

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 Criminal Justice

BILL: CS/CS/SB 128

INTRODUCER: Criminal Justice Committee; Children, Families, and Elder Affairs Committee; and Senator Bean

SUBJECT: Child Abuse

DATE: March 4, 2019

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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

- Revises the definition of the term “harm” to include a violation of child safety restraints or seat belt usage laws which results in the death or injury of a child that requires treatment at a hospital, if a licensed physician determines that such violation exacerbated the child’s injuries or resulted in the child’s death;
- Requires the central abuse hotline (hotline) to accept a report and call for investigation of known or suspected child abuse, abandonment, or neglect, that occurred out of state relating to an alleged perpetrator and child victim who live out of state *if* the child is currently being evaluated in a medical facility in Florida;
- Requires the Department of Children and Families (DCF) to initiate an investigation when a report of child abuse, abandonment, or neglect is received from an emergency room physician; and
- Requires the DCF to refer child abuse, abandonment, and neglect reports to child protection teams (CPT) within the Department of Health (DOH) that involve a child who does not live in Florida but is currently being evaluated in a medical facility in Florida and a child who was not properly restrained in a motor vehicle, which exacerbated the child’s injury or resulted in the child’s death.

While the fiscal impact is indeterminate at this time, the DOH may incur costs associated with the addition of reports that must be referred to CPTs for assessment.

The bill is effective July 1, 2019.

II. Present Situation:

Inadequate Supervision of a Child

Current law defines “abuse” in part as any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or *harm* that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired.¹ Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by any person responsible for the child’s welfare, or that a child is in need of supervision and care, must immediately report such knowledge or suspicion to the DCF’s hotline.²

Florida law specifies that a child can suffer “harm” to his or her health or welfare in a number of ways. For example, harm can occur when any person allows, encourages, or forces the sexual exploitation of a child; exploits a child, or allows a child to be exploited; or exposes a child to a controlled substance or alcohol.³ Also included within the definition of harm is “inadequate supervision,” which is defined as a parent or caregiver leaving a child without adult supervision or arrangement appropriate for the child’s age, 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.⁴ In Florida, there is no age in which a child can be left unattended or alone.⁵

An example of inadequate supervision is when a parent or legal guardian who is a driver or passenger in a motor vehicle fails to ensure his or her child is properly safeguarded in a legally required child restraint device or seat belt, and this results in either the child’s death or the child’s suffering of serious injuries requiring treatment at an emergency department or trauma center at a hospital.⁶

Currently, however, 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.⁷

¹ Section 39.01(2), F.S.

² Sections 39.201(1)(a) and 39.201(2)(a), F.S.

³ *See generally* s. 39.01(35), F.S.

⁴ Section 39.01(35)(a)3., F.S.

⁵ Department of Children and Families, *Child Welfare*, CFOP 170-4, pg. A-29, (July 1, 2018), 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 25, 2019).

⁶ *Id.*

⁷ 65C-29.002(6)(e), F.A.C.

If one of the above scenarios is met, then a report of abuse, abandonment, or neglect can be made to the hotline. Each report of abuse, abandonment, or neglect must contain at least one type of maltreatment.⁸ Inadequate supervision qualifies as a type of maltreatment.⁹ There are a number of factors to consider in assessing whether there has been maltreatment, which would prompt an investigation by the DCF. Specifically, the following factors are considered if the intake done following an accident alleges failure of a parent or legal guardian to use a child restraint device:

- 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?
- 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?
- 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?
- Does the police report document an injured child was not properly safeguarded in a legally approved child restraint device (car seat or seat belt)?
- 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.
- Does the parent have a history of traffic citations for failure to use a restraint device?
- 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?¹⁰

Child Safety Restraint Laws

Section 316.613(1)(a), F.S., requires every operator of a motor vehicle,¹¹ while transporting a child in a motor vehicle operated on the roadways, streets, or highways of the state, to provide protection for a child by properly using a crash-tested, federally approved child restraint device if the child is 5 years or younger. The law also requires children 3 years of age and younger to be

⁸ "Maltreatment" means behavior that is harmful and destructive to a child's cognitive, social, emotional, or physical development. *Supra*, n. 4 at 4.

⁹ *Supra*, n. 4 at 6-7.

¹⁰ *Supra*, n 4 at A-29-31.

¹¹ "Motor vehicle" means a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, swamp buggy, or moped. Section 316.003(42), F.S.

restrained by a separate carrier device or a vehicle manufacturer's integrated child seat. A separate carrier, an integrated child seat, or a child booster seat may be used for children aged 4 through 5 years.¹²

Further, current law prohibits the operation of a motor vehicle or an auticycle¹³ unless each passenger and the operator of the vehicle or auticycle under the age of 18 years are restrained by a safety belt¹⁴ or by a child restraint device pursuant to s. 316.613, F.S., if applicable.¹⁵ The requirement to use a child restraint device does not apply if a safety belt is used 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.¹⁶

Reports of Child Abuse, Abandonment, or Neglect Occurring Out of State

Current law requires all known or suspected child abuse, abandonment, or neglect to be reported to the hotline. However, if the report is of an instance that occurred out of state and the alleged perpetrator and the child alleged to be a victim live out of state, the hotline must not accept the report or call for investigation, but instead must transfer the information on the report to the appropriate state.¹⁷

Child Protection Teams

A child protection team¹⁸ (CPT) program is a medically directed, multidisciplinary program that works with local Sheriff's offices and the DCF in child abuse and child neglect cases to supplement investigation activities. The CPTs are tasked with the following:

- Providing expertise in evaluating alleged child abuse and neglect;
- Assessing risk and protective factors; and
- Providing recommendations for interventions to protect children and enhance a caregiver's capacity to provide a safer environment when possible.¹⁹

¹² Section 316.613(1)(a), F.S.

¹³ "Auticycle" means a 3-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 applicable federal motorcycle safety standards. Section 316.003(2), F.S.

¹⁴ "Safety belt" means a seat belt assembly that meets the requirements established under Federal Motor Vehicle Safety Standard No. 208, 49 C.F.R. s. 571.208. Section 316.614(3)(b), F.S.

¹⁵ Section 316.614(4)(a), F.S.

¹⁶ Section 316.613(1)(a)2.a.-c., F.S.

¹⁷ Section 39.201(2)(d), F.S.

¹⁸ "Child protection team" is a team of professionals established by the DOH to receive referrals from the protective investigators and protective supervision staff of the DCF and to provide specialized and supportive services to the program in processing child abuse, abandonment, or neglect cases. Such team shall provide consultation to other programs of the DCF and other persons regarding child abuse, abandonment, or neglect cases. Section 39.01(13), F.S.

¹⁹ Children's Medical Services, *Child Protection Teams*, available at http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html (last visited February 25, 2019).

Current law requires the Children's Medical Services Program in the DOH to develop, maintain, and coordinate the services of the CPTs in each of the service districts of the DCF.²⁰ The role of a CPT is to support activities of the family safety and preservation program of the DCF and provide services deemed by the CPTs to be necessary and appropriate to abused, abandoned, and neglected children upon referral. A CPT must be capable of providing specialized diagnostic assessments, evaluations, coordination, consultation, and other supportive services.²¹ Reports of child abuse, abandonment, and neglect made to the DCF that must be referred to CPTs 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;
- 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; and
- Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.²²

III. Effect of Proposed Changes:

Section 1 revises the definition of the term "harm" to include a violation of the child safety restraint laws pursuant to s. 316.613, F.S., or the seat belt usage laws pursuant to s. 316.614, F.S., if a licensed physician determines that such violation exacerbated the child's injuries or resulted in the child's death.

Section 2 requires the hotline to accept the call of known or suspected child abuse, abandonment, or neglect, which occurred out of state and the alleged perpetrator and the child victim live out of state if the child is currently being evaluated in a medical facility in Florida. If the child is not currently being evaluated in Florida, the hotline must transfer the information or call to the appropriate state or country.

The bill also requires the DCF to initiate an investigation when a report to the hotline is made by an emergency room physician.

Section 3 requires the DCF to refer child abuse, abandonment, and neglect reports to CPTs that involve a child who does not live in Florida but is currently being evaluated in a medical facility in Florida and a child not properly restrained in a motor vehicle which exacerbated the child's injury or resulted in the child's death.

The bill is effective July 1, 2019.

²⁰ Section 39.303(1), F.S.

²¹ Section 39.303(3), F.S.

²² Section 39.303(4)(a)-(h), F.S.

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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

While the fiscal impact is indeterminate at this time, the DOH may incur costs associated with the addition of reports that must be referred to CPTs for assessment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

No analysis from the DCF, the DOH, 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 substantially amends the following sections of the Florida Statutes: 39.01, 39.201, and 39.303.

IX. 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 Criminal Justice on March 4, 2019:

The Committee Substitute clarifies that the DCF is tasked with referring specific reports to CPTs.

CS by Children, Families, and Elder Affairs on February 19, 2019:

The Committee Substitute:

- 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”; and
- Requires the DCF to initiate an investigation when a report is received from an emergency room physician.

- B. **Amendments:**

None.