

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 115 Dependent Children  
**SPONSOR(S):** Civil Justice Subcommittee, Sirois and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 124

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Bruno	Poche
2) Justice Appropriations Subcommittee	10 Y, 0 N	Jones	Gusky
3) Judiciary Committee			

### SUMMARY ANALYSIS

A court may appoint a guardian to act on behalf of an incapacitated person. The venue for guardianship appointment proceedings for a Florida resident is the county where the incapacitated person resides. A dependent child aging out of the dependency system may require a guardian upon reaching age 18 due to incapacity. When incapacity of a dependent child is suspected, Florida law requires guardian appointment proceedings to begin within 180 days after the child's 17th birthday. Due to the venue requirements for guardianship proceedings, the proceedings must occur where the dependent child resides, which may not be the same circuit handling his or her dependency case.

In general, the juvenile delinquency system addresses children who violate criminal laws. Abused, abandoned, and neglected children are at a heightened risk of engaging in delinquent acts and becoming "crossover children," served by both the dependency and delinquency courts. In December 2018, 1,064 children were dually served by the Department of Children and Families and the Department of Juvenile Justice.

The Guardian ad Litem (GAL) Program is a network of volunteer advocates and professional staff representing the best interests of abused, abandoned, and neglected children. Many crossover children have an appointed GAL to represent their interests in dependency court, as a court must appoint a GAL to represent a child as soon as possible in any child abuse, abandonment, or neglect proceeding.

CS/HB 115 allows the court handling an incapacitated person's dependency case to also handle his or her guardianship appointment proceedings by authorizing venue in the county with jurisdiction over the dependency case. When an incapacitated person who is a dependent child or young adult moves, venue may remain in the county with jurisdiction over the dependency case.

The bill provides a dependent child's GAL and other dependency stakeholders with notice of and an opportunity to be heard at several stages of the delinquency disposition and commitment process.

The bill does not appear to have a significant fiscal impact on state or local governments (see Fiscal Impact on State Government).

The bill provides an effective date upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Dependency System and Guardianship

##### *Dependency*

A dependent child is a child<sup>1</sup> whom a court has found to:

- Have been:
  - Abandoned, abused, or neglected by the child's parents or legal custodians;
  - Surrendered for adoption;
  - Voluntarily placed with the Department of Children and Families (DCF), a licensed child-caring or child-placing agency, or an adult relative pursuant to a case plan that has expired, and the parents or legal custodians failed to substantially comply with the case plan;
  - Voluntarily placed with a licensed child-placing agency for the purposes of a subsequent adoption;
  - Sexually exploited and have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care;
- Have no parent or legal custodians capable of providing supervision and care; or
- Be at substantial risk of imminent abuse, abandonment, or neglect by the child's parent, parents, or legal custodians.<sup>2</sup>

DCF must develop and refine a case plan for a dependent child, including:

- Services to be provided to the child's parents or legal custodians.
- Tasks for the child's parents or legal custodians to complete.
- Care arrangements for the child.<sup>3</sup>

A court reviews and, upon acceptance, orders compliance with DCF's proposed case plan.<sup>4</sup> A case plan may allow a child to remain in his or her home with services provided or remove the child from the home.<sup>5</sup>

An eligible young adult may remain under the jurisdiction of the dependency court through extended foster care until age 21. A young adult is eligible for extended foster care if he or she is:

- Completing secondary education or a program leading to an equivalent credential;
- Enrolled in a postsecondary or vocational educational institution;
- Participating in a program or activity designed to promote or eliminate barriers to employment;
- Employed for at least 80 hours per month; or
- Has a physical, intellectual, emotional, or psychiatric condition that limits educational program participation or employment.<sup>6</sup>

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<sup>1</sup> "Child" means an unmarried person less than 18 years old who has not been emancipated. S. 39.01(12), F.S.

<sup>2</sup> S. 39.01(15), F.S.

<sup>3</sup> Ss. 39.6011 and 39.6012, F.S.

<sup>4</sup> S. 39.521, F.S.

<sup>5</sup> S. 39.6011, F.S.

<sup>6</sup> S. 39.6251, F.S.

## *Guardian ad Litem Program*

The Guardian ad Litem (GAL) Program is a network of volunteer advocates and professional staff representing the best interests of abused, abandoned, and neglected children. A GAL is not required to be an attorney.<sup>7</sup> A court must appoint a GAL to represent a child as soon as possible in any child abuse, abandonment, or neglect proceeding.<sup>8</sup> A GAL's responsibilities in a dependency proceeding are to:

- Gather information concerning the allegations of the petition and any subsequent matters arising in the case and, unless excused by the court, to file a written report.
- Be present at all court hearings, unless excused by the court.
- Represent the interests of the child until the jurisdiction of the court over the child terminates, or until excused by the court.
- Perform such other duties as are consistent with the scope of the appointment.<sup>9</sup>

As appropriate, a court may appoint an attorney ad litem to represent a child alleged or found to be dependent.<sup>10</sup> A court must appoint an attorney ad litem for a child in dependency proceedings who:

- Resides in a skilled nursing facility or is being considered for placement in a skilled nursing home;
- Is prescribed psychotropic medication but resists taking the psychotropic medication;
- Is diagnosed with a developmental disability;<sup>11</sup>
- Is being placed in a residential treatment center or being considered for such placement; or
- Is a victim of human trafficking.<sup>12</sup>

## *Guardianship*

A court may appoint a guardian to act on behalf of an incapacitated person. A court declares a person to be incapacitated when he or she lacks the capacity to take necessary actions to:

- Obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income; or
- Provide oneself healthcare, food, shelter, clothing, personal hygiene, or other care without which serious and imminent physical injury or illness is more likely than not to occur.<sup>13</sup>

The venue for a guardianship appointment proceeding is:

- The county where the incapacitated person resides, if he or she is a Florida resident;
- In any county where the incapacitated person's property is located, if he or she is not a Florida resident; or
- In the county where any debtor of the incapacitated person resides, if the incapacitated person is not a Florida resident and owns no property in the state.<sup>14</sup>

Generally, a guardian must petition a court to transfer venue when an incapacitated person moves to another county so that venue moves with the incapacitated person to the new county of residence.<sup>15</sup>

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<sup>7</sup> Fla. R. Juv. P. 8.215.

<sup>8</sup> S. 39.822, F.S.

<sup>9</sup> Fla. R. Juv. P. 8.215.

<sup>10</sup> Fla. R. Juv. P. 8.217.

<sup>11</sup> "Developmental disability" means a disorder or syndrome that is 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, F.S.

<sup>12</sup> S. 39.01305(3), F.S.; "human trafficking" means transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person. S. 787.06(2)(d), F.S.

<sup>13</sup> S. 744.102(12), F.S.

<sup>14</sup> S. 744.1097, F.S.

<sup>15</sup> S. 744.1097(3), F.S.

## *Dependent Children Requiring Guardians Upon Reaching Maturity*

A dependent child aging out of the dependency system may require a guardian upon reaching age 18 due to incapacity. When incapacity of a dependent child is suspected, Florida law requires a guardian appointment proceeding to begin within 180 days after the child's 17th birthday.<sup>16</sup>

Due to statutory venue requirements, a guardianship appointment proceeding must occur where the dependent child resides, which may not be the same circuit handling his or her dependency case. For example, a dependent child may reside in a facility outside of his or her home county. This prevents the dependency judge, having the most familiarity with the child, from hearing the guardianship case. The venue requirements may further affect the ability of dependency stakeholders to provide input in the guardianship case, and can impose a financial burden by requiring an out-of-town attorney to file the action.<sup>17</sup>

## Dependency and Delinquency Overlap

### *Crossover Children*

In general, the juvenile delinquency system addresses children who violate criminal laws. Abused, abandoned, and neglected children are at a heightened risk of engaging in delinquent acts and becoming "crossover children," served by both the dependency and delinquency courts.<sup>18</sup> In Florida, between 9 and 29 percent of dependency children crossed over into delinquency court, and the delinquency rate for children previously abused or neglected is 47 percent higher than other children.<sup>19</sup> In December 2018, 1,064 children were dually served by DCF and the Department of Juvenile Justice (DJJ).<sup>20</sup> Of those children, 36 percent were placed outside of their removal county, and 19 percent were placed outside of the judicial circuit from where they were removed.<sup>21</sup>

### *Delinquency Dispositions*

Upon finding that a child has committed a delinquent act, a court may dispose of the case by:

- Adjudicating the child delinquent or withholding adjudication of delinquency.<sup>22</sup>
- Committing the child to a DJJ commitment program or ordering probationary supervision with community-based sanctions.<sup>23</sup>

DJJ commitment programs vary by restrictiveness level, which may be:

- Minimum-risk nonresidential, where a child remains in the community and participates at least five days per week in a day treatment program;
- Nonsecure residential, where a child lives at the program but may have supervised access to the community.
- High-risk residential, where a child lives at the program and does not have access to the community.
- Maximum-risk residential, which includes juvenile correctional facilities and juvenile prisons.<sup>24</sup>

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<sup>16</sup> S. 39.701(3), F.S.

<sup>17</sup> Florida Statewide Guardian ad Litem Office, Agency Analysis of 2019 House Bill 115, p. 2 (Jan. 4, 2019).

<sup>18</sup> Office of the State Court Administrator, *Florida's Juvenile Delinquency Benchbook*, p. 25 (November 2016), <https://www.flcourts.org/content/download/215962/1961718/DelinquencyBenchbook.pdf> (last visited Mar. 15, 2019).

<sup>19</sup> *Id.*

<sup>20</sup> Florida Department of Children and Families, *Child Welfare Key Indicators Monthly Report*, p. 53 (Jan. 2019), [http://www.centerforchildwelfare.org/qa/cwkeyindicator/KI\\_Monthly\\_Report\\_JAN\\_2019.pdf](http://www.centerforchildwelfare.org/qa/cwkeyindicator/KI_Monthly_Report_JAN_2019.pdf) (last visited Mar. 15, 2019).

<sup>21</sup> *Id.* at 47 and 50.

<sup>22</sup> S. 985.43(2), F.S.

<sup>23</sup> S. 985.433, F.S.

<sup>24</sup> S. 985.03(44), F.S.

To assist in determining the appropriate final disposition of a case, a court may order DJJ to prepare a predisposition report, indicating the child's priority needs, risk classification recommendations, and recommended placement.<sup>25</sup> The report must evaluate:

- The seriousness of the offense to the community.
- Whether the protection of the community requires adjudication and commitment.
- Whether the offense was committed in an aggressive, violent, premeditated, or willful manner.
- Whether the offense was against persons or property.
- The sophistication and maturity of the child.
- The child's record and prior criminal history, including prior contacts with DCF.
- The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child if committed to a community services program or facility.
- The child's educational status, including his or her strengths, abilities, and special educational needs.<sup>26</sup>

At a disposition hearing, a court may also receive and consider any relevant and material evidence,<sup>27</sup> including testimony from a dependent child's GAL. A court makes a final disposition based on a child's entire assessment, predisposition report, and records of earlier judicial proceedings. The length of a child's commitment is based on his or her performance in the program.<sup>28</sup> DJJ must report a committed child's treatment plan progress and adjustment-related issues to the court quarterly or monthly, and notify the court of its intent to discharge a child from commitment.<sup>29</sup> A court may reject DJJ's request to discharge a child from commitment.<sup>30</sup> DJJ may also transfer a committed child to another program, including a program with a different restrictiveness level, upon providing the court written notification.<sup>31</sup>

Upon a child's release from a residential commitment program, DJJ may provide transition-to-adulthood services.<sup>32</sup> As part of these services, DJJ may use community reentry teams to develop age-appropriate activities and responsibilities to incorporate into the child's case plan, including life skills training, educational support, employment training, and counseling.<sup>33</sup> Community reentry teams may include representatives from school districts, law enforcement workforce development services, community-based service providers, and the youth's family.<sup>34</sup>

### Effect of Proposed Changes

CS/HB 115, cited as the "Charting a Positive Path for the Future Act," authorizes venue for guardianship appointment proceedings as the county:

- Where a dependent child or dependent young adult resides, *or*
- With jurisdiction over a child or young adult's dependency case.

This change allows the court handling an incapacitated person's dependency case to also handle his or her guardianship appointment proceedings while that person is under the jurisdiction of the dependency court. When an incapacitated person who is a dependent child or young adult moves, venue may remain in the county with jurisdiction over the dependency case.

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<sup>25</sup> S. 985.43(1)(a), F.S.

<sup>26</sup> S. 985.433(6), F.S.

<sup>27</sup> S. 985.433(3), F.S.

<sup>28</sup> However, a child may not be committed for longer than the maximum sentence of incarceration that an adult may serve for committing the same offense, or up to six months for a second degree misdemeanor. S. 985.455(3), F.S.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> S. 985.441(2), F.S.

<sup>32</sup> S. 985.461(4)(b), F.S.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

The bill also provides a dependent child's GAL and other dependency stakeholders with notice of and an opportunity to be heard at several stages of the delinquency disposition and DJJ commitment process. The bill:

- Allows a court to receive and consider information from the GAL program and the child's attorney ad litem:
  - Before making a final disposition in a case.
  - At quarterly or monthly commitment progress reports.
- Requires DJJ to provide notice to the dependency court, DCF, the GAL program, and the child's attorney ad litem when transferring a committed child to a different program.
- Adds the GAL program to the list of community reentry team representatives that may help develop a child's transition-to-adulthood case plan.

**B. SECTION DIRECTORY:**

**Section 1:** Provides a short title.

**Section 2:** Amends s. 744.1097, F.S., relating to venue.

**Section 3:** Amends s. 985.43, F.S., relating to predisposition reports; other evaluations.

**Section 4:** Amends s. 985.441, F.S., relating to commitment.

**Section 5:** Amends s. 985.455, F.S., relating to other dispositional issues.

**Section 6:** Amends s. 985.461, F.S., relating to transition to adulthood.

**Section 7:** Reenacts s. 322.051, F.S., relating to identification cards.

**Section 8:** Reenacts s. 322.21, F.S., relating to license fees; procedure for handling and collecting fees.

**Section 9:** Reenacts s. 382.0255, F.S., relating to fees.

**Section 10:** 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:

The number of cases impacted by the bill is unknown. To the extent that the bill increases any judicial workload, the Office of the State Courts Administrator does not anticipate needing additional resources to implement the requirements of the bill at this time.<sup>35</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

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<sup>35</sup> Office of the State Courts Administrator, *2018 Judicial Impact Statement (SB 124/HB 115)* (Mar. 15, 2019).

### **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**

On March 6, 2019, the Civil Justice & Claims Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Expanded the bill to authorize venue for a dependent young adult's guardianship appointment proceedings as the county with jurisdiction over the young adult's dependency case.
- Clarified that a guardian is not required to petition for transfer of venue if venue was determined based on the incapacitated person's dependency.

This analysis is drafted to the committee substitute as passed by the Civil Justice & Claims Subcommittee.