

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 Judiciary Committee

BILL: CS/CS/SB 628

INTRODUCER: Judiciary Committee, Children, Families, and Elder Affairs Committee, Senator Rich, and others

SUBJECT: Court Actions Involving Families

DATE: March 13, 2008 **REVISED:** _____

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

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| 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 serve as a guardian ad litem, after the organization conducts a security background investigation. A guardian ad litem certified by a not-for-profit legal aid organization may only serve in actions for dissolution of marriage, modification, parental responsibility, custody, or visitation where there are no allegations of child abuse, neglect, or abandonment.

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 1003.201.

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. Judges who have implemented a unified family court see “tremendous advantages, particularly in family matters, to have a judge who is familiar with the family.”³ The purpose of the unified family court is to bring the child and his or her family before one specialized court to solve problems.⁴ 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.⁵

Family Court in Florida includes domestic relations (ch. 61, F.S.), juvenile delinquency (ch. 985, F.S.), and juvenile dependency (ch. 39, F.S.) cases.⁶ These cases are the largest and fastest growing segment of state civil court caseloads. In FY 2005-2006, there were more than 360,000 circuit family court case filings.⁷ These cases constituted the largest percentage of all circuit court filings in Florida – over 42 percent.⁸

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

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 Georgene Kaleina, *Judicial Objectivity Crucial in All Courts*, UNIFIED FAMILY COURT CONNECTION 1, 4 (2008) (quoting Judge Audrey J.S. Carrion, Baltimore City Circuit Court Family Division).

⁴ Wright, *supra* note 1, at 180.

⁵ AMERICAN BAR ASSOCIATION, *What is a Unified Family Court?*, <http://www.abanet.org/unifiedfamcrt/about.html#top> (last visited March 4, 2008).

⁶ FLORIDA OFFICE OF THE STATE COURTS ADMINISTRATOR, *Florida’s Trial Courts, Statistical Reference Guide FY 2005-06 4-1* (February 2007), available at http://www.flcourts.org/gen_public/stats/bin/reference_guide/2005_06Circuitfamily.pdf (last visited March 6, 2008).

⁷ *Id.*

⁸ *Id.* at 1-5.

make recommendations on the characteristics of a model family court.⁹ 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 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.¹⁰

The Court also said, “[O]ur goal continues to be the creation of ‘a fully integrated, comprehensive approach to handling all cases involving children and families.’ ... We therefore reaffirm our continued commitment to the broad principles espoused for a model family court in Florida.”¹¹

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.¹²

In November 2006, the Committee on Judiciary released an interim project report titled “Implementation of the Unified Family Court Model,” indicating that all 20 judicial circuits have implemented some form of a unified family court.¹³ 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.

⁹ *In re Report of the Comm’n on Family Courts*, 633 So. 2d 14, 18-19 (Fla. 1994).

¹⁰ *In re Report of the Family Court Steering Comm.*, 794 So. 2d 518, 535-36 (Fla. 2001).

¹¹ *Id.* at 519, 536.

¹² Chapter 2005-239, Laws of Fla.

¹³ 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 March 4, 2008).

Appointment of Guardian ad Litem

The Florida Guardian ad Litem Program is a partnership of community advocates and professional staff acting on behalf of Florida's abused and neglected children.¹⁴ A guardian ad litem (GAL) is "a volunteer appointed by the court to protect the rights and advocate the best interests of a child involved in a court proceeding."¹⁵ As of September 14, 2007, there were 32,411 children represented by the Guardian ad Litem Program.¹⁶ There are currently 5,687 certified volunteers in the Guardian ad Litem Program.¹⁷

Section 61.401, F.S., allows a court to appoint a GAL in domestic relations cases, if the court finds it is in the best interest of the child. A court is required to appoint a GAL in cases that involve a verified and well-founded allegation of child abuse, neglect, or abandonment.¹⁸

In order to be a GAL, a person must either be "a citizen certified by the Guardian ad Litem Program to act in family law cases or an attorney who is a member in good standing of The Florida Bar."¹⁹ The Guardian ad Litem 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.²⁰ 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.²¹

The Guardian ad Litem 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.²² The security background investigation is meant to ensure that a person is not certified as a GAL if he or she has been convicted of, regardless of adjudication, or entered a plea of *nolo contendere* or guilty to, any offense prohibited under s. 435.04(2), F.S.²³ The Guardian ad Litem Program has the sole discretion to determine whether to certify a person based on his or her security background investigation.²⁴

¹⁴ FLORIDA GUARDIAN AD LITEM PROGRAM, <http://www.guardianadlitem.org/index.asp> (last visited March 4, 2008).

¹⁵ *Id.* at http://www.guardianadlitem.org/vol_faq.asp (last visited March 4, 2008).

¹⁶ *Id.*

¹⁷ *Id.* This number is current through July 31, 2007.

¹⁸ Section 61.401, F.S. The court is required to appoint a guardian ad litem to represent the child at the earliest possible time in proceedings involving child abuse, neglect, or abandonment. Section 39.822(1), F.S.

¹⁹ Section 61.402, F.S.

²⁰ *Id.*

²¹ Section 39.821(1), F.S.

²² *Id.*

²³ *Id.* Section 435.04(2), F.S., identifies many disqualifying offenses, including, but not limited to, sexual misconduct, abuse, neglect, or exploitation of aged or disabled persons, murder, manslaughter, kidnapping, and certain assault, battery, and drug-related offenses.

²⁴ Section 39.821(1), F.S.

The Statewide Guardian ad Litem Office (the Office) oversees the operation of the Guardian ad Litem Program in the 20 judicial circuits.²⁵ Since FY 2004-2005, the Office has operated under proviso language stating that “[f]unds and positions ... shall not be utilized to represent children in dissolution of marriage proceedings unless the child is also subject to dependency proceedings.”²⁶ As a result of this limitation, as well as the Guardian ad Litem Program’s limited resources, the Office currently does not certify citizens to act in dissolution of marriage proceedings (ch. 61, F.S.). Individuals who serve as GALs in such cases are usually 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 the local program director;
- Successfully complete 30 hours of training, including classroom lecture and courtroom observation; and
- Sign the Code of Conduct.²⁷

III. Effect of Proposed Changes:

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

- It is the intent of the Legislature to provide all children and families with a fully integrated, comprehensive 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 the intent of the Legislature 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.
- 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 fully integrated, comprehensive approach that includes coordinated case management, the concept of “one family, one judge,” community collaboration, and alternative dispute resolution. The bill does not specify what the term “support” means as it relates to the Legislature.

²⁵ Statewide Guardian ad Litem Office, Senate Bill 628 Analysis, Feb. 4, 2008.

²⁶ See ch. 2004-268, specific appropriation 836A, Laws of Fla.; ch. 2005-70, specific appropriation 846, Laws of Fla.; ch. 2006-25, specific appropriation 884, Laws of Fla.; and ch. 2007-72, specific appropriation 922, Laws of Fla.

²⁷ FLORIDA GUARDIAN AD LITEM PROGRAM, *Volunteer Application Process*, http://www.guardianadlitem.org/vol_app_process.asp (last visited March 5, 2008).

- 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.

This language is added to, or created in, the following places in 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 (parentage);
- 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 organization²⁸ may serve as a guardian ad litem, after the organization conducts a security background investigation as described in s. 39.821, F.S. A guardian ad litem certified by a not-for-profit legal aid organization may only serve in actions described in s. 61.401, F.S.,²⁹ that do not have allegations of child abuse, neglect, or abandonment.

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.

²⁸ 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.

²⁹ Section 61.401, F.S., allows a court to appoint a GAL in domestic relations cases, if the court finds it is in the best interest of the child. A court is required to appoint a GAL, at the earliest possible time, in cases that involve a verified and well-founded allegation of child abuse, neglect, or abandonment. Section 39.822(1), F.S.

D. Other Constitutional Issues:

Article V, section 2, subsection (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, the precise cost savings to private parties cannot be determined because neither the number of hearings that would be eliminated, nor the average length of time per hearing, is known.

Additionally, according to the Statewide Guardian ad Litem Office, it is possible that enabling individuals certified by not-for-profit legal aid organizations to serve as guardians ad litem in certain cases could allow courts to appoint guardians for children who otherwise would not have access to such representation.³⁰

C. Government Sector Impact:

The Office of the State Courts Administrator 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.³¹

VI. Technical Deficiencies:

The Statewide Guardian ad Litem Office (the Office) does not provide guardian ad litem (GAL) representation in dissolution proceedings, but rather attempts to meet the needs of as many children as possible who are abused, neglected, or abandoned. According to the Office, the citizens appointed as a result of this bill would not be screened, trained, or supervised by the Office.³² The bill does not specifically require training or supervision of the new category of GALs. It is not clear what requirements the not-for-profit legal aid organization would have to meet in order to certify a citizen to become a GAL.

³⁰ Statewide Guardian ad Litem Office, *supra* note 25.

³¹ Office of State Courts Administrator, Senate Bill 628 Analysis, January 23, 2008.

³² Statewide Guardian ad Litem Office, *supra* note 25.

VII. Related Issues:

This bill codifies virtually identical 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. The Legislature may wish to consider creating one section to articulate its intent on this subject and specifying within that section that it is designed to apply to multiple policy areas.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on February 20, 2008:

The committee substitute 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.

CS by Judiciary on March 11, 2008:

The committee substitute conforms this bill to the House bill. The provisions are substantively the same as the prior Senate committee substitute; however, with respect to ch. 1003, F.S. (public K-12 education), the committee substitute places the unified family court language in a different statutory section than the prior committee substitute. In addition, the committee substitute uses slightly different wording and placement of the language relating to certification of guardians ad litem by a not-for-profit legal aid organization.

- B. **Amendments:**

None.