

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 Committee on Children, Families, and Elder Affairs

BILL: CS/SB 1468

INTRODUCER: Judiciary Committee and Senator Lee

SUBJECT: Appointment of an Attorney for a Dependent Child with Disabilities

DATE: March 27, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shankle	Cibula	JU	Fav/CS
2.	Preston	Hendon	CF	Pre-meeting
3.			AP	
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:

CS/SB 1468 creates s. 39.01305, F.S., to require a court to appoint attorneys to represent dependent children having disabilities who either reside in a skilled nursing facility or are under consideration for placement in a skilled nursing facility.

The bill will have a fiscal impact on the state and has an effective date of July 1, 2013.

This bill creates section 39.01305, Florida Statutes.

II. Present Situation:

In December 2011, the U.S. Department of Justice (DOJ) opened an investigation of the state of Florida regarding the services the state provides to children having disabilities.¹ The DOJ visited a number of nursing homes that served severely disabled children throughout Florida. The DOJ found that the children housed at these facilities had little social activity, received little

¹ Letter to Attorney General Pam Bondi from Thomas E. Perez, Assistant Attorney General, Department of Justice (September 4, 2012), available at http://www.ada.gov/olmstead/documents/florida_findings_letter.pdf.

stimulation, and were often confined to their rooms or housed among the elderly.² The DOJ found that the state failed to provide for these children as required by the Americans with Disabilities Act by violating the requirement that persons with a disability be placed in the least restrictive environment.³ In a letter from the DOJ, which was received by Attorney General Pam Bondi on September 1, 2012, the DOJ warned, “In the event we determine that we cannot secure compliance voluntarily to correct the deficiencies described in this letter, the [U.S.] Attorney General may initiate a lawsuit pursuant to the ADA.”⁴

An attorney representing a dependent child having a disability could provide the necessary legal services to protect a child from a harmful environment and also insure that he or she receives all the necessary medical needs and other services needed to live full lives. This could include advocacy for benefits from the Agency for Persons with Disabilities, Agency for Health Care Administration, or the Social Security Administration.⁵

The purpose of ch. 39, F.S., is to provide for the care, safety, and protection of dependent children and to prevent child abuse, neglect, and abandonment.⁶ Chapter 39, F.S., provides for the appointment of a Guardian Ad Litem (GAL) to represent the interest of the child in dependency cases.⁷ However, there is no provision in ch. 39, F.S., which specifically provides an attorney for a dependent child having a disability and who resides in a skilled nursing home. Additionally, while the Guardian Ad Litem program is required to represent all children in dependency hearings, according to the Statewide Guardian Ad Litem Office, due to cost constraints, the program represents only 69 percent of the children in the system.⁸ A court can however, order the appointment of an attorney for a dependent child. Such appointments are rare and are paid for by the Guardian Ad Litem program.

III. Effect of Proposed Changes:

The bill creates s. 39.01305, F.S., to require the court to appoint an attorney to represent a dependent child with a disability who either resides in a skilled nursing home facility or is being considered for placement in a skilled nursing facility.

The bill requires that the attorney be appointed in writing. The appointed attorney must provide the child with all necessary legal services, including all available appellate proceedings so that the attorney can address the medical and other services that the disabled child needs. The attorney must be adequately compensated and provided funding for costs of litigation. The appointment stays in effect until the attorney is discharged by the court, permitted to withdraw, or the case terminates.

The bill does not negate the authority of the court to appoint an attorney for a dependent child under other sections of ch. 39, F.S.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Statewide Guardian Ad Litem Office, *White paper: Bill Analysis* (2013) (on file with the Senate Committee on Judiciary).

⁶ Section 39.001(1)(a), F.S.

⁷ Section 39.822(1), F.S.

⁸ Statewide Guardian Ad Litem Office, *supra* note 5.

The bill takes effect July 1, 2013.

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:

None.

C. Government Sector Impact:

The bill creates a requirement for the appointment of an attorney to represent a dependent child having a disability who resides in a skilled nursing home facility or is being considered for placement in a skilled nursing facility. Though this is a small group of individuals, attorneys representing these children must be compensated, including costs of litigation, until the termination of the case or the attorney is permitted to withdraw or is released. The bill provides that the implementation of the bill is subject to the appropriation of funds by the Legislature. The cost to implement the bill is not known.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 39.01305(2)(c), F.S., appears to be the main substantive portion of the bill. However, the provision appears to be structured as intent. “It is the intent of the Legislature that an attorney be appointed by the court” To avoid ambiguity, the Legislature may wish to restructure the provision as a command, such that: “A court must appoint an attorney to represent each dependent child”

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, 2013

The CS makes technical changes to the underlying 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.
