

**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 Committee on Children, Families, and Elder Affairs

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BILL: SB 124

INTRODUCER: Senator Bean

SUBJECT: Dependent Children

DATE: January 21, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	<b>Pre-meeting</b>
2.			JU	
3.			RC	

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**I. Summary:**

SB 124 amends Florida Statutes related to abused and neglected children who are also involved in additional court proceedings, to improve outcomes for those children due to better information sharing and increased cooperation among stakeholders. Specifically, the bill:

- Provides that a petition to determine incapacity in a guardianship proceeding under chapter 744, F.S., may be filed either where the child is residing or in the county of the child’s dependency case.
- Codifies procedures to strengthen communication between the dependency and juvenile courts in order to better meet the needs of a child involved in both systems. These children are often referred to as “crossover kids.”

The bill has no fiscal impact on state government and has an effective date of upon becoming law.

**II. Present Situation:**

**Guardian ad Litem Program**

The Guardian ad Litem Program is a statewide coalition of community advocates and professional staff who advocate for the child’s best interest on behalf of Florida’s abused and neglected children. In November 2018, the program reported that statewide 90.4% of children under court supervision had been appointed to the program.<sup>1</sup>

Florida Statutes require the appointment of a guardian ad litem at the earliest possible time to represent a child in any child abuse, abandonment, or neglect judicial proceeding.<sup>2</sup> Florida law

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<sup>1</sup> Florida Guardian ad Litem Program, Performance Advocacy Snapshot and Reports, *available at*: <https://guardianadlitem.org/about-us/performance-advocacy-snapshot/> (Last visited: January 15, 2019).

<sup>2</sup> Section 39.822, F.S.

also encourages the Guardian ad Litem Program to provide greater representation to those children who are within 1 year of leaving foster care<sup>3</sup> and contains specific court procedures for children on their 17th birthday to facilitate the transition to adulthood.<sup>4</sup>

### **Children in Dependency and Guardianship Proceedings**

Florida law requires that when incapacity of a dependent child is suspected, proceedings may be initiated within 180 days after the child's 17th birthday for appointment of a guardian pursuant to Chapter 744.<sup>5</sup> Dependent children who are suspected of having a condition that will not allow them to live independently as an adult must be evaluated, and a petition for guardianship may be filed.

Florida Law also provides that the venue for proceedings for the appointment of a guardian for a resident of this state shall be in the county where the incapacitated person resides. This means if the child is residing in a facility outside the circuit where the dependency court is located, the proceeding must be initiated in that circuit, even if it is not the child's home circuit or the circuit where the dependency judge hears the child's case.<sup>6</sup>

This venue requirement in Chapter 744 presents logistical problems for courts and dependency stakeholders who are attempting to secure a guardian for the child when the child turns 18. It can prevent the child's dependency judge from hearing the case, it may prevent some or all of the dependency stakeholders from having input, and may add a financial burden by requiring the hiring an out-of-town attorney to file the action. Additionally, if the child will return to his or her home circuit at the age of 18, it may be difficult to identify a guardian to serve in one county when the action is pending in another.<sup>7</sup>

### **Children in Dependency and Delinquency Proceedings**

In November 2018, Florida has 1,003 children who are served by both the Department of Children and Families (DCF) and the Department of Juvenile Justice (DJJ).<sup>8</sup> These children are typically referred to as "crossover kids." A dependent child who commits a delinquent act may be committed to a facility that is outside of the circuit of his or her family or of the initial dependency court placement. While individuals are currently allowed to provide relevant information to the court in both dependency and delinquency proceedings, there are only a limited number of statutory requirements in either proceeding where one system provides information about the child to the other, and there are many circumstances where exchanging information is vital to effectively serving these children.<sup>9</sup> It can be difficult for judges to get all

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<sup>3</sup> Section 39.013(11), F.S.

<sup>4</sup> Section 39.701(3), F.S.

<sup>5</sup> Section 39.701(3)(b), F.S. See also "The Regis Little Act to Protect Children with Special Needs," Ch. 2015—112, Laws of Florida.

<sup>6</sup> Section 744.1097(2), F.S.

<sup>7</sup> Florida Statewide Guardian ad Litem Office, Bill Analysis, SB 124, January 4, 2019.

<sup>8</sup> Florida Department of Children and Families, Child Welfare Key Indicators Monthly Report, December 2018, *available at*: [http://www.centerforchildwelfare.org/qa/cwkeyindicator/KI\\_Monthly\\_Report\\_DEC\\_2018.pdf](http://www.centerforchildwelfare.org/qa/cwkeyindicator/KI_Monthly_Report_DEC_2018.pdf) (Last visited: January 15, 2019).

<sup>9</sup> See chapters 39 and 985, F.S.

relevant information about a child when he or she is placed out of circuit, which can become more complicated if more than one judge is simultaneously deciding issues for the child.

Guardians ad litem or attorneys ad litem appointed by dependency courts face challenges in monitoring and advocating for the child when the child is out of circuit. The circumstances of the child and the child's family may change during any commitment or new service needs may arise. If dependency or delinquency stakeholders are not sharing current information, children may have to wait for services and other things they need.

When a delinquency case ends and the child returns to his or her family or community, the dependency case may be ongoing and certain issues and needs for services will persist. If the child does not have an advocate toward the end of the delinquency case it can be difficult to identify appropriate placements and services after completion of the commitment. The inability to locate an appropriate placement combined with the lack of an advocate can cause children to stay in a commitment facility for longer than the court's sentence.<sup>10</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 744.1097, F.S., relating to venue for guardianship proceedings, to provide that a petition to determine incapacity may be filed either where the child is residing or in the county of the child's dependency case.

**Section 2** amends s. 985.43, F.S., relating to predisposition reports in delinquency proceedings, to provide that if the child is also under the jurisdiction of a dependency court, the court may consider information provided by the Guardian ad Litem Program and the child's attorney ad litem if either has been appointed.

**Section 3** amends s. 985.441, F.S., relating to commitment in delinquency proceedings, to provide that if a child committed to the custody of DJJ is transferred from his or her commitment facility or to a program of a higher or lower restrictiveness level and the child is also under the jurisdiction of a dependency court, DJJ shall provide notice to the dependency court and DCF, and the Guardian Ad Litem Program and the child's attorney ad litem if either has been appointed.

**Section 4** amends s. 985.455, F.S., relating to dispositional issues in delinquency proceedings, to provide that if the child is also under the jurisdiction of a dependency court, the court may consider information provided by the Guardian ad Litem Program and the child's attorney ad litem if either has been appointed.

**Section 5** amends s. 985.461, F.S., relating to transition to adulthood for delinquent children, to include the Guardian ad Litem Program on community reentry teams that develop activities and responsibilities to be included in the case plan of a child under the custody of DJJ who is being released from residential commitment.

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<sup>10</sup> Florida Statewide Guardian ad Litem Office, Bill Analysis, SB 124, January 4, 2019.

**Section 6** reenacts s. 322.051, F.S., relating to identification cards, for the purpose of incorporating an amendment made by the bill to s. 985.461, F.S.

**Section 7** reenacts s. 322.21, F.S., relating to driver license fees, for the purpose of incorporating an amendment made by the bill to s. 985.461, F.S.

**Section 8** reenacts s. 382.0255, F.S., relating to fees for birth certificates, for the purpose of incorporating an amendment made by the bill to s. 985.461, F.S.

**Section 9** provides an effective date of upon becoming law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill substantially amends ss. 744.1097, 985.43, 985.441, 985.455, and 985.461 of the Florida Statutes.

The bill reenacts ss. 322.051, 322.21, and 382.0255 of the Florida Statutes.

**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.