

**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 Rules

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BILL: CS/SB 124

INTRODUCER: Judiciary Committee and Senator Bean and others

SUBJECT: Dependent Children

DATE: March 12, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<b>Favorable</b>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
3.	<u>Preston</u>	<u>Phelps</u>	<u>RC</u>	<b>Pre-meeting</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 124 addresses the complications that arise when a dependent child or young adult is involved in legal proceedings in multiple courts and jurisdictions.

For example, the courts of the county having jurisdiction over a child's dependency case lose jurisdiction to appoint a guardian for the child if the child is placed in a living arrangement outside of that county. Similarly, the courts of the county having jurisdiction over an incapacitated young adult's dependency case lose jurisdiction to appoint a guardian for the young adult if he or she is placed in a specialized and supportive living arrangement outside of the county. The bill addresses this issue by creating an additional guardianship venue<sup>1</sup> provision that permits venue in the county with jurisdiction of the dependency case.

The bill also addresses issues concerning a dependent child who is involved in juvenile justice proceedings. In addressing these issues, the bill:

- Permits the court, before making a final disposition in juvenile proceedings, to receive and consider any information provided by the Guardian Ad Litem Program and the child's attorney ad litem, if appointed, when the child is also under the jurisdiction of a dependency court;

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<sup>1</sup> Venue refers to the proper location for a lawsuit to proceed, generally because the location has a connection to the plaintiff, defendant, or the facts of the case. BLACK'S LAW DICTIONARY (10<sup>th</sup> ed. 2014).

- Requires the Department of Juvenile Justice to notify the dependency court, the Department of Children and Families, and if appointed, the Guardian Ad Litem Program and the child's attorney ad litem before transferring a dependent child who is in the custody of the Department of Juvenile Justice from one facility or program to another;
- Permits a court, when receiving a quarterly report in juvenile proceedings, to receive and consider any information provided by the Guardian Ad Litem Program or the child's attorney ad litem, if appointed, if the child is under the jurisdiction of a dependency court; and
- Adds the Guardian Ad Litem Program to the group of entities that may serve on a community reentry team that helps a youth transition from a residential commitment facility to adulthood.

The bill takes effect upon becoming a law.

## II. Present Situation:

### Venue, Guardianship Proceedings, and Dependency for Children and Young Adults

Children who are dependent and have developmental disabilities or other issues are often in need of a court-appointed guardian when they turn 18 years old.<sup>2</sup> To avoid a gap in available care or protections, the guardianship proceedings must begin in advance of the child's 18th birthday.<sup>3</sup> However, complications for guardianship proceedings arise when these children are placed in a living arrangement outside of the county of the child's dependency court. Another group adversely affected by these venue provisions are incapacitated young adults with a disability whose stay in foster care is extended up to the 22nd birthday and a guardian has not been appointed. Similarly, when the dependent young adult is living in a specialized and supportive placement outside of the county of his or her dependency court and a need for guardianship proceedings arises, venue is limited to the county of his or her foster care residence.

Due to the requirements of dependency statutes in chapter 39, F.S.,<sup>4</sup> and the guardianship statutes in chapter 744, F.S.,<sup>5</sup> the guardianship proceedings for a dependent child or young adult must occur in the county where the dependent child or young adult resides. When the dependent child or young adult resides outside of the county of the dependency court, the caseworkers often must locate an attorney in another circuit to handle the proceedings. Case managers must also be found in the other circuit who are willing to attend hearings.

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<sup>2</sup> Without a guardianship, when the youth reaches the age of 18, he or she will be able to exercise all of the rights of adulthood but likely cannot manage those responsibilities. For example, he or she might decline a needed medical procedure because of a fear of surgery. If a guardian is appointed, the child's best interests will be better protected. Telephone interview with Tracy Ellis, General Magistrate, Dependency Division, Thirteenth Judicial Circuit, in Tampa, Fla. (Jan. 29, 2019).

<sup>3</sup> See s. 39.701(3)(c), F.S.

<sup>4</sup> Proceedings to appoint a guardian for a dependent child, which include proceedings for the determination of incapacity and proceedings for the appointment of a guardian, must be "conducted in a separate proceeding in the court division with jurisdiction over guardianship matters and pursuant to chapter 744." Section 39.701(3)(b)4., F.S.

<sup>5</sup> Under the guardianship statutes in chapter 744, F.S., the proper location or venue for incapacity proceedings is the county where the alleged incapacitated person resides or is found. However, the venue for proceedings to appoint a guardian is limited to the county where the incapacitated person resides. Section 744.1097, F.S.

If a court in a county having jurisdiction over the dependency case were allowed to hear the guardianship petition, those who know the child or young adult best will be in a better position to assist with the guardianship proceedings.<sup>6</sup>

## **Juvenile Justice and Dependency and Delinquency Proceedings**

### ***Procedure***

When a court determines that a child has committed a delinquent act<sup>7</sup> the court may order the Department of Juvenile Justice to prepare a predisposition report concerning the child's placement, priority needs, and plan for treatment. The juvenile probation officer then meets with the child's family, the guardian ad litem staff, and possibly others to gather information about the child and make a recommendation for the child's placement. If a residential commitment is anticipated or recommended, the court must order a comprehensive evaluation of the child's overall physical and mental health and related issues.

Before making a final disposition of the case, the court must consider the child's assessment, predisposition report, and previous records of earlier juvenile delinquency proceedings. The court may also order additional evaluations, studies, and educational needs assessments that will be included in the assessment and predisposition report.

### ***“Crossover” Children***

Children who have legal matters pending simultaneously in the juvenile justice system and dependency court, or who are dually served by the Department of Juvenile Justice and the Department of Children and Families, are commonly referred to as crossover children. According to the Department of Children and Families, there were 1,003 crossover children in November 2018.<sup>8</sup> Of those children, 36 percent are currently placed in a location that is outside of the county from which they were removed. Nineteen percent are currently placed outside of the judicial circuit from which they were removed, and 31 percent of children between the ages of 13 and 17 live in group care.<sup>9</sup>

When a child is living outside of the circuit that has dependency jurisdiction, it can be burdensome for the dependency judge to gather all of the pertinent information needed to make a decision about the child's best interests. It can also be difficult for the dependency court, guardians ad litem, and others to be aware of changes and accordingly advocate for the child's best interest. Moreover, if the dependency and delinquency case workers are not sharing their information, needed services for the child may be delayed. For example, when a child does not have an advocate and a delinquency case closes, it might be difficult to locate appropriate

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<sup>6</sup> Telephone interview with Tracy Ellis, General Magistrate, Dependency Division, Thirteenth Judicial Circuit, in Tampa, Fla. (January 29, 2019).

<sup>7</sup> A “child who has been found to have committed a delinquent act” means a child who, under chapter 985, F.S., is found by a court to have committed a violation of law or is found to be in direct or indirect contempt of court except that it does not mean an act constituting contempt of court arising from a dependency proceeding or a proceeding concerning a child or family in need of services. Section 985.03(9), F.S.

<sup>8</sup> Florida Department of Children and Families, *Child Welfare Key Indicators Monthly Report*, Dually Served Youth, 53 (December 2018), [http://centerforchildwelfare.fmhi.usf.edu/qa/cwkeyindicator/KI\\_Monthly\\_Report\\_DEC\\_2018.pdf](http://centerforchildwelfare.fmhi.usf.edu/qa/cwkeyindicator/KI_Monthly_Report_DEC_2018.pdf).

<sup>9</sup> *Id.* at 47 and 50.

services or placement for the child which may cause the child to remain in a commitment facility longer than his or her sentence.<sup>10</sup>

### **Guardian Ad Litem Program**

The Guardian ad Litem program consists of more than 170 lawyers and 11,000 volunteer advocates who represent a child's best interest when the child is abused, abandoned, or neglected and cannot remain at home because it is not a healthy or safe environment. In 2018, 32,396 children were removed from their homes and placed under the jurisdiction of a dependency court.<sup>11</sup>

When a child is removed from the home, the legal proceedings begin in dependency court. The guardian ad litem program is then appointed by a judge to represent the child's best interest and advocate for things the child is legally entitled to receive. The program uses a team approach involving volunteers, Child Advocate Managers, and Best Interest Attorneys. Guardian ad Litem attorneys advocate for expedited permanency, compliance with time frames, stable placements in schools, healthcare, mental health services, and visitation. The guardian ad litem volunteers regularly visit the child to understand the child's needs, explain the legal process to the child, and appear in court when needed.<sup>12</sup>

## **III. Effect of Proposed Changes:**

### **Guardianship Venue (Section 1)**

Current law limits venue for guardianship proceedings for a dependent child or young adult living in foster care up to his or her 22nd birthday to the county where the child or young adult resides. Under the bill, the guardianship proceedings may be held either in the county where the child or young adult resides *or* in the county that has jurisdiction of the dependency case.

Similarly, the bill provides that the guardian does not have to transfer the guardianship case when the child or young adult moves to a different county. This is an exception to the guardianship statutes that generally require the venue of a guardianship case to be transferred to the ward's new county of residence.

These changes will allow the dependency court and case workers who know the child or young adult best to have more input and control over the guardianship process.

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<sup>10</sup> Florida Statewide Guardian Ad Litem Office, *SB 124 Bill Analysis* (Jan. 4, 2019) (on file with the Senate Committee on Judiciary).

<sup>11</sup> *I Am for the Child*, Guardian ad Litem Program 2018 Annual Report, <https://guardianadlitem.org/wp-content/uploads/2018/01/FINAL-EDITED-GAL-2018-Annual-Report-1.pdf>.

<sup>12</sup> *Id.*

## **Juvenile Justice and Children in Dependency and Delinquency Proceedings (Sections 2, 3, 4, and 5)**

### ***Predisposition Reports (Subsection 2)***

The bill expressly allows a court to receive and consider information from additional sources before making a final disposition of a juvenile justice case that involves a child under the jurisdiction of a dependency court. These information sources include the Guardian Ad Litem Program and the child's attorney ad litem, if appointed.

### ***Commitment and Transfers of a Child (Subsection 3)***

Before the Department of Juvenile Justice may transfer a dependent child from one facility or program to another, the Department must provide notice to the dependency court and the Department of Children and Families, and if either one is appointed, also to the Guardian Ad Litem Program and to the child's attorney ad litem.

### ***Other Dispositional Issues and Quarterly Reports (Subsection 4)***

The statute is amended to provide that the Guardian Ad Litem Program or the child's attorney ad litem may present information to the juvenile delinquency court when other parties present quarterly report information for a child who is also under the jurisdiction of a dependency court. For example, this input could include information provided by a guardian ad litem based upon visits with the child or might include options for a future placement based upon identifying a new relative of the child.<sup>13</sup> The current statute does not preclude them from offering information, but this clarifies that the two entities may provide information about the child to the court.

### ***Transitions from a Residential Facility to Adulthood (Section 5)***

This bill adds the Guardian Ad Litem Program to the list of representatives who may serve on a community reentry team. Community reentry teams develop life skills training to aid a youth's transition from residential commitment facilities to adulthood. The teams may currently include representatives from school districts, law enforcement agencies, workforce development services, community-based service providers, and the youth's family.<sup>14</sup>

### **Conforming Changes (Sections 6, 7, and 8)**

The remaining three sections of the bill (sections 322.051(9), 322.21(1)(f), and 382.0255(3), F.S.) republish provisions of the law for the purpose of incorporating changes made in a cross-reference. These are not substantive changes made to the statutes.

### **Effective Date**

The bill takes effect upon becoming a law.

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<sup>13</sup> See *supra* note 11.

<sup>14</sup> Section 985.461(4)(b), F.S.

**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:

The Office of the State Courts Administrator states that the fiscal impact of the legislation cannot be accurately known because the data is not available to determine the effects this bill will have on judicial time and workload.<sup>15</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Florida Rules of Juvenile Procedure may need to be amended to address changes made by the bill.

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<sup>15</sup> Office of the State Courts Administrator, *Senate Bill 124 Judicial Impact Statement* (Jan. 17, 2019) (on file with the Senate Committee on Judiciary).

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 744.1097, 985.43, 985.441, 985.455, and 985.461.

This bill re-enacts the following sections of the Florida Statutes: 322.051, 322.21, and 382.0255.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Judiciary on February 4, 2019:**

The committee substitute amends the venue provisions of the underlying bill to include the category of an incapacitated young adult who is under the jurisdiction of a dependency court. As such, venue for a guardianship proceeding for an incapacitated dependent young adult may be either in the county where the young adult resides or in the county having jurisdiction of the dependency case.

- B. **Amendments:**

None.