

STORAGE NAME: h4229.leps

DATE: April 6, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
LAW ENFORCEMENT AND PUBLIC SAFETY
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4229

RELATING TO: False Reports

SPONSOR(S): Representative Dockery & Others

COMPANION BILL(S): CS/S 1024 (Similar)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FAMILY LAW AND CHILDREN YEAS 8 NAYS 0
- (2) LAW ENFORCEMENT AND PUBLIC SAFETY
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

House Bill 4229 provides additional measures which can be used to take action against individuals who file false reports of child abuse or neglect or false reports of abuse, neglect, or exploitation of a disabled adult or elderly person. Under certain circumstances, the Department of Children and Family Services is required to refer reports to the Florida Department of Law Enforcement and local law enforcement agencies for investigation into whether a false report has been filed.

The penalty for filing a false report is elevated from a second degree misdemeanor to a third degree felony.

State attorneys are directed to publish their procedures to facilitate the prosecution of persons who file false reports and to report to the Legislature annually the number of cases that have resulted in the filing of an information or indictment.

The administrative fine that can be imposed for knowingly and willfully making a false abuse report is increased from a maximum of \$1,000 to \$10,000.

The bill will have an indeterminate fiscal impact on the Florida Department of Law Enforcement and local law enforcement agencies.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Under the current provisions of chapter 415, Florida Statutes, any person who has reason to believe that a child has been neglected or abused, or a disabled adult or elderly person has been abused, neglected, or exploited, is required to report it to the Department of Children and Family Services (DCF) through the central abuse hotline. The department must conduct an onsite investigation of every report accepted by the hotline even if there is some indication that the report may be a false report. Sections 415.102(14) and 415.503(7), Florida Statutes, define "false report" as one maliciously made for the purpose of harassing, embarrassing or harming another person; personal financial gain for the reporter; acquiring custody of a child, an elderly person or a disabled adult; or personal benefit for the reporter in any other private dispute involving a child, disabled adult or elderly person.

Sections 415.111 and 415.513, Florida Statutes, provide that a person who knowingly and willfully makes a false report, or who advises another to make a false report, is guilty of a misdemeanor of the second degree. The statute also directs DCF to establish procedures for determining whether a false report has been made and for submitting all identifying information relating to such a report to the state attorney for prosecution. In the case of child abuse, law enforcement must also be notified. Each state attorney is required to establish procedures to facilitate the prosecution of persons for filing false abuse reports.

The Department of Children and Family Services is authorized in ss. 415.1113 and 415.5131, Florida Statutes, to impose a maximum administrative fine of \$1,000 upon anyone who files a false report. Current statute also provides for due process and requires the department to prove by clear and convincing evidence that the person filed a false report, before imposing a fine.

Application of these statutory provisions by DCF and state attorneys appears to be inadequate. The department does not have in place written procedures for determining that a false report has been filed. It is the practice of hotline personnel to play a recording advising the reporter of the penalties associated with making a false report whenever the hotline counselor has reason to believe a false report is being made. A code is also available for child protective investigators to note in the investigation record the belief that a false report was filed, but the code is used inconsistently and few reports are actually submitted to law enforcement or the state attorney for prosecution. The department also reports that it has imposed only one administrative fine of \$1,000.

The Florida Prosecuting Attorneys Association reports that procedures exist for facilitating the prosecution of filing a false report but is unable to document the number of cases that have been prosecuted. The number of prosecutions is believed to be quite low.

B. EFFECT OF PROPOSED CHANGES:

If the Department of Children and Family Services or its agent has received and investigated:

- two reports of abuse or neglect of a **disabled adult or elderly person** and determined that the reports are false; or
- three reports of abuse, neglect, or exploitation of a disabled adult or elderly person and determined that the reports are unfounded; or
- two reports of **abuse or neglect of children in the same family** and determined that the reports are false; or
- three reports of abuse or neglect of children in the same family and determined that there are no indications of maltreatment;

the department shall refer the reports to the Florida Department of Law Enforcement (FDLE) for an investigation to determine whether evidence exists that the reporter has filed a false report as defined in ss. 415.102 and 415.503, Florida Statutes. While the investigation by FDLE is pending, any subsequent reports concerning the same disabled adult or elderly person or children in the same family must be handled by FDLE and local law enforcement. When the investigation is completed, FDLE shall either refer the case of the appropriate state attorney for prosecution or shall return the case to the department.

The bill elevates the penalty for knowingly and willfully making a false report of abuse, neglect of a child, or abuse, neglect, or exploitation of a disabled adult or elderly person from a second degree misdemeanor to a third degree felony.

The bill also requires each state attorney to publish procedures to facilitate the prosecution of persons who file false reports and report to the Legislature annually the number of complaints that have resulted in the filing of an information or indictment under this section.

The maximum amount of any administrative fine that may be imposed by the department for making a false report of child abuse or neglect or abuse, neglect, or exploitation of a disabled adult or an elderly person is increased from \$1,000 to \$10,000.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill provides that the Department of Children and Family Services turn over abuse reports under certain specified circumstances to the Florida Department of Law Enforcement and local law enforcement agencies for investigation. The section also directs each state attorney to publish procedures to facilitate the prosecution of persons who file false reports and report to the Legislature annually the number of complaints that have resulted in the filing of an information or indictment under this section.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

- (2) what is the cost of such responsibility at the new level/agency?

Not applicable.

- (3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

Not applicable.

- b. Does the bill require or authorize an increase in any fees?

Not applicable.

- c. Does the bill reduce total taxes, both rates and revenues?

Not applicable.

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d. Does the bill reduce total fees, both rates and revenues?

Not applicable.

e. Does the bill authorize any fee or tax increase by any local government?

Not applicable.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Not applicable.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Not applicable.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

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(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

Not applicable.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. STATUTE(S) AFFECTED:

Sections 415.111, 415.1113, 415.513, and 415.5131, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 415.111, Florida Statutes, to provide that if the Department of Children and Family Services or its agent has received and investigated two reports of abuse or neglect of a **disabled adult or elderly person** and determined that the reports are false, or has received and investigated three reports of abuse, neglect, or exploitation of a disabled adult or elderly person and determined that the reports are unfounded, the department shall refer the reports to the Florida Department of Law Enforcement (FDLE) for an investigation to determine whether evidence exists that the reporter has filed a false report as defined in s. 415.102, Florida Statutes. While the investigation by FDLE is pending, any subsequent reports concerning the same disabled

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adult or elderly person must be handled by FDLE and local law enforcement. When the investigation is completed, FDLE shall either refer the case of the appropriate state attorney for prosecution or shall return the case to the department.

The section provides that any person who knowingly and willfully makes a false report of abuse, neglect, or exploitation pursuant to this section or advises another person to make such a false report commits a third degree felony.

The section also directs each state attorney to publish procedures to facilitate the prosecution of persons who file false reports and report to the Legislature annually the number of complaints that have resulted in the filing of an information or indictment under this section.

Section 2. Amends s. 415.1113, Florida Statutes, to increase the maximum amount of any administrative fine that may be imposed by the department for making a false report of abuse, neglect, or exploitation of a disabled adult or an elderly person from \$1,000 to \$10,000.

Section 3. Amends s. 415.513, Florida Statutes, to provide that if the Department of Children and Family Services or its agent has received and investigated two reports of abuse or neglect of children in the same family and determined that the reports are false, or has received and investigated three reports of abuse or neglect of children in the same family and determined that there are no indications of maltreatment, the department shall refer the reports to the Florida Department of Law Enforcement (FDLE) for an investigation to determine whether evidence exists that the reporter has filed a false report as defined in s. 415.503, Florida Statutes. While the investigation by FDLE is pending, any subsequent reports concerning children in that same family must be handled by FDLE and local law enforcement. When the investigation is completed, FDLE shall either refer the case of the appropriate state attorney for prosecution or shall return the case to the department.

The section provides that any person who knowingly and willfully makes a false report of child abuse or neglect or advises another person to make such a false report commits a third degree felony.

The section also directs each state attorney to publish procedures to facilitate the prosecution of persons who file false reports and report to the Legislature annually the number of complaints that have resulted in the filing of an information or indictment under this section.

Section 4. Amends s. 415.5131, Florida Statutes, to increase the maximum amount of any administrative fine imposed by the department for false reporting of child abuse or neglect from \$1,000 to \$10,000.

Section 5. Provides for an effective date of July 1 of the year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

4. Total Revenues and Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See fiscal comments.

2. Direct Private Sector Benefits:

See fiscal comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See fiscal comments.

D. FISCAL COMMENTS:

The requirement that the Department of Children and Family Services turn abuse reports in specified circumstances over to the Florida Department of Law Enforcement and local law enforcement agencies for investigation will increase the workload of those agencies, but the amount of that increase cannot be determined.

Individuals found to have committed a felony of the third degree would be subjected to fines of \$5,000, and under the provisions of ss. 415.111 and 415.5131, Florida Statutes, individuals who make false abuse reports could face administrative fines up to \$10,000.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

One of the reasons it is difficult to prove allegations of a false report is that many reports are made anonymously. This practice is permitted under Florida law just as it is in most, if not all, states. Sections 415.1034 and 415.504, Florida Statutes, provide that a specified list of professionals must give their names when reporting abuse, but other individuals reporting abuse are not currently required to give their names. It is believed that such a requirement would have a chilling effect on the willingness of many individuals to report.

Section 415.504, Florida Statutes, also requires that hotline counselors must be trained to encourage reporters to provide their names, and as a result, the percentage of anonymous reports is down. In FY 1995-96, 8.52 percent of child abuse reports and 5.56 percent of elder and disabled adult abuse reports were made anonymously. It is reasonable to assume that a significant percentage of false reports are made anonymously.

Recently, s. 415.504(1)(e), Florida Statutes, authorized the department to electronically identify the telephone number from which abuse reports are made, and that telephone number is made a part of the record. The number is confidential, but is available to law enforcement or the state attorney.

The Department of Children and Family Services reports several problems encountered in pursuing administrative fines for false reporting as provided for in statute. The "clear and convincing" proof requirement is a high standard of proof to meet, and discourages the commitment of scarce resources away from the focus of protecting children. Current level of proof in dependency matters is "a preponderance of evidence". There is concern about requiring the child to participate in another hearing process which many times involves one parent against the other. Finally, the amount of administrative fine for false reporting is small compared to the amount of agency resources available to pursue and any final order can be appealed resulting in a lengthy process which can be disruptive to family members and the child,

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Family Law and Children adopted a strike everything amendment and three amendments to the amendment during the April 1, 1998 committee meeting. Those amendments provide:

- for the addition of law enforcement agencies as an entity to which the identity of any person reporting adult abuse, neglect, or exploitation may be released, without that person's written consent;
- that the Department of Children and Family Services will, with the consent of the alleged perpetrator, refer all reports the agency determines to be false to local law enforcement for investigation, and that local law enforcement be notified of any subsequent reports concerning the same child, disabled adult, or elderly person;
- for state attorneys to establish written procedures for prosecution; and
- for the annual report to the Legislature by the state attorneys to include the disposition of each complaint referred.

VII. SIGNATURES:

COMMITTEE ON FAMILY LAW AND CHILDREN:

Prepared by:

Legislative Research Director:

Carol E. Preston

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AS REVISED BY THE COMMITTEE ON LAW ENFORCEMENT AND PUBLIC SAFETY:

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