

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 715 Court-Appointed Psychologists  
**SPONSOR(S):** Rivera and others  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** CS/SB 2050 (s)

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Health Standards (Sub)</u>	_____	<u>Mitchell</u>	<u>Collins</u>
2) <u>Health Care</u>	_____	_____	_____
3) <u>Judiciary</u>	_____	_____	_____
4) <u>Judicial Appropriations (Sub)</u>	_____	_____	_____
5) <u>Appropriations</u>	_____	_____	_____

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### SUMMARY ANALYSIS

HB 715 creates s. 490.0122, F.S., to provide that a psychologist, appointed by the court to conduct an evaluation in a child custody proceeding, is presumed to be acting in good faith if the evaluation is conducted using the standards of the American Psychological Association's Guidelines for Child Custody Evaluation in Divorce Proceedings.

The bill allows a judge who presides over any child custody hearing to review a petition to file suit against a court-appointed psychologist and to appoint another psychologist, if the judge deems the evaluation did not meet standard guidelines. The petitioner would have to pay all courts costs and attorneys fees associated with the review. The bill provides that administrative complaints cannot be filed with the department anonymously.

The effective date of the bill is upon becoming law.

Currently, a parent or legal guardian may file a complaint with the department against a court-appointed psychologist when they are in disagreement with the psychologist's evaluation. Complaints may be filed anonymously. A parent or legal guardian may also file a suit against a psychologist without first petitioning the court.

The Florida Board of Psychology has been concerned with the number of administrative complaints filed against licensed psychologists who are appointed to evaluate minors in child custody cases. The non-custodial parent files a majority of complaints. The board has dismissed most of the complaints as not valid. Over the past seven years there have been 46 custody cases, relating to administrative complaints that have cost approximately \$58,000. The average costs for each complaint is approximately \$1300. Only 8 cases resulted in a finding of probable cause.

The board is also concerned that many qualified psychologists that perform the evaluations are requesting not to be appointed because they are fearful of being brought into a suit or having an administrative complaint filed against them.

The board is presently amending Rule 64B19-18.007, F.A.C., to provide licensed psychologists a minimum standard of performance in court ordered child custody evaluations to address these issues.

Establishing these guidelines in statute may help protect court appointed psychologists who perform child custody evaluations from suits and complaints.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0715.hc.doc  
**DATE:** April 8, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

HB 715 creates s. 490.0122, F.S., governing administrative, civil and criminal actions against court-appointed psychologists in proceedings involving child custody matters;

Provisions of the bill:

- Provide a presumption that a court-appointed psychologist in a custody matter is acting presumptively in good faith if the evaluation is done in accordance with standards consistent with the American Psychological Association's guidelines for such evaluations in divorce proceedings;
- Prohibit a complainant from filing an anonymous administrative complaint against a psychologist as an exception to s. 456.073(1), F.S.;
- Require presuit filing of a petition for appointment of another psychologist prior to any legal action against a psychologist;
- Require petitioner to bear cost and reasonable attorneys fees associated in successful action for appointment of another psychologist; and
- Provide for recovery of attorneys fees and costs to prevailing party in legal action against court-appointed psychologist.

The effective date of the bill is upon becoming law.

The provision for guidelines for court appointed psychologists performing custody evaluations may prevent suits and complaints filed against the psychologist.

#### PRESENT SITUATION

Currently, a parent or legal guardian may file a complaint with the department against a court-appointed psychologist when they are in disagreement with the psychologist's evaluation. Complaints may be filed anonymously. A parent or legal guardian may also file a suit against a psychologist without first petitioning the court.

The Florida Board of Psychology has been concerned with the number of administrative complaints filed against licensed psychologists who are appointed to evaluate minors in child custody cases. The non-custodial parent files a majority of complaints. The board has dismissed most of the complaints as not valid. Over the past seven years there have been 46 custody cases, relating to administrative complaints that have cost approximately \$58,000. The average costs for each complaint is approximately \$1300. Only 8 cases resulted in a finding of probable cause.

The board is also concerned that many qualified psychologists that perform the evaluations are requesting not to be appointed because they are fearful of being brought into a suit or having an administrative complaint filed against them.

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### **Court Ordered Social Investigations**

Child custody, visitation and parenting issues may arise in child support, divorce, custody and visitation, termination of parental rights, dependency, and guardianship cases. In proceedings under chapter 61, F.S., a court may order a social investigation of the family if one hasn't been done or if the one that has been done is insufficient. The social investigation must include all pertinent details relating to the child and each parent. The court-appointed or selected staff conducting the social investigation must give to the court and all parties of record a copy of the written study including recommendations and statement of facts upon which the recommendations are based.

Although such investigations may contain hearsay and other inadmissible information under typical judicial proceedings, the rules of evidence do not preclude their consideration by the court. There are no statutory standards or uniform format for conducting such evaluations or investigations in child custody matters.

There are, however, some voluntary professional guidelines that have been developed that professionals in the field follow such as the Guidelines for Child Custody Evaluations in Divorce Proceedings, American Psychologist Association, Committee on Ethical Guidelines for Forensic Psychologists, Specialty Guidelines for Forensic Psychologists, and Association of Family and Conciliation Courts, Model Standards of Practice for Child Custody Evaluations.

With the exception of the indigent party, the adult parties involved in the child custody proceeding share financial responsibility for the expense of the social investigation which is taxed and ordered to be paid as costs in the proceedings.

### **Evaluators in Child Custody Matters**

In a judicial proceeding involving child custody issues, an evaluator may be privately retained or court-appointed. It is not known what processes the various courts use to appoint or select evaluators. Under s. 61.20, F.S., the following persons or entities are the only ones that may conduct a social investigation and study relating to child custody or parental responsibility determinations:

- Qualified staff of the court
- A child-placing agency licensed pursuant to s. 409.175, F.S.
- A psychologist licensed under chapter 490, F.S.
- A licensed clinical social worker licensed under chapter 491, F.S.
- A licensed marriage and family therapist, licensed under chapter 491, F.S.
- A licensed mental health counselor licensed under chapter 491, F.S.
- Qualified staff of the Department of Children and Family Services if a party is indigent and no other qualified staff is available.

Each of the aforementioned professionals has varying degrees of training and expertise as required by their licensure. Each of these professionals with the possible exception of qualified court staff or staff of the Department of Children and Family Services is regulated by his or her respective governing board under which the professional may be disciplined or have a license suspended or denied.

Any person can file an administrative complaint against one of these professionals. A copy of the administrative complaint must be given to the health care professional. The complaint remains

confidential until 10 days after the probable cause panel of the respective board determines whether a violation occurred. However, patient identity and patient records remain confidential at all times.

Current law allows a person to file an administrative complaint anonymously against any health professional as long as the complaint is in writing and the complaint contains an allegation of possible violation of the law. See s. 456.073(1), F.S. Such complaint must be investigated if it is determined that the alleged violation of law and/or rule is substantial and there is reason to believe, after a preliminary inquiry, that the alleged violation in the complaint is true. As of July 1, 2002, the Department of Health, Division of Medical Quality Assurance assumed responsibility for processing administrative complaints and reports involving potential misconduct of a licensee and initiating investigations when appropriate.

C. SECTION DIRECTORY:

**Section 1.** Creates s. 490.0122, F.S., relating to court-appointed psychologists in child custody proceedings.

**Section 2.** Establishes the bill shall take effect upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce the number of civil suits and administrative complaints filed against court-appointed psychologists and reduce the cost of their defense in such proceedings.

D. FISCAL COMMENTS:

Legislative staff have expressed concern that any reference to court related fees and costs risks conflict with changes currently being made in Article V legislation, and may have to be corrected in a subsequent legislative session.

According to the Department of Health, because the term "claimant" is not defined, the department could potentially be liable for attorney fees and administrative fees for work lost by the psychologist.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

##### 2. Other:

#### B. RULE-MAKING AUTHORITY:

No rule promulgation is required by the bill.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The legal office of the Department of Health suggests the proposed legislation confuses civil and administrative actions, as well as the submission of a complaint to the department against a Chapter 490 licensee. Clarification is needed with regard to the word "suit." The reference to filing of an administrative complaint is also unclear. The bill does clarify whether the intent is to require that there not be any anonymous complaints to the department against a psychologist following a child custody evaluation, or whether if there is a complaint it requires the name, address and phone number of the complainant within the actual administrative complaint.

The department recommends references to "a suit or a complaint" in section 2 of the bill.

The department also recommends inserting the word "qualified" before the word psychologist. In the court arena, "qualified" means the court has previously deemed the psychologist acceptable as a custody evaluator. The qualified psychologist conducts evaluations recommended by The American Psychological Association's Guidelines for Child Custody Evaluation in Divorce Proceedings.

The department suggests the bill define "claimant." According to the department, a definition of claimant should clarify that the claimant is the parent or legal guardian who is filing suit or an administrative complaint.

The department is also concerned that the bill provides that administrative complaints cannot be filed with the department anonymously. This provision conflicts with s. 456.073(1), F.S., that states the department may investigate an anonymous complaint if the complaint is in writing and is legally sufficient.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES