

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain: The bill has the potential to increase the number of calls coming into the hotline which would result in an increase in the number of child protective investigations conducted. An increase in the number of calls and investigations would necessitate additional child welfare related positions being added to the Department of Children and Family Services.

B. EFFECT OF PROPOSED CHANGES:

Florida law requires **any person** who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare **to report** such knowledge or suspicion to the Department of Children and Family Services' hotline as prescribed by law.¹

Florida law also provides that **reporters in the following occupation categories** are required to **provide their names** to the hotline staff when reporting:

- Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons.
- Health or mental health professional other than one listed above.
- Practitioner who relies solely on spiritual means for healing.
- School teacher or other school official or personnel.
- Social worker, day care center worker, or other professional child care, foster care, residential, or institutional worker.
- Law enforcement officer.
- Judge.²

The bill adds persons who are employed or supervised by religious institutions, including any affiliated organizations, to the list of reporters in specified occupational categories that are required to provide their names to the hotline staff when making a report.

C. SECTION DIRECTORY:

Section 1. Amends §39.201, Florida Statutes, relating to mandatory reports of child abuse, abandonment, or neglect, to provide that persons who are employed or supervised by specified religious institutions, including any affiliated organizations are required to provide their names to hotline staff when making a report of known or suspected child abuse, abandonment, or neglect.

¹ See §39.201, Florida Statutes

² See §39.201, Florida Statutes

Section 2. Provides for an effective date of July 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Children and Family Services provided the following information and explanation:

Because this requirement does not presently exist in law, there is no data from which to estimate an increase in reporting. If persons associated with religious institutions were mandated to report, and if their reporting were approximate to school personnel, there would be an estimated 10% increase in abuse reports.

For the first year we estimate a 10% increase in investigations or 19,858 additional. The cost for one investigation is approximately \$515. The increased cost would be **\$10,226,870**. The cost would be recurring but we expect reporting to level off. Therefore, we are not projecting an increased cost for the subsequent year.

The two paragraphs above are somewhat ambiguous which could affect the accuracy of the estimated fiscal impact:

- First, the first paragraph references a “10% increase in abuse reports”. It is unclear whether this means an increase in calls or “reports” coming into the hotline or an increase in the number of reports accepted for investigation. If the projected 10% increase is an increase in the number of investigations, then the estimated fiscal impact would be accurate; if the increase is in the number of calls coming in - typically 50-55% of calls result in investigations – then the estimated fiscal impact would be low.

- Second, the fiscal impact estimate could be too high. The bill adds individuals employed or supervised by religious institutions, including any affiliated organizations to the reporters in occupations that must provide their name to hotline staff when reporting. This would include not only members of the clergy, but also teachers and staff of parochial schools. Hotline data shows that currently approximately 10% of all reporters are school personnel.³ The analysis provided by the department estimated that the bill’s requirement would generate the same percentage of calls from parochial school teachers and staff.

Current law provides that school teachers or other school officials or personnel are required to provide their name to hotline staff when reporting.⁴ The law does not say “public” school personnel, which means that at least some percentage of the 10% of all reporters who are listed as

³ See Florida Abuse Hotline Information System (FAHIS), Florida Department of Children and Family Services

⁴ See §39.201, Florida Statutes

“school personnel” in the data are received from parochial school personnel. If this is true, the estimated fiscal impact would be lower.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Typically, whenever a new class of professionals is added to the list of individuals in occupations who are required to provide their name when reporting known or suspected child abuse, abandonment, or neglect, the number of calls to the hotline increases. It has been speculated that this occurs because the inclusion of a specifically identified profession to this list leads the individuals belonging to the profession being added to believe that they are now being required to report pursuant to chapter 39, Florida Statutes, for the first time.

In fact, since “**any person**” is currently required to report instances of child abuse, abandonment, or neglect, the increased number of reports would appear to be from a misinterpretation of the law by members of the newly added profession. The fiscal impact of any future additions to the list of those professionals required to provide their names when reporting could perhaps be mitigated by providing better education relating to reporting requirements to members of professions who routinely work with or around children.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The title of the bill is misleading in that it states that the bill provides that persons employed or supervised by religious institutions or entities that are affiliated with such institutions are required to report known or suspected child abuse, abandonment, or neglect to the Department of Children and Family Services. Current law requires all individuals to report known or suspected child abuse, abandonment, or neglect to the Department. The bill requires that persons employed or supervised by

religious institutions or entities that are affiliated with such institutions provide their names to hotline staff when reporting.

If the intent of the bill is to address the issue of members of the clergy not being reported for abusing children, HB 629 does not appear to provide a solution. Mandatory reporting of child abuse, abandonment, or neglect pursuant to chapter 39, Florida Statutes, requires the reporting of known or suspected child abuse, abandonment, or neglect that is caused by an individual in a caretaking position:

any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected **by a parent, legal custodian, caregiver, or other person responsible for the child's welfare** shall report such knowledge or suspicion to the Department of Children and Family Services' hotline as prescribed by law.⁵

Since members of the clergy or other individuals affiliated in some capacity with religious institutions are not included in the statutory definition of "parent", "legal custodian", "caregiver", or "other person responsible for the child's welfare", any abuse, abandonment, or neglect of a child **by** members of the clergy or other individuals affiliated in some capacity with religious institutions would **not** be required to be reported under the provisions of chapter 39, Florida statutes:

Each report of known or suspected child abuse, abandonment, or neglect pursuant to this section ... shall be made immediately to the department's central abuse hotline on the single statewide toll-free telephone number, and, **if the report** is of an instance of known or suspected **child abuse by a noncaretaker**, the call shall be **immediately electronically transferred** to the appropriate **county sheriff's office** by the central abuse hotline...⁶

If a report of known or suspected child abuse, abandonment, or neglect that was committed by a member of the clergy or other individuals affiliated in some capacity with religious institutions is received by the hotline, current law requires that the call be transferred to local law enforcement. The provisions of this bill would not change this process. Florida law does provide for a duty to report sexual battery and penalties for failure to report:

A person who observes the commission of the crime of sexual battery and who:

- Has reasonable grounds to believe that he or she has observed the commission of a sexual battery;
- Has the present ability to seek assistance for the victim or victims by immediately reporting such offense to a law enforcement officer;
- Fails to seek such assistance;
- Would not be exposed to any threat of physical violence for seeking such assistance;
- Is not the husband, wife, parent, grandparent, child, grandchild, brother, or sister of the offender or victim, by consanguinity or affinity; and
- Is not the victim of such sexual battery

is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.⁷

Florida law affords privileged communication to "members of the clergy" which is defined as:

⁵ See §39.201, Florida Statutes

⁶ See §39.201, Florida Statutes

⁷ See §794.027, Florida Statutes

a priest, rabbi practitioner of Christian Science, or minister of any religious organization or denomination usually referred to as a church, or an individual reasonably believed so to be by the person consulting him or her.⁸

Communication between a member of the clergy and a person is confidential or “privileged” if such communication is made privately when seeking spiritual counsel and advice from the member of the clergy in the usual course of his or her practice and the communication is not intended for further disclosure.

Abrogation of privileged communication as it relates to child abuse, abandonment, or neglect is specifically referenced in §39.204, Florida Statutes. Privileged communication ordinarily afforded to husbands and wives, professionals and their clients or any others with privileged communication does not apply when a communication involves the perpetrator or alleged perpetrator in a situation that involves child abuse, abandonment, or neglect. Two exceptions are made to the abrogation: privileged communication between attorneys and their clients and members of the clergy and individuals seeking their counsel or advice.

Neither the existence of privileged communication between a member of the clergy and an individual seeking counsel or advice nor the exception to the abrogation of such privilege related to members of the clergy necessarily relieves members of the clergy from the requirement to report known or suspected child abuse, abandonment, or neglect. Members of the clergy, as defined in §90.505, Florida Statutes, who are afforded privileged communication pursuant to §90.505, Florida Statutes, are specifically excluded from the reporting requirements of chapter 39, Florida Statutes, when the information to be reported is learned in their private communications with individuals seeking advice or spiritual counsel. Information gained outside of the specific communication that is afforded confidentiality pursuant to §90.505, Florida Statutes, by members of the clergy would be required to be reported.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On **April 1, 2003**, the **Subcommittee on Children’s Services** adopted an amendment. The bill added individuals employed or supervised by religious institutions, including any affiliated organizations, to the list of persons in specified occupations who are required to provide their names to hotline staff when reporting known or suspected child abuse, abandonment, or neglect. The amendment provided an exception for members of the clergy as defined in §90.505, Florida Statutes. Members of the clergy, as defined in §90.505, Florida Statutes, include a priests, rabbis, practitioners of Christian Science, or ministers of any religious organization or denomination usually referred to as a church, or individuals reasonably believed so to be by the person consulting him or her

⁸ See §90.505, Florida Statutes