

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/SB 1686

INTRODUCER: Judiciary Committee and Senator Rich

SUBJECT: Court Actions Involving Families

DATE: April 24, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Jameson</u>	<u>CF</u>	<u>Favorable</u>
2.	<u>Daniell</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill amends several sections of current law, as well as creates new law, to reflect legislative intent regarding the goal of implementing unified family court programs in the circuit courts. These additional provisions of legislative intent are added to statutory sections involving children and families.

Additionally, the bill provides that citizens affiliated with a not-for-profit legal aid organization, after completing a security background investigation, may be a guardian ad litem.

This bill substantially amends the following sections of the Florida Statutes: 39.001, 61.001, 61.402, 63.022, 68.07, 741.2902, 984.01, and 985.02. This bill creates the following sections of the Florida Statutes: 88.1041, 742.016, 743.001, and 1003.269.

II. Present Situation:

Unified Family Court

Families come to the attention of the courts in a variety of ways: through divorce, domestic violence, substance abuse, abandonment or abuse of children, or delinquency of children.¹ These families often move from courtroom to courtroom, where substantial expenditures in time and money are made, although core problems are not necessarily addressed.² In many cases, the

¹ Claudia Wright, *Representation of Children in a Unified Family Court System in Florida*, 14 U. FLA. J.L. & PUB. POL'Y 179, 180 (2003).

² *Id.*

parties are appearing before a different judge in each proceeding, making it possible for a judge to be unaware of previous or pending related legal matters involving the same children or family. The idea of the unified family court is to bring the child and his or her family before a court, preferably one specialized court, to solve problems.³ The American Bar Association described a unified family court in the following way:

A unified family court combines all the essential elements of traditional family and juvenile courts into one entity and contains other resources, such as social services, critical to the resolution of a family's problems. It is a comprehensive court with jurisdiction over all family-related legal matters. The structure of a unified family court promotes the resolution of family disputes in a fair, comprehensive, and expeditious way. It allows the court to address the family and its long-term needs as well as the problems of the individual litigant. Through its insistence on collaboration among court staffs and units, its "team approach," and its outreach to social service providers and local volunteers, a unified family court can provide the highest quality of service to its clients and its community.⁴

The judge is often considered a "therapeutic agent," in a unified family court setting, whose "role is to try to prevent further disruptions and further trauma to the child."⁵

Domestic relations cases are the largest and fastest growing segment of state civil court caseloads; in 1994, 4.7 million domestic relations cases were filed in state courts.⁶ As of 1998 and 1999, these cases constituted the largest percentage of all circuit court filings in Florida – over 40 percent.⁷ At over 70 percent, these cases also represented the largest percentage of circuit court reopenings in Florida.⁸ Against this backdrop, the Florida Supreme Court created the Family Court Steering Committee in 1994 to, among other things, advise the Court about the circuit courts' responses to families in litigation and make recommendations on the characteristics of a model family court.⁹

Florida is currently moving toward a unified family court system.¹⁰ In its May 3, 2001, order adopting the findings of the Report of the Family Court Steering Committee, the Florida Supreme Court declared:

If the judicial system encourages alternatives to the adversarial process, empowers litigants to reach their own solutions, and assists in crafting solutions that promote long-term stability in matters involving children

³ *Id.*

⁴ AMERICAN BAR ASSOCIATION, WHAT IS A UNIFIED FAMILY COURT?, <http://www.abanet.org/unifiedfamcrt/about.html#top> (last visited April 18, 2007).

⁵ Eve Stotland and Cynthia Godsoe, *The Legal Status of Pregnant and Parenting Youth in Foster Care*, 17 U. FLA. J.L. & PUB. POL'Y 1, 30 (2006) (quoting Susan L. Brooks, *Therapeutic Jurisprudence and Preventive Law in Child Welfare Proceedings: A Family Systems Approach*, 5 PSYCHOL. PUB. POL'Y & L. 951, 955 (1999)).

⁶ AMERICAN BAR ASSOCIATION, *supra* note 4.

⁷ *In re Report of the Family Court Steering Committee*, 794 So. 2d 518, 520 n.3 (Fla. 2001).

⁸ *Id.*

⁹ *In re Report of the Commission on Family Courts*, 633 So. 2d 14, 18-19 (Fla. 1994).

¹⁰ Wright, *supra* note 1, at 179.

and families, the likelihood of future court intervention in the family should be decreased – whether this be through minimizing post-judgment litigation or preventing the dependent child of today from becoming the delinquent child of tomorrow. Our ultimate goal remains to facilitate the resolution of disputes involving children and families in a fair, timely, effective, and cost-efficient manner.¹¹

The Court also said, “[O]ur goal continues to be the creation of ‘a fully integrated, comprehensive approach to handling all cases involving children and families.’ . . . We therefore reaffirm our continued commitment to the broad principles espoused for a model family court in Florida. . . .”¹²

In 2005, the Legislature supported the Supreme Court’s recommendations by:

- Authorizing the Court to create a unique identifier for each person by which to identify all court cases related to that person or his or her family;
- Providing that specified orders entered pursuant to ch. 39, F.S., take precedence over court orders entered in other civil proceedings; and
- Providing that final orders and evidence admitted in proceedings under ch. 39, F.S., are admissible as evidence in subsequent civil proceedings under certain circumstances.¹³

In November 2006, the Committee on Judiciary released an interim project report entitled “Implementation of the Unified Family Court Model,” indicating that currently all 20 judicial circuits have implemented some form of a unified family court.¹⁴ According to the report, each circuit’s unified family court is unique, but all circuits have implemented some of the best practices endorsed by the Supreme Court, such as: case management/coordination, increased use of alternative dispute resolution, and use of magistrates and hearing officers. Factors influencing which elements of a unified family court that circuits have implemented include the size of the circuit, technology available to the courts in the circuit, and the availability of related services in the circuit. The reasons most frequently cited by circuits for limited implementation of a unified family court included lack of technology and funding.

Guardian Ad Litem Program

The Florida Guardian Ad Litem Program is a partnership of community advocates and professional staff acting on behalf of Florida’s abused and neglected children.¹⁵ A guardian ad litem (GAL) is a volunteer appointed by the court to protect the rights and advocate the best interests of a child involved in a court proceeding.¹⁶ As of August 31, 2006, there were 43,765

¹¹ *In re Report of the Family Court Steering Committee*, 794 So. 2d at 535-36.

¹² *Id.* at 519, 536.

¹³ Chapter 2005-239, L.O.F.

¹⁴ COMM. ON JUDICIARY., FLA. SENATE, IMPLEMENTATION OF THE UNIFIED FAMILY COURT MODEL (Interim Project Report 2007-133) (November 2006), http://www.flsenate.gov/data/Publications/2007/Senate/reports/interim_reports/pdf/2007-133ju.pdf (last visited April 19, 2007).

¹⁵ Florida Guardian ad Litem Program, <http://www.guardianadlitem.org/index.asp> (last visited April 20, 2007).

¹⁶ *Id.*

children under the Department of Children and Family Services' supervision and involved in court proceedings.¹⁷ Of this number, the Guardian Ad Litem Program represents 28,719 children.¹⁸ There are currently over 5,413 volunteers in the Guardian Ad Litem Program.¹⁹

Part XII of ch. 39, F.S., addresses GALs and guardian advocates. In 2003, the Statewide Guardian Ad Litem Office was created within the Justice Administrative Commission.²⁰ The Statewide Guardian Ad Litem Office's purpose is to oversee responsibilities for and provide technical assistance to all guardian ad litem and attorney ad litem programs located within the judicial circuits.²¹

Chapter 61, F.S., provides for the appointment of a GAL in a dissolution of marriage, modification, parental responsibility, custody, or visitation proceeding.²² In order to be a GAL under ch. 61, F.S., a person must be certified by the Guardian Ad Litem Program or be an attorney who is a member in good standing of The Florida Bar.²³ The Guardian Ad Litem Program must conduct a security background investigation as provided in s. 39.821, F.S., prior to certifying a person as a GAL.

III. Effect of Proposed Changes:

This bill amends several sections of current law, as well as creates new law, to reflect the Legislature's goal of moving toward a unified court system. The bill adds the following legislative intent provisions to certain Florida Statutes:

- It is the intent of the Legislature to provide a comprehensive and integrated approach to handling all cases that involve children and families, while at the same time resolving family disputes in a fair, timely, efficient, and cost-effective manner.
- It is in the best interests of this state that the courts embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system.
- The legal system should focus on the needs of children, refer families to resources that will make their relationships stronger, coordinate family cases to provide consistent results, and strive to leave families more stable than when they entered the system.
- It is the intent of the Legislature to support the development of a unified family court and to support the state court system's efforts to improve the resolution of disputes involving children and families through a comprehensive and integrated approach that

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Chapter 2003-53, L.O.F.

²¹ Section 39.8296(2)(b), F.S.

²² Section 61.401, F.S.

²³ Section 61.402, F.S.

includes coordinated case management, the concept of “one family, one judge,” community collaboration, and alternative dispute resolution.

This language is added to, or created in, the following sections of Florida Statutes:

- Chapter 39 (proceedings relating to children);
- Chapter 61 (dissolution of marriage);
- Chapter 63 (adoption);
- Section 68.07 (name change);
- Chapter 88 (interstate family support act);
- Chapter 741 (marriage and domestic violence);
- Chapter 742 (paternity);
- Chapter 743 (removal of disability of nonage of minors);
- Chapter 984 (children and families in need of services);
- Chapter 985 (juvenile justice); and
- Chapter 1003 (public K-12 education).

This bill also amends s. 61.402, F.S., to provide that a citizen affiliated with a not-for-profit legal aid organization²⁴ may be a guardian ad litem, after completing a positive security background investigation as described in s. 39.821, F.S. A security background investigation must include, but is not limited to, employment history checks, checks of references, local criminal records checks through local law enforcement agencies, and statewide criminal records checks through the Department of Law Enforcement.²⁵

This bill provides that the act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁴ A “not-for-profit legal aid organization” means a “not-for-profit organization operated in this state that provides as its primary purpose civil legal services without charge to eligible clients.” Section 68.096(4), F.S.

²⁵ Section 39.821(1), F.S.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

According to the Office of the State Courts Administrator, to the extent the unified family court concepts in the bill would result in a reduction of the number of hearings private parties are required to attend, the parties would save time and attorney's fees. However, neither the number of hearings that would be eliminated, nor the average length of time per hearing, is known. Therefore, the precise cost savings to private parties cannot be determined.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) does not anticipate immediate expenditures as a result of this bill, but to the extent the bill encourages the state courts system to move toward full implementation of a unified family court, OSCA does expect that its efforts to improve the effectiveness and efficiency of the courts for the benefit of children and families would be enhanced.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill codifies virtually identical legislative intent language regarding a unified family court in multiple sections and chapters of the Florida Statutes. This approach does create a risk that – over time – the language may be revised in one section but inadvertently not in others, resulting in potentially inconsistent provisions. The Legislature may wish to consider creating one section to articulate its intent on this subject and specifying within that section that it is designed to apply to multiple policy areas.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
