

## 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			

### 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 by an attorney. 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 appointed attorneys and provide access to funding for expert witnesses, depositions, and other costs of litigation for an appointed attorney, but a pro bono attorney is not reimbursed for costs incurred.

The bill 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 more dependent children with special needs are represented by pro bono attorneys, expenditures for contract registry attorneys will decrease and expenditures for due process costs associated with those cases will increase.

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.<sup>1</sup> The Guardian ad Litem program employs program attorneys to represent the best interest of the child in court. In certain dependency cases, in addition to the GAL Program, the court must appoint an attorney ad litem to represent the child.

##### 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."<sup>2</sup> Section 39.01305, F.S., requires the court to appoint an attorney to represent a dependent child with specific special needs. The specific enumerated special needs are for a child who:<sup>3</sup>

- 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.

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.<sup>4</sup> 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.<sup>5</sup> 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 available appellate proceedings.<sup>6</sup>

##### Justice Administrative Commission

In 1965, the Legislature enacted s. 43.16, F.S., creating the Justice Administrative Commission (JAC) to provide administrative services, such as budget management, for statewide judicial and justice

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<sup>1</sup> S. 39.822(1), F.S.; S. 39.820(1), F.S.

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

<sup>3</sup> S. 39.01305(3), F.S.

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

<sup>5</sup> *Id.*

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

related offices.<sup>7</sup> In 2004, the Legislature expanded the duties of the JAC to include the administrative duties related to contracting with court-appointed attorneys and related service providers.<sup>8</sup> Court-appointed attorneys are chosen from registries maintained by each judicial circuit.<sup>9</sup> A registry attorney executes a JAC registry contract<sup>10</sup> and his or her fees and expenses are submitted to the JAC for payment.<sup>11</sup>

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.<sup>12</sup> Payment to an attorney is subject to appropriations and review by the JAC.<sup>13</sup> 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.<sup>14</sup> In addition, a compensated attorney is reimbursed for costs.<sup>15</sup>

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 Bill**

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.

The bill would be 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.

## **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.

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<sup>7</sup> Ch. 65-328, Laws of Fla.

<sup>8</sup> Ch. 2004-265, Laws of Fla.; contracted services include services such as investigators, court reporters, and expert witnesses.

<sup>9</sup> 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](https://www.justiceadmin.org/court_app_counsel/P&P.pdf) (last accessed October 17, 2017).

<sup>10</sup> Justice Administrative Commission, *Instructions for Registry Contract*, available at:

[https://www.justiceadmin.org/court\\_app\\_counsel/agreementscontracts.aspx](https://www.justiceadmin.org/court_app_counsel/agreementscontracts.aspx) (last accessed October 16, 2017); Example Contract available at: [https://www.justiceadmin.org/court\\_app\\_counsel/contracts/2017-2018/Draft.pdf](https://www.justiceadmin.org/court_app_counsel/contracts/2017-2018/Draft.pdf).

<sup>11</sup> Justice Administrative Commission, *Court-Appointed Counsel*, available at:

[https://www.justiceadmin.org/court\\_app\\_counsel/index.aspx](https://www.justiceadmin.org/court_app_counsel/index.aspx) (last accessed October 16, 2017).

<sup>12</sup> S. 39.01305(5), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> S. 39.01305, F.S.

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 more dependent children with special needs are represented by pro bono attorneys, expenditures for contract registry attorneys will decrease and expenditures for due process costs associated with those cases will increase.

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.

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 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 certain special needs and \$27,007.16 in due process costs.<sup>16</sup>

### 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 does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>16</sup> Email from Veronica Vasquez, Public Records Coordinator, Justice Administrative Commission, Public Records Request, (Sept. 14, 2017) (On file with the Civil Justice & Claims Subcommittee Staff).

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.