

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 57 Appointment of Attorneys for Dependent Children with Special Needs

SPONSOR(S): White and Williams

TIED BILLS: None **IDEN./SIM. BILLS:** SB 146

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	14 Y, 0 N	Tuszynski	Bond
2) Justice Appropriations Subcommittee	12 Y, 0 N	Smith	Gusky
3) Judiciary Committee	18 Y, 0 N	Tuszynski	Poche

SUMMARY ANALYSIS

Dependency court is the division of circuit court concerned with the care and custody of abused, abandoned, or neglected children. Most children in dependency court are not represented directly by an attorney, as the Guardian ad Litem program represents the best interest of the child. However, in certain instances, the court is required to appoint an attorney to represent a dependent child with specific special needs. Before appointing an attorney from a registry, the court is required to ask the Guardian ad Litem Program whether a pro bono attorney is willing to be appointed for the child. Current law requires the state to compensate an appointed attorney and provide access to funding for expert witnesses, depositions, and other costs of litigation, however, a pro bono attorney is not reimbursed for costs incurred.

HB 57 requires the Justice Administrative Commission (JAC) to provide a pro bono attorney who represents a dependent child with special needs the same funding for expert witnesses, depositions, and other due process costs of litigation as a paid appointed attorney, subject to appropriations.

It is unknown how many additional attorneys may represent dependent children with special needs on a pro bono basis if reimbursed for case-related due process costs. To the extent that dependent children with special needs are represented by more pro bono attorneys, expenditures to pay contract registry attorneys will decrease and expenditures for due process costs that would have been paid to contract registry attorneys should shift to those pro bono attorneys.

The bill provides that the payment of case-related due process costs are subject to appropriations. The bill would have an indeterminate fiscal impact on the current resources of the JAC.

The effective date of the bill is upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Dependency System and the Statewide Guardian ad Litem Program

Chapter 39, F.S., outlines Florida's child welfare system, known as the dependency system. The Department of Children and Families (DCF) is required to investigate reports of abuse, abandonment, and neglect of children. DCF also provides services to families and children in the dependency system. After DCF investigates a report, if it is determined that a child cannot remain safely in home with services and is removed from his or her home, the court is required to appoint the Guardian ad Litem Program (GAL Program) to represent the best interests of the child.¹ The GAL Program employs program attorneys for this purpose. In dependency cases involving children with special needs, in addition to the GAL Program, the court must appoint an attorney ad litem to represent the child.²

Appointment of an Attorney for a Dependent Child with Certain Special Needs

Current law provides that "dependent children with certain special needs have a particular need for an attorney to represent them in proceedings so that the attorney may address the child's medical and related needs as well as the services and supports necessary for the child to live successfully in the community."³ Section 39.01305, F.S., requires the court to appoint an attorney to represent a dependent child with specific special needs. A child with special needs includes one who:

- Resides in a skilled nursing facility or is being considered for placement in a skilled nursing facility;
- Is prescribed psychotropic medication but declines assent to the medication;
- Has a diagnosis of a developmental disability;
- Is being placed in a residential treatment center or being considered for placement in a residential treatment center; or
- Is a victim of human trafficking.⁴

Before a court may appoint an attorney for the child, the court must request a recommendation from the GAL Program for a volunteer attorney. If such an attorney is available within 15 days after the court's request, the court must appoint that attorney.⁵ However, the court may appoint a compensated attorney within the 15-day period if the GAL Program informs the court it will not be able to recommend a volunteer attorney within the time period.⁶ An attorney appointed to represent the child must provide the complete range of legal services, from the removal from home or from the initial appointment through all appellate proceedings.⁷

Justice Administrative Commission

In 1965, the Legislature created the Justice Administrative Commission (JAC) to provide administrative services, such as budget management, for statewide judicial and justice related offices.⁸ In 2004, the Legislature expanded the duties of the JAC to include the administrative duties related to contracting

¹ S. 39.822(1), F.S.; S. 39.820(1), F.S.

² S. 39.01305, F.S.

³ S. 39.01305(2), F.S.

⁴ S. 39.01305(3), F.S.

⁵ S. 39.01305(4)(a), F.S.

⁶ Id.

⁷ S. 39.01305(4)(b), F.S.

⁸ Ch. 65-328, L.O.F.; s. 43.16, F.S.

with court-appointed attorneys and related service providers.⁹ Court- appointed attorneys are chosen from registries maintained by each judicial circuit.¹⁰ A registry attorney executes a JAC registry contract¹¹ and his or her fees and expenses are submitted to the JAC for payment.¹²

Appointed attorneys are compensated and provided access to funding for expert witnesses, depositions, and other costs of litigation, unless the attorney has agreed to provide pro bono representation.¹³ Payment to an attorney is subject to appropriations and review by the JAC.¹⁴ The JAC must contract with attorneys appointed by the court to represent a dependent child with special needs, but fees may not exceed \$1,000 per child per year.¹⁵ In addition, a compensated attorney is reimbursed for costs.¹⁶

Currently, the JAC does not provide access to funding for expert witnesses, depositions, and other costs of litigation to attorneys who have agreed to provide pro bono representation for a dependent child with special needs.

Effect of the Proposed Language

HB 57 amends s. 39.01305, F.S., to require the JAC to provide a pro bono attorney who agrees to represent dependent children with certain special needs access to the same funding for expert witnesses, depositions, and other due process costs of litigation as an appointed registry attorney. This may increase pro bono participation in dependency cases by allowing an attorney to represent a child with special needs that otherwise may not have done so due to the expense of expert witnesses, depositions, and other due process costs.

The bill is effective upon becoming law.

B. SECTION DIRECTORY:

- Section 1:** Creates a short title.
Section 2: Amends s. 39.01305, F.S., relating to appointment of an attorney for a dependent child with certain special needs.
Section 3: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

It is unknown how many additional attorneys may represent dependent children with special needs on a pro bono basis if reimbursed for case-related due process costs. To the extent that dependent children with special needs are represented by more pro bono attorneys, expenditures to pay

⁹ Ch. 2004-265, L.O.F.; contracted services include services such as investigators, court reporters, and expert witnesses.

¹⁰ Justice Administrative Commission, Court-Appointed Counsel, *Policies & Procedures for Private Court-Appointed Counsel*, available at: https://www.justiceadmin.org/court_app_counsel/P&P.pdf (last accessed January 6, 2018).

¹¹ Justice Administrative Commission, *Instructions for Registry Contract*, available at:

https://www.justiceadmin.org/court_app_counsel/agreementscontracts.aspx (last accessed January 6, 2018); Example Contract available at: https://www.justiceadmin.org/court_app_counsel/contracts/2017-2018/Draft.pdf.

¹² Justice Administrative Commission, *Court-Appointed Counsel*, available at:

https://www.justiceadmin.org/court_app_counsel/index.aspx (last accessed January 6, 2018).

¹³ S. 39.01305(5), F.S.

¹⁴ Id.

¹⁵ Id.

¹⁶ S. 39.01305, F.S.

contract registry attorneys will decrease and expenditures for due process costs that would have been paid to contract registry attorneys should shift to those pro bono attorneys.

The bill provides that the payment of case related due process costs are subject to appropriations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The direct impact on the private sector is unknown as the number of attorneys who may choose to take a case representing a dependent child with special needs on a pro bono basis is unknown. However, those attorneys will no longer need to spend personal or firm funds for expert witnesses, depositions, or other due process costs associated with litigation.

D. FISCAL COMMENTS:

The JAC reports that from July 1, 2014 through September 8, 2017, it has paid a total of \$3,537,217.52 in attorney fees for registry attorneys representing dependent children with special needs and \$27,007.16 in due process costs.¹⁷

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹⁷ Email from Veronica Vasquez, Public Records Coordinator, Justice Administrative Commission, Public Records Request, (Sept.14, 2017) (On file with Judicial Committee Staff).