

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 601 Pub. Rec./Reporting Child Abuse  
**SPONSOR(S):** Children, Families & Seniors Subcommittee, Roth  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 318

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	10 Y, 0 N, As CS	Christy	Brazzell
2) Oversight, Transparency & Public Management Subcommittee	13 Y, 0 N	Moore	Harrington
3) Education Committee			

### SUMMARY ANALYSIS

To protect Florida's children from child abuse, abandonment, or neglect, the Department of Children and Families operates the Florida central abuse hotline (hotline), which accepts reports 24 hours a day, seven days a week. Any person who knows or suspects that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare must report such information or suspicion to the hotline.

Current law provides a public record exemption for the name of a hotline reporter, but does not protect any other identifying information of the reporter.

The bill expands the public record exemption that protects the name of a reporter of child abuse, abandonment, or neglect to also protect identifying information that would inadvertently identify the reporter of child abuse, abandonment, or neglect.

The bill provides a statement of public necessity as required by the Florida Constitution.

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

**Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption for individuals reporting child abuse, abandonment, or neglect; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### **Florida Central Abuse Hotline**

The Department of Children and Families (DCF or department) operates the Florida central abuse hotline (hotline), which accepts reports 24 hours a day, seven days a week of known or suspected child abuse, abandonment, or neglect.<sup>1</sup> A child protective investigation begins with a report by any person to the hotline.

Current law requires any person to immediately report to the hotline if the person knows or suspects that a child:

- has been abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare;
- is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care;
- has been abused by an adult other than a parent, legal guardian, caregiver or other person responsible for the child's welfare; or
- is the victim of childhood sexual abuse, or the victim of a known or suspected juvenile sexual offender.<sup>2</sup>

The hotline encourages a reporter to provide his or her name. Most reporters may remain anonymous,<sup>3</sup> but certain reporters are considered "professionally mandatory reporters" and must provide their names to the hotline because of their occupation. These occupational categories include:

- Physicians, osteopathic physicians, medical examiners, chiropractic physicians, nurses, or hospital personnel engaged in the admission, examination, care, or treatment of persons.
- Health or mental health professionals other than those listed above.
- Practitioners who rely solely on spiritual means for healing.
- School teachers or other school officials or personnel.
- Social workers, day care center workers, or other professional child care, foster care residential, or institutional workers.
- Law enforcement officers.
- Judges.<sup>4</sup>

If a reporter provides his or her name, the name is entered into the record of the report but is held confidential by the department and exempt from public records requests and may not be disclosed except as specifically authorized by ch. 39, F.S.

Any person who makes a child abuse, abandonment, or neglect report in good faith is immune from any criminal or civil liability that might otherwise result from reporting.<sup>5</sup>

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<sup>1</sup> S. 39.201(5), F.S.

<sup>2</sup> S. 39.201(1)(a)-(c), F.S.

<sup>3</sup> S. 39.201(2)(h), F.S.

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

<sup>5</sup> S. 39.203(1)(a), F.S.

Failure to report known or suspected child abuse, abandonment, or neglect is a crime. A person who knowingly and willfully fails to make a report of abuse, abandonment, or neglect, or who knowingly and willfully prevents another person from making a report, is guilty of a third degree felony.<sup>6</sup>

Allowing reporters to remain anonymous encourages reporting of known or suspected child abuse or neglect without the fear of retribution. However, because a reporter may be the only witness to the abuse or neglect and the identity of the reporter may be essential in prosecuting a person for false reporting, the department uses electronic equipment that captures the telephone number and the Internet protocol (IP) address from which the report was received.<sup>7</sup> This information becomes part of the report, but is confidential and is protected the same way as the reporter's name.<sup>8</sup>

The table below includes the number of reports made to the hotline per month, and how many of those reports were accepted for an investigation because they met the statutory definition of abuse, abandonment, or neglect.

<b>Hotline Reports Received and Accepted for Investigation from the Previous Six Months<sup>9</sup></b>						
	<i>Jan. 2019</i>	<i>Dec. 2018</i>	<i>Nov. 2018</i>	<i>Oct. 2018</i>	<i>Sept. 2018</i>	<i>Aug. 2018</i>
<b>Hotline Reports Received</b>	28,679	25,136	26,713	30,866	29,765	28,858
<b>Allegations Approved for Investigation</b>	20,484	18,112	19,377	22,330	21,586	20,971

### *Child Protective Investigations*

Once the hotline obtains information from a reporter, the allegations of the report must meet the statutory definition required to trigger a child protective investigation by DCF or the sheriff's office, if the report is for a child in one of the seven counties where the sheriff's office conducts child protective investigations.<sup>10</sup> If the allegations meet the statutory requirements, an investigation must be commenced either immediately or within 24 hours after the report is received, depending on the nature of the allegation.<sup>11</sup>

The child protective investigation assesses the safety and perceived needs of the child and family. It includes a face-to-face interview with the child, other siblings, parents, and other adults in the household.<sup>12</sup> Based upon the information received by the hotline, the review of the family's history, and interviews with all family members, the investigator must determine which collateral sources, including neighbors, teachers, and friends, are likely to have relevant and reliable information about the child's situation.<sup>13</sup> The investigator interviews the collateral sources and, under DCF operating procedure, must protect identities to the extent possible when discussing with the child's family information shared by collateral sources about that family.<sup>14</sup>

<sup>6</sup> S. 39.205(1), F.S.

<sup>7</sup> Supra, note 3.

<sup>8</sup> Id.

<sup>9</sup> Department of Children and Families, Child Welfare Dashboard, *Child Intakes Received*, available at <http://www.dcf.state.fl.us/programs/childwelfare/dashboard/intakes-received.shtml?Landing%20Page%20InvRec=2> (last visited Mar. 21, 2019).

<sup>10</sup> S. 39.201(2)(a), F.S.

<sup>11</sup> Id.

<sup>12</sup> S. 39.303(7), F.S.

<sup>13</sup> Department of Children and Families Operating Procedure CFOP 170-5, *Interviewing Collateral Contacts*, (Jan. 15, 2019), available at <http://www.dcf.state.fl.us/admin/publications/cfops/CFOP%20170-xx%20Child%20Welfare/CFOP%20170-05%20%20Child%20Protective%20Investigations/CFOP%20170-05,%20%20Chapter%2018,%20Interviewing%20Collateral%20Contacts.pdf> (last visited Mar. 21, 2019).

<sup>14</sup> Id.

## Public Records

The state Constitution guarantees every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.<sup>15</sup> The Legislature, however, may provide by general law for the exemption of records from the constitutional requirement.<sup>16</sup> The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law.<sup>17</sup> A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.<sup>18</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Further, the Open Government Sunset Review Act provides that a public record exemption may be created or maintained only if it serves an identified public purpose.<sup>19</sup> In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a government program, which administration would be significantly impaired without the exemption;
- Protect personal identifying information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protect trade or business secrets.<sup>20</sup>

## Confidentiality of Records

Current law provides a public records exemption to protect the rights of a child in the dependency system and those responsible for the child's welfare. All records concerning child abuse, abandonment, or neglect, including hotline reports and all records generated as a result of such reports, are confidential and exempt from public records laws under s. 119.07(1), F.S. Disclosure of such records must be specifically authorized by ch. 39, F.S.

Pursuant to s. 39.202(2), F.S., access to records concerning child abuse, abandonment, or neglect, *excluding the name of the reporter*, is granted to:

- Certain employees, authorized agents, or contract providers of DCF, the Department of Juvenile Justice, the Department of Health, the Agency for Persons with Disabilities, the Office of Early Learning, county agencies responsible for carrying out specific duties related to these agencies, and entities with comparable jurisdictions in other states.
- Criminal justice agencies and the state attorney of the judicial circuit where the child resides or the alleged abuse or neglect occurred.
- The parent or legal custodian of any child who is alleged to have been abused, abandoned, or neglected, and the child and their attorneys.
- Any person alleged to have caused the abuse, abandonment, or neglect of a child. If that person is not a parent, the record will be limited to information about the protective investigation and will not include any information about the subsequent dependency proceedings.
- A court, if access to such records is necessary for the determination of an issue before it, and a grand jury, if access is necessary for its official business.
- Any person authorized by the department who uses information of child abuse, abandonment, or neglect for research, statistical, or audit purposes. Information identifying the subjects of such

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<sup>15</sup> Fla. Const., art. I, s. 24(a).

<sup>16</sup> Fla. Const., art. I, s. 24(c).

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> S. 119.15, F.S.

<sup>20</sup> S. 119.15(6)(b), F.S.

records or information must be treated as confidential by the researcher and may not be released in any form.

- The Division of Administrative Hearings for purposes of any administrative challenge.
- An official of a Florida advocacy council investigating a report of known or suspected child abuse, abandonment, or neglect.
- An official of the Auditor General or the Office of Program Policy Analysis and Government Accountability for the purpose of conducting audits or examinations pursuant to law.
- The Guardian ad Litem for the child.
- The Public Employees Relations Commission for the sole purpose of obtaining evidence for appeals filed under s. 447.207, F.S.
- Employees or agents of the Department of Revenue responsible for child support enforcement activities.
- Any person in the event that the death of a child is the result of abuse, abandonment, or neglect.
- An employee of a local school district who is the designated liaison between the school district and the department and the principal of a public school, private school, or charter school where the child is a student. An employee or agent of the Department of Education who is responsible for the investigation or prosecution of misconduct by a certified educator.
- Staff of a children's advocacy center that is established and operated under s. 39.3035, F.S.
- A physician, psychologist, or mental health professional licensed in Florida and engaged in the care or treatment of the child.
- Persons with whom the department is seeking to place the child or to whom placement has been granted, including foster parents, the designee of a licensed residential group home, a relative or nonrelative with whom a child is placed, preadoptive parents, adoptive parents, or an adoptive entity acting on behalf of preadoptive or adoptive parents.

A reporter may, however, provide written consent to release his or her name to these entities.

A reporter's name may be released without that person's written consent to department employees responsible for child protective services, the hotline, law enforcement, child protection teams, or the appropriate state attorney.<sup>21</sup>

An individual commits a second degree misdemeanor if he or she knowingly or willfully discloses any confidential information contained in the hotline or in the records of any child abuse, abandonment, or neglect case to anyone other than an authorized person.<sup>22</sup>

### **Effect of the Bill**

The bill amends s. 39.202, F.S., to protect any information that would identify the reporter of child abuse, abandonment, or neglect, rather than just the reporter's name. This information is confidential and exempt from public record requirements and may only be released as provided by s. 39.202, F.S.

The bill also removes "the designee of a licensed residential group home" from the list of entities which may have access to the department's confidential records.

The bill provides a statement of public necessity as required by the Florida Constitution, stating that the exemption is necessary to protect child abuse reporters from retaliation and encourage individuals to comply with mandatory reporting of child abuse, abandonment, or neglect.

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<sup>21</sup> S. 39.202(5), F.S.; *see also* Department of Children and Families, Florida Abuse Hotline 2013, *available at* <http://www.dcf.state.fl.us/service-programs/abuse-hotline/publications/mandatedreporters.pdf> (last visited Mar. 21, 2019).

<sup>22</sup> S. 39.205(6), F.S.

B. SECTION DIRECTORY:

**Section 1:** Amends s. 39.202, F.S., relating to confidentiality of reports and records in cases of child abuse or neglect.

**Section 2:** Provides a public necessity statement.

**Section 3:** Provides an effective date of July 1, 2019.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands an existing public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands an existing public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands an existing public record exemption for reporters of child abuse, abandonment, or neglect.

The expansion of the public record exemption seeks to improve mandatory reporting and protect school personnel from retaliation.

**B. RULE-MAKING AUTHORITY:**

The bill does not require rulemaking.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Other Comments: Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption. Although the term “substantially expands” is not defined in the Act, the sponsor of this bill may want to consider adding a provision to provide for the automatic repeal of the exemption in accordance with the Act.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 13, 2019, the Children, Families & Seniors Subcommittee adopted a strike-all amendment that removed language granting reporter status to school personnel who were following a school-level or school district-wide policy in reporting child abuse, abandonment, or neglect. The amendment requires identifying information, including the name, of all reporters of child abuse, abandonment, or neglect to be confidential and exempt from public records.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute as passed by the Children, Families & Seniors Subcommittee.