

# 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: Judiciary Committee

BILL: CS/CS/SB 758

SPONSOR: Judiciary and Children and Families Committees and Senator Wise

SUBJECT: Child Protective Investigations

DATE: April 14, 2005

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|---------|----------------|-----------|---------------|
| 1. | Sanford | Whiddon        | CF        | <b>Fav/CS</b> |
| 2. | Chinn   | Maclure        | JU        | <b>Fav/CS</b> |
| 3. |         |                | WM        |               |
| 4. |         |                |           |               |
| 5. |         |                |           |               |
| 6. |         |                |           |               |

## I. Summary:

Committee Substitute for Committee Substitute for Senate Bill 758 prohibits the use of information contained in a report from a closed investigation 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 closed investigations of institutional abuse, neglect, or abandonment, as well, but the committee substitute provides that when the person is a licensee of the Department of Children and Family Services (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.

The committee substitute also authorizes staff of a children's advocacy center to access certain records of the department relating to reports of child abuse.

This committee substitute substantially amends sections 39.202 and 39.301, Florida Statutes.

## II. Present Situation:

The Department of Children and Family Services (DCF or the department) is statutorily required to establish and maintain a central abuse hotline that receives reports of known or suspected child abuse, neglect, or abandonment 24 hours a day, seven days a week through a single statewide toll-free telephone number.<sup>1</sup> The department must also be capable of investigating the reports received at any time, day or night.<sup>2</sup>

<sup>1</sup> s. 39.201(4), F.S.

<sup>2</sup> s. 39.201(5), F.S.

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),<sup>3</sup> 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.<sup>4, 5</sup>

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;<sup>6</sup> these findings are recorded in HomeSafenet.<sup>7</sup> The DCF's operating procedures provide three possible findings and the following guidance in determining which to apply:

- **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.

A link is established between a particular caregiver and a particular allegation only when an allegation is verified and when the preponderance of credible evidence identifies an individual as the likely person responsible for the abuse, neglect, or abandonment.

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 1995, 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

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<sup>3</sup> 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).

<sup>4</sup> s. 39.302, F.S., provides for CPI investigations and cross-references to ss. 39.01(31) and 39.01(47), F.S., for definitions of entities and persons subject to investigations under this section.

<sup>5</sup> s. 39.01(47), F.S., excludes from investigation the following: law enforcement officers, employees of municipal or county detention facilities, and the Department of Corrections when acting in an official capacity.

<sup>6</sup> Department of Children and Family Operating Procedures, No. 175-28, Allegation Matrix.

<sup>7</sup> HomeSafenet is Florida's statewide automated child welfare information system. It provides real-time automated support for caseworkers and managers on the state and local level and can be analyzed for trends, deficiencies, and improvements (Program Improvement Plan, April 1, 2003, <http://www.dcf.state.fl.us/publications/docs/pipapp0403.pdf> at p. 22).

character.”<sup>8</sup> 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.<sup>9</sup> The exceptions that allow use of the registry and hotline information, found in ss. 39.201(6) and 39.202, F.S., are primarily centered around DCF’s use of data in its files for screening its employees or fulfilling its licensing responsibilities. Permitted uses of records are as follows:

- 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 for the purposes of determining whether such licenses should be issued, renewed, or revoked;
- 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; and
- Employees or agents of the Department of Juvenile Justice (DJJ) are authorized to utilize records to provide services to juveniles and families under chs. 984 and 985, F.S.

In addition, s. 63.092(3)(b), 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 it is not clear under the law whether DCF can release the information directly to private adoption agencies or what either DCF or the adoption 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 file management, 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.

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<sup>8</sup> s. 30, ch. 95-228, L.O.F, rewrote s. 39.001(2)(a), F.S., regarding contracts between the department and child care providers.

<sup>9</sup> ch. 95-228, L.O.F.

### **III. Effect of Proposed Changes:**

Committee Substitute for Committee Substitute for Senate Bill 758 prohibits the use of information contained in a report from a closed investigation 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 closed investigations of institutional abuse, neglect, or abandonment, but the committee substitute provides that when the person is a licensee of the Department of Children and Family Services, 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.

The committee substitute also amends s. 39.202, F.S., which provides confidentiality to records held by the department concerning reports of child abandonment, abuse, or neglect. The statute currently delineates certain agencies and officials who may be provided access to these records. The committee substitute adds staff of a children's advocacy center (established and operated under s. 39.3035, F.S.) to the list of those who may access the records.

The committee substitute provides an effective date of upon becoming law.

### **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:**

State agencies or contractors with state agencies may no longer use records that may have named an individual who was not identified as a caregiver responsible for abuse, neglect, or abandonment for employment screening or licensing. This change may enable individuals to obtain licenses or employment that could have been denied to them in the past when any mention of an individual in an investigation record could be considered and could adversely affect an applicant.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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## **IX. Summary of Amendments:**

None.

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