

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

History of the Hotline

Since 1963, Florida has had a requirement that child abuse be reported.¹ It was at that time that physicians were statutorily required to make written reports of suspected child abuse to county judges, and the failure to report constituted grounds for criminal prosecution. At that time, there was no single agency to receive and investigate those reports.

In 1971, the Legislature created a statewide Child Protective Services program within the Department of Health and Rehabilitative Services (HRS) and required the department to develop a central registry.² As a result, a statewide telephone “hotline” and registry for the reporting of suspected incidents of child abuse and neglect was established in Florida—years ahead of the federal requirement. The list of required reporters was expanded to include nurses, teachers, social workers, and employees of public or private facilities serving children. The original purpose of the registry was primarily to receive reports for investigation and to maintain information to track child victims of abuse or neglect. In 1975, the requirement to report became essentially the same as current statute, requiring “any person” with reason to believe that a child had been abused to report.³ By 1977, the registry had developed a “clearinghouse” function, which enabled HRS personnel quick access to information contained in the registry to provide appropriate intervention and child protective services.

In 1985, the Legislature fundamentally changed the character of the registry by enacting a requirement that child care employees and certain other employees be screened for “good moral character.” Information contained in the abuse registry, along with criminal records, was to be used in this screening. Persons identified as having committed acts of child abuse were to be disqualified from employment for lengthy periods of time. This linking of the registry information to employment screening necessitated the development of increasingly complex due-process protections for persons whose names were placed on the registry.

During the 1995 legislative session, responding in part to an interim project of the House Committee on Aging and Human Services, the Legislature removed the linkage between the registry and employment screening, with limited exceptions.⁴ These exceptions, found in sections 39.201(6) and 39.202, Florida Statutes, are primarily related to the department’s use of information in its files for its own employment or licensing responsibilities. The exceptions are the following:

- Employees, authorized agents, or contract providers of the Department of Children and Family Services, the Department of Health, or county agencies responsible for the licensing of child care providers and foster homes are authorized to use the information in the hotline for the purposes of determining whether such licenses should be issued, renewed or revoked.
- Appropriate officials of the Department of Children and Family Services are authorized to use the hotline information in making decisions regarding

¹ Chapter 63-24, Laws of Florida, codified as section 828.041, Florida Statutes (1963).

² Chapter 71-136, Laws of Florida, codified as section 828.041(7), Florida Statutes (1971).

³ Chapter 75-185, Laws of Florida, codified as section 828.041(4), Florida Statutes (1975).

⁴ Chapter 95-228, Laws of Florida.

employing, continuing the employment of, or taking appropriate administrative action against employees of the department.

- Employees or agents of the Department of Juvenile Justice responsible for the provision of services to children.

In addition, the required home-study of an intended adoptive home is to include a check of central abuse hotline records.⁵ This provision, which pre-dates the legislative changes made to the hotline statute in 1995, does not describe how the information is to be used. In fact, authorization to release the information to private adoption agencies is lacking, so that it is not clear whether the department can release the information directly to private adoption agencies.

Since the time the ability to contest the classification of reports was legislatively removed on 1995, concerns have been raised regarding the fairness of information maintained in the department's files. The increasing reliance on electronic management of the files, as well as the growing exceptions to the confidentiality requirements of section 39.202, Florida Statutes, have contributed to the perception that persons are being harmed by inaccurate information without any opportunity, or the timely opportunity, to correct this information. This concern is of particular urgency in the case of persons who have never been identified as having caused any harm to a child, but who report having suffered adverse consequences as a result of having been named, even as a witness or neighbor, in a report.

Current Operation of the Abuse Hotline and Child Abuse Investigations

The department is statutorily required to establish and maintain a central abuse hotline which receives reports of known or suspected child abuse, neglect, or abandonment seven days a week, 24 hours a day through a single statewide toll-free telephone number. The operation of the central abuse hotline must enable the department to immediately identify and locate prior reports or cases of child abuse, neglect, or abandonment; track critical steps in the investigative process; and maintain and produce statistical reports that monitor the patterns of child abuse, neglect, and abandonment, as well as evaluate the effectiveness of the child protection program.⁶

If a report is accepted by the hotline, the information gathered by hotline staff during the intake process is made available to the child protective investigator (CPI),⁷ who accesses it electronically and uses it as the basis for initiating a child protective investigation. The CPI units are also responsible for investigating reports of institutional child abuse, which includes abuse by an employee of a private school, public or private day care center, residential home, institution, facility, or agency responsible for the child's care, with certain exclusions.⁸

Upon completion of the investigation, the CPI makes a determination or finding as to each of the allegations of abuse, neglect, or abandonment based on the evidence found.⁹ This finding is recorded in the Statewide Automated Child Welfare Information System—Homesafenet. The operating procedure provides three possible findings and the following guidance in determining which applies:

- **Verified**—The preponderance of credible evidence results in a determination that the specific injury, harm, or threatened harm was the result of abuse or neglect.
- **Some Indication**—There is credible evidence which does not meet the standard of being a preponderance to support that the specific injury, harm, or threatened harm was the result of abuse or neglect.

⁵ See section 63.092(3), Florida Statutes.

⁶ See section 39.201, Florida Statutes.

⁷ Child protective investigations are conducted either by department staff or, in five counties, by staff of the sheriffs' offices. Whether the investigations are conducted by department staff or by sheriff's office employees, the investigator is termed a Child Protective Investigator (CPI).

⁸ See section 39.302, Florida Statutes.

⁹ DCF Operating Procedures, No. 175-28, Allegation Matrix.

- No Indication—There is no credible evidence to support the allegations of abuse, neglect, or threatened harm.

These determinations or findings are made as to allegations, not as to persons. Only when an allegation is verified, and only when the preponderance of credible evidence identifies an individual as the likely person responsible for the abuse, neglect, or abandonment, is a link established between a particular caregiver and a particular allegation.

House Bill 407 CS

The bill prohibits the use of information contained in a report of child abuse, neglect or abandonment in any way that adversely affects the interests of a person when that person has not been identified as a caregiver responsible for the abuse, neglect, or abandonment.

The prohibition extends to institutional investigations of abuse, neglect or abandonment. The bill provides, however, that when the person is a licensee of the Department of Children and Family Services, the information may be considered if relevant in re-licensing or revocation of license decisions when three or more instances have occurred over a five-year period.

The bill authorizes access to child abuse or neglect records described in section 39.202, Florida Statutes, to staff of Children's Advocacy Centers established and operated under section 39.3035, Florida Statutes.

The bill expands the definition of the term "other person responsible for a child's welfare" under chapter 39, Florida Statutes, to include employees of public schools.

The bill provides an effective date of upon becoming law.

C. SECTION DIRECTORY:

Section 1. Amends s. 39.01, F.S., relating to definitions.

Section 2. Amends s. 39.301, F. S., relating to the initiation of protective investigations.

Section 3. Amends s. 39.302, F. S., relating to protective investigations of institutional child abuse, neglect or abandonment.

Section 4. Amends section 39.202, F. S., to provide access to child abuse or neglect records to staff of Children's Advocacy Centers.

Section 5. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The adoption of the amendment expanding the definition of the term "other person responsible for a child's welfare" has the potential to have a substantial fiscal impact on the Department of Children and Family Services. In addition, it could also have an impact on the Department of Education, law enforcement agencies that conduct child protective investigations, and the courts.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 23, 2005, the Future of Florida's Families Committee, adopted a strike everything amendment. The original bill authorized subjects of a verified or indicated report of child abuse to request an administrative hearing under chapter 120, Florida Statutes, if a state attorney determined that prosecution of the criminal child abuse case based on the report was not justified. The amendment prohibits the use of information contained in a report of abuse, neglect, or abandonment in any way that adversely affects the interests of a person when that person has not been identified as a caregiver responsible for the abuse, neglect, or abandonment. The analysis reflects the amendment.

On April 11, 2005, the Health Care Appropriations Committee adopted an amendment to House Bill 407 CS, which gives access to reports and records in cases of child abuse and neglect to staff of a Children's Advocacy Center that is established and operated under section 39.3035, Florida Statutes. The amendment revises section 39.202, Florida Statutes, to add Children's Advocacy Center staff to other persons, officials and agencies that can access specified records. The analysis reflects the amendment.

On April 22, 2005, the Health and Families Council adopted an amendment to HB 407 CS, which expands the definition of the term “other person responsible for a child’s welfare” under chapter 39, Florida Statutes, to include employees of public schools. The bill was then reported favorably as amended. The analysis reflects the amendment.