HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1055 Child Protection
SPONSOR(S): Health & Human Services Committee; Children, Families & Seniors Subcommittee; Harrell
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	11 Y, 0 N, As CS	Tuszynski	Brazzell
2) Health & Human Services Committee	17 Y, 0 N, As CS	Tuszynski	Calamas

SUMMARY ANALYSIS

A child protection team (CPT) is a medically directed, multidisciplinary team that works with local sheriffs' offices and the Department of Children and Families (DCF) in cases of child abuse and neglect to supplement investigation activities. Child protection teams provide expertise in evaluating alleged child abuse and neglect, assessing risk and protective factors, and providing recommendations for interventions to protect children.

The bill:

- Amends s. 39.303, F.S., to require the Statewide Medical Director for Child Protection and district CPT medical directors to hold certain licenses and certifications.
- Adds "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" for the purposes of sovereign immunity.
- Requires the inclusion of a child protection team medical director on any Critical Incident Rapid Response Team initiated by DCF to conduct investigations of certain child deaths or other serious incidents.

The bill also adds child abuse and neglect cases as an authorized use of the "expert witness certificate" for physicians and osteopathic physicians.

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

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Child Protection Teams

A child protection team (CPT) is a medically directed, multidisciplinary team that supplements the child protective investigation efforts of local sheriffs' offices and the Department of Children and Families (DCF) in cases of child abuse and neglect.[1] They are independent, community-based programs that provide expertise in evaluating alleged child abuse and neglect, assessing risk and protective factors, and providing recommendations for interventions to protect children and to enhance a caregiver's capacity to provide a safer environment when possible.[2] The Children's Medical Services (CMS) program in the Department of Health (DOH) is authorized via statute to contract for these CPT services with local community-based programs.[3] There are 23 CPTs across the state providing services to all 67 Florida counties. [4]

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.
- 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.[5]

The State Surgeon General and the DOH Deputy Secretary for Children's Medical Services, in consultation with the DCF Secretary, have responsibility for the screening, employment, and any necessary termination of child protection team medical directors, both at the state and district level.[6] There is currently no statutory requirement related to the qualifications of either the Statewide Medical Director for Child Protection or the district team medical directors. The Florida Administrative Code requires a district team medical director to be a licensed to practice in Florida, board certified in pediatrics, and interested in the field of child abuse and neglect with satisfactory completion of training deemed necessary by the Department of Health.[7]

[1] Florida Department of Health, Children's Medical Services. *Child Protection Teams* http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html (last visited March 10, 2015).
[2] Id.
[3] Section 39.303, F.S.
[4] Children's Medical Services, *Child Protection Teams: CPT Statewide Directory*, available at http://www.floridahealth.gov/alternatesites/cms-kids/home/contact/cpt.pdf (last accessed March 12, 2015)
[5] Id.
[6] Supra. at FN 4.
[7] Rule 64C-8.002, F.A.C.

Specialty Certification for Child Abuse Pediatrics

Child abuse pediatricians are responsible for the diagnosis and treatment of children and adolescents who are suspected victims of child maltreatment. This includes physical abuse, sexual abuse, factitious illness (medical child abuse), neglect, and psychological/emotional abuse. These specialty pediatricians participate in multidisciplinary collaborative work within the medical, child welfare, and law enforcement systems. They are also often called to provide expert testimony in court proceedings.[8]

The American Board of Medical Specialties approved the child abuse pediatrics specialty in 2006 and the American Board of Pediatrics issued the first certification exams in late 2009. Three years of full-time, broad-based fellowship training in child abuse pediatrics are required for fellows entering training on or after January 1, 2010.[9] Three-year child abuse fellowships are in various stages of development at academic medical centers because of the new specialty designation. Most of them are housed within children's hospitals across the country, similar to other pediatric specialty fellowships, and will be comprised of both clinical and research training and a requirement for a scholarly project, which will help advance the field.[10] As of December 31, 2013, there were 324 child abuse pediatrics diplomates nationwide, including 12 in Florida.[11]

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.[12] 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.[13]

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.[14]

Whether sovereign immunity applies turns on the degree of control of the agent of the state retained by the state.[15] 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.[16]

[8] Council of Pediatric Subspecialties. *Pediatric Child Abuse*, available at: http://pedsubs.org/SubDes/ChildAbuse.cfm. (last visited March 10, 2015).
[9] Child Abuse Pediatrics Certification, Eligibility Criteria for Certification in Child Abuse Pediatrics, available at https://www.abp.org/content/child-abuse-pediatrics-certification (last visited March 11, 2015)
[10] Giardino, A., Hanson, N., Hill, K.S, and Leventhal, J.M. Child Abuse Pediatrics: New Specialty, Renewed Mission. *Pediatrics* 2011; 128(1):156-159.
[11] American Board of Pediatrics, *Workforce Databook*, available at https://www.abp.org/sites/abp/files/pdf/workforcebook.pdf (last visited March 11, 2015).
[12] S. 768.28(5), F.S.
[13] Id.
[14] S. 768.28(9)(a), F.S.
[15] *Stoll v. Noel*, 694 So. 2d 701, 703 (Fla. 1997).
[16] Id.

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.[17] 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 despite its potential liability in this case, 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.[18]

Expert Testimony in Child Abuse Cases and Expert Witness Certificate

Sections 458.3175 and 459.0066, F.S., require an expert witness who is licensed in another jurisdiction to obtain an "expert witness certificate" from DOH before that expert witness may testify in medical negligence cases or provide an affidavit in the pre-suit portion of a medical negligence case. The certificate is good for 2 years, and only authorizes the physician to do the following:

- Provide a verified written medical expert opinion; and
- Provide expert testimony about the prevailing professional standard of care in connection with medical negligence litigation pending in this state against a physician licensed in Florida.[19]

In criminal child abuse and neglect cases, s. 827.03(3), F.S., allows expert testimony in child abuse and neglect cases by physicians licensed under chapter 458, F.S., or 459, F.S., or by physicians who have obtained an expert witness certification. To provide expert testimony of mental injury in child abuse and neglect cases, physicians must be licensed under chapter 458, F.S., or 459, F.S., and have completed an accredited residency in psychiatry, or obtained an expert witness certification.

While s. 827.03, F.S., allows experts to testify in criminal child abuse and neglect cases if they have an expert witness certificate, ss. 458.3175(2) and 459.0066(2), F.S., only authorize a very narrow enumerated use of this certificate and do not currently allow physicians or osteopathic physicians to give expert testimony in criminal child abuse and neglect cases.

Critical Incident Rapid Response Team

The Critical Incident Rapid Response Team (CIRRT) was created by the Legislature in 2014. The CIRRTs are established within DCF to conduct investigations of child death or other serious incidents reported to the central abuse hotline if the child or another child in his or her home was the subject of a verified report of abuse or neglect within the previous 12 months.[20] The purpose of the CIRRT is to perform an immediate root-cause analysis of critical incidents and rapidly determine the need to change policies and practices related to child protection and welfare.[21]

Statute requires that the CIRRT be comprised of a multiagency team of at least five professionals with expertise in child protection, child welfare, and organizational management; a majority of the team must reside in judicial circuits outside the location of the incident.[22] It does not require a CPT member to be appointed to the CIRRT, although CPT members may be appointed to the CIRRT due to their expertise in child protection.

Effect of Proposed Changes

Child Protection Teams

[17] Id.
[18] Id.
[19] S. 758.3175(2), F.S.
[20] S. 39.2015(2), F.S.
[21] S. 39.2015(1), F.S.
[22] S. 39.2015(3), F.S.

CS/HB 1055 amends s. 39.303, F.S., to require the Statewide Medical Director for Child Protection to be:

- A licensed physician under chapters 458 or 459;
- A board-certified pediatrician; and
- A diplomate in the subspecialty of child abuse pediatrics from the American Board of Pediatrics.

The bill requires each district CPT medical director to be:

- A licensed physician under chapters 458 or 459;
- A board-certified pediatrician; and
- A diplomate in the subspecialty of child abuse pediatrics from the American Board of Pediatrics within 2 years after the date of his or her employment as district medical director; or
- Meet the requirements established by a third-party credentialing entity recognizing a demonstrated specialized competence in child abuse pediatrics.

Third-Party Credentialing Entity

The bill requires DOH to approve one or more third-party credentialing entities to develop and administer a professional credentialing program for district medical directors. DOH must approve an entity within 90 days after receiving documentation that demonstrates the third-party credentialing entity's compliance with certain minimum standards, including:

- Establishment of child abuse pediatrics core competencies,[23] certification standards, testing instruments, and recertification standards;
- A demonstrated ability to administer a professional code of ethics, disciplinary process, biennial continuing education and certification renewal requirements, and an education provider program;
- Establishment of a process to administer the certification application, award, and maintenance processes according to national psychometric standards;
- Establishment of, and ability to maintain a publicly accessible Internet-based database that contains information on each person who applies for and is awarded certification, such as the person's first and last name, certification status, and ethical or disciplinary history; and

Sovereign Immunity

The bill amends s. 768.28(9)(b), F.S., adding "a member of a child protection team, as defined in s. 39.01[24], when carrying out his or her duties as a team member" to the definition of "Officer, employee or agent." This explicitly enumerates CPT members as falling under the sovereign immunity protections of the state.

Expert Witness Certificate

The bill amends ss. 458.3175(2) and 459.0066(2), F.S., adding criminal child abuse and neglect cases as an authorized use of the "expert witness certificate" for physicians and osteopathic physicians.

Critical Incident Rapid Response Team

[23] These core competency standards must be established according to nationally recognized psychometric standards.
[24] S. 39.01 defines a CPT as, "[A] team of professionals established by the Department of Health to receive referrals from the protective investigators and protective supervision staff of the department and to provide specialized and supportive services to the program in processing child abuse, abandonment, or neglect cases. A child protection team shall provide consultation to other programs of the department and other persons regarding child abuse, abandonment, or neglect cases."

The bill amends s. 39.2015, F.S., to require the inclusion of a child protection team medical director on any CIRRT.

Lastly, the bill reenacts ss. 39.3031 and 391.026(2), F.S., to incorporate the amendments made by the bill and makes other conforming changes.

The bill provides an effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1: Amends s. 39.2015(3), F.S., relating to critical incident rapid response team.
Section 2: Amends s. 39.303, F.S., relating to child protection teams.
Section 3: Amends s. 768.28, F.S., relating to sovereign immunity.
Section 4: Amends s. 458.3175, F.S., relating to expert witness certificates.
Section 5 Amends s. 39.301, F.S., relating to conforming references.
Section 6: Reenacts s. 39.3031, F.S., relating to rules for implementation.
Section 7: Amends s. 827.03(3), F.S., relating to expert witness testimony.
Section 8: Reenacts s. 391.026(2), F.S., relating to powers and duties of the department.
Section 10: Provides for an effective date.

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:

The cost of obtaining the required child abuse pediatric subspecialty certification from the American Board of Pediatrics or the third-party credential is unknown. The subspecialty certification through the American Board of Pediatrics requires a three-year fellowship.

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:

None.

B. RULE-MAKING AUTHORITY:

The bill reenacts the relevant section of statute giving the Department of Health sufficient rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 17, 2015, the Children, Families & Seniors Subcommittee adopted a strike-all amendment. The amendment:

- Requires district medical directors to obtain a subspecialty certification in child abuse pediatrics from the American Board of Pediatrics or meet minimum requirements established by a third-party credentialing entity.
- Requires the Department of Health to approve one or more third-party credentialing entities for the purpose of developing a professional credentialing program for district medical directors.
- Removes the amendment to s. 827.03, F.S., in relation to mental injury expert testimony, and adds child abuse and neglect cases as an authorized use of the "expert witness certificate" under s. 458.3175, F.S.
- Removes the parallel definition of "Officer, employee, or agent" in s. 768.28(9)(b)3. for sovereign immunity and adds CPT members to the existing definition of "Officer, employee, or agent" in s. 768.28(9)(b)2.

The bill was reported favorably as a committee substitute.

On March 26, 2015, the Health & Human Services Committee adopted two amendments. The amendments:

- Remove the requirement that the child protection team medical director serving on a critical incident rapid review team investigating a child's death be from the local child protection team.
- Authorize osteopathic physicians to provide expert testimony in criminal child abuse and neglect cases with an expert witness certificate.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.