

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: SB 1018

INTRODUCER: Senator Joyner

SUBJECT: Guardians ad Litem

DATE: March 9, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Walsh	CF	Favorable
2.			JU	
3.				
4.				
5.				
6.				

I. Summary:

The bill amends s. 61.402, F.S., to allow a person certified by a not-for-profit legal aid organization to be appointed as a guardian ad litem (GAL) in a non-dependency, family law case. The bill provides that prior to certifying a GAL, the not-for-profit legal aid organization must conduct a security background investigation and provide training to the GAL.

The bill makes it a first degree misdemeanor for an applicant to willfully fail to disclose any material fact relating to his or her qualifications to be a GAL.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: section 61.402.

II. Present Situation:

A guardian ad litem (GAL) is an adult “who is appointed by the court to represent the best interests of a child . . . who is a party to any judicial proceeding . . .”¹ Section 39.822, F.S., *requires* the court to appoint a GAL to represent the child at the earliest possible time in proceedings involving child abuse, neglect, or abandonment.² Section 61.401, F.S., *allows* the court to appoint a GAL in family law cases, if the court finds it is in the best interest of the

¹ The term guardian ad litem encompasses the following: a certified guardian ad litem program, a duly certified volunteer, a staff attorney, contract attorney, or certified pro bono attorney working on behalf of a guardian ad litem or the program; staff members of a program office; a court-appointed attorney; or a responsible adult. Section 39.820(1), F.S.

² Section 39.822(1), F.S.

child.³ A court is required to appoint a GAL in family law cases that involve a verified and well-founded allegation of child abuse, neglect, or abandonment.⁴

In order to be a volunteer GAL in a family law case, 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.”⁵ Pursuant to s. 61.402, F.S., prior to certifying a person to be appointed as a GAL in any case, the Guardian ad Litem Program must conduct a security background investigation as provided in s. 39.821, F.S. 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.⁶

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. 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.⁷ The Guardian ad Litem Program has the sole discretion to determine whether to certify a person based on his or her security background investigation.⁸

The Statewide Guardian ad Litem Office (the Office) oversees the operations of the Guardian ad Litem programs in the 20 judicial circuits.⁹ The Office is required to establish a curriculum committee to develop a GAL training program. The committee must include dependency judges, directors of circuit guardian ad litem programs, active certified guardians ad litem, a mental health professional who specializes in the treatment of children, a member of a child advocacy group, a representative of the Florida Coalition Against Domestic Violence, and a social worker experienced in working with victims and perpetrators of child abuse.¹⁰

The Family Law Section of the Florida Bar (Family Law) has created an *ad hoc* committee which has nearly completed a training manual for ch. 61, F.S., GALs. Family Law intends to produce a DVD to accompany the manual and to provide the materials free of charge to legal aid

³ Section 61.401, F.S., permits the court to appoint a guardian ad litem in “an action for dissolution of marriage or for the creation, approval, or modification of a parenting plan . . .” A parenting plan is a “document created to govern the relationship between the parties relating to . . . [their] minor child . . .” Section 61.046, F.S.

⁴ Section 61.401, F.S.

⁵ Section 61.402, F.S.

⁶ Section 39.821(1), F.S.

⁷ 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.

⁸ Section 39.821(1), F.S.

⁹ Statewide Guardian ad Litem Office, *Senate Bill 1018 Analysis* (February 12, 2009).

¹⁰ Section 39.8296(2)(b)4., F.S.

organizations that opt to certify GALs. Family Law anticipates that both the training manual and the DVD will be completed and approved for use on or before July 1, 2009.¹¹

Since FY 2004-05, 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.”¹² Limited by this restriction, as well as by its resources,¹³ the Guardian ad Litem Program currently does not certify citizens to act in non-dependency, family law proceedings.¹⁴

III. Effect of Proposed Changes:

The bill amends s. 61.402, F.S., to allow a person certified by a not-for-profit legal aid organization¹⁵ to be appointed as a guardian ad litem in a family law case.

The bill provides that prior to certifying a guardian ad litem, a not-for-profit legal aid organization must:

- Conduct a security background investigation as described in s. 39.821, F.S.; and
- Provide training developed by the Florida Bar.

The bill authorizes a not-for-profit legal aid organization to develop its own curriculum for guardian ad litem training, pending the development of a “uniform objective statewide training program” by the Florida Bar. The creators of a legal aid organization’s training curriculum must include at least the following:

- One family court judge;
- One mental health professional whose practice concentrates on the treatment of children; and
- Two attorney members of the Family Law Section of the Florida Bar, who have served as GALs in family law cases.¹⁶

¹¹ E-mail from Kathy Arrant, Executive Director, Legal Aid Foundation of the Tallahassee Bar Association, forwarding E-mail from Scott Rubin, Fogel, Rubin and Fogel (Thu 3/5/2009 4:52 PM) (on file with the Senate Committee on Children, Families and Elder Affairs).

¹² 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. For FY 2008-09, the proviso language was amended slightly: “Funds and positions [for the Statewide Guardian ad Litem Office] shall first be used to represent children involved in dependency proceedings. Once all children in dependency proceedings are represented, the funds may be used to represent children in other proceedings as authorized by law.” See ch. 2008-152, part 3, specific appropriations 829 through 835, Laws of Fla.

¹³ In July 2008, the Guardian ad Litem Program was representing only 29,564 of the 35,543 children who were under the supervision of the Department of Children and Families and involved in court proceedings. GUARDIAN AD LITEM, ANNUAL REPORT 7 (2008).

¹⁴ Statewide Guardian ad Litem Office, *supra* note 9.

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.

¹⁶ Section 39.8296(2)(b)4., F.S., requires the Statewide Guardian ad Litem office to establish a curriculum committee to develop a training program. The committee must include dependency judges, directors of circuit guardian ad litem programs, active certified guardians ad litem, a mental health professional who specializes in the treatment of children, a member of a

The bill clarifies that a GAL may serve in a dependency case only if he or she has been certified by the Guardian ad Litem Program pursuant to s. 39.821, F.S., or is an attorney in good standing. The bill further clarifies that neither the Guardian ad Litem Program nor a not-for-profit legal aid organization are required to train or certify GALs to serve in family law cases.

The bill makes it a first degree misdemeanor for an applicant to willfully, knowingly, or intentionally fail, by false statement, impersonation, or other fraudulent means, to disclose any material fact relating to his or her qualifications to be a GAL.¹⁷

The bill provides an effective date of July 1, 2009.

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:

Enabling not-for-profit legal aid organizations to certify individuals to serve as guardians ad litem in non-dependency, family law cases may benefit children who otherwise would not have access to such representation.¹⁸

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

child advocacy group, a representative of the Florida Coalition Against Domestic Violence, and a social worker experienced in working with victims and perpetrators of child abuse.

¹⁷ A similar provision is made in s. 39.821(3), F.S.

¹⁸ Statewide Guardian ad Litem Office, *supra* note 9.

VII. Related Issues:

The bill provides that not-for-profit legal aid organizations must provide training developed by the Florida Bar before certifying GALs to serve in family law cases, but it does not mandate the development of training materials by the Bar. Although Family Law anticipates the release of training materials by the effective date of the bill, it remains uncertain if or when training materials will be available, making it somewhat uncertain if or when this provision will be implemented. In the meantime, because the bill authorizes legal aid organizations to develop and use their own training materials, training for non-dependency, family law GALs will 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.)

None.

B. Amendments:

None.