

**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.)

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Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

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BILL: SB 670

INTRODUCER: Senator Gaetz

SUBJECT: Child Protection Teams

DATE: January 13, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 670 bill provides sovereign immunity protections of the state to members of a child protection team, when they are carrying out duties as a team member. Child protection teams (CPT) are medically directed, multidisciplinary teams that supplement the child protective investigation efforts of the Department of Children and Families (DCF or department) and local sheriffs' offices in cases of child abuse and neglect

The bill does not appear to have a significant fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2016.

**II. Present Situation:**

**Child Protection Teams**

A child protection team is a medically directed, multidisciplinary team that supplements the child protective investigation efforts of the department and local sheriffs' offices in cases of child abuse and neglect.<sup>1</sup> They are independent, community-based programs that provide expertise in evaluating alleged child abuse and neglect, assessing risk and protective factors, and provide recommendations for interventions to protect children and to enhance a caregiver's capacity to provide a safer environment when possible.<sup>2</sup>

Child abuse, abandonment and neglect reports to the DCF central abuse hotline that must be referred to child protection teams include cases involving:

- Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.

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<sup>1</sup> Florida Department of Health, Children's Medical Services. Child Protection Teams, available at [http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child\\_protection\\_safety/child\\_protection\\_teams.html](http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html) (last visited December 29, 2015).

<sup>2</sup> *Id.*

- Bruises anywhere on a child five years of age or younger.
- Any report alleging sexual abuse of a child.
- Any sexually transmitted disease in a prepubescent child.
- Reported malnutrition or failure of a child to thrive.
- Reported medical neglect of a child.
- A sibling or other child remaining in a home where one or more children have been pronounced dead on arrival or have been injured and later died as a result of suspected abuse, abandonment or neglect.
- Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.<sup>3</sup>

Once a referral from DCF or law enforcement has been accepted, the CPT may provide one or more of the following services:

- Medical diagnosis and evaluation,
- Nursing assessments,
- Child and family assessments,
- Multidisciplinary staffing,
- Psychological and psychiatric evaluations,
- Specialized and forensic interviews, or
- Expert court testimony<sup>4</sup>

The Department of Health currently contracts with a variety of community-based organizations to provide CPT services statewide. Employees of the 22 CPTs are independent contractors and are not covered by section 768.28, F.S., which provides sovereign immunity in tort actions and limits financial recoveries. The teams are medically directed by one board certified pediatrician and in the case of a large geographical areas, some may have an associate medical director to ensure adequate coverage.<sup>5</sup>

Some CPTs employ individuals to provide services while others provide these services through subcontractors. The total number of all CPT members statewide is approximately 388. These 388 positions do not include the 20 CPT Medical Directors and the two interim CPT Statewide Medical Directors, who are all employees of the state and have liability protection when acting in the scope of their employment. Of the 388 positions, 92 are employed by the University of Florida (Gainesville and Jacksonville) and the University of South Florida and are currently covered by sovereign immunity. The CPT employees are employed as physicians, registered nurses (RN), advanced registered nurse practitioner (ARNP), physician assistants (PA), medical assistants, team coordinator or supervisor, case coordinator or other staff (administrative or data).

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<sup>3</sup> Section 39.303, F.S.

<sup>4</sup> Florida Department of Health, Children's Medical Services. Child Protection Teams, *available at* [http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child\\_protection\\_safety/child\\_protection\\_teams.html](http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html) (last visited December 29, 2015).

<sup>5</sup> Florida Department of Health, 2016 Agency Legislative Bill Analysis, SB 670. November 3, 2015. On file with the Senate Committee on Children, Families and Elder Affairs.

## Sovereign Immunity

Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of such governments unless the immunity is expressly waived. Article X, Section 13, of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive such immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Under this statute, officers, employees, and agents of the state will not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function.

Instead, the state steps in as the party litigant and defends against the claim. The recovery by any one person is limited to \$200,000 for one incident and the total for all recoveries related to one incident is limited to \$300,000.<sup>6</sup> The sovereign immunity recovery caps do not prevent a plaintiff from obtaining a judgment in excess of the caps, but the plaintiff cannot recover the excess damages without action by the Legislature.<sup>7</sup> However, personal liability may result from actions in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.<sup>8</sup>

Whether sovereign immunity applies depends on the degree of control of the agent of the state retained by the state.<sup>9</sup> In *Stoll v. Noel*, the Florida Supreme Court held that independent contractor physicians may be agents of the state for purposes of sovereign immunity. The court examined the employment contract between the physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship and held that it did.<sup>10</sup>

The *Stoll* court explained that whether the Children's Medical Services (CMS) physician consultants are agents of the state turns on the degree of control retained or exercised by CMS. The manuals and guides given to physician consultants demonstrated that CMS had final authority over all care and treatment provided to CMS patients, and that CMS could refuse to allow a physician consultant's recommended course of treatment of any CMS patient for either medical or budgetary reasons.<sup>11</sup> Furthermore, the court's conclusion was supported by the state's acknowledgement that the manual creates an agency relationship between CMS and its physician consultants, and the state acknowledged full financial responsibility for the physicians' actions. The court stated that the state's interpretation of its manual is entitled to judicial deference and great weight.<sup>12</sup>

A memorandum from the Deputy State Health Officer for Children's Medical Services (CMS) to all CMS physicians stated:

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<sup>6</sup> Section 768.28(5), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 768.28(9)(a), F.S.

<sup>9</sup> *Stoll v. Noel*, 694 So. 2d 701, 703 (Fla. 1997).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

In *Stoll v. Noel*, the Florida Supreme Court established the principal that in appropriate factual circumstances contract physician providers for CMS may be deemed agents of the state for purposes of liability protection under section 768.28, Florida Statutes. Application of that principle, however, does not establish a bright line legal test to determine when a CMS contracted physician will be deemed to be an agent of the state as a matter of law.

As a matter of sound legal practice the public policy the Department cannot make any definitive statement of when contract physicians, individually or collectively, may be deemed an agent of the state for purposes of liability protection.<sup>13</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 768.28(9)(b), F.S., adding “a member of a child protection team, as defined in s. 39.01, when carrying out his or her duties as a team member” to the definition of “officer, employee or agent.” This explicitly includes CPT members as falling under the sovereign immunity protections of the state.

**Section 2** provides an effective date of July 1, 2016.

### 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:

Members of a CPT team that are under contract would be provided sovereign immunity.

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<sup>13</sup> Florida Department of Health. Memorandum from Dennis Cookro, Interim Deputy Secretary for Health and Deputy State Health Officer for CMS to all CMS physicians. February 6, 2013. On file with the Senate Committee on Children, Families and Elder Affairs.

**C. Government Sector Impact:**

The Department of Health reports that the Department of Financial Services (DFS) provided a rough estimate of the state's general liability premium with the Child Protection Team staff added. The estimate is based upon the data for FY2015-2016 general liability premium allocation, but revised to include the additional 388 FTEs identified by DOH. The result is an increase of \$1,683 in the general liability premium based on this year's costs. DFS indicated they cannot guarantee the estimate will not materially differ. Because the total revenue generated each fiscal year by casualty premiums is established by the Legislature, premiums are the result of an allocation process and are not developed independently from other covered agencies and universities.<sup>14</sup>

The Department of Health also reports that 92 of the 388 CPT employees are already covered by sovereign immunity so the number of employees needing protection may only be 296.<sup>15</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The current definition of the term "Child protection team" in s. 39.01, F.S., is outdated.

**VIII. Statutes Affected:**

This bill substantially amends s. 768.28 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>14</sup> Florida Department of Health, 2016 Agency Legislative Bill Analysis, SB 670. November 3, 2015. On file with the Senate Committee on Children, Families and Elder Affairs.

<sup>15</sup> Florida Department of Health, email communication, Office of Legislative Planning, December 30, 2015. On file with the Senate Committee on Children, Families and Elder Affairs.