

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Children and Families Committee

BILL: CS/SB 758

SPONSOR: Children and Families Committee and Senator Wise

SUBJECT: Child Protective Investigations

DATE: March 8, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanford</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Senate Bill 758 prohibits the use of information contained in a report of abuse, neglect, or abandonment in any way which 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, as well, but the committee substitute provides that when the person is a licensee of the Department of Children and Families (DCF or the department), the information may be considered if relevant in relicensing or revocation of license decisions when three or more instances have occurred over a five-year period.

This bill substantially amends sections 39.301 and 39.302 of the Florida Statutes.

II. Present Situation:

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.¹

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),² who accesses it electronically and uses it as the basis for initiating a child protective investigation.

¹ Sections. 39.201(4) and (5), F.S.

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.³

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.⁴ This finding is recorded in HomeSafenet (HSn). 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.
- **No Indication:** There is no credible evidence to support the allegations of abuse, neglect, or threatened harm.

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.

Florida established a statewide telephone "hotline" and registry for the reporting of suspected incidents of child abuse and neglect in 1971. 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. By 1977, the registry had developed a "clearinghouse" function, which enabled workers in the predecessor agency to DCF (the Department of Health and Rehabilitative Services, or HRS) quick access to information contained in the registry in order 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." Abuse registry information, 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 extended 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.⁵ These exceptions, found in ss. 39.201(6) and 39.202, F.S., are primarily centered around DCF's use of data in its files for its own employment or licensing responsibilities. The exceptions are:

² Child protective investigations are conducted either by DCF staff or, in five counties, by staff of the sheriffs' offices. Whether the investigations are conducted by DCF staff or by sheriff's office employees, the investigator is termed a Child Protective Investigator (CPI).

³ Section 39.302, F.S.

⁴ DCF Operating Procedures, No. 175-28, Allegation Matrix.

⁵ Chapter 95-228, Laws of Florida.

- Employees, authorized agents, or contract providers of DCF, 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; and
- Appropriate officials of DCF are authorized to use the hotline information in making decisions regarding employing, continuing the employment of, or taking appropriate administrative action against employees of DCF
- Employees or agents of the Department of Juvenile Justice (DJJ) responsible for the provision of services to children.

In addition, s. 63.092(3), F.S., requires the home-study of an intended adoptive home to include a “check” of the central abuse hotline information. 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 DCF can release the information directly to private adoption agencies or what either DCF or the agency is expected to do with the information after the “check.”

Since the time the ability to contest the classification of reports was legislatively removed in 1995, concerns have been expressed regarding the fairness of information maintained in DCF files. The increasing reliance on electronic management of the files, combined with the growing exceptions to the confidentiality requirements of s. 39.202, F.S., 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.

III. Effect of Proposed Changes:

The Committee Substitute for Senate Bill 758 prohibits the use of information contained in a report of abuse, neglect, or abandonment in any way which 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, but the committee substitute provides that when the person is a licensee of the Department of Children and Families (DCF), the information may be considered if relevant in relicensing or revocation of license decisions when 3 or more instances have occurred over a five-year period.

The bill provides an effective date of July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

IX. Summary of Amendments:

None.

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