

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 679 Guardians Ad Litem
SPONSOR(S): Criminal & Civil Justice Policy Council; Stargel
TIED BILLS: None IDEN./SIM. BILLS: SB 1018

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Rows include Civil Justice & Courts Policy Committee, Criminal & Civil Justice Policy Council, Criminal & Civil Justice Appropriations Committee, Full Appropriations Council on General Government & Health Care, and an empty row.

SUMMARY ANALYSIS

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. This bill provides that a citizen may be certified as a guardian ad litem by a not-for-profit legal aid organization in dissolution of marriage, modification, parental responsibility, custody, and visitation cases.

This bill requires the not-for-profit legal aid organization to use a state-wide training program for GALs developed by The Florida Bar. This bill provides that a person who willfully, knowingly, or intentionally fails to provide a material fact in an application to become a GAL is guilty of a first degree misdemeanor punishable by imprisonment not to exceed one year or a fine of \$1,000.

This bill appears to have an indeterminate fiscal impact on state expenditures. See fiscal comments for more detail.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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.¹ The Florida Guardian Ad Litem Program ("Program") is a partnership of community advocates and professional staff who act on behalf of Florida's abused and neglected children.² During the 2008-2009 fiscal year, there were 35,543 children under the Department of Children and Family Services' supervision and involved in court proceedings.³ Of this number, the Program represented 30,344 children. As of July 31, 2008, the Program had 6,754 certified volunteers.⁴

Part XII of ch. 39, F.S., addresses GALs and guardian advocates. In 2003, the Statewide Guardian Ad Litem Office was created within the Justice Administrative Commission.⁵ The Statewide Guardian Ad Litem Office's purpose is to oversee responsibilities for and provide technical assistance to all guardian ad litem and attorney ad litem programs located within the judicial circuits.⁶

Chapter 61, F.S., provides for the appointment of a GAL in a dissolution of marriage, modification, parental responsibility, custody, or visitation proceeding.⁷ In order to be a GAL under ch. 61, F.S., a person must be certified by the Program or be an attorney who is a member in good standing of The Florida Bar.⁸ The Program must conduct a security background investigation as provided in s. 39.821, F.S., prior to certifying a person as a GAL.

The Program under the Statewide Guardian Ad Litem Office provides representation for children in child abuse, abandonment, and neglect proceedings. However, the Program does not provide GAL representation in most dissolution of marriage cases.⁹ General revenue for the Program is only

¹ Florida Guardian ad Litem Program, *Guardian Ad Litem 2008 Annual Report*, at http://www.guardianadlitem.org/vol_main.asp. Last accessed February 26, 2009.

² *Id.* at 7.

³ *Id.*

⁴ *Id.* at 2.

⁵ Chapter 2003-53, L.O.F.

⁶ Section 39.8296(2)(b), F.S.

⁷ Section 61.401, F.S.

⁸ Section 61.402, F.S.

⁹ E-mail correspondence with Debra Lacombe, Director of Legislative Affairs for the Statewide Guardian ad Litem Office. February 26, 2009. Correspondence on file with the Civil Justice & Courts Policy Committee.

provided in proceedings where allegations of child abuse or neglect have been made.¹⁰ "[F]unds... [are not] used to represent children in dissolution of marriage proceedings unless the child is also subject to dependency proceedings."¹¹

Effect of Proposed Changes

This bill amends s. 61.402, F.S., to provide that a citizen may be certified as a guardian ad litem by a not-for-profit legal aid organization¹² in dissolution of marriage, modification, parental responsibility, custody, and visitation cases. A GAL certified by a not-for-profit legal aid organization may not be appointed to a case in which the court has determined that there are well-founded allegations of child abuse, abandonment, or neglect.

Prior to certification, a not-for-profit legal aid organization must conduct a security background investigation as described in s. 39.821, F.S., for the person seeking to become a GAL. A security background 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.¹³

Also prior to certification, the not-for-profit legal aid organization must provide training using the objective standards training program for GAL developed by The Florida Bar. However, The Florida Bar does not currently have a training program for GALs. This bill provides that the Program and not-for-profit legal aid organizations are not required to train or certify GALs appointed under ch. 61, F.S.

This bill provides that it is a first-degree misdemeanor for any person to willfully, knowingly, or intentionally fail by false statement, misrepresentation, impersonation, or other fraudulent means to provide a material fact used to make a determination regarding an applicant's qualifications to become a GAL. This is punishable by an imprisonment not to exceed one year¹⁴ or a fine of \$1,000.¹⁵

B. SECTION DIRECTORY:

Section 1 amends s. 61.402, F.S., relating to guardians ad litem.

Section 2 provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

¹⁰ *Id.*

¹¹ See Ch. 2008-152, Laws of Florida

¹² 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.

¹³ Section 39.821(1), F.S.

¹⁴ Section 775.082(4)(a), F.S.

¹⁵ Section 775.083(1)(d), F.S.

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill could require either an individual associated with a not-for-profit legal aid organization or the not-for-profit organization itself to pay \$24 for a background check for each citizen who wishes to become a GAL under this bill.¹⁶

D. FISCAL COMMENTS:

In its current form, the bill does not specify whether the State, the not-for-profit, or the citizen wishing to become a GAL, bears the cost of the required background check. This is an indeterminate, but potentially negative impact on state expenditures.

This bill appears to have an indeterminate minimal positive fiscal impact on the Florida Department of Law Enforcement from revenues generated by this background check fee.

In addition, this bill creates a misdemeanor. To the extent that this might increase the case load of the court system, the court system may see a corresponding indeterminate minimal negative fiscal impact. However, according to the Office of the State Court Administrator, it is anticipated that this bill will generate very little judicial workload.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take any action requiring expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 17, 2009, the Criminal & Civil Justice Policy Council adopted one amendment to this bill. The amendment removed the authority for a not-for-profit legal aid organization to develop and use its own guardian ad litem training program pending the development of The Florida Bar's training program. The bill was then reported favorably. This analysis is drafted to the bill as amended.

¹⁶ See <http://www.fdle.state.fl.us/Content/getdoc/2952da22-ba08-4dfc-9e45-2d7932a803ea/Obtaining-Criminal-History-Information.aspx>. Last accessed February 25, 2009.