

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 Judiciary Committee

BILL: CS/CS/SB 1582

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

SUBJECT: Guardians Ad Litem

DATE: April 17, 2008 **REVISED:** _____

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

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill provides that a person certified by a not-for-profit legal aid organization may serve as a guardian ad litem in dissolution of marriage cases, as long as there are no allegations of child abuse, neglect, or abandonment, and after the organization has completed a security background investigation on the person.

The bill further requires a not-for-profit legal aid organization to provide training to a person to be certified as a guardian ad litem. The training program is to be developed and approved by The Florida Bar or, until The Florida Bar approves such a program, the program is to be developed by a curriculum committee established by the not-for-profit legal aid organization.

This bill substantially amends section 61.402, Florida Statutes.

II. Present Situation:

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.¹ 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."² As of September 14, 2007, there were 32,411 children represented by the Guardian ad Litem Program.³ There are currently 5,687 certified volunteers in the Guardian ad Litem Program.⁴

Section 61.401, F.S., allows a court to appoint a GAL in domestic relations cases, if the court finds it is in the best interest of the child. A court is required to appoint a GAL in cases that involve a verified and well-founded allegation of child abuse, neglect, or abandonment.⁵

In order to be a GAL, a person must either be "a citizen certified by the Guardian ad Litem Program to act in family law cases or an attorney who is a member in good standing of The Florida Bar."⁶ The Guardian ad Litem 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.⁷ 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.⁸

The Guardian ad Litem 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.⁹ The security background investigation is meant to ensure that a person is not certified as a GAL if he or she has been convicted of, regardless of adjudication, or entered a plea of *nolo contendere* or guilty to, any offense prohibited under s. 435.04(2), F.S.¹⁰ The Guardian ad Litem Program has the sole discretion to determine whether to certify a person based on his or her security background investigation.¹¹

¹ FLORIDA GUARDIAN AD LITEM PROGRAM, <http://www.guardianadlitem.org/index.asp> (last visited April 10, 2008).

² *Id.* at http://www.guardianadlitem.org/vol_faq.asp (last visited April 10, 2008).

³ *Id.*

⁴ *Id.* This number is current through July 31, 2007.

⁵ Section 61.401, F.S. The court is required to appoint a guardian ad litem to represent the child at the earliest possible time in proceedings involving child abuse, neglect, or abandonment. Section 39.822(1), F.S.

⁶ Section 61.402, F.S.

⁷ *Id.*

⁸ Section 39.821(1), F.S.

⁹ *Id.*

¹⁰ *Id.* Section 435.04(2), F.S., identifies many disqualifying offenses, including, but not limited to, sexual misconduct, abuse, neglect, or exploitation of aged or disabled persons, murder, manslaughter, kidnapping, and certain assault, battery, and drug-related offenses.

¹¹ Section 39.821(1), F.S.

The Statewide Guardian ad Litem Office (the Office) oversees the operation of the Guardian ad Litem Program in the 20 judicial circuits.¹² Since FY 2004-2005, the Office has operated under proviso language stating that “[f]unds and positions ... shall not be utilized to represent children in dissolution of marriage proceedings unless the child is also subject to dependency proceedings.”¹³ As a result of this limitation, as well as the Guardian ad Litem Program’s limited resources, the Office currently does not certify citizens to act in dissolution of marriage proceedings (ch. 61, F.S.). Individuals who serve as GALs in such cases are usually 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 the local program director;
- Successfully complete 30 hours of training, including classroom lecture and courtroom observation; and
- Sign the Code of Conduct.¹⁴

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 organization¹⁵ may serve as a guardian ad litem in dissolution of marriage cases, as long as there are no allegations of child abuse, neglect, or abandonment. The bill provides that a not-for-profit legal aid organization must complete a security background investigation that conforms to the requirements of s. 39.821, F.S., before certifying a person as a guardian ad litem.

Additionally, a not-for-profit legal aid organization must provide training to a person before certifying him or her to be a guardian ad litem under this section. The training program is to be developed and approved by The Florida Bar and is to be available without charge to not-for-profit legal aid organizations. The bill provides that until The Florida Bar approves a training program, the not-for-profit legal aid organization shall provide training developed by a curriculum committee established by the organization, which is comprised of, at a minimum, a family law judge, a mental health professional who specializes in the treatment of children, and two members of The Florida Bar who are active guardians ad litem.

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

¹² Statewide Guardian ad Litem Office, *Analysis of CS/SB 1582* (April 10, 2008).

¹³ See ch. 2004-268, specific appropriation 836A, Laws of Fla.; ch. 2005-70, specific appropriation 846, Laws of Fla.; ch. 2006-25, specific appropriation 884, Laws of Fla.; and ch. 2007-72, specific appropriation 922, Laws of Fla.

¹⁴ FLORIDA GUARDIAN AD LITEM PROGRAM, *Volunteer Application Process*, http://www.guardianadlitem.org/vol_app_process.asp (last visited April 10, 2008).

¹⁵ 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.

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 Statewide Guardian ad Litem Office, it is possible that enabling individuals certified by not-for-profit legal aid organizations to serve as guardians ad litem in certain cases could allow courts to appoint guardians for children who otherwise would not have access to such representation.¹⁶

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Statewide Guardian ad Litem Office (the Office) does not provide guardian ad litem (GAL) representation in dissolution of marriage proceedings, but rather attempts to meet the needs of as many children as possible who are abused, neglected, or abandoned.¹⁷ According to the Office, the citizens appointed as a result of this bill would not be screened, trained, or supervised by the Office.¹⁸

The bill provides for a training program to be developed and approved by The Florida Bar (the Bar), which not-for-profit legal aid organizations must use to provided training before certifying a GAL. Currently, the Bar does not have a training program for layperson GALs in

¹⁶ Statewide Guardian ad Litem Office, *supra* note 12.

¹⁷ *Id.*

¹⁸ *Id.*

nondependency cases.¹⁹ The Bar has not taken a position on this language and, therefore, it is unclear how the Bar will develop the training program.

The bill also provides that until The Florida Bar develops and approves a uniform, statewide training program, each not-for-profit legal aid organization must establish a curriculum committee to develop training, which the not-for-profit legal aid organization will administer to people prior to certifying them as a GAL. Since each not-for-profit legal aid organization will be establishing a curriculum committee and that committee may develop different training guidelines, the training program for people being certified as GALs in nondependency cases initially may not be uniform throughout the state.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Judiciary on April 16, 2008:

The committee substitute:

- Requires a not-for-profit legal aid organization to provide training to a person before certifying him or her as a guardian ad litem under this section;
- Provides that The Florida Bar will develop and approve a uniform, objective, and statewide training program for guardians ad litem in nondependency cases;
- Clarifies that the training program will be available to not-for-profit legal aid organizations at no charge;
- Provides that until The Florida Bar approves a training program, a not-for-profit legal aid organization must provide training, prior to certifying a guardian ad litem, developed by a curriculum committee established by the not-for-profit legal aid organization; and
- Requires that the curriculum committee consist of, at a minimum, a family law judge, a mental health professional who specializes in the treatment of children, and two Florida Bar members who are active guardians ad litem.

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

The committee substitute 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.

¹⁹ Conversation with Allyson Hughes, Chairperson of the Family Law Section of The Florida Bar (April 15, 2008).