

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 561 Attorneys for Dependent Children with Special Needs

SPONSOR(S): Judiciary Committee; Civil Justice Subcommittee; Fresen

TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 972

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 0 N, As CS	Ward	Bond
2) Justice Appropriations Subcommittee	12 Y, 0 N	deNagy	Lloyd
3) Judiciary Committee	17 Y, 0 N, As CS	Ward	Havlicak

SUMMARY ANALYSIS

"Dependency" is a legal determination that an abandoned, neglected, or abused child requires intervention by the state. The term "dependent child" means that the child has been determined by a court to be dependent on the state for support or services. Some dependent children may have certain special needs.

The bill provides legislative findings that though there are organizations that provide representation to children in dependency proceedings, a child with certain special needs in this system has a particular need for legal services.

The bill requires the court to appoint an attorney for a dependent child who:

- Resides in, or is being considered for placement in, a skilled nursing facility;
- Is prescribed a psychotropic medication and declines it;
- Has a developmental disability as defined by statute;
- Is being placed in, or is considered for placement in, a residential treatment center; or
- Is a victim of human trafficking as defined by statute.

The bill requires the court to ask the Statewide Guardian Ad Litem Office to recommend an attorney willing to work without additional compensation prior to the court appointing an attorney on a compensated basis. An attorney willing to serve without compensation must be available within 15 days after which the court may appoint a compensated attorney. The bill directs the attorney representing the child to provide the complete range of legal services from removal from the home or initial appointment through all appellate proceedings.

The bill provides that the Justice Administrative Commission will contract the appointed attorney. Attorney fees are limited to \$3,000 per child per year subject to appropriations and to review by the Commission for reasonableness. The Department of Children and Families is tasked with identifying and requesting attorney representation for qualifying children, and may make rules to administer the provisions of the bill.

The bill provides that implementation of the law is subject to appropriations expressly made for the purposes of the law.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Dependent Children

Proceedings related to children are governed by ch. 39, F.S. The stated purpose of the chapter is to "provide for the care, safety, and protection of dependent children in an environment that fosters healthy social, emotional, intellectual, and physical development; to ensure secure and safe custody; to promote the health and well-being of all children under the state's care; and to prevent the occurrence of child abuse, neglect, and abandonment."¹

"Dependency," "dependent child" and "adjudication of dependency" are terms used throughout ch. 39, F.S., to describe the legal process whereby parental rights and responsibilities are partially or fully surrendered to the state. The statutes do not define "dependency" but do define "dependent child."² "Dependent child," is defined by the adjudication of the condition of dependency, after notice and hearing,³ based upon one or more of the findings set out in the statute.⁴

The dependency process in Florida begins with an investigation into an allegation of child abuse, abandonment, or neglect.⁵ A child protection investigator conducts an on-site investigation of the alleged abuse or neglect.⁶ If warranted, a dependency petition is filed with the court by the Department of Children and Families.⁷

A child may be taken into custody and placed in a shelter without a hearing if there is probable cause of imminent danger or injury to the child.⁸ If a child is taken into custody, a hearing is held within 24 hours.⁹ A guardian ad litem¹⁰ will be, and an attorney ad litem¹¹ may be, appointed to represent the child's best interests in the proceeding. An adjudicatory hearing is held to determine whether the child is dependent based upon a preponderance of the evidence.¹² A disposition hearing is held to determine appropriate services and placement setting for the child.¹³ A case plan¹⁴ determining permanency of the child placement, with goals such as reunification of the family or another outcome, is also approved by the court.¹⁵

The court holds periodic judicial reviews, generally every six months, until supervision is terminated, to determine the child's status, the progress in following the case plan, and the status of the goals and objectives of the case plan.¹⁶ After twelve months, if the case plan goals have not been met, the court holds a permanency hearing to determine the child's permanent placement goal.¹⁷

¹ Section 39.001(1)(a), F.S.

² Section 39.01(15), F.S.

³ Section 39.502(1), F.S.

⁴ Section 39.01(15), F.S.

⁵ Section 39.301(1), F.S.

⁶ *Id.*

⁷ Section 39.501(3)(c), F.S.

⁸ Section 39.402(1), F.S.

⁹ Sections 39.01(69) and 39.402(8)(a), F.S.

¹⁰ Section 39.822(1), F.S.

¹¹ Section 39.4085(20), F.S.

¹² Section 39.507, F.S.

¹³ Sections 39.01(25) and 39.521, F.S.

¹⁴ Section 39.01(11), F.S.

¹⁵ Section 39.521(1), F.S. *See also*, s. 39.6011, F.S., *et seq.*

¹⁶ Section 39.521(1)(c), F.S.

¹⁷ Section 39.621(1), F.S.

Dependent Children in Nursing Homes

In December 2011, the U.S. Department of Justice (DOJ) opened an investigation against the State of Florida regarding the services the state provides to children with disabilities. 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 stimulation, and were often confined to their rooms or housed among the elderly. The DOJ found that the state failed to provide for these children as required by the Americans with Disability Act (ADA). 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."¹⁸

The Fiscal Year 2013-14 General Appropriations Act, Ch. 2013-40, L.O.F., currently appropriates \$323,000 in recurring general revenue funds to be used by the Justice Administrative Commission to contract with attorneys selected by the Guardian ad Litem Program to represent dependent children with disabilities in, or being considered for placement in, skilled nursing facilities. Attorney fees shall not exceed \$4,500 per child per year and due process costs shall not exceed \$5,000 per year per child.

Developmental Disabilities

A developmental disability is defined as a disorder or syndrome that manifests before the age of 18 and is due to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome, if the disability constitutes a substantial handicap reasonably expected to be permanent.¹⁹

Human Trafficking

The act of human trafficking is defined as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting the person.²⁰

Effect of the Bill

The bill provides legislative findings that:

- All children in ch. 39, F.S., proceedings have important interests at stake;
- A dependent child with certain special needs has a particular need for an attorney in dependency through appellate proceedings so that the child's medical and related needs along with services and supports may be addressed;
- The Statewide Guardian Ad Litem program already provides 'best interest' representation for children;
- Funding provided for representation under the bill is to be an additional resource;
- Pro bono representation of children in dependency proceedings is encouraged; and
- There is no intent to limit the ability of a pro bono attorney to appear on behalf of a child.

The bill requires the court to appoint an attorney for a dependent child who:

- Resides in, or is being considered for placement in, a skilled nursing facility;
- Is prescribed a psychotropic medication and declines it;
- Has a developmental disability as defined by statute;²¹
- Is being placed in, or is considered for placement in, a residential treatment center; or
- Is a victim of human trafficking as defined by statute.²²

¹⁸ 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 (last visited February 13, 2014).

¹⁹ Section 393.063(9), F.S.

²⁰ Section 787.06(2)(d), F.S.

²¹ See fn. 19.

The bill requires the court to ask the Statewide Guardian Ad Litem Office for a recommendation for an attorney willing to work without additional compensation, or pro bono, prior to the court appointing an attorney on a compensated basis. The pro bono attorney must be available for services within 15 days after the court's request. If, however, the Statewide Guardian Ad Litem does not make a recommendation within 15 days after the court's request, the court may appoint a compensated attorney. Appointment by the court must be in writing. This provision prioritizes the use of pro bono attorneys or legal aid societies over other attorneys.

The bill directs the attorney representing the child to provide the complete range of legal services from removal from the home or initial appointment through all appellate proceedings. With court permission, the attorney is authorized to arrange for supplemental or separate counsel to handle appellate matters. The bill provides that the Justice Administrative Commission²³ will contract with appointed attorneys, whose fees will be limited to \$3,000 per child per year subject to appropriations and to review by the Commission for reasonableness. The bill does not limit the authority of the court to appoint an attorney for a proceeding under ch. 39, F.S.

The Department of Children and Families is tasked with identifying and requesting attorney representation for qualifying children, and may make rules to administer the provisions of the bill.

The bill has an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1 creates s. 39.01305, F.S., relating to appointment of an attorney for a dependent child with disabilities.

Section 2 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

If the bill were implemented statewide, it would have an indeterminate, but significant fiscal impact. The Department of Children and Families (DCF) estimated as of January 27, 2014, the number of children who meet the definition of a "dependent child with disabilities" is 3,915.²⁴ The cost of an attorney for each child is unknown. There is no standard for determination of fees and costs, nor is there a limit, creating a significant fiscal impact.

The bill specifies the implementation of this section is subject to appropriations expressly made for that purpose (lines 111-112). The House of Representatives proposed FY 2014-15 GAA appropriates \$200,000 in nonrecurring general revenue funds to be used by the Justice Administrative Commission to contract with attorneys selected by the Guardian ad Litem Program to represent dependent children as specified in this bill or similar legislation within the 11th Judicial Circuit²⁵, contingent upon this bill or similar legislation becoming law.

²² See fn. 20.

²³ Section 43.16, F.S.

²⁴ Department of Children and Families, 2014 Agency Legislative Bill Analysis on HB 561

²⁵ The 11th Judicial Circuit comprises Miami-Dade County.

The House of Representatives proposed FY 2014-15 GAA also appropriates \$323,000 in recurring general revenue funds to be used by the Justice Administrative Commission to contract with attorneys selected by the Guardian ad Litem Program to represent dependent children with disabilities in, or being considered for placement in, skilled nursing facilities. Attorney fees shall not exceed \$4,500 per child per year and due process costs shall not exceed \$5,000 per year per child. Funds anticipated to be in excess of those necessary to represent these children may be used for attorney training on legal issues involving children with disabilities. This appropriation will cover the costs of attorneys for any dependent child who resides in a skilled nursing facility statewide. This appropriation is not contingent upon this bill or similar legislation becoming law.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a positive fiscal impact on attorneys who represent the dependent children who meet the definitions of this bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides that the Department of Children and Families may adopt rules to administer the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 19, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides legislative findings recognizing that there already exist organizations that provide attorney representation to children in many jurisdictions in the state with some proven effect, and that it is not the intent that the funding under the bill to supplant those organizations which are effective and proven. The amendment provides that an attorney shall be appointed to represent the children described in the bill. The bill amendment also removed a reference to perpetrators of sexual abuse or human trafficking.

On April 11, 2014, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes the definition of "dependent child with suspected or known disability;"
- Recognizes and endorses the availability of pro bono attorney representation that is available to dependent children with certain special needs;
- Removes victims of sexual abuse from the class of children provided representation under the bill;
- Limits paid attorneys to fees of \$3,000 per child per year subject to approval by the Justice Administration Commission and subject to appropriations;
- Directs the Department of Children and Families to develop procedures to identify children in need of the services contemplated under the bill; and
- Allows the Department of Children and Families to implement rules to administer the provisions of the bill.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.