

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1383
SPONSOR(S): Weinstein

Pregnant Children and Youth in Out-of-Home Care

TIED BILLS: **IDEN./SIM. BILLS:**

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----|---|---------------|----------------|-----------------------|
| 1) | Health Care Appropriations Committee | | Schoonover | Massengale |
| 2) | Criminal & Civil Justice Policy Council | | | |
| 3) | | | | |
| 4) | | | | |
| 5) | | | | |

SUMMARY ANALYSIS

The bill makes several changes to current law and creates a new section to address issues related to pregnant children and youth in out-of-home care. Specifically, the bill does the following:

- Ensures appointment of a pro bono attorney or guardian ad litem for all pregnant children and youth in out-of-home care;
- Creates a 3-year pilot program in the Fourth Judicial Circuit to provide specialty guardians ad litem for pregnant children and youth in out of home care;
- Requires community-based care providers to report information about pregnant children and youth in licensed care to the Department of Children and Family Services through the Family Safe Families Network.

The bill appears to have a significant fiscal impact on state government (See Fiscal Comments).

The bill provides an effective date of July 1, 2010.

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 recent national study shows that by age 19 nearly half of young women in foster care have been pregnant compared to one-fifth of their peers not in foster care.¹ Additionally, youth in foster care are 2.5 times more likely to be pregnant.² Studies have also shown that foster care youth tend to have high levels of unprotected sex and have a perception that child rearing is a way to create the family the youth doesn't have or to fill an emotional void.³

Guardian Ad Litem Program

In 2003, the Statewide Guardian Ad Litem Office was created within the Justice Administrative Commission.⁴ The purpose of the Statewide Guardian Ad Litem Office is to oversee responsibilities for and provide technical assistance to all guardian ad litem and attorney ad litem programs located within the judicial circuits.⁵

Currently, a Guardian Ad Litem (GAL) must be appointed by the court at the earliest possible time to represent a child in any child abuse, abandonment, or neglect judicial proceeding, whether civil or criminal.⁶ A GAL includes a certified volunteer, a staff attorney, contract attorney, or certified pro bono attorney, staff members of a program office, a court-appointed attorney, or a responsible adult who is appointed by the court to represent the best interests of a child in a proceeding.⁷ In most instances, following the appointment to a dependency case by the court at a shelter hearing, the program assigns a program attorney and a volunteer and/or staff advocate to the case.⁸

The GAL volunteer, the GAL volunteer's supervisor, and the program attorney work as a team to ensure the child's well-being, best interest, and safety are considered, and that child-centered

¹ Amy Dworsky, "Preventing Pregnancy Among Youth in Foster Care: Remarks for Congressional Roundtable," (2009). <http://www.chapinhall.org/sites/default/files/DworskyFosterPregnancy-7-16-09.pdf> (last visited 3/30/10)

² *Id.*

³ *Id.*

⁴ Chapter 2003-53, L.O.F.

⁵ s. 39.8296(2)(b), F.S.

⁶ s. 39.822(1), F.S.

⁷ s. 39.820(1), F.S.

⁸ Staff Analysis, HB1383 (2010), Statewide Guardian Ad Litem Office. (On file with committee staff).

decisions are made on critical issues such as permanency, placement, visitation, and education.⁹ This team tracks cases and attends all case proceedings on behalf of the child.¹⁰ The program attorney represents the program in court by advocating on behalf of the program and also by advocating on behalf of the child when filing necessary legal motions. In 2009, GAL represented 80 percent of the children under dependency court supervision.¹¹

Foster Care

The state's child welfare program serves children and families in their homes, as well as children who have been removed from their families and placed in foster care.¹² Foster care settings include licensed foster homes, residential facilities, and placements with relatives and approved non-relatives.¹³ In 1996, the Legislature encouraged DCF to contract with community-based, not-for-profit entities to provide child welfare services, including but not limited to, prevention, child protection, licensing, placement, foster care, adoptions, and independent living.¹⁴ In 1998, the Legislature directed DCF to contract with community-based lead agencies to assume many of the management and operational responsibilities previously performed by its internal staff.¹⁵ Under this outsourced system, lead agencies are responsible for providing foster care and related services including, but not limited to, family preservation, emergency shelter, and adoption.¹⁶

The state completed the transition to community-based care during the latter part of Fiscal Year 2004-2005.¹⁷ As of March 2010, 20 community-based lead agencies provide child welfare services statewide, including foster care.¹⁸ The lead agencies contract with a large number of subcontractors for case management and direct care services to children and their families.¹⁹ In addition to DCF's contracts with 20 lead agencies, as of March 2010 the lead agencies maintained 70 subcontracts for case management services and 646 subcontracts for direct care services such as foster care placement, adoption supervision, and substance abuse and mental health intervention.²⁰

Client and Management Information System

Current law requires the Department of Children and Family Services (DCF) to establish a statewide children and families client and management information system to provide information concerning children served by DCF.²¹ Pursuant to this requirement, DCF established the Florida Safe Families Network (FSFN) to provide, at a minimum, a service information system to implement comprehensive screening, uniform assessment, case planning, monitoring, resource matching, and outcome evaluations for all programs and services related to child welfare, prevention, diversion, and child care.²² However, FSFN does not collect data and information about children or youth who become pregnant before or while residing in licensed out-of-home care.²³ Current law does specify that, whenever feasible, the information system shall have online computers and be available for data entry and retrieval at the unit level of organization by program component counselors.²⁴ Recently, DCF extracted data and learned that in January 2010, there were 130 females in out-of-home care who are listed as having children.²⁵

⁹ Guardian Ad Litem 2009 Annual Report. <http://www.guardianadlitem.org/documents/GAL-2009AnnualReport.pdf>. (last visited 3/30/10).

¹⁰ *Id.*

¹¹ *Id.*

¹² "Child Welfare System Performance Mixed in First Year of Statewide Community-Based Care," Office of Program Policy and Government Accountability (OPPAGA), Report 06-50.

¹³ *Id.*

¹⁴ s. 5, ch. 96-402, L.O.F.

¹⁵ s. 1, ch. 98-180, L.O.F.

¹⁶ OPPAGA, Report 06-50.

¹⁷ *Id.*

¹⁸ Lead Agency Contacts, Department of Children and Family Services. <http://www.dcf.state.fl.us/programs/cbc/docs/leadagencycontacts.pdf> (last visited 3/31/10).

¹⁹ OPPAGA, Report 06-50.

²⁰ Email from Alan Abramowitz, Director of Family Safety, DCF (October 31, 2010). On file with committee staff.

²¹ s. 409.146(1), F.S.

²² s. 409.146(2), F.S.

²³ Staff Analysis, HB 1383 (2010). Department of Children and Family Services. (On file with committee staff).

²⁴ s. 409.146(7), F.S.

²⁵ Staff Analysis, HB 1383 (2010). Department of Children and Family Services. (On file with committee staff). Data was collected using FSFN and adding up the amount of females in the system that had the "mother" radial checked off under the "relationship" tab. It does not appear that this method of tabulation is able to account for the amount of females currently in out-of-home care who either became pregnant or entered care while pregnant.

The Independent Living Transitional Services Checklist survey is a voluntary self-reporting survey for youth 13-17 years old in foster care and for 18-22 year olds that have aged out of foster care. The 2008 survey provided the following results related to pregnancy and parents in foster care:²⁶

- Are you Pregnant?
 - 4 percent of 13-17 year olds answered yes
 - 10 percent of 18-22 year olds answered yes
- Do you have children?
 - 15 percent of 13-22 year olds answered yes
- Are those children in your legal custody?
 - 69 percent answered yes.

Parental Notice of Abortion Act

In 2004, the Legislature passed House Joint Resolution 1 to amend the state constitution. The joint resolution, placed on the November 2004 ballot, provided:

ARTICLE X SECTION 22. Parental notice of termination of a minor's pregnancy.—
The Legislature shall not limit or deny the privacy right guaranteed to a minor under the United States Constitution as interpreted by the United States Supreme Court. Notwithstanding a minor's right of privacy provided in Section 23 of Article I, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the notification.

The voters approved this amendment on November 2, 2004.²⁷ The amendment permitted the Legislature to create a parental notification statute notwithstanding the state right to privacy. Accordingly, in 2005, the Legislature recreated the Parental Notice of Abortion Act under section 390.01114, Florida Statutes,²⁸ which specifies the following:

Notice. A physician or the referring physician must give 48 hours actual notice of the physician's intent to perform or induce the termination of a minor's pregnancy to one of the minor's parents or to the legal guardian of the minor. If the physician is unable, after making reasonable efforts, to give actual notice, the physician may provide constructive notice by mail, overnight delivery guaranteed, return receipt requested with delivery restricted to a parent or legal guardian. This constructive notice must be mailed at least 72 hours before the procedure is commenced. The physician is required to document the efforts to provide notice and keep such records with the minor's medical file.

Notice Exceptions. Section 22 of Article X of the Florida Constitution, requires the Legislature to provide exceptions to the notice requirement. Under section 390.01114(3)(b), Florida Statutes, prior actual or constructive notice is not required in the following circumstances:

- If, in the physician's good faith clinical judgment, a medical emergency exists and there is insufficient time to comply with the notice requirements. If a medical emergency exists, the physician may terminate the pregnancy but must document the reason for the medical necessity and provide notice after performing the procedure;
- Notice is waived by the person entitled to receive notice;
- Notice is waived by the minor who is or has been married or has had the disability of nonage removed under section 743.015, Florida Statutes;
- Notice is waived by the patient because the patient has a minor child dependent on her; or
- Notice is waived through a waiver petition granted by a circuit court.

²⁶ *Id.*

²⁷ According to the Department of State website, <http://election.dos.state.fl.us>, 4,639,635 people voted for the amendment and 2,534,910 voted against the amendment.

²⁸ An earlier Parental Notice Act (1999 Act) – s. 390.01115, F.S. – was declared unconstitutional by the Florida Supreme Court.

Judicial Waiver of Notice. Section 22 of Article X of the Florida Constitution requires the Legislature to create a procedure for a judicial waiver of notice. Accordingly, section 390.01114(4), Florida Statutes, specifies that a pregnant minor who is less than 18 years of age may petition the circuit court in the judicial circuit within the jurisdiction of the District Court of Appeal where she resides for a waiver of the notice requirement. The court must provide the minor counsel upon her request and at no cost.

The court must give court proceedings under this act precedence over other pending matters and the court must rule, and issue written findings of fact and conclusions of law, within 48 hours of the minor's request. If the court fails to rule within 48 hours, and an extension has not been granted at the request of the minor, the petition must be granted.

While the law provides that notice shall be given to parents of a minor, there are exceptions such that the court may grant a petition to waive notice if the court finds:

- By clear and convincing evidence, that the minor is sufficiently mature to terminate her pregnancy without the knowledge of her parent or guardian;
- By a preponderance of the evidence, that there is evidence of child abuse or sexual abuse by one or both of her parents or her guardian. In addition, the court must report the evidence of child abuse or sexual abuse to the Department of Children and Families' Child Abuse and Neglect hotline, in accordance with section 39.201, Florida Statutes; or
- By a preponderance of the evidence, that the notification of a parent or guardian is not in the best interest of the minor.

If one of these exceptions is not met, the court must dismiss the minor's petition.

The Office of State Court Administrator (OSCA) must report to the Governor, President of the Senate, and the Speaker of the House of Representatives on the number of petitions for judicial waiver and the timing and manner of disposal of the petitions.²⁹ According to OSCA, from July 2009 to February 2010, 14 minors from the Fourth Judicial Circuit filed petitions seeking judicial bypass of the parental notice requirements.³⁰ Of those petitions, 12 were granted. It is unclear how many, if any, of the 14 these minors were foster children.

Florida Pregnancy Support Services Program

The Florida Pregnancy Support Program is administered by two contract managers—Florida Pregnancy Care Network and the Uzzell Group—under contract with the Department of Health.³¹ The contract managers subcontract with more than 50 direct service providers throughout the state to provide counseling and other services to individuals who are suspecting or experiencing an unplanned pregnancy. Services are not limited to women, as sometimes the eligible woman's partner and family members who are directly impacted by her pregnancy are also eligible for services, and the services may continue for up to 12 months after the birth of the child.

Direct service providers administer a number of services to clients, including free pregnancy testing; counseling; and social service/medical referrals for services such as housing, employment, childcare, education, Medicaid and other support services, and mental health or other health care services. Additionally, some direct service providers have education programs for expectant families.

As of March 9, 2010, there were three direct service providers in the Fourth Judicial Circuit.

²⁹ s. 390.01114(6), F.S.

³⁰ Parental Notice of Abortion Act, Petitions Filed and Disposed by Circuit and County (July 2009-February 2010) Office of State Courts Administrator, Research and Data as of March 31, 2010.

³¹ The Florida Pregnancy Support Services Program also consists of the Florida Hope Line, a free hotline answered 24 hours a day, 365 days a year in order to refer women to the nearest direct service providers. The Hope Line is operated by Option Line, a nationally pregnancy helpline.

Effect of Proposed Changes

Appointment of a Guardian ad Litem for a Pregnant Child or Youth in Out-of-Home Care

The bill amends section 39.822, Florida Statutes, by requiring the court, at the first hearing after the court is notified a child or youth in out-of-home care is pregnant, to appoint to the child or youth a pro-bono attorney or a guardian ad litem if a pro bono attorney is not available. The effect of this change will ensure that pregnant children and youth are provided the support they need.

Specialty Guardian Ad Litem Pilot Program

The bill creates section 38.8299, Florida Statutes, by creating a 3-year Specialty Guardian ad Litem (GAL) program in the Fourth Judicial Circuit for pregnant children and youth in out-of-home care. The pilot program's funding is subject to a specific appropriation in the General Appropriations Act. Specifically, the bill requires the Statewide Guardian Ad Litem Office to do the following:

- Designate a GAL in the Fourth Judicial Circuit to administer the Specialty GAL program under the supervision of the executive director of Statewide GAL Office;
- Develop and implement a training program to ensure that specialty GALs receive all the training provided to GALs, as well as additional specialty training, including training about:
 - Social service programs available to pregnant women;
 - Legal requirements related to the parental notice of abortions act;
 - Availability of pregnancy counseling services in the Fourth Judicial Circuit, including providers offering services under contract under the Florida Pregnancy Support Services Program;
- Design and implement an appropriate specialty GAL program and may establish the number of specialty GALs needed to meet the needs of the pilot program. Current GALs will be prohibited from serving as Specialty GALs prior to completing the proper training requirements.

The program created in section 38.8299, Florida Statutes, also limits the specialty GAL's representation for children and youth in out-of-home care that are pregnant to dependency proceedings and other proceedings in chapter 39, Florida Statutes. The specialty GAL may, at the request of the pregnant child or youth, represent that child or youth in parental notice judicial bypass proceedings. The specialty GAL does not have the authority to accept notice of termination of pregnancy and must represent the child's best interest as long as the child or youth's wishes are consistent with the child or youth's safety and well-being. A specialty GAL is directed to represent a pregnant youth or child until 6 months after the conclusion of the child or youth's pregnancy.

Collection and Reporting of Pregnant Children and Youth in Out-of-Home Care

The bill amends section 409.146, Florida Statutes, by requiring DCF through its client and management information system, Florida Safe Families Network (FSFN), to collect and report information on pregnant children and youth in licensed care, but not those placed with relatives.

The bill directs lead community-based providers and their subcontractors to notify DCF within 72 hours of determining or discovering that a child or youth in their care is pregnant. The notification must include the following data:

- Age of pregnant child or youth;
- Whether the child or youth was pregnant prior to entering licensed care or became pregnant while in licensed care;
- The name of any entity that is providing prenatal care, counseling, or other social services; and
- Whether the child or youth has declined prenatal care, counseling, or other social services.

The bill requires lead community-based providers and their subcontractors to notify DCF, through FSFN, within 7 days after determining or discovering the pregnancy outcome of a child or youth in licensed care, but those placed with relatives. The notification may include whether the pregnancy was terminated or resulted in a live birth, still birth, or fetal death. For live births, the bill requires indication in

the reporting as to whether the infant remains in the care of the child or youth, has been placed for adoption, or has been placed in other licensed care.

The effect of these changes will create a more efficient process for collecting data on pregnant children and youth in licensed care. The changes will also provide DCF with access to reliable data on pregnant children and youth in licensed care, which will assist DCF in ensuring consistent counseling and proper prenatal medical care is provided.

B. SECTION DIRECTORY:

Section 1. Amends s. 39.822, F.S., relating to appointment of guardian ad litem for abused, abandoned, or neglected child.

Section 2. Creates s. 39.8299, F.S., relating to Specialty Guardian Ad Litem Pilot Program for pregnant children or youth in out-of-home care.

Section 3. Amends s. 409.146, F.S., relating to children and families client and management information system.

Section 4. Creates an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

| | Amount Year 1 (FY 2010-2011) | Amount Year 2 (FY 2011-2012) |
|---|---|---|
| A. Nonrecurring or First-Year Start-up Effects: | \$150,000 ³² | |
| B. Recurring or Annualized Continuation Effects: | \$55,000 ³³ | \$55,000 |
| C. Appropriations Consequences: | \$205,000 | \$55,000 |

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

³² Cost associated with updating DCF's FSN information system to make it able to collect data required by bill.

³³ Cost of one position to serve as the administrator of the Specialty Guardian Ad Litem Pilot Program in the Fourth Judicial Circuit.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

Section 23 of Article 1 of the Florida Constitution provides, "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein." See also *In re T.W.*, 551 So.2d 1186 (Fla. 1989) (holding that this provision applies to minors as well as adults). Because the right to privacy is a fundamental right, the state must prove that a statute furthers a compelling state interest through the least intrusive means. *Id.*

The Florida Supreme Court has determined that Section 23 of Article I is implicated in a woman's decision to terminate or continue her pregnancy. *Id.* None of the provisions in the bill interfere with the minor's right to choose. Instead, the bill authorizes a child or youth in out-of-home care in the pilot program area to request a specialty guardian ad litem to represent the child's best interests during a judicial bypass proceeding under section 390.01114(4), Florida Statutes. This does not replace the requirement in section 390.01114(4)(a), Florida Statutes, for a minor to receive notice that the minor has a right to court appointed counsel, and does not prohibit the minor from having both a specialty guardian ad litem and counsel present, as the specialty guardian's ad litem participation is not in the capacity as a legal advisor.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES