

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 523

Court Actions Involving Families

SPONSOR(S): Planas

TIED BILLS:

IDEN./SIM. BILLS:

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee		De La Paz	De La Paz
2)	Criminal & Civil Justice Policy Council			
3)	Criminal & Civil Justice Appropriations Committee			
4)	Full Appropriations Council on General Government & Health Care			
5)				

SUMMARY ANALYSIS

This bill provides purposes and legislative intent regarding the implementation of a unified family court program in the circuit courts. The additional purposes and legislative intent include:

- To provide all children and families with a fully integrated, comprehensive 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.
- 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.
- To support the development of a unified family court and to support the state courts system’s efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach.
- To focus on the needs of children who are involved in the litigation, refer families to resources that will make their relationships stronger, coordinate their cases to provide consistent results, and strive to leave families in better condition than when they entered the system.

This bill also provides that an individual affiliated with a non-profit legal aid organization may be appointed by a court as a guardian ad litem in limited cases. The organization is responsible for a background check.

This bill does not have a fiscal impact on state or local governments and is effective upon becoming a law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Currently, legal issues involving children and families are frequently addressed by different divisions of the court, particularly in larger judicial circuits. In many cases, the parties are appearing before a different judge in each proceeding. Therefore, it is possible that a judge may be unaware of previous or pending related legal matters involving the same children or family before the court. Unified family courts are intended to address this problem.

Florida's initiative for a unified family court reform began as a result of increasing demands being placed on the judicial system by the large volume of cases involving children and families. As the number of family court filings significantly increased, the Supreme Court noted that it must seek to improve productivity and conserve resources.¹ Against this background, the Court created the Family Court Steering Committee in 1994 to, among other things, advise the Court about the circuits' responses to families in litigation and make recommendations on the characteristics of a model family court.²

In 2005, the Legislature implemented recommendations by the Florida Supreme Court related to the operation of a unified family court system.³ These recommendations were to:

- Allow the court system to create a unique identifier to identify all court cases related to the same family.
- Provide that specified orders entered in dependency court take precedence over court orders entered in other civil proceedings.
- Provide that final orders and evidence admitted in dependency actions are admissible in evidence in subsequent civil proceedings under certain circumstances.

Effect of Bill -- Unified Family Court, In General

¹ See *In Re Report of the Family Court Steering Committee*, 794 So.2d 518 (Fla. 2001). The court, at p.520, reported that as of 1998 and 1999, family law cases constituted the largest percentage of all circuit court filings -- over 40%. The court also reported that for this same period, these cases overwhelmingly represented the largest percentage of circuit court cases that were reopened -- almost 70%.

² See *In Re Report of the Commission on Family Courts*, 633 So.2d 14 (Fla. 1994).

³ Chapter 2005-239, L.O.F.

The bill provides additional purposes and legislative intent regarding the implementation of a unified family court program in the circuit courts. These additional purposes are added to chapter 39, F.S., pertaining to proceedings relating to children; chapter 61, F.S., pertaining to dissolution of marriage, support, and custody; chapter 63, F.S., pertaining to adoption; section 68.07, F.S., pertaining to name change; chapter 88, F.S., pertaining to the Uniform Interstate Family Support Act; chapter 741, F.S., pertaining to marriage and domestic violence; chapter 742, F.S., pertaining to determination of parentage; chapter 743, F.S., pertaining to disability of nonage of minors removed; chapter 984, F.S., pertaining to children and families in need of services; chapter 985, F.S., pertaining to the juvenile justice system; and part II of chapter 1003, F.S., pertaining to school attendance. The additional purposes and legislative intent include:

- To provide all children and families with a fully integrated, comprehensive 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.
- 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.
- To support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach.
- To focus on the needs of children who are involved in the litigation, refer families to resources that will make their relationships stronger, coordinate their cases to provide consistent results, and strive to leave families in better condition than when they entered the system.

Current Legislative Intent for the Prosecution of Juvenile Crime in the Juvenile Justice System

HB 523's inclusion of legislative intent language of a unified family court system into sections of chapter 985 relating to juvenile justice may conflict with certain provisions stating the intent and purposes of provisions of that chapter relating to the prosecution of juvenile crime. For example, HB 523 adds, in part this language to s. 985.02, F.S.:

“ . . . It is the intent of the Legislature that the courts of this state 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.

Under chapter 985, the juvenile justice system is designed to enable the adjudication of juvenile offenders of all ages charged with committing violations of criminal law from second degree misdemeanors, such as petit theft or minor trespasses, to offenses which if tried as an adult in adult court, would be serious felonies punishable by death or life imprisonment, such as first degree murder or armed home invasion robbery.

In contrast to the intent expressed in HB 523, s. 985.01, F.S, expresses the intent and purpose of chapter 985 in part as follows:

. . .
(c) To ensure the protection of society, by providing for a comprehensive standardized assessment of the child's needs so that the most appropriate control, discipline, punishment, and treatment can be administered consistent with the seriousness of the act committed, the community's long-term need for public safety, the prior record of the child, and the specific rehabilitation needs of the child, while also providing whenever possible restitution to the victim of the offense.

. . .

(e)1. To assure that the adjudication and disposition of a child alleged or found to have committed a violation of Florida law be exercised with appropriate discretion and in

keeping with the seriousness of the offense and the need for treatment services, and that all findings made under this chapter be based upon facts presented at a hearing that meets the constitutional standards of fundamental fairness and due process.

In addition, s. 985.02 (3), F.S., states in part “[i]t is the policy of this state with respect to juvenile justice and delinquency prevention to first protect the public from acts of delinquency. Subsection (4) (b) states:

The Legislature intends that a juvenile found to have committed a delinquent act understands the consequences and the serious nature of such behavior. Therefore, the Legislature finds that secure detention is appropriate to provide punishment that discourages further delinquent behavior. The Legislature also finds that certain juveniles have committed a sufficient number of criminal acts, including acts involving violence to persons, to represent sufficient danger to the community to warrant sentencing and placement within the adult system. It is the intent of the Legislature to establish clear criteria in order to identify these juveniles and remove them from the juvenile justice system.

With respect to the intention to transfer and establish criteria to identify juveniles who represent a sufficient danger to the community to warrant prosecution and sentencing through the adult system, it is unclear how the “one family, on judge” concept of HB 523 would be implemented in each circuit. Also, the legislative intent of HB 523 that “the courts of this state embrace methods or resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system,” appears in conflict with the stated intent that a juvenile “understand the consequences and serious nature of [delinquent] behavior” and the policy to remove dangerous offenders from the juvenile justice system in appropriate circumstances.⁴

Effect of Bill -- Guardian Ad Litem volunteers

Current law only allows a court to appoint, as a guardian ad litem, either a licensed attorney or a volunteer that is affiliated with, and certified through, the Statewide Guardian Ad Litem Office. This bill additionally allows appointment of a citizen certified by a not-for-profit legal aid organization⁵ to additionally be appointed as a guardian ad litem. A volunteer guardian ad litem under a legal aid organization may only serve in an action for dissolution of marriage, modification, parental responsibility, custody or visitation. The legal aid organization must conduct a security background investigation which conforms to the requirements of s. 39.821, F.S. prior to any appointment.⁶

B. SECTION DIRECTORY:

Section 1 amends s. 39.001, F.S., regarding the purposes of ch. 39, F.S.

Section 2 amends s. 61.001, F.S., regarding the purposes of ch. 61, F.S.

Section 3 amends s. 63.022, F.S., regarding legislative intent related to ch. 63, F.S.

Section 4 amends s. 68.07, F.S., regarding legislative intent related to petitions for a name change.

Section 5 creates s. 88.1041, F.S., regarding legislative intent applicable to ch. 88, F.S.

Section 6 amends s. 741.2902, F.S., regarding legislative intent applicable to the offense of domestic violence.

⁴ See, Sections 985.557 & 985.56, F.S.

⁵ Legal aid organization is defined in s. 68.096(4), F.S., as a non-profit organization that provides as its primary purpose civil legal services without charge to eligible clients.

⁶ This is the section that defines the scope of a background investigation for other guardian ad litem volunteers.

Section 7 creates s. 742.016, F.S., regarding legislative intent related to determination of parentage.

Section 8 creates s. 743.001, F.S., regarding legislative intent related to ch. 743, F.S.

Section 9 amends s. 984.01, F.S., regarding legislative intent related to ch. 984, F.S.

Section 10 amends s. 985.02, F.S., regarding legislative intent related to ch. 985, F.S. (juvenile justice system).

Section 11 creates s. 1003.201, F.S., regarding legislative intent related to ch. 1003, F.S.

Section 12 amends s. 61.402, F.S., regarding the qualifications of guardians ad litem.

Section 13 provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The portion of this bill related to guardian ad litem volunteers appears to have an indeterminate positive fiscal impact for the Florida Department of Law Enforcement, resulting from \$23 per person background checks for certain guardian ad litem volunteers.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

As to the portion of the bill regarding guardian ad litem volunteers, such volunteers, or their sponsoring organization, will be required to pay \$23 per individual for a background check. This cost is the same charged for other background checks.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the

aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES