

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 Committee on Children, Families, and Elder Affairs

BILL: CS/ SB 128

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Bean

SUBJECT: Child Abuse

DATE: February 20, 2019 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Fav/CS
2.			CJ	
3.			IS	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 128 makes a number of changes to current law relating to child abuse, abandonment and neglect. Specifically, the bill:

- Adds a violation of child safety restraints or seat belt usage laws that results in the death or injury of a child that requires treatment at a hospital emergency department or trauma center to the definition of the term “harm” if substantiated by a licensed physician’s opinion that the violation exacerbated the child’s injuries or resulted in the child’s death.
- Provides an exception to a call to the central abuse hotline when the alleged perpetrator and the child who is the alleged victim live out of state. The call is only accepted by the hotline if the child is currently being evaluated in a medical facility in Florida.
- Adds cases involving a child who does not live in this state who is currently being evaluated in a medical facility in this state and a child who was not properly restrained in a motor vehicle and the improper restraint exacerbated the child’s injuries or resulted in the child’s death to cases that must be referred by the Department of Children and Families (DCF or department) to child protection teams of the Department of Health (DOH) for an assessment and other appropriate available support services.
- Requires the department to initiate an investigation when a report is received from an emergency room physician.

II. Present Situation:

Definition of Harm

The definition of the term “harm” currently includes “inadequate supervision” which means a parent/caregiver leaving a child without adult supervision or arrangement appropriate for the age of the child or the child’s maturity, developmental level or mental or physical condition, so that the child is unable to care for his or her own needs or is unable to exercise sufficient judgment in responding to a physical or emotional crisis.¹

Examples of inadequate supervision include a parent or legal guardian who is a driver or passenger in a motor vehicle and who fails to ensure his or her child is properly safeguarded in a legally required child restraint device or seat belt and the child has died or has suffered serious injuries requiring treatment at an emergency department or trauma center at a hospital.²

If the intake alleges failure of a parent or legal guardian to use a child restraint device an assessment should include:

- Was the child transported to the hospital by EMS or other first responders due to the injuries sustained as a result of the accident?
- What statements did the child provide to first responders, the emergency department/trauma center physician/staff, or law enforcement when questioned about being placed in a child restraint seat or having used a seat belt while being transported in the vehicle?
- What is the parent or legal guardian’s explanation for a child restraint device not being used at the time of the accident (child unbelted strap to pick up toy, another child/youth passenger reached over and undid buckle, etc.)?
- Do statements from the emergency department/trauma center physician or medical records reflect the child suffered injuries that clearly indicate use of a child restraint device (bruising or abrasions from strap(s), internal visceral injuries, etc.)?
- Do statements from the attending emergency department/trauma center physician or medical records reflect the child suffered serious injuries that clearly indicate non-use of a child restraint device (severe head trauma caused by being thrown or ejected from the vehicle, etc.)?
- Does the police report document an injured child was not properly safeguarded in a legally approved child restraint device (car seat or seat belt)? Required restraints by type of device and child’s age may be found on the Florida Department Highway Safety and Motor Vehicle website.
- What was the location of the alleged child victim when first responders appeared on scene (in the vehicle or ejected from the vehicle)?
- Attempt to obtain medical opinion on whether the severity of the vehicular accident (head-on collision at high speed, etc.) would have likely resulted in serious injury or death despite the use of a legally required child restraint device.

¹ Section 39.01(35)(a)3., F.S.

² Department of Children and Families, CFOP 170-4, available at: <http://www.dcf.state.fl.us/admin/publications/cfops/CFOP%20170-xx%20Child%20Welfare/CFOP%20170-04.%20Child%20Maltreatment%20Index.pdf> (Last visited February 11, 2019).

- Does the parent have a history of traffic citations for failure to use a restraint device (ticketed for self or passengers)?
- When the parent or legal guardian reports the injured child was originally placed in a child restraint device but disconnected the device themselves during transit is/was the child physically capable of disconnecting the device on their own?
- Does the parent or legal guardian report that this was a first time incident or does/did the child have a pattern of disconnecting the device? If a pattern, how did the parent attempt to control this behavior? What other collateral sources can validate this pattern?³

Department of Children and Families – Administrative Rule

Currently, administrative rule provides that complaints concerning infants or children in automobiles who are not in legally required child restraint devices do not constitute reports of abuse, neglect or abandonment unless one or more of the following circumstances are present:

- The parent or legal guardian was charged with driving under the influence of drugs or alcohol.
- The parent or legal guardian received a traffic citation(s) for reckless driving.
- A child was seriously injured or killed during an accident.⁴

Child Protection Teams

A child protection team (CPT) is a medically directed, multidisciplinary team that works with local Sheriff's offices and the department in cases of child abuse and neglect to supplement investigation activities.⁵ Current law governs CPTs, and requires the Children's Medical Services Program (CMS) in DOH to develop, maintain, and coordinate the services of the CPTs in each of the service districts of the DCF. Child protection team medical directors are responsible for oversight of the teams.⁶

- Specifically, CPTs help assess risk and protective factors, and provide recommendations for interventions that protect children.⁷ Child abuse, abandonment, and neglect reports to the DCF central abuse hotline that must be referred to child protection teams include cases involving:
 - Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.
 - Bruises anywhere on a child 5 years of age or younger.
 - Any report alleging sexual abuse of a child.
 - Any sexually transmitted disease in a prepubescent child.
 - Reported malnutrition or failure of a child to thrive.
 - Reported medical neglect of a child.

³ *Id.*

⁴ 65C-29.002(6)(e), F.A.C.

⁵ Children's Medical Services, Child Protection Teams, (Aug. 30, 2012) available at: http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html .(last visited February 14, 2019).

⁶ Section 39.303, F.S.

⁷ Children's Medical Services, Child Protection Team Brochure, available at http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/documents/child_protection_brochure.pdf . (last visited February 14, 2019).

- A sibling or other child remaining in a home where one or more children have been - pronounced dead on arrival or have been injured and later died as a result of suspected abuse, abandonment, or neglect.
- Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.⁸

Child Safety Restraints

Currently, any individual operating a motor vehicle while transporting a child on a roadway, street, or highway is required to provide for protection of the child by properly using a crash-tested, federally approved child restraint device, if the child is 5 years of age or younger:

- For children aged through 3 years, such restraint device must be a separate carrier or a vehicle manufacturer's integrated child seat.
- For children aged 4 through 5 years, a separate carrier, an integrated child seat, or a child booster seat may be used. However, the requirement to use a child restraint device under this subparagraph does not apply when a safety belt is used as required in s. 316.614(4)(a) and the child:
 - Is being transported gratuitously by an operator who is not a member of the child's immediate family;
 - Is being transported in a medical emergency situation involving the child; or
 - Has a medical condition that necessitates an exception as evidenced by appropriate documentation from a health care professional.⁹

Safety Belt Usage

Current law provides that it is unlawful for any person to operate a motor vehicle or an autocycle¹⁰ in this state unless each passenger and the operator of the vehicle or autocycle under the age of 18 years are restrained by a safety belt or by a child restraint device pursuant to s. 316.613, if applicable.¹¹

III. Effect of Proposed Changes:

Section 1 amends s. 39.01, F.S., to add a violation of s. 316.613 or s. 316.614, F.S., that results in the death or injury of a child that requires treatment at a hospital emergency department or trauma center to the definition of the term "harm" if substantiated by a licensed physician's opinion that the violation exacerbated the child's injuries or resulted in the child's death. Section 316.613, F.S., is related to child safety restraints in a motor vehicles and s. 316.614, F.S., is related to safety belt usage.

⁸ Section 39.303, F.S.

⁹ Section 316.613, F.S.

¹⁰ Section 316.003, F.S. An autocycle is a three-wheeled motorcycle that has two wheels in the front and one wheel in the back; is equipped with a roll cage or roll hoops, a seat belt for each occupant, antilock brakes, a steering wheel, and seating that does not require the operator to straddle or sit astride it; and is manufactured in accordance with the applicable federal motorcycle safety standards in 49 C.F.R. part 571 by a manufacturer registered with the National Highway Traffic Safety Administration.

¹¹ Section 318.614, F.S.

Section 2 amends s. 39.201, F.S., to provide an exception to a call to the central abuse hotline when the alleged perpetrator and the child who is the alleged victim live out of state. The call is only accepted by the hotline if the child is currently being evaluated in a medical facility in Florida. The section also requires the department to initiate an investigation when a report is received from an emergency room physician.

Section 3 amends s. 39.303, F.S. to add cases involving a child who does not live in this state who is currently being evaluated in a medical facility in this state and a child who was not properly restrained in a motor vehicle pursuant to s. 316.613 or s. 316.614, F.S., and the improper restraint exacerbated the child's injuries or resulted in the child's death to cases that must be referred by the department to child protection teams of the Department of Health for an assessment and other appropriate available support services.

Section 4 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. **Government Sector Impact:**

It is estimated that there may be a need for one additional child protective investigator due to an increase in child protective investigations.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

No analysis from the Department of Children and Families, the Department of Health or the Office of the State Courts Administrator was received to provide additional information on the impact of the bill.

VIII. **Statutes Affected:**

This bill amends ss. 39.01, 39.201, and 39.303 of the Florida Statutes.

IX. **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 February 19, 2019:

- Clarifies that only those children that require treatment at a hospital emergency department or trauma center are added to the definition of the term “harm.”
- Requires the department to initiate an investigation when a report is received from an emergency room physician.

B. **Amendments:**

None.