

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 Committee on Children, Families, and Elder Affairs

BILL: CS/ SB 232

INTRODUCER: Senator Book

SUBJECT: Child Welfare

DATE: November 13, 2019 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Fav/CS
2.			JU	
3.			RC	

I. Summary:

CS/SB 232 makes a number of changes to current law relating to child abuse, abandonment, and neglect. Specifically, the bill:

- Revises the definition of the term “harm” to include a violation of child safety restraints or seat belt usage laws which results in the death or injury of a child that requires treatment at a hospital, if a licensed physician determines that such violation exacerbated the child’s injuries or resulted in the child’s death;
- Revises the definition of the term “harm” to include a violation of leaving a child unattended or unsupervised in motor vehicle which results in the injury or death of a child.
- Revises the definition of the term “harm” to include any liquid that is heated into a vapor by an electronic cigarette or other vaping device as a substance that can cause harm if given to a child or stored where a child has reasonable access to the substance.
- Requires the Department of Children and Families (DCF) to refer child abuse, abandonment, and neglect reports to a Child Protection Team (CPT) within the Department of Health (DOH) that involve a child who was not properly restrained in a motor vehicle pursuant to ss. 316.613 or 316.614, F.S., or involve a child who was left unattended or unsupervised in a motor vehicle pursuant to s. 613.6135, F.S. and the improper restraint or action resulted in injuries or death to a child.

The bill has an effective date of July 1, 2020.

II. Present Situation:

Inadequate Supervision of a Child

Current law defines “abuse” in part as any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or *harm* that causes or is likely to cause the child’s

physical, mental, or emotional health to be significantly impaired.¹ Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by any person, whether or not that person is a parent, legal custodian, caregiver or other person responsible for the child's welfare, or that a child is in need of supervision and care, must immediately report such knowledge or suspicion to the DCF's hotline.²

Florida law specifies that a child can suffer "harm" to his or her health or welfare in a number of ways. For example, harm can occur when any person allows, encourages, or forces the sexual exploitation of a child; exploits a child, or allows a child to be exploited; or exposes a child to a controlled substance or alcohol.³ Also included within the definition of harm is "inadequate supervision," which is defined as a parent or caregiver leaving a child without adult supervision or arrangement appropriate for the child's age, maturity, developmental level, or mental or physical condition, so that the child is unable to care for his or her own needs or is unable to exercise sufficient judgment in responding to a physical or emotional crisis.⁴ In Florida, there is no age in which a child can be left unattended or alone.⁵

An example of inadequate supervision is when a parent or legal guardian who is a driver or passenger in a motor vehicle fails to ensure his or her child is properly safeguarded in a legally required child restraint device or seat belt, and this results in either the child's death or the child's suffering of serious injuries requiring treatment at an emergency department or trauma center at a hospital.⁶

Currently, however, administrative rule provides that complaints concerning infants or children in automobiles who are not in legally required child restraint devices do not constitute reports of abuse, neglect, or abandonment unless one or more of the following circumstances are present:

- The parent or legal guardian was charged with driving under the influence of drugs or alcohol.
- The parent or legal guardian received a traffic citation(s) for reckless driving.
- A child was seriously injured or killed during an accident.⁷

If one of the above scenarios is met, then a report of abuse, abandonment, or neglect can be made to the hotline. Each report of abuse, abandonment, or neglect must contain at least one type of maltreatment.⁸ Inadequate supervision qualifies as a type of maltreatment.⁹ There are a number of factors to consider in assessing whether there has been maltreatment, which would prompt an investigation by the DCF. Specifically, the following factors are considered if the intake done following an accident alleges failure of a parent or legal guardian to use a child restraint device:

¹ Section 39.01(2), F.S.

² Sections 39.201(1)(a) and 39.201(2)(a), F.S.

³ See generally s. 39.01(35), F.S.

⁴ Section 39.01(35)(a)3., F.S.

⁵ Department of Children and Families, *Child Welfare*, CFOP 170-4, pg. A-29, (July 1, 2018), available at <http://www.dcf.state.fl.us/admin/publications/cfops/CFOP%20170-xx%20Child%20Welfare/CFOP%20170-04.%20Child%20Maltreatment%20Index.pdf> (last visited November 5, 2019).

⁶ *Id.*

⁷ 65C-29.002(6)(e)3., F.A.C.

⁸ "Maltreatment" means behavior that is harmful and destructive to a child's cognitive, social, emotional, or physical development. *Supra*, n. 5 at 4.

⁹ *Supra*, n. 5 at 6-7.

- Was the child transported to the hospital by EMS or other first responders due to the injuries sustained as a result of the accident?
- What statements did the child provide to first responders, the emergency department/trauma center physician/staff, or law enforcement when questioned about being placed in a child restraint seat or having used a seat belt while being transported in the vehicle?
- What is the parent or legal guardian's explanation for a child restraint device not being used at the time of the accident?
- Do statements from the emergency department/trauma center physician or medical records reflect the child suffered injuries that clearly indicate use of a child restraint device?
- Do statements from the attending emergency department/trauma center physician or medical records reflect the child suffered serious injuries that clearly indicate non-use of a child restraint device?
- Does the police report document an injured child was not properly safeguarded in a legally approved child restraint device (car seat or seat belt)?
- What was the location of the alleged child victim when first responders appeared on scene (in the vehicle or ejected from the vehicle)?
- Attempt to obtain medical opinion on whether the severity of the vehicular accident (head-on collision at high speed, etc.) would have likely resulted in serious injury or death despite the use of a legally required child restraint device.
- Does the parent have a history of traffic citations for failure to use a restraint device?
- When the parent or legal guardian reports the injured child was originally placed in a child restraint device but disconnected the device themselves during transit is/was the child physically capable of disconnecting the device on their own?
- Does the parent or legal guardian report that this was a first time incident or does/did the child have a pattern of disconnecting the device? If a pattern, how did the parent attempt to control this behavior? What other collateral sources can validate this pattern?¹⁰

Child Safety Restraint Laws

Section 316.613(1)(a), F.S., requires every operator of a motor vehicle,¹¹ while transporting a child in a motor vehicle operated on the roadways, streets, or highways of the state, to provide protection for a child by properly using a crash-tested, federally approved child restraint device if the child is 5 years or younger. The law also requires children 3 years of age and younger to be restrained by a separate carrier device or a vehicle manufacturer's integrated child seat. A separate carrier, an integrated child seat, or a child booster seat may be used for children aged 4 through 5 years.¹²

Further, current law prohibits the operation of a motor vehicle or an autocycle¹³ unless each passenger and the operator of the vehicle or autocycle under the age of 18 years are restrained by

¹⁰ *Supra*, n 5 at A-29-31.

¹¹ "Motor vehicle" means a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, swamp buggy, or moped. Section 316.003(42), F.S.

¹² Section 316.613(1)(a), F.S.

¹³ "Autocycle" means a 3-wheeled motorcycle that has two wheels in the front and one wheel in the back; is equipped with a roll cage or roll hoops, a seat belt for each occupant, antilock brakes, a steering wheel, and seating that does not require the

a safety belt¹⁴ or by a child restraint device pursuant to s. 316.613, F.S., if applicable.¹⁵ The requirement to use a child restraint device does not apply if a safety belt is used and the child:

- Is being transported gratuitously by an operator who is not a member of the child's immediate family;
- Is being transported in a medical emergency situation involving the child; or
- Has a medical condition that necessitates an exception as evidenced by appropriate documentation from a health care professional.¹⁶

Leaving a Child Unattended in a Motor Vehicle Laws

Section 316.6135, F.S., prohibits a parent, legal guardian or other person responsible for a child as defined in s. 39.01, F.S., from leaving a child younger than 6 years of age unattended or unsupervised in a motor vehicle. Penalties are specified for violations.

Any law enforcement officer who observes a child left unattended or unsupervised in a motor vehicle may use whatever means are reasonably necessary to protect the minor child and to remove the child from the vehicle. The child is required to be placed in the custody of DCF pursuant to chapter 39, unless the law enforcement officer is able to locate the parents or legal guardian or other person responsible for the child.

Vaping

Vaping is the inhaling of a vapor created by an electronic cigarette (e-cigarette) or other vaping device. E-cigarettes are battery-powered smoking devices that have cartridges filled with a liquid that usually contains nicotine, flavorings, and other chemicals. The liquid is heated into a vapor, which the person inhales, a practice that is known as "vaping". Vaping hasn't been around long enough to know how it affects the body over time, but health experts are reporting serious lung damage in people who vape, including some deaths.¹⁷

The Centers for Disease Control and Prevention (CDC) advises people to avoid e-cigarettes while federal and state officials investigate an ongoing nationwide outbreak of severe lung injuries associated with the use of e-cigarette, or vaping, products. "E-cigarette use is never safe for youth, young adults, or pregnant women," said CDC's Dana Meaney-Delman, MD, who is leading the agency's response to the outbreak, which emerged in the summer of 2018.¹⁸ Recent surveys have shown:

operator to straddle or sit astride it; and is manufactured in accordance with applicable federal motorcycle safety standards. Section 316.003(2), F.S.

¹⁴ "Safety belt" means a seat belt assembly that meets the requirements established under Federal Motor Vehicle Safety Standard No. 208, 49 C.F.R. s. 571.208. Section 316.614(3)(b), F.S.

¹⁵ Section 316.614(4)(a), F.S.

¹⁶ Section 316.613(1)(a)2.a.-c., F.S.

¹⁷ KidsHealth, The Nemours Foundation, Vaping: What You Need to Know, available at: <https://kidshealth.org/en/parents/e-cigarettes.html> (Last visited November 4, 2019).

¹⁸ Raven, K., Teen Vaping Linked to More Health Risks, Yale Medicine, November 8, 2019, available at <https://www.yalemedicine.org/stories/teen-vaping/> (Last visited November 10, 2019).

- More than 5 million middle and high school students currently use e-cigarettes, according to the 2019 National Youth Tobacco Study (NYTS), up from more than 3.6 million last year.
- The rates of youth who say they vaped with nicotine in the past month more than doubled in two years. About 11 percent of high school seniors reported this habit in 2017, compared to 25 percent, or one in four seniors, in 2019. Among eighth-graders, the numbers jumped from 3.5 percent to 9 percent.¹⁹

Current law in Florida contains provisions related to children under the age of 18 and vaping.

- It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under 18 years of age, any nicotine product or a nicotine dispensing device.²⁰
- The gift of a sample nicotine product or nicotine dispensing device to any person under the age of 18 by a retailer of nicotine products or nicotine dispensing devices, or by an employee of such retailer, is prohibited.²¹
- It is unlawful for any person under 18 years of age to knowingly possess any nicotine product or a nicotine dispensing device. Any person under 18 years of age who violates this subsection commits a noncriminal violation as defined in s. 775.08(3).²²
- In order to prevent persons under 18 years of age from purchasing or receiving nicotine products or nicotine dispensing devices, the sale or delivery of such products or devices is prohibited with some exceptions.²³

Child Protection Teams

A Child Protection Team²⁴ (CPT) program is a medically directed, multidisciplinary program that works with local Sheriff's offices and the DCF in child abuse and child neglect cases to supplement investigation activities. The CPTs are tasked with the following:

- Providing expertise in evaluating alleged child abuse and neglect;
- Assessing risk and protective factors; and
- Providing recommendations for interventions to protect children and enhance a caregiver's capacity to provide a safer environment when possible.²⁵

Current law requires the Children's Medical Services Program in the DOH to develop, maintain, and coordinate the services of the CPTs in each of the service districts of the DCF.²⁶ The role of a CPT is to support activities of the family safety and preservation program of the DCF and provide services deemed by the CPTs to be necessary and appropriate to abused, abandoned, and

¹⁹ *Id.*

²⁰ Section 877.112(2), F.S.

²¹ Section 877.112(3), F.S.

²² Section 877.112(6), F.S.

²³ Section 877.112(12), F.S.

²⁴ "Child protection team" is a team of professionals established by the DOH to receive referrals from the protective investigators and protective supervision staff of the DCF and to provide specialized and supportive services to the program in processing child abuse, abandonment, or neglect cases. Such team shall provide consultation to other programs of the DCF and other persons regarding child abuse, abandonment, or neglect cases. Section 39.01(13), F.S.

²⁵ Children's Medical Services, *Child Protection Teams*, available at http://www.cms-kids.com/families/child_protection_safety/child_protection_teams.html (last visited November 5, 2019).

²⁶ Section 39.303(1), F.S.

neglected children upon referral. A CPT must be capable of providing specialized diagnostic assessments, evaluations, coordination, consultation, and other supportive services.²⁷ Reports of child abuse, abandonment, and neglect made to the DCF that must be referred to CPTs include cases involving:

- Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age;
- Bruises anywhere on a child 5 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; and
- Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.²⁸

III. Effect of Proposed Changes:

Section 1 revises the definition of the term “harm” to include a violation of the child safety restraint laws pursuant to s. 316.613, F.S., or the seat belt usage laws pursuant to s. 316.614, F.S., if a licensed physician determines that such violation exacerbated the child’s injuries or resulted in the child’s death.

It also revises the definition of the term “harm” to include a violation of leaving a child unattended or unsupervised in a motor vehicle pursuant to s. 316.6135, F.S., which results in the injury or death of a child.

The bill also revises the definition of the term “harm” to include any liquid that is heated into a vapor by an electronic cigarette or other vaping device as a substance that can cause harm if given to a child or stored where a child has reasonable access to the substance.

Section 2 requires DCF to refer child abuse, abandonment, and neglect reports to a CPT that involve a child who was not properly restrained in a motor vehicle pursuant to ss. 316.613 or 316.614, F.S., or involve a child who was left unattended or unsupervised in a motor vehicle pursuant to s. 613.6135, F.S. and the improper restraint or action resulted in injuries or death to a child.

Section 3 provides an effective date of July 1, 2020

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁷ Section 39.303(3), F.S.

²⁸ Section 39.303(4)(a)-(h), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

While the fiscal impact is indeterminate at this time, DOH may incur costs associated with the addition of reports that must be referred to CPTs for assessment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.01 and 39.303.

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

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

CS by Children, Families, and Elder Affairs on November 12, 2019;

Revises the definition of the term “harm” to include any liquid that is heated into a vapor by an electronic cigarette or other vaping device as a substance that can cause harm if given to a child or stored where a child has reasonable access to the substance.

B. Amendments:

None.

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