office currently does not certify citizens to act in family law cases, and the only individuals who serve as GALs in such cases are court-appointed attorneys.

The Office requires volunteer GALs to meet the following criteria:

- Be at least 19 years old;
- Complete and submit an application and photo identification;
- Sign a release for the Florida Department of Law Enforcement's Florida criminal history check;
- Provide two written character references;
- Interview with local program director;
- Successfully complete 30 hours of training, including classroom lecture and courtroom observation; and
- Sign the Code of Conduct.²⁰

¹³ Section 61.402, F.S.

¹⁴ *Id.*

¹⁵ Section 435.04(2), F.S., identifies many disqualifying offenses, including sexual misconduct, abuse, neglect, or exploitation of elderly, disabled or minor persons, murder, manslaughter and certain assault, battery and drug-related offenses.

¹⁶ Section 39.821(1), F.S.

¹⁷ Section 39.821(1), F.S.

¹⁸ Statewide Guardian ad Litem Office, Analysis of SB 628 (February 4, 2008).

¹⁹ Ch. 2004-268, L.O.F., Ch. 2005-70, L.O.F., Ch. 2006-25, L.O.F., and Ch. 2007-72, L.O.F.

²⁰ Florida Guardian ad Litem Program, *Volunteer Application Process*, http://www.guardianadlitem.org/vol_app_process.asp (last visited February 13, 2008).

III. Effect of Proposed Changes:

This bill amends several sections of current law, as well as creates new law, to reflect the goal of moving toward a unified court system. The bill adds the following legislative intent or findings to specified Florida Statutes:

- It is the intent of the Legislature to provide a comprehensive and integrated approach to handling all cases that involve children and families, while at the same time resolving family disputes in a fair, timely, efficient, and cost-effective manner.
- It is in the best interests of this state that the courts embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system.
- The legal system should focus on the needs of children, refer families to resources that will make their relationships stronger, coordinate family cases to provide consistent results, and strive to leave families more stable than when they entered the system.
- It is the intent of the Legislature to support the development of a unified family court and to support the state court system's efforts to improve the resolution of disputes involving children and families through a comprehensive and integrated approach that includes coordinated case management, the concept of "one family, one judge," community collaboration, and alternative dispute resolution. It is not clear what the term "support" means as it relates to the Legislature.

This language is added to, or created in, the following sections of Florida Statutes:

- Chapter 39 (proceedings relating to children);
- Chapter 61 (dissolution of marriage);
- Chapter 63 (adoption);
- Section 68.07 (name change);
- Chapter 88 (interstate family support act);
- Chapter 741 (marriage and domestic violence);
- Chapter 742 (paternity);
- Chapter 743 (removal of disability of nonage of minors);
- Chapter 984 (children and families in need of services);
- Chapter 985 (juvenile justice); and
- Chapter 1003 (public K-12 education).

This bill amends s. 61.402, F.S., to provide that a citizen certified by a not-for-profit legal aid organization²¹ may serve as a guardian ad litem, after the organization conducts a security background investigation as described in s. 39.821, F.S. The bill provides that the organization

²¹ A "not-for-profit legal aid organization" means a "not-for-profit organization operated in this state that provides as its primary purpose civil legal services without charge to eligible clients." Section 68.096(4), F.S.

may also participate in the Volunteer and Employee Criminal History System pursuant to s. 943.0542, F.S.²²

This bill provides that the act will take effect upon becoming a law.

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:

Article V s. 2(a) of the Florida Constitution vests the Florida Supreme Court with the responsibility of, *inter alia*, adopting rules for practice and procedure in Florida's courts and supervising the administration of the courts. To the extent this bill may be construed as a legislative attempt to accomplish those tasks, it may be subject to challenge under the doctrine of separation of powers. However, the bill provides primarily legislative intent rather than direction to the courts.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent the unified family court concepts in the bill would result in a reduction of the number of hearings private parties are required to attend, the parties would save time and attorney's fees. However, neither the number of hearings that would be eliminated, nor the average length of time per hearing, is known. Therefore, the precise cost savings to private parties cannot be determined.

²² Section 943.0542, F.S., provides that a qualified entity which provides care to children, the elderly or the disabled and which registers with the Florida Department of Law Enforcement, may submit a request for background screening of an employee or volunteer. FDLE will access both state and national criminal history data for screening pursuant to this section.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) does not anticipate immediate expenditures as a result of this bill, but it does note that its efforts to reach full implementation of a unified family court system would be furthered with additional resources including improved technology, child support enforcement hearing officers, additional case managers, and on-site mediators.²³

VI. Technical Deficiencies:

The bill does not specifically require training or supervision of the new category of GALs. The Statewide GAL Office does not provide GAL representation in dissolution proceedings, but rather attempts to meet the needs of as many children as possible who are abused, neglected or abandoned, consistent with current law. According to the Office, the citizens appointed as a result of this bill would not be screened, trained or supervised by the Office.²⁴

VII. Related Issues:

This bill codifies legislative intent language regarding a unified family court in multiple sections and chapters of the Florida Statutes. This approach does create a risk that – over time – the language may be revised in one section but inadvertently not in others, resulting in potentially inconsistent provisions.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/SB 628 requires a not-for-profit legal aid organization to certify and screen a citizen who is appointed to serve as a guardian ad litem in a dissolution of marriage proceeding involving issues of child custody.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²³ Office of State Courts Administrator, Analysis of SB 628 (January 23, 2008).

²⁴ Statewide Guardian ad Litem Office, Analysis of SB 628 (February 4, 2008).