

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: SB 146

INTRODUCER: Senators Bean and Bradley

SUBJECT: Appointment of Attorneys for Dependent Children with Special Needs

DATE: December 5, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Favorable</b>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 146 authorizes the payment of certain due process costs when a court-appointed pro bono<sup>1</sup> attorney represents a dependent child with special needs. These due process costs are the costs of court reporting and transcriptions, expert witnesses, mental health professionals, reasonable pretrial consultation fees and costs, and certain travel expenses.

Currently, a court-appointed pro bono attorney is not entitled to funds for due process costs. In contrast, a private court-appointed attorney who is paid for his or her services in these cases is permitted to access due process costs. Under the bill, the Justice Administrative Commission will review and pay due process costs for pro bono attorneys as it does for compensated attorneys under current law.

The bill is expected to increase the need for funding for due process costs associated with children with special needs represented by pro bono attorneys. Indirectly, this bill may reduce the need for funding relating to attorney fees if more pro bono attorneys are willing to represent children with special needs when due process costs are borne by the state.

The bill will take effect upon becoming law.

**II. Present Situation:**

**Legal Representation for Dependent Children with Special Needs**

In 2014, the Legislature determined that a dependent child with certain special needs is entitled to legal representation during all phases of a dependency case. This legal representation begins as early as when the child is removed from the home or the initial appointment is made and

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<sup>1</sup> Pro bono is from the Latin phrase *pro bono publico* meaning “for the public good” and has come to mean uncompensated legal services performed for the public good. BLACK’S LAW DICTIONARY 1220 (10th ed. 2014).

continues through any appellate proceedings. The continuous legal representation permits the attorney to address the child's medical and related needs and ensures that the appropriate services and supports are obtained for the child to live successfully in the community.<sup>2</sup>

### **Dependent Children with Special Needs<sup>3</sup>**

Section 39.01305(3), F.S., requires the court to appoint an attorney to represent a dependent child with certain special needs. A child has a qualifying special need if the child:

- Resides in a skilled nursing facility or is being considered for placement in a skilled nursing home;
- Is prescribed, but does not take, a psychotropic medication;
- Is diagnosed with a developmental disability;<sup>4</sup>
- Is being placed or considered for placement in a residential treatment center; or
- Is a victim of human trafficking.<sup>5</sup>

### **Procedure for Appointing an Attorney**

The statutes establish priorities for selecting a court-appointed attorney to represent a dependent special needs child. In an effort to minimize expenses to the state, a pro bono attorney must first be sought to represent the child before a paid attorney or organization may be requested.

The court must request initially the Statewide Guardian Ad Litem Office to recommend an attorney who is willing to serve without compensation. If a pro bono attorney is available to serve within 15 days after the court's request, the court must appoint that attorney, thereby avoiding costs.<sup>6</sup> However, if the Statewide Guardian Ad Litem office is unable to recommend an attorney within the 15-day period, the court may appoint a compensated attorney within that time period.<sup>7</sup> Once the court appoints an attorney, the appointment continues until the attorney is permitted to withdraw, is discharged by the court, or the case is dismissed.<sup>8</sup>

An attorney or legal aid organization willing to serve for compensation is selected from a registry of names maintained by the chief judge in the circuit. These attorneys and organizations must be adequately compensated and provided with access to funding for expert witnesses, depositions, and other costs of litigation. The legal fees and compensation for litigation costs are

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<sup>2</sup> Section 39.01305(1)(a)2., F.S.

<sup>3</sup> Staff attempted to determine the current number of children who are classified as a "dependent child with disabilities." The information is not available from the Department of Children and Families. This number fluctuates regularly as children come in and out of care. However, recent data, collected at various times, has stated that approximately 12 children were in skilled nursing facilities, 265 children were diagnosed with developmental disabilities, and 130 children were in residential treatment centers. Staff was unable to discern how many children were not taking prescribed psychotropic medication or were victims of human trafficking.

<sup>4</sup> A developmental disability is a disorder or syndrome attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely. s. 393.063(12), F.S.

<sup>5</sup> Section 787.06(2)(d), F.S., defines human trafficking as the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person to exploit that person.

<sup>6</sup> Section 39.01305(4)(a), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 39.01305(4)(b), F.S.

subject to appropriations and subject to review by the Justice Administrative Commission<sup>9</sup> for reasonableness. The attorney fees may not exceed \$1,000 per year per child.<sup>10</sup> There is no statutory cap on the amount of due process costs that may be expended in a particular case. However, the funds to cover those costs, along with attorney fees, is subject to legislative appropriation expressly for those purposes.<sup>11</sup>

**Due Process Costs**

These litigation costs are often referred to as “due process costs” and are defined to include the costs of court reporting and transcripts, witnesses, mental health professionals, reasonable pretrial consultation fees and costs, and certain travel expenses.<sup>12</sup> The attorney who serves for compensation is paid for his or her legal services, and the accompanying due process costs are reviewed and paid by the Justice Administrative Commission. In contrast, there is no statutory authority to pay the due process costs incurred when a pro bono attorney is involved. Accordingly, the pro bono attorney is not paid for his or her legal services, and the attendant costs are not paid by the Justice Administrative Commission.

The Justice Administrative Commission<sup>13</sup> reports the following fiscal year payments for due process costs and attorney fees for dependent children with special needs:

<b>Fiscal Year</b>	<b>Due Process Costs</b>	<b>Attorney Fees</b>
2014-2015	\$6,402	\$761,024
2015-2016	\$3,606	\$1,133,682
2016-2017	\$16,998	\$1,642,510
Total	\$27,006	\$3,537,216

**III. Effect of Proposed Changes:**

SB 146 authorizes a court-appointed pro bono attorney who represents a dependent child with special needs to receive funding for due process costs. Payment of the case-related due process costs is subject to appropriations and review by the Justice Administration Commission.

The bill takes effect upon becoming a law.

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<sup>9</sup> The Justice Administrative Commission administratively serves the offices of the state attorneys, public defenders, and other judicial-related offices. The commission processes accounting, budget, financial, and human resource transactions for these offices. The commission also processes bills for services provided by private court-appointed attorneys who represent indigent defendants as well as for associated due process service vendors such as court reporters, investigators, and expert witnesses. According to commission staff, due process costs in private court-appointed cases may either be paid directly to the due process service provider or paid by the attorney and then reimbursed by the commission.

<sup>10</sup> Section 39.01305(5), F.S.

<sup>11</sup> Section 39.01305(9), F.S.

<sup>12</sup> Section 29.007(3)-(7), F.S.

<sup>13</sup> Justice Administration Commission, *Children With Special Needs - Cases Appointed and Payment by Fiscal Year as of September 8, 2017* (on file with the Senate Committee on Judiciary).

**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:

A pro bono attorney currently paying due process costs from the attorney's own resources may enjoy savings to the extent such due process costs will now be paid by the Justice Administrative Commission.

## C. Government Sector Impact:

The bill is expected to increase the need for funding for due process costs associated with children with special needs represented by pro bono attorneys.

Indirectly, this bill may reduce the need for funding relating to attorney fees if more pro bono attorneys are willing to represent children with special needs when due process costs are borne by the state.<sup>14</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 39.01305 of the Florida Statutes.

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<sup>14</sup> Justice Administrative Commission, *Bill Analysis for Senate Bill 146* (Sept. 5, 2017) (on file with the Senate Committee on Judiciary).

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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