

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 Judiciary Committee

BILL: CS/SB 2044

INTRODUCER: Judiciary Committee and Children, Families, and Elder Affairs Committee

SUBJECT: Child Protection

DATE: February 13, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Farmer	CF	Favorable
2.	O'Connor	Cibula	JU	Fav/CS
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill makes changes to numerous provisions in chapter 39, F.S., relating to the central abuse hotline, child protective investigations, and the dependency process. Specifically, the bill does the following:

- Amends the central abuse hotline procedures to specify that the hotline may accept a call from a parent or legal custodian seeking assistance for themselves when the call does not meet the statutory requirement of abuse, abandonment or neglect;
- Allows the Department of Children and Family Services (DCF or department) to discontinue an investigation if it is determined that a false report of abuse, abandonment or neglect has been filed;
- Requires the department to maintain one electronic child welfare case file for each child;
- Requires child protective investigators (CPIs) to determine the need for immediate consultation with law enforcement personnel, child protection teams, and others prior to the commencement of an investigation;
- Eliminates the current bifurcated investigative process and provides for a single procedure for every case accepted for investigation; and

- Requires that monitoring of protective investigation reports are used to determine the quality and timeliness of safety assessments, and teamwork with other professionals and engagement with families.

In addition, the bill: makes changes to the chapter 39, F.S., protective injunction process to prevent child abuse and to mirror language in the civil injunction process in chapter 741, F.S.; amends requirements relating to criminal background and records checks for individuals being considered for placement of a child; and amends provisions relating to termination of parental rights that apply to incarcerated parents. Finally, the bill provides specific circumstances in which the court may order maintaining and strengthening families as a permanency goal in a child's case plan when the child resides with a parent and revises the number of times the Children and Youth Cabinet must meet annually.

The bill substantially amends ss. 39.01, 39.013, 39.0138, 39.201, 39.205, 39.301, 39.302, 39.307, 39.502, 39.504, 39.521, 39.6011, 39.621, 39.701, 39.8055, 39.806, 39.823, 39.828, and 402.56, Florida Statutes.

II. Present Situation:

Background

Chapter 39, F.S., provides direction for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development. It also ensures secure and safe custody; promotes the health and well-being of all children under the state's care; and prevents the occurrence of child abuse, neglect, and abandonment.¹ The central abuse hotline and the child protective investigation comprise the “front-end” of the child protection system in Florida.²

Florida Abuse Hotline

The department operates the central abuse hotline (hotline), a 24 hour a day, 7 day a week reporting system which serves as a point of contact for individuals who reasonably suspect or believe that a child has been abused, abandoned, or neglected³ by a parent, legal custodian, caregiver, or other person responsible for the child's welfare⁴ or believe that a child is in need of supervision and care but has no parent, legal custodian, or responsible adult relative immediately known and available.^{5, 6}

Callers to the hotline may remain anonymous. However, various professionals are required to provide their names as part of the permanent report.⁷ Once a call has been made to the hotline, hotline counselors enter all information into the Florida Safe Families Network (FSFN), and

¹ Section 39.001(1)(a), F.S.

² Sections 39.201 and 39.301, F.S.

³ As defined by s. 39.01(1), (2), and (44), F.S.

⁴ As defined by s. 39.01(10), (47) and (49), F.S.

⁵ Section 39.201(1)(a), F.S.

⁶ In 2008, the department was authorized to accept reports to the central abuse hotline by fax or web-based report. Chapter 2008-245, Laws of Fla.

⁷ Section 39.201, F.S.

determine if the call meets the statutory definition of child abuse, abandonment, or neglect by a caregiver.⁸ If the call meets one of those definitions, it is accepted as a report and referred to the appropriate child investigative office.⁹ The Department of Children and Families (DCF or department) is required to maintain a master file for each child whose report is accepted by the hotline.¹⁰

In 2007, the department authorized the central abuse hotline to begin implementing new procedures related to calls that do not meet the criteria to be accepted as a report, but may indicate situations in which a family needs help. These have been referred to as “prevention referrals,” “parent needs assistance referrals,” or “special condition referrals.” The expectation of these referrals was for circuits to utilize local resources to prevent a child from being placed at risk.^{11, 12}

Child Protective Investigations

The department’s approach to child protective investigations has historically been marked by change:

- In 1992, the Florida House of Representatives Aging and Human Services Committee decided that incremental changes made in the past relating to child protective investigations had not remedied perceived problems with the process and wanted a more systematic approach to reforming the child protection system.¹³ Legislation was enacted which directed the department to prepare a strategic plan to establish a clear and consistent direction for policy and programs for the child protection system, including goals, objectives, and strategies.¹⁴ Recommendations in the completed strategic plan included creating the statutory authority for developing and demonstrating the efficacy of a service-oriented response system to reports of child abuse and neglect.¹⁵
- With the creation of part III of chapter 415, F.S., entitled Family Services Response System (FSRS),¹⁶ in 1993, Florida was one of the first two states to implement a differential response system. The provisions in Florida law relating to the FSRS constitute the assessment response of a differential response system. The approach provided for a nonadversarial response to reports of abuse and neglect by assessing for and delivering services to remove any determined risk, while providing support for the family. The legislation allowed local

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Department of Children and Family Services. Prevention Referral Guidance Memorandum, Dec. 1, 2009.

¹² Early problems included circuits and lead agencies providing inconsistent responses to these referrals. A subsequent memorandum provided some clarification for the referral process. Department of Children and Family Services. Child Prevention Referral Guidance and Clarification Memorandum, Jan. 19, 2010.

¹³ Final Bill Analysis and Economic Impact Statement, CS/HB 593, Florida House of Representatives, Committee on Aging and Human Services, Apr. 3, 1993.

¹⁴ Chapter 92-58, Laws of Fla. In developing the plan, the department was required to engage a broad spectrum of individuals and groups and look at the child protection system in its entirety.

¹⁵ Final Bill Analysis and Economic Impact Statement, *supra* note 13.

¹⁶ Chapter 93-25, Laws of Fla. The legislation not only created part III of chapter 415, F.S., entitled Family Services Response System, but also created part IV, entitled Protective Investigations, which resulted in a clear statutory delineation between the two types of responses to reports of child abuse and neglect. The legislation also required an outcome evaluation and three annual status reports to be submitted to the Legislature beginning January 1, 1995.

service districts the flexibility to design the FSRS to meet local community needs¹⁷ and required an ongoing community planning effort to include the approval of the recently established Health and Human Service Boards.¹⁸

- The department began steps toward the implementation of FSRS in districts statewide. Despite some positive findings reported in subsequent outcome evaluations, difficulties identified during the course of the evaluation had a negative effect on the viability and support for FSRS.¹⁹ In addition to problems identified in the outcome evaluation, an assessment of dependency cases by Florida's Dependency Court Improvement Program (DCIP)²⁰ revealed enough judicial concern with the inconsistent implementation of the FSRS, and compromised child safety as a result of decisions being made by department staff, that the DCIP recommended that Florida return to the use of a traditional protective investigation for all reports.²¹
- During the 1998 session, legislation was enacted which incorporated all of the recommendations of the DCIP, as well as the mandated provisions of the newly enacted federal Adoption and Safe Families Act, and Florida's version of a differential response system was repealed.²² As a result, all districts returned to the investigation of all child protective reports culminating in a finding associated with a child victim and perpetrator. Currently, Florida law does not allow for the use of a differential response system.
- In 2003, the Protective Investigation Retention Workgroup (PIRW) was formed under the direction of DCF for the purpose of examining a number of the issues relating to retention of protective investigators.²³ The product of the workgroup was a comprehensive set of recommendations, including development of a framework for a differential response system to be piloted in multiple sites.^{24, 25} Recommendations of the workgroup also resulted in legislation creating two types of investigative response: onsite and enhanced onsite.²⁶

¹⁷ Section 415.5018, F.S. (1993).

¹⁸ *Id.*

¹⁹ Alternative Response System Design Report, Prepared for the Florida Department of Children and Family Services by the Child Welfare Institute (Dec. 2006).

²⁰ Florida's Dependency Court Improvement Program (DCIP) was established in 1995 when Congress funded a comprehensive research initiative to assess judicial management of foster care and adoption proceedings. The mandate to the highest court in every state was to assess the court's management of dependency cases to determine the level of compliance with the Adoption Assistance and Child Welfare Act and to develop an action plan to effect positive change in legislation, policy, judicial oversight, representation, and practice and procedure.

²¹ Committee on Children, Families, and Elder Affairs, The Florida Senate, *Differential Response To Reports Of Child Abuse And Neglect* (Interim Report 2011-105) (Oct. 2010) (on file with the Senate Committee on Judiciary).

²² Chapter 98-403, Laws of Fla. CS/HB 1019. Part III of chapter 39, F.S., entitled Protective Investigations, was created and all calls accepted by the hotline as reports were required to be investigated.

²³ See Committee on Children and Families, The Florida Senate, *Retention of Protective Investigators and Protective Investigative Supervisors* (Interim Report 2003-110) (Jan. 2003) (on file with the Senate Committee on Judiciary), and Committee on Children and Families, The Florida Senate, *Retention of Protective Investigators Phase II*, 24 (Interim Report 2004-113) (Nov. 2003) (on file with the Senate Committee on Judiciary).

²⁴ Protective Investigator Retention Workgroup, Report to the Legislature, Department of Children and Family Services, Dec. 31, 2003.

²⁵ In 2005, the DCF Family Safety program office issued a Request for Proposal (RFP) for assistance in designing a differential response system pilot project in Florida. The program office limited the scope of the project to Bay, Duval, and Seminole counties. The pilots ran for six months, beginning in mid 2008, with mixed results. Florida's Alternative Response Pilot Final Summary Report, Florida Department of Children and Family Services, Family Safety Program Office, Feb., 2009.

²⁶ Chapter 2003-127, Laws of Fla.

- The department proposed legislation to implement a statewide differential response system for responding to reports of child abuse and neglect during the 2009 and 2010 Legislative Sessions.²⁷

Chapter 39 Protective Injunctions

Current law permits a court to issue an injunction to prevent an act of child abuse including protection from acts of domestic violence at any time after a protective investigation has been initiated, and if there is reasonable cause for the injunction.²⁸ An injunction issued pursuant to chapter 39, F.S., may order an alleged or actual offender to:

- Refrain from further abuse or acts of domestic violence;
- Participate in a specialized treatment program;
- Limit contact or communication with the child victim, other children in the home, or any other child;
- Refrain from contacting the child at home, school, work, or wherever the child may be found;
- Have limited or supervised visitation with the child;
- Pay temporary support for the child or other family members; the costs of medical, psychiatric, and psychological treatment for the child incurred as a result of the offenses; and similar costs for other family members; and
- Vacate the home in which the child resides.²⁹

The injunction will remain in effect until modified or dissolved by the court, and is enforceable in all counties in the state, allowing law enforcement to exercise arrest powers in the enforcement of the injunction, if necessary.³⁰

The department has reported that some judges do not interpret the law to allow for jurisdiction to attach to the dependency courts when an injunction for protection under s. 39.504, F.S., is filed prior to, or in lieu of, a shelter or dependency petition. Judges are reluctant to advance a petition for injunction unless a dependency action is also filed because of this jurisdictional issue. Current law does not allow for a warrantless arrest.³¹

Termination of Parental Rights

Current law provides that grounds for the termination of parental (TPR) rights may be established under a number of circumstances, including when the parent of a child is incarcerated in a state or federal correctional institution and either:

- The period of time for which the parent is expected to be incarcerated will constitute a substantial portion of the period of time before the child will attain the age of 18 years;

²⁷ See SB 2288 (2009) and SB 2676 (2010).

²⁸ Section 39.504, F.S.

²⁹ *Id.*

³⁰ *Id.*

³¹ Department of Children and Families. *Staff Analysis and Economic Impact Statement, HB 803*. (Dec. 5, 2011). At the time of this analysis HB 803 and PSB 7166 were identical.

- The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084, F.S., a habitual violent felony offender as defined in s. 775.084, F.S., or a sexual predator as defined in s. 775.21, F.S.; has been convicted of first-degree or second-degree murder in violation of s. 782.04, F.S., or a sexual battery that constitutes a capital, life, or first-degree felony violation of s. 794.011, F.S.; or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph;³² or
- The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child.

The measurement of the child's remaining minority runs from the date the termination of parental rights petition is filed. The court is limited to relying solely on the length of the parent's sentence and may not consider the quality of that time in the child's development.³³ The court must consider whether the time for which a parent is expected to be incarcerated in the future constitutes a substantial portion of the time before the child reaches 18, not whether the time the parent has been incarcerated in the past was a substantial portion of the child's life to that point.³⁴

Currently, the courts interpret "substantial portion of the child's remaining minority" as a mathematical formula. In determining what constitutes a substantial portion of the child's remaining minority, the courts have found that 25 percent, 26 percent, 28.6 percent and 32 percent of the child's remaining minority was not substantial.

- *W.W. v. Department of Children and Families* held that incarceration for a period constituting 25 percent of the child's minority was not a substantial portion of the child's minority.³⁵
- *In re A.W.* held that remaining incarceration constituting 26 percent and 32 percent of the remaining minority of the children did not constitute a substantial portion of child's minority.³⁶

Children and Youth Cabinet

The Children and Youth Cabinet (cabinet) was created in 2007 to ensure that the public policy of the state relating to children and youth be developed to promote interdepartmental collaboration and program implementation so that services designed for children and youth are planned, managed, and delivered in a holistic and integrated manner to improve the children's self-

³² As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction.

³³ *In re A.W.*, 816 So. 2d 1261 (Fla. 2d DCA 2002).

³⁴ *In re J.D.C.*, 819 So. 2d 264 (Fla. 2d DCA 2002); *See also B.C. v. Department of Children and Families*, 887 So. 2d 1046 (Fla. 2004).

³⁵ *W.W. v. Department of Children and Families*, 811 So. 2d 791 (Fla. 4th DCA 2002).

³⁶ *In re A.W.*, 816 So. 2d at 1264.

sufficiency, safety, economic stability, health, and quality of life.³⁷ The cabinet is currently required to meet at least six times each year in different regions of the state in order to solicit input from the public and any other individual offering testimony relevant to the issues considered. Each meeting must include a public comment session.³⁸

III. Effect of Proposed Changes:

Central Abuse Hotline

The department is currently making referrals known as “Special Condition Referrals” without statutory authority. The bill authorizes the department to refer calls to the central abuse hotline from parents or legal custodians who seek help, to voluntary community services providers after it is determined that the call does not meet the statutory threshold for a child protective investigation.

Child Protective Investigations

This bill proposes substantial changes to the child protective investigation process with the intent to strengthen the investigation process, streamline investigative activities, and provide a more focused framework for on-going services to be provided.³⁹ Current law provides for two types of investigative responses; “enhanced” and “onsite.”⁴⁰ The abbreviated “onsite” investigative process, with the exception of minor requirement exemptions, mirrors the “enhanced” or “traditional” investigative process, and essentially renders them indistinguishable.⁴¹ The department reports that due to the prescriptive nature of the current statute, child protective investigators are inhibited from developing different criteria and response protocols to effectively engage families. The department also reports that the current statute does not provide for differentiation between risk and safety that guides a child protective investigator’s determination of response and service provision.⁴²

The bill contains the following provisions related to child protective investigations:

- Provides DCF with the discretion whether to file a dependency petition with the court when a child is in need of protection and supervision. Current law is deleted which requires that a dependency petition be filed when the child needs protection and supervision of the court and when the case is determined to be high risk.
- Requires that the case record for each child be electronic and include all information from reports called into the hotline and all services the child and family have received.

³⁷ Chapter 2007-151, Laws of Fla.

³⁸ Section 402.56, F.S.

³⁹ Following the death of Nubia Barahona, Secretary Wilkins convened the Child Protection Improvement Advisory Board to draft an “overhaul of the way DCF investigators handle child abuse cases, of the hotline that filters thousands of abuse calls annually and of the community agencies that serve foster families.” A. Valdes, *Barahona Death to Spur Florida Child Protection Overhaul*, THE PALM BEACH POST. Jun. 16, 2011. It is unclear whether the changes proposed in the bill are a result of the work of the advisory board.

⁴⁰ Section 39.301, F.S.

⁴¹ *Id.*

⁴² Department of Children and Families, *Staff Analysis and Economic Impact Statement, HB 803* (Dec. 5, 2011). At the time of this analysis HB 803 and PSB 7166 were identical.

- Removes several provisions from current law which provide conditions as to when a child protective investigation is to be performed. This is replaced with a general directive that each report from the hotline that is accepted will be investigated and provides the following list of activities to be performed, some of which are already in current law:
 - Review all available information specific to the child and family and the alleged maltreatment including past family child welfare history, criminal records checks, and requests for law enforcement assistance provided by the hotline;
 - Interview collateral contacts, which may include professionals who know the child;
 - Conduct face-to-face interviews, including with the child's parent or caregiver; and
 - Assess the child's residence.

The bill contains the following new provisions related to the investigative process, which requires the department to:

- Determine the need for immediate consultation with law enforcement, child protection teams, domestic violence shelters and substance abuse and mental health professionals; and
- Document impending dangers to the child based on safety assessment instruments as opposed to a risk assessment instrument which is required in current law. Neither the bill nor current law defines "safety" or "risk." It is, therefore, not clear what change is intended by a safety assessment versus a risk assessment.

The bill also:

- Allows DCF or its authorized agent to discontinue all investigative activities at the point it is determined that a false report has been referred;
- Establishes the Statewide Automated Child Welfare Information System as the single standard electronic case file on a child for centralized documentation and maintenance on services provided to the child and family;
- Requires the child protection investigator to determine the need for immediate consultation with law enforcement, a child protection team, a domestic violence shelter or advocate, and a substance abuse or mental health professional prior to commencement of an investigation;
- Authorizes the child protection investigator to close a case at various stages of an investigation when it is determined that a child is safe and there are no signs of impending danger;
- Provides that, at the close of a child protective investigation, the investigator is required to provide to the alleged perpetrator and the parent or legal custodian of the child a summary of findings from the investigation and inform them of their right to access confidential reports associated with the investigation;
- Outlines the activities, training requirements and qualitative reviews that must be performed to enhance the skills of staff and improve the region's overall child protection system; and
- Provides conditions under which an investigator may close a case and makes changes to the case review process to identify family strengths and weaknesses.

Chapter 39 Protective Injunctions

The bill makes improvements and changes to the protective injunction process to prevent child abuse in s. 39.504, F.S., and mirrors language in the civil injunction process in chapter 741, F.S. The bill contains the following provisions related to protective injunctions under chapter 39, F.S.:

- Amends 39.013, F.S., related to court procedures and jurisdiction to specify that jurisdiction of the court attaches to a case when a petition for injunction to prevent child abuse has been issued pursuant to s. 39.504, F.S. Current law provides that court jurisdiction attaches to a case when petitions for shelter, dependency or termination of parental rights are filed or the child is taken into DCF custody. The department reports that some courts will not recognize or hear an injunction unless a shelter, dependency or termination of parental rights petition has already been filed. This change will assist DCF by not requiring one of these other petitions when all that may be needed to resolve a situation is an injunction to protect the child.
- Establishes jurisdiction to enable courts to accept a domestic violence injunction filed by the department rather than the victim of such violence. and
- Effectuates the legislative intent of 2008 by creating a process similar to the procedures in adult domestic violence cases under chapter 741, F.S., for the entry of an immediate injunction, which also protects the constitutionally-protected due process rights of the respondent. The department reports these changes are essential to providing a consistent and positive application of injunctions under chapter 39, F.S.⁴³

Termination of Parental Rights

The Guardian Ad Litem Program reports that using a purely mathematical formula to determine termination of parental rights (TPR) of an incarcerated parent does not support the provisions of chapter 39, F.S., where the primary consideration is for permanency and the best interest of the child.⁴⁴ The bill authorizes termination upon a “significant portion of the child’s minority” and replaces the forward mathematical time calculation with a qualitative review of the significance of the incarceration to a child’s life. The judicial review would begin on the date the parent entered the correctional institution rather than at the time of the filing of the TPR petition.

The bill also contains the following provisions related to termination of parental rights:

- Amends the timeframe for parents to comply with a case plan from 9 months to 12 months as it relates to grounds for termination of parental rights. This is a conforming change to other sections of law that already specify 12 months.⁴⁵ and
- Amends the definitions of the terms “abandoned” and “harm” to conform with changes made by the bill related to termination of parental rights when a parent is incarcerated.

⁴³ *Id.*

⁴⁴ Communication from Alan Abramowitz, Executive Director, Florida Statewide Guardian ad Litem Office, Nov. 21, 2011. (on file with the Committee on Children, Families, and Elder Affairs).

⁴⁵ See ss. 39.401, 39.6011, 39.621, 39.701, and 39.8055, F.S.

Additional Provisions

The bill also does the following:

- Clarifies that a criminal history records check on all persons, being considered by the department for placement of a child includes parents of the child and all members of the household 12 years of age or older; requires submission of fingerprints to the Florida Department of Law Enforcement (FDLE) on household members 18 years of age and older and on other visitors; and requires an out-of-state criminal history records check on any person 18 years of age or older who resided in another state if that state allows the release of such records. The department reports that there are inconsistent interpretations around the state related to the background screening requirements for parents who are being considered for placement of a child and whether children who are 12 to 18 years of age should be fingerprinted.
- Requires the protective investigation of an institution to include an interview with the child's parent or legal guardian rather than an onsite visit of the child's place of residence.
- Eliminates the seven day requirement for an assessment of service and treatment needs regarding child-on-child sexual abuse reports, recognizing that assessments often can take longer than seven days.
- Clarifies that maintaining and strengthening families is a statutorily authorized case plan goal for children who remain in their homes under protective supervision. and
- Requires that the Children and Youth Cabinet must meet at least four times annually.

Effective Date

The bill provides an effective date of July 1, 2012.

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:

None.

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.)**CS by Judiciary on February 9, 2012:**

The committee substitute:

- Provides that, at the close of a child protective investigation, the investigator is required to provide to the alleged perpetrator and the parent or legal custodian of the child a summary of findings from the investigation and inform them of their right to access confidential reports associated with the investigation; and
- Provides that the department's training requirements for child protective investigators must ensure that investigators know how to explain to the alleged perpetrator and the parent or legal custodian the results of the investigation and inform them of their right to access confidential reports associated with the investigation.

B. Amendments:

None.