

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.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/SB 1582

INTRODUCER: Children, Families & Elder Affairs Committee and Senator Joyner

SUBJECT: Guardians ad Litem

DATE: March 27, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Jameson	CF	Fav/CS
2.			JU	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Committee Substitute for Senate Bill 1582 provides that a person certified by a not-for-profit legal aid organization may serve as a guardian ad litem in a domestic relations case after the organization has completed a security background investigation on the person.

This bill substantially amends the following sections of the Florida Statutes: 61.402.

II. Present Situation:

Section 61.401, F.S., allows a court to appoint a guardian ad litem (GAL) in a domestic relations case, if the court finds it is in the best interest of the child. The court is required to appoint a GAL in a domestic relations case if the case also involves a verified and well-founded allegation of child abuse, neglect or abandonment.¹

¹Section 39.822(1), F.S., requires the court to appoint a guardian ad litem to represent the child at the earliest possible time in any abuse, abandonment, or neglect judicial proceeding.

In order to be a GAL, a person must be either a citizen certified by the GAL program to act in family law cases or an attorney who is a member in good standing of the Florida Bar.² The GAL program must conduct a security background investigation as provided in s. 39.821, F.S., prior to certifying a person to be appointed as a GAL under ch. 61, F.S.³

Section 39.821(1), F.S., provides that a security background investigation must ensure that a person is not certified to be a GAL if he or she has been convicted of, or entered a plea of *nolo contendere* or guilty to, any offense prohibited under s. 435.04(2), F.S.⁴ The 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.⁵

The GAL program may also request a federal criminal records check of a GAL applicant through the Federal Bureau of Investigation, giving particular emphasis to past activities of the applicant involving children. The GAL program has the sole discretion to determine whether to certify a person based on his or her security background investigation.⁶

The Statewide GAL Office (the Office) oversees the operation of the GAL programs in the 20 judicial circuits.⁷ Since FY 2004-2005, the Office has operated under proviso language stating that "[f]unds and positions ... shall not be used to represent children in dissolution of marriage proceedings unless the child is also subject to dependency proceedings."⁸ As a result of this limitation, the Office currently does not certify citizens to act in family law cases, and the only individuals who serve as GALs in such cases are court-appointed attorneys.

The Office requires volunteer GALs to meet the following criteria:

- Be at least 19 years old;
- Complete and submit an application and photo identification;
- Sign a release for the Florida Department of Law Enforcement's Florida criminal history check;
- Provide two written character references;
- Interview with local program director;
- Successfully complete 30 hours of training, including classroom lecture and courtroom observation; and

² Section 61.402, F.S.

³ *Id.*

⁴ Section 435.04(2), F.S., identifies many disqualifying offenses, including sexual misconduct, abuse, neglect, or exploitation of elderly, disabled or minor persons, murder, manslaughter and certain assault, battery and drug-related offenses.

⁵ Section 39.821(1), F.S.

⁶ *Id.*

⁷ Statewide Guardian ad Litem Office, *Analysis of SB 1582* (March 17, 2008).

⁸ Ch. 2004-268, L.O.F., Ch. 2005-70, L.O.F., Ch. 2006-25, L.O.F., and Ch. 2007-72, L.O.F.

- Sign the Code of Conduct.⁹

III. Effect of Proposed Changes:

This bill amends s. 61.402, F.S., to provide that a person certified by a not-for-profit legal aid organization¹⁰ may serve as a guardian ad litem in a domestic relations case, if there are no allegations of child abuse, neglect or abandonment. The bill provides that a legal aid organization must complete a security background investigation that conforms to the requirements of s. 39.821, F.S., before certifying a guardian ad litem to serve in a domestic relations case.

This bill provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the Office, enabling individuals certified by not-for-profit legal aid organizations to serve as guardians ad litem in certain cases may result in the appointment of guardians for children who otherwise would not have access to such representation.¹¹

C. Government Sector Impact:

None.

⁹ Florida Guardian ad Litem Program, *Volunteer Application Process*, http://www.guardianadlitem.org/vol_app_process.asp (last visited March 16, 2008).

¹⁰ 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.

¹¹ Statewide Guardian ad Litem Office, *Analysis of SB 1582* (March 17, 2008).

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires that the new category of GALs be certified by a not-for-profit legal aid organization, but it does not specifically require training or supervision of the GALs. The Statewide GAL Office does not provide GAL representation in dissolution proceedings, but rather attempts to meet the needs of as many children as possible who are abused, neglected or abandoned, consistent with current law. As such, the individuals appointed as a result of this bill will not be screened, trained or supervised by the Office.¹²

VIII. Additional Information:

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

CS by Children, Families and Elder Affairs on March 26, 2008:

Requires that guardians ad litem appointed pursuant to the bill must be certified by (rather than affiliated with) a legal aid organization, and clarifies that such guardians ad litem can only be appointed in domestic relations cases that do not include allegations of child abuse.

- B. **Amendments:**

None.

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

¹² Statewide Guardian ad Litem Office, *Analysis of SB 1582* (March 17, 2008).