

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 1044

INTRODUCER: Children, Families, Elder Affairs Committee and Senator Lynn

SUBJECT: Child Abuse, Abandonment, or Neglect Reporting

DATE: April 17, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ray	Jameson	CF	Favorable
2.	Dugger	Cannon	CJ	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Section 39.205(4), F.S., requires the Department of Children and Families (DCF or “the department”) to report the number of potential false reports of child abuse, abandonment, or neglect referred to law enforcement for investigation. According to Senate Interim Project Report 2008-105, the inconsistent and sporadic reporting makes it difficult to gain a clear picture of false reporting in Florida.

This bill substantially amends s. 39.205, F.S., requiring DCF to include within their annual report to the Legislature, the number of:

- Suspected false reports of child abuse, abandonment, or neglect;
- False reports that are referred to a law enforcement agency for investigation;
- False reports that are reviewed by the department for potential administrative fines;
- Investigations that are conducted by the department or its authorized agent as a result of a report of child abuse, abandonment, or neglect;
- Reports that are closed with no findings of alleged maltreatment;
- Administrative fines that are levied and collected pursuant to s. 39.206(1), F.S.; and
- False reports of child abuse, abandonment, or neglect which result in prosecution.

The bill provides for an effective date of July 1, 2008.

II. Present Situation:

According to *Child Maltreatment 2005*, the most recent report of data from the National Child Abuse and Neglect Data System (NCANDS), approximately 899,000 children in the U.S. were found to be victims of child abuse or neglect in calendar year 2005.¹ Approximately 131,000 of those victimized were in the State of Florida.² Many victims do not receive help, because the crimes committed against them are not reported.³

Reporting Abuse

Section 39.201(2)(a), F.S., requires that reports of child abuse, abandonment, or neglect be made immediately to the Florida Abuse Hotline. Under the provisions of s. 39.201(1)(a), F.S., any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected is required to report such knowledge or suspicion to the department.

For the hotline to accept a report on a child, personnel at the department's central abuse hotline are required to determine whether the child who is the subject of the report meets the following statutory conditions. He or she:

- Is a Florida resident, and can be located in Florida, or is temporarily out of the state but expected to return;
- Has been harmed or is believed to be threatened with harm by a parent, legal custodian, caregiver, or other person responsible for the child's welfare; or
- Is not a Florida resident but can be located in Florida and has been harmed in Florida or is believed to be threatened with harm in Florida by a parent, legal custodian, caregiver, or other person responsible for the child's welfare.⁴

The department's quality assurance program regularly reviews calls to the hotline involving three or more unaccepted reports on a single child, in order to detect such things as harassment and situations that warrant an investigation because of the frequency or variety of the source of the reports. The program director for Family Safety may refer a case for investigation when it is determined, as a result of this review, that an investigation may be warranted.⁵

According to DCF, almost 50 percent of the reports investigated are closed with no findings of alleged maltreatment. Of these, a small percentage may be false reports.⁶ Reports that cannot be proven and are closed as unfounded should not be confused with a false report that is made knowingly, willingly, and maliciously.

¹ The Florida Senate, Committee on Children, Families, and Elder Affairs, *False Reports of Child Abuse, Abandonment, and Neglect* (Interim Project Report 2008-105)(October 2007).

² *Id.* at page 2.

³ *Id.* at page 2.

⁴ Section 39.201(2), F.S., also see Rule 65C-29.002, F.A.C.

⁵ Section 39.201(7), F.S.

⁶ The Florida Senate, Committee on Children, Families, and Elder Affairs, *False Reports of Child Abuse, Abandonment, and Neglect* (Interim Project Report 2008-105)(October 2007).

False Reports

The term “false report” is defined in s. 39.01(28), F.S., as a report of abuse, abandonment, or neglect of a child made to the central abuse hotline, which is maliciously made for the purpose of:

- Harassing, embarrassing, or harming another person;
- Personal financial gain for the reporting person;
- Acquiring custody of a child; or
- Personal benefit for the reporting person in any other private disputes involving the child.

A false report does not include a report of abuse, abandonment, or neglect that is made in good faith,⁷ a report of abuse, abandonment, or neglect that does not meet the statutory requirements in s. 39.01(2), F.S., or a call made to the hotline in error.

The department may become aware of a potential false report through staff observation, as a result of information received from third parties, or through a complaint submitted by the subject of the false report.

If an investigator suspects that a false report was made, the investigator indicates that suspicion by flagging the report as a potential false report. Once a report is identified as a potential false report, a course of action is decided.⁸ In order for the department to proceed, the consent of the subject of the false report must be obtained.⁹ It is the department’s responsibility to refer the alleged false report to local law enforcement to determine whether sufficient evidence exists to refer the case for prosecution.¹⁰ If law enforcement finds sufficient evidence for prosecution for filing a false report, they must refer the case to the appropriate state attorney.¹¹

Florida law provides three potential criminal or civil penalties against a false reporter:

- A person who knowingly and willfully makes a false report of child abuse, abandonment, or neglect or advises another to make such a report is guilty of a felony in the third degree,¹² punishable by imprisonment not to exceed five years and a fine not to exceed \$5,000.
- In addition to or in lieu of the criminal penalties,¹³ s. 39.206(1), F.S., authorizes the department to impose an administrative fine, not to exceed \$10,000 per violation, upon a person who knowingly and willfully makes or advises another to make a false report of abuse, abandonment, or neglect of a child.
- A person who knowingly and willfully makes or advises another to make a false report of abuse, abandonment, or neglect of a child may also be sued civilly for damages, including attorney fees and costs.¹⁴

⁷ Section 39.01(28), F.S.

⁸ The Florida Senate, Committee on Children, Families, and Elder Affairs, *False Reports of Child Abuse, Abandonment, and Neglect* (Interim Project Report 2008-105)(October 2007).

⁹ Section 39.205(5), F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² Chapter 98-403, Laws of Florida; s. 39.205(6), F.S.

¹³ Section 39.205(6), F.S.

¹⁴ Section 39.206(10), F.S.

In 1998, the Legislature amended s. 39.205(4), F.S., requiring DCF to provide the Legislature with an annual report outlining the number of reports referred to local law enforcement as false reports. The department did not submit a report to the Legislature for FY 2004-2005. The department's report to the Legislature for FY 2003-2004 did not include the number of false reports referred to law enforcement.

The only data that the department is currently required to report is the number of potential false reports referred to law enforcement for investigation. The inconsistent and sporadic collection and reporting of the data by the department makes it difficult to gain a clear picture of false reporting in Florida.

III. Effect of Proposed Changes:

The bill significantly amends s. 39.205, F.S., by requiring that DCF include within their annual report to the Legislature the number of:

- Suspected false reports of child abuse, abandonment, or neglect;
- False reports that are referred to a law enforcement agency for investigation;
- False reports that are reviewed by the department for potential administrative fines;
- Investigations that are conducted by the department or its authorized agent as a result of a report of child abuse, abandonment, or neglect;
- Reports that are closed with no findings of alleged maltreatment;
- Administrative fines that are levied and collected pursuant to s. 39.206(1), F.S.; and
- False reports of child abuse, abandonment, or neglect which result in prosecution.

The bill provides for an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The department is already required to report limited information regarding false reports. This bill adds data elements to the existing reporting requirements. The effect on DCF is expected to be negligible.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.