

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/SB 1018

INTRODUCER: Judiciary Committee and Senator Joyner

SUBJECT: Guardians ad Litem

DATE: March 19, 2009

REVISED: _____

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

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="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:

The bill provides that a person certified by a not-for-profit legal aid organization may serve as a guardian ad litem (GAL) in dissolution of marriage cases, after the organization has conducted a security background investigation and provided training to the person.

The bill also makes it a first-degree misdemeanor for an applicant to willfully, knowingly, or intentionally fail to disclose any material fact relating to his or her qualifications to be a GAL.

This bill substantially amends section 61.402, Florida Statutes.

II. Present Situation:

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.¹ 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."² As of September 14, 2007, there were

¹ Florida Guardian ad Litem Program, <http://www.guardianadlitem.org/> (last visited March 12, 2009).

² *Id.* at http://www.guardianadlitem.org/vol_faq.asp (last visited March 12, 2009).

32,411 children represented by the Guardian ad Litem Program.³ There are currently 6,754 certified volunteers in the Guardian ad Litem Program.⁴

Section 61.401, F.S., *allows* a court to appoint a GAL in domestic relations cases,⁵ 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.⁶

In order to be a GAL in a domestic relations case, 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.”⁷ 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.⁸ 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.⁹

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.¹⁰ 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.¹¹ The Guardian ad Litem Program has the sole discretion to determine whether to certify a person based on his or her security background investigation.¹²

The Statewide Guardian ad Litem Office (the Office) oversees the operations of the Guardian ad Litem programs in the 20 judicial circuits.¹³ Since fiscal year 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.”¹⁴ As a result of this limitation, as well as limited resources,¹⁵ the Guardian ad

³ *Id.*

⁴ *Id.* This number is current through August 2008.

⁵ Section 61.401, F.S., permits the court to appoint a guardian ad litem in “an action for dissolution of marriage or for the creation, approval, or modification of a parenting plan” A parenting plan is a “document created to govern the relationship between the parties relating to . . . [their] minor child” Section 61.046, F.S.

⁶ 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 the proceeding involving child abuse, neglect, or abandonment. Section 39.822(1), F.S.

⁷ Section 61.402, F.S.

⁸ *Id.*

⁹ Section 39.821(1), F.S.

¹⁰ *Id.*

¹¹ *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.

¹² Section 39.821(1), F.S.

¹³ Statewide Guardian ad Litem Office, *Senate Bill 1018* (Feb. 12, 2009) (on file with the Senate Committee on Judiciary).

¹⁴ 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. The proviso

Litem Program currently does not certify citizens to act in dissolution of marriage proceedings (ch. 61, F.S.).¹⁶ Individuals who serve as GALs in such cases are usually court-appointed attorneys.

Section 39.8296, F.S., mandates that the Office establish a curriculum committee to develop a GAL training program. The committee must include dependency judges, directors of circuit guardian ad litem programs, active certified guardians ad litem, a mental health professional who specializes in the treatment of children, a member of a child advocacy group, a representative of the Florida Coalition Against Domestic Violence, and a social worker experienced in working with victims and perpetrators of child abuse.¹⁷

The Family Law Section of The Florida Bar (the Section) has created an *ad hoc* committee, which has nearly completed a training manual for ch. 61, F.S., GALs. The Section intends to produce a DVD to accompany the manual and to provide the materials free of charge to not-for-profit legal aid organizations that opt to certify GALs. The Section anticipates that both the training manual and the DVD will be completed and approved for use on or before July 1, 2009.¹⁸

III. Effect of Proposed Changes:

This bill amends s. 61.402, F.S., to provide that a person certified by a not-for-profit legal aid organization¹⁹ may serve as a guardian ad litem (GAL) in dissolution of marriage cases. The bill further provides that a not-for-profit legal aid organization must complete a security background investigation that conforms to the requirements of s. 39.821, F.S., before certifying a person as a guardian ad litem. Consistent with s. 39.821(1), F.S., a not-for-profit legal aid organization is given the sole discretion in determining whether to certify a person based on the person's security background investigation.

Additionally, a not-for-profit legal aid organization must provide training to a person, before certifying him or her to be a GAL, using the uniform objective statewide training program developed by The Florida Bar.

language was amended slightly for FY 2008-2009, providing: "Funds and positions [for the Statewide Guardian ad Litem Office] shall first be used to represent children involved in dependency proceedings. Once all children in dependency proceedings are represented, the funds may be used to represent children in other proceedings as authorized by law." See ch. 2008-152, specific appropriation 829, Laws of Fla.

¹⁵ Since the 2008 Regular Session, the Guardian ad Litem Program's budget has been cut by 7.2 percent, causing the program to terminate staff and reduce the number of children that can be represented. In July 2008, the Guardian ad Litem Program was representing 29,564 of the 35,543 children who were under the supervision of the Department of Children and Families and involved in court proceedings. Guardian ad Litem, *Annual Report*, 6, 7 n.9 (2008), available at <http://www.guardianadlitem.org/documents/GAL2008AnnualReport.pdf> (last visited March 12, 2009).

¹⁶ Statewide Guardian ad Litem Office, *supra* note 13.

¹⁷ Section 39.8296(2)(b)4., F.S.

¹⁸ E-mail from Kathy Arrant, Executive Director, Legal Aid Foundation of the Tallahassee Bar Association, to staff of the Senate Committee on Children, Families, and Elder Affairs (March 5, 2009) (on file with the Senate Committee on Judiciary).

¹⁹ 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.

The bill clarifies that a GAL may serve in a dependency case only if he or she has been certified by the Guardian ad Litem Program pursuant to s. 39.821, F.S., or is an attorney in good standing with The Florida Bar. The bill further clarifies that nothing in the bill requires the Guardian ad Litem Program or a not-for-profit legal aid organization to train or certify people to be GALs in dissolution of marriage cases (*i.e.*, it is not mandatory that they participate in the certifying and training of GALs).

The bill makes it a first-degree misdemeanor²⁰ for an applicant to willfully, knowingly, or intentionally fail, by false statement, impersonation, or other fraudulent means, to disclose any material fact relating to his or her qualifications to be a GAL.²¹

The bill provides an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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.²²

Also, the Family Law Section of The Florida Bar (the Section) estimates that it will incur costs between \$12,000 and \$15,000 for producing and duplicating the training materials required under the bill. The Section plans to seek funding from The Florida Bar, The

²⁰ The bill provides that a violation of this section is punishable as provided in ss. 775.082 or 775.083, F.S. Under these statutes, a first-degree misdemeanor is punishable by up to one year in prison and a \$1,000 fine.

²¹ A similar provision is in s. 39.821(3), F.S.

²² Statewide Guardian ad Litem Office, *supra* note 13.

Florida Bar Foundation, and local charities, as well as absorb some of the costs itself if necessary.²³

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Statewide Guardian ad Litem Office (the Office) does not provide guardian ad litem (GAL) representation in dissolution of marriage proceedings, but rather attempts to meet the needs of as many children as possible who are abused, neglected, or abandoned.²⁴ According to the Office, the citizens appointed as a result of this bill would not be screened, trained, or supervised by the Office.²⁵

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 Judiciary on March 18, 2009:

The committee substitute:

- Clarifies that a not-for-profit legal aid organization has the sole discretion in determining whether to certify a person to be a guardian ad litem based on the person's security background investigation;
- Removes the requirement that a not-for-profit legal aid organization develop and use its own training curriculum pending development of a training program by The Florida Bar;
- Clarifies that the bill does not require the Guardian ad Litem Program or a not-for-profit legal aid organization to certify or train persons to become guardians ad litem; and
- Makes technical changes to the bill.

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 E-mail from Kathy Arrant, *supra* note 18.

²⁴ Statewide Guardian ad Litem Office, *supra* note 13.

²⁵ *Id.*