

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 413 Child Welfare
SPONSOR(S): Byrd
TIED BILLS: **IDEN./SIM. BILLS:** SB 232

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	10 Y, 5 N	Woodruff	Brazzell
2) Health Care Appropriations Subcommittee	10 Y, 0 N	Fontaine	Clark
3) Health & Human Services Committee			

SUMMARY ANALYSIS

To protect Florida's children from child abuse, abandonment, or neglect, the Department of Children and Families (DCF) operates the Florida central abuse hotline (hotline), which accepts reports 24 hours a day, 7 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. If reports meet the statutory criteria for abuse, abandonment, or neglect, a child protective investigation is commenced.

A child protection team (CPT) is a medically directed, multidisciplinary team contracted by the Department of Health (DOH) that supplements the child protective investigation efforts of DCF and local sheriffs' offices in cases of child abuse or neglect. Certain cases reported to the hotline must be referred to CPTs.

HB 413 expands the definition of "harm" to include situations where a person responsible for a child's welfare fails to use a child restraint or seat belt required by law or leaves a child younger than 6 years of age unattended or unsupervised in a vehicle. In these situations, a child protective investigation would be required if a physician, licensed under Ch. 458, F.S., substantiates that the failure to use a child restraint or seatbelt or leaving a child younger than 6 in a vehicle unattended or unsupervised resulted in the child's injury or death. The bill also requires a mandatory referral of these cases from DCF to CPTs.

Additionally, the bill requires DCF to refer cases to CPTs if the report is from an emergency room physician.

HB 413 has an indeterminate, but likely insignificant, fiscal impact on DCF, DOH, certain Sheriffs, and the Community-based care (CBC) lead agencies. The bill does not appear to have a fiscal impact on local governments. See fiscal comments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Child Welfare System

The child welfare system identifies families whose children are in danger of suffering or have suffered abuse, abandonment, or neglect and works with those families to address the problems that are endangering children, if possible. If the problems cannot be addressed, the child welfare system finds safe out-of-home placements for these children.

Florida Central Abuse Hotline

The Department of Children and Families (DCF) operates the Florida central abuse hotline (hotline), which accepts reports 24 hours a day, 7 days a week of known or suspected child abuse, abandonment, or neglect.¹ A child protective investigation begins with a report by any person to the hotline. Statute mandates 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, or that a child 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, shall report such knowledge or suspicion to the hotline.²

Once the hotline obtains information from a reporter, the allegations must meet the statutory definition required to trigger a child protective investigation. For the report to be accepted for an investigation there must be reasonable cause to believe that the child was harmed by abuse, abandonment, or neglect, or the child is at risk of harm.³

Under s. 39.01(35), F.S., "harm" to a child's health or welfare can occur when any person:

- Inflicts or allows to be inflicted upon the child physical, mental, or emotional injury, which include, but is not limited to, willful acts that produce specific injuries specified in statute.
- Purposely giving a child poison, alcohol, drugs, or other substance that substantially affects the child's behavior or that results in sickness or internal injury.
- Leaving a child without proper adult supervision.
- Inappropriate or excessively harsh disciplinary action that is likely to result in physical, mental, or emotional injury.
- Commits or allows to be committed sexual battery or lewd or lascivious acts against the child.
- Allows, encourages, or forces the sexual exploitation of a child.
- Exploits a child or allows a child to be exploited as provided in s. 450.151, F.S.
- Abandons or neglects a child.
- Exposes the child to a controlled substance or alcohol.
- Uses mechanical devices, unreasonable restraints, or an extended period of isolation to control the child.

¹ S. 39.201(5), F.S.

² S. 39.201(1)(a), F.S.

³ S. 39.201(2), F.S.

- Engages in violent behavior that demonstrates a wanton disregard for the presence of a child and could reasonably result in serious injury to the child.
- Negligently fails to protect a child in his or her care from physical, mental, or sexual injury caused by the acts of another.
- Has allowed a child's sibling to die as a result of abuse, abandonment, or neglect.
- Makes the child unavailable for a protective investigation unless fleeing from domestic violence.

If the allegations meet the statutory requirements for a child protective investigation, an investigation must be commenced either immediately or within 24 hours after the report is received, depending on the nature of the allegation. ⁴

Case Management and Child Welfare Services

If a child protective investigation results in verified findings of abuse or neglect, the dependency court will approve a case plan for the parent, and services are provided to the family to address the problems that are endangering the child. DCF contracts for case management, out-of-home care, and related services with lead agencies, also known as community-based care organizations (CBCs). The model of using CBCs to provide child welfare services is designed to increase local community ownership of service delivery and design.⁵

CBCs are responsible for providing foster care and related services including, but not limited to, counseling, domestic violence services, substance abuse services, family preservation, emergency shelter, and adoption. CBCs contract with a number of subcontractors for case management and direct care services to children and their families. There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.⁶

Child Protection Teams

A child protection team (CPT) is a medically directed, multidisciplinary team that supplements the child protective investigation efforts in cases of child abuse and neglect.⁷ CPTs are independent community-based programs contracted by the Department of Health (DOH) Children's Medical Services that provide expertise in evaluating alleged child abuse or neglect, assess risk and protective factors, and provide recommendations for interventions to protect children and enhance a caregiver's capacity to provide a safer environment when possible.⁸ The state is divided into 15 circuits and DOH assigns a CPT to each. CPTs serve all 67 counties by utilizing satellite offices and telemedicine services.⁹ Each of the 15 circuits served by CPTs are supervised by one or multiple CPT directors, depending on the size and subdivision of the particular circuit.¹⁰

DCF must refer certain reports of child abuse, abandonment, or neglect to CPTs for assessment and other appropriate available support services:

⁴ S. 39.301(1), F.S.

⁵ Department of Children and Families, *Community-Based Care*, <http://www.dcf.state.fl.us/service-programs/community-based-care/> (last visited Dec. 10, 2019).

⁶ Department of Children and Families, *Community Based Care Lead Agency Map*, <https://www.myflfamilies.com/service-programs/community-based-care/lead-agency-map.shtml> (last visited Nov. 22, 2019).

⁷ Children's Medical Services, *Child Protection Teams*, http://www.cms-kids.com/families/child_protection_safety/child_protection_teams.html (last visited Nov. 22, 2019).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

- 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 under;
- Any report alleging sexual abuse of a child;
- Any sexually transmitted disease in a prepubescent child;
- Reported malnutrition of a child and 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; and
- A child who does not live in this state who is currently being evaluated in a medical facility in this state.¹¹

Currently, child abuse and neglect reports to the hotline from emergency room physicians are assessed and a case may be accepted for CPT services based on the information provided.

When a CPT accepts a referral from DCF or law enforcement, it may provide one or more of the following services:

- Medical diagnosis and evaluation;
- Telephone consultation services during emergencies and other situations;
- Psychological and psychiatric evaluations;
- Expert court testimony;
- Multidisciplinary staffings;
- Case service coordination and assistance;
- Community awareness campaigns; and
- Child forensic interviews, family psychosocial interviews, or specialized clinical interviews.¹²

CPT staff also train child protective investigators, community providers of child welfare services, and emergency room staff and other medical providers in the community to enable them to develop and maintain their professional skills and abilities in handling child abuse, abandonment, and neglect cases.¹³

State Laws Protecting Children in Motor Vehicles

Child Restraint and Safety Belts

Florida law requires the use of seat belts and child restraint devices, if applicable, by drivers, all front seat passengers, and all children under the age of 18 riding in a motor vehicle.

Currently, the hotline accepts reports of children who are harmed due to the failure of a parent to use a child restraint required by law. These reports are accepted under the maltreatment of “inadequate supervision”.¹⁴ Previously, DCF required two mitigating criteria before accepting

¹¹ S. 39.303(4), F.S.

¹² S. 39.303(3), F.S.

¹³ S. 39.303(3)(h), F.S.

¹⁴ DCF’s operating procedures define “inadequate supervision” 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 the child’s own needs or another’s basic need, or is unable to exercise sufficient judgement in responding to a physical or emotional crisis.

the report: either the parent had to be cited for reckless driving or under the influence of drugs or alcohol, in addition to the child not being properly restrained.¹⁵ However, in 2018, DCF updated its rule to allow investigations based solely on the parent's or legal guardian's failure to properly safeguard a child if the omission resulted in serious harm or death of the child.¹⁶

Under s. 316.613, F.S., the driver of a motor vehicle transporting a child through 5 years of age must properly use a crash-tested, federally-approved child restraint device for the child. For children through age 3, such restraint device must be a separate carrier or a vehicle manufacturer's integrated child seat.¹⁷

For children age 4 through age 5, a separate carrier, an integrated child seat, or a child booster seat may be used.¹⁸ However, the requirements to use a child restraint device for children in this age range do not apply when a safety belt is being used and the child is being transported:

- gratuitously by a driver who is not a member of the child's immediate family;
- in a medical emergency situation involving the child; or
- has a medical condition diagnosed by a health care professional that necessitates an exception.¹⁹

Florida law gives the option for children six years of age or older to continue to use a booster seat or begin wearing safety belts.

Additionally, under s. 316.614, F.S., it is unlawful for any person to drive a motor vehicle or an autocycle²⁰ in Florida unless the driver and each passenger under the age of 18 are restrained by a safety belt or a child restraint device pursuant to s. 316.613, F.S.²¹ The requirements of s. 316.614, F.S., do not apply to motor vehicles that are not required to be equipped with safety belts under federal law.²²

Under ss. 316.613, F.S., and 316.614, F.S., a motor vehicle does not include a:

- School bus.
- Bus used for the transportation of persons for compensation, unless the bus is regularly used to transport children to or from school or in conjunction with school activities.
- Farm tractor or implement of husbandry.
- Truck having a gross vehicle weight rating or more than 26,000 pounds.
- Motorcycle, moped, or bicycle.

The child restraint requirements imposed by s. 316.613, F.S., do not apply to a chauffeur-driven taxi, limousine, sedan, van, bus, motor coach, or other passenger vehicle if the driver and the vehicle were hired and used for transportation.²³ It is the caregiver's responsibility to comply with the child restraint requirements in these situations.²⁴

¹⁵ 2019 Agency Legislative Bill Analysis, Department of Children and Families, HB 413, on file with the Children, Families, and Seniors Subcommittee.

¹⁶ *Id.*

¹⁷ S. 316.613(1)(a)1., F.S.

¹⁸ S. 316.613(1)(a)2., F.S.

¹⁹ *Id.*

²⁰ An autocycle is a three-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 operator to straddle or sit astride it; and is manufactured in accordance with the applicable federal motorcycle safety standards by a manufacturer registered with the National Highway Traffic Safety Administration.

²¹ S. 316.614(4), F.S.

²² S. 316.614(6)(d), F.S.

²³ S. 316.613(6), F.S.

²⁴ *Id.*

In 2017, there were 132,366 crashes in Florida involving children under the age of 18. Almost 50 percent of child passengers who died in a car crash that year were not wearing any type of restraint.²⁵ Further, that same year, there were 8,574 citations given for no or improper child restraint device.²⁶

Data received from DHSMV on vehicle crashes between 2013-2018 show that an average of 1,355 minors received an incapacitating injury and 96 child fatalities occurred each year.²⁷ It is unknown how many of these children were not properly restrained.²⁸

Currently, a CPT may accept referrals related to the lack of proper use of a child restraint or seatbelts. However, the case would not constitute a mandatory referral unless it met one of the criteria outlined in s. 39.303(4), F.S.²⁹

Leaving Children Unattended or Unsupervised in a Vehicle

Section 316.6135, F.S., prohibits a caregiver³⁰ from leaving a child younger than 6 years of age unattended or unsupervised in a motor vehicle longer than 15 minutes, or for any period of time while the motor vehicle is running, the health of the child is in danger, or the child appears to be in distress. Each of these violations has its own penalties.³¹

If the caregiver leaves a child younger than 6 years of age unattended or unsupervised in a vehicle longer than 15 minutes, or for any period of time while the motor vehicle is running, the child's health is in danger, or the child appears to be in distress, and that action causes great bodily harm, permanent disability, or permanent disfigurement to a child, then the person commits a third degree felony punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

Any law enforcement officer who observes a child left unattended or unsupervised in a motor vehicle may use whatever means reasonably necessary to protect the child and remove the child from the motor vehicle.³² If the law enforcement officer is unable to locate a caregiver, the child is required to be placed in DCF's custody pursuant to Ch. 39, F.S.³³

Children experience different types of dangers if left unattended or unsupervised in a motor vehicle, such as heatstroke, setting the car in motion, seatbelt strangulation and leaving the car voluntarily.³⁴ From January 1990 to December 2014, there were 11,759 non-traffic injuries and fatalities in the US to children 0 to 14 years of age, with a median age of the affected children being 3.7 years.³⁵ The incident types include:

²⁵ Florida Department of Highway Safety and Motor Vehicles, *August is Child Safety Awareness Month*, (Aug. 1, 2018), https://fcaap.org/wp-content/uploads/2018/08/8.1.18_ChildSafety_PressRelease_FINAL.pdf (last visited Dec. 10, 2019)

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ 2019 Agency Legislative Bill Analysis, Department of Health, HB 413, on file with the Children, Families, and Seniors Subcommittee.

³⁰ The term "caregiver" encompasses a parent, legal guardian, or other person responsible for a child's welfare.

³¹ Pursuant to s. 316.6135(2), F.S., a caregiver who leaves a child younger than 6 years of age unattended or unsupervised in a motor vehicle longer than 15 minutes commits a second degree misdemeanor punishable up to 60 days in jail and a \$500 maximum fine. Pursuant s. 316.6135(3), F.S., a caregiver who leaves a child younger than 6 years of age unattended or unsupervised in a motor vehicle for any period of time while the vehicle is running, the health of the child is in danger, or the child appears to be in distress is guilty of noncriminal traffic infraction punishable by a fine not less than \$50 and not more than \$500.

³² S. 316.6135(5), F.S.

³³ S. 316.6135(7), F.S.

³⁴ Kids and Cars, *NEVER Leave a Child Alone Inside a Vehicle... Not Even for a Minute!*, <http://www.kidsandcars.org/wp-content/uploads/2019/02/Kids-Alone-in-Cars-FACT-SHEET.pdf> (last visited Nov. 23, 2019).

³⁵ Mark R. Zonfrillo, et al., *Unintentional non-traffic injury and fatal events: Threats to children in and around vehicles*, Traffic Injury Prevention, 19:2, 184-188, <https://docs.house.gov/meetings/IF/IF17/20190523/109548/HHRG-116-IF17-Wstate-FennellJ-20190523-SD004.pdf#page=5&zoom=100,0,66>

- 3,115 children unattended in hot vehicles resulting in 729 deaths;
- 2,251 backovers³⁶ resulting in 1,232 deaths;
- 1,439 frontovers³⁷ resulting in 692 deaths;
- 777 vehicles knocked into motion resulting in 227 deaths;
- 415 underage drivers resulting in 203 deaths;
- 173 power window incidents resulting in 61 deaths;
- 134 falls resulting in 54 deaths;
- 79 fires resulting in 41 deaths; and
- 3,377 other incidents resulting in 157 deaths.³⁸

In Florida, from 1998-2018, there were 89 child vehicular heatstroke deaths. Nationally, 51 children died due to vehicular heatstroke in 2018; of that total, five of the deaths occurred in Florida.³⁹

Currently, a CPT may accept referrals related to children left unattended or unsupervised in motor vehicles; however, the case would not constitute a mandatory referral unless it met a criterion outlined in s. 39.303(4), F.S.⁴⁰

Effect of Proposed Changes

Expanding the Definition of “Harm”

The bill amends s. 39.01(35), F.S., to also consider as “harm” any violations of:

- child restraint requirements in s. 316.613, F.S.;
- seat belt requirements in s. 316.614, F.S.; and,
- s. 316.6135, F.S., which relates to leaving a child unattended or unsupervised in a motor vehicle;

if a physician licensed under Ch. 458, F.S., substantiates that the violation caused the child’s injury or death.

By expanding the definition of harm, more situations would meet the statutory criteria for a child protective investigation.

The bill is more comprehensive than DCF’s current agency rule, because the bill encompasses *all* injuries due to violations of child restraint or seat belt requirements or injuries from leaving a child unattended or unsupervised in a vehicle, and not just those that are deemed serious, and thus could potentially result in an increased number of reports to the hotline and additional child protective investigations. CBCs and their subcontractors may be required to provide services to these children and families.

Child Protection Teams

The bill amends s. 39.303(4), F.S., to require the following hotline reports to be referred to CPTs for an assessment when a physician licensed under Ch. 458, F.S., substantiates an injury or death to a child is:

³⁶ Backovers are defined as a child being backed over by vehicle traveling in reverse.

³⁷ Frontovers are defined as a slow forward-moving vehicle running over a child.

³⁸ *Supra* note 35.

³⁹ 2019 Agency Legislative Bill Analysis, Department of Children and Families, HB 69, on file with the Children, Families, and Seniors Subcommittee.

⁴⁰ *Supra* note 29.

- exacerbated by not properly being restrained in a motor vehicle with a child restraint or seatbelt pursuant to ss. 316.613, F.S., or 316.614, F.S., and
- from being left unattended or unsupervised in a vehicle, if the child is younger than 6 years of age.

The bill also requires mandatory referrals to CPTs on cases reported to DCF from emergency room physicians. From July 27 – December 8, 2019,⁴¹ the hotline received 204 reports from emergency room physicians, 201⁴² of which were accepted for a child protective investigation.⁴³

Some abuse or neglect cases in the above situation might already meet criteria for a mandatory referral to CPTs.⁴⁴ CPTs may also choose to review other cases that do not meet the criteria for a mandatory referral based on information provided in the hotline report. Therefore, the number of additional reports likely to be received that would not currently be referred to CPTs for an assessment is unknown.⁴⁵

CPTs will need to review the cases and provide services deemed necessary and appropriate.

B. SECTION DIRECTORY:

Section 1: Amends s. 39.01, F.S., relating to definitions.

Section 2: Amends s. 39.303, F.S., relating to Child Protection Teams and sexual abuse treatment programs; services; eligible cases.

Section 3: Amends s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment, or neglect.

Section 4: Amends s. 39.521, F.S., relating to disposition hearings; powers of disposition.

Section 5: Amends s. 39.6012, F.S., relating to case plan tasks; services.

Section 6: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Expanding the Definition of Harm

Indeterminate impact to DCF. By expanding the definition of harm, child protective investigators may experience an increased workload because more situations would meet the statutorily-required criteria to initiate a child protective investigation. It is unknown how many additional investigations would be required by expanding the definition of harm to include an injury or death exacerbated by the failure to use a child restraint, or seatbelt, or leaving a child unattended or unsupervised in a vehicle that results in injury or death.

⁴¹ The option to track hotline reports from emergency room physicians was added to DCF's system in July 2019, so the data is new and limited.

⁴² The three calls that were screened-out was due to an error in identifying the occupation of the caller or due to incorrect coding of the call.

⁴³ Email from Kimora McConnell, Florida Department of Children and Families, RE: Data request, (Dec. 12, 2019).

⁴⁴ For example, if a child was in a car accident, was not properly restrained, and experienced injuries to the head, the report would meet the criteria for a mandatory referral to CPT for assessment.

⁴⁵ *Supra* note 29.

Cases Referred to CPTs

Indeterminate impact to DOH. It is unknown how many additional referrals DOH may receive from DCF investigations that result from this bill, but is not expected to have a significant impact based upon a five-year review of the frequency of vehicular injuries and fatalities experienced by children.⁴⁶

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate impact to the seven Sheriffs who perform child protective investigations in lieu of the department in the respective counties. These Sheriffs may experience an increased workload because more situations would meet the statutorily-required criteria to initiate a child protective investigation

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Expanding the Definition of Harm

Indeterminate impact to CBCs. It is unknown how many investigations due to expanding the definition of "harm" would result in case management services being required. Therefore, it is difficult to project the fiscal impact on the CBCs and their subcontractors' caseloads.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The agencies impacted by the bill have sufficient rulemaking authority to implement the bill.

⁴⁶ 2019 Agency Legislative Bill Analysis, Department of Health, HB 413, on file with the Health Care Appropriations Subcommittee.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill limits the type of medical provider that is required to substantiate the violation of the child restraint or seatbelt or leaving a child unattended or unsupervised in a car that causes a child's injury or death to only physicians licensed under Ch. 458, F.S. This would exclude Doctors of Osteopathic Medicine licensed under Ch. 459, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES