

**STORAGE NAME:** h3197s1.go  
**DATE:** March 12, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
GOVERNMENTAL OPERATIONS  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/HB 3197

**RELATING TO:** Proceedings that involve juveniles

**SPONSOR(S):** Committee on Governmental Operations, Representative Wise and others

**COMPANION BILL(S):** SB 0548 (s) and HB 3883(c)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) GOVERNMENTAL OPERATIONS YEAS 4 NAYS 1
  - (2)
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**I. SUMMARY:**

CS/HB 3197 revises the law pertaining to criteria, procedures and proceedings relating to taking into custody a child alleged to be abused, neglected or abandoned. It ♦ allows an agent of the Department of Children and Family Services (Department), or a law enforcement officer to take a child into custody without a court order due to a medical emergency or if, in the judgment of that official, the child is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment, or has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care. A law enforcement officer *only*, can take a child into custody if the officer believes the child is a runaway or is truant from school; ♦ provides criteria for issuance of an emergency court order to take a child alleged to have been abused, neglected, or abandoned into protective custody, and for an emergency shelter hearing within 24 hours after taking a child into protective custody; ♦ provides for notification of parents or guardians, including the right to an attorney; ♦ provides criminal penalties for knowingly making false statements, or knowingly and willfully removing a child without a court order, and provides for petitions for emergency orders; ♦ makes corresponding changes in the notice requirements; ♦ provides standards of evidence for placement in shelter care, and conditions under which oral petition and order for such care may be made; ♦ provides for periods of time a child may be held in a shelter, petitions alleging dependency, arraignment hearings, and notification; ♦ provides that the “prevailing parent”, or county, in a ch. 39, F.S. dependency action, may be awarded attorney’s fees and costs under s. 57.111, F.S.; ♦ requires that interviews with children be audiorecorded or videotaped; ♦ limits the scope of investigations which are based on anonymous reports; ♦ requires the Department, when denied access to the child by the child’s parent or guardian, to show cause to the court why the interview or examination is necessary; ♦ provides that certain information relative to an investigation may, *by court order*, be released to the alleged perpetrator, and others, and provides victims of false reports with civil remedies against the makers and instigators of such false reports; ♦ allows use of closed circuit television for juvenile detention hearings if specified access to legal representation is provided; provides that a court placement order must direct that the child be released from placement no later than 5 p.m. on the last day of detention specified by statute unless specified statutory provisions apply providing for continuance of placement or termination of placement upon conditions met rather than time certain; ♦ creates a civil cause of action against a person who makes a false report of child abuse.

See FISCAL COMMENTS for fiscal impact.

II. SUBSTANTIVE RESEARCH:

PRESENT SITUATION:

"Child" or "juvenile" or "youth" means any unmarried person under the age of 18 who has not been emancipated by order of the court, and who has been found, or alleged, to be dependent, in need of services, or from a family in need of services; or any married or unmarried person who is charged with a violation of law occurring prior to the time that person reached the age of 18 years.

"Child who is found to be dependent" means a child who, pursuant to this chapter, is found by the court:

- (a) To have been abandoned, abused, or neglected by the child's parents or other custodians.
- (b) To have been surrendered to the Department, the former Department of Health and Rehabilitative Services, or a licensed child-placing agency, for purpose of adoption.
- (c) To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, the Department, or the former Department of Health and Rehabilitative Services, after which placement, under the requirements of part II of this chapter, a case plan has expired, and the parent or parents have failed to substantially comply with the requirements of the plan.
- (d) To have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a natural parent or parents signed a consent pursuant to the Florida Rules of Juvenile Procedure.
- (e) To have no parent, legal custodian, or responsible adult relative to provide supervision and care.
- (f) To be at substantial risk of imminent abuse or neglect by the parent, or parents, or the custodian.

**SHELTER PROVISIONS**

The procedures for taking a child alleged to be dependent into custody, determining the child's need for continued custody or release, and the placement of the child in a shelter when indicated are set out in ss. 39.40-39.402, F.S.

A child can be taken from the custody of his or her parents under the following circumstances only: 1) pursuant to an order of a circuit court, based on sworn testimony; or 2) by a law enforcement officer, or an authorized agent of the Department, if they have probable cause to support a finding of reasonable grounds for removal of the child from the home. s. 39.401, F.S. Reasonable grounds for removal include: that the child has been abused, neglected, or abandoned, or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment; that the custodian of the child has materially violated a condition of placement imposed by the court; or that the child has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care. *Id.*

A child presently can be taken into protective custody by a physician or hospital when the circumstances are such, or the condition of the child is such, that continuing the child in the child's place of residence, or in the care or custody of the parents, legal guardian, or legal custodian presents an imminent danger to the child's life, or physical or mental health. s. 415.506, F.S. A law enforcement officer can take a child into protective custody when the officer discovers a child in imminent danger during a search conducted pursuant to a warrant. s. 933.18, F.S.

In all of these situations, the law provides that the child be placed in the custody of an authorized agent of the Department. The department's legal staff must review the facts supporting the removal of the child from the home prior to the emergency shelter hearing. The purpose of the review is to determine if probable cause exists for the filing of an emergency shelter petition under s. 39.402(1), F.S. If the facts are sufficient to support the petition, and the child has not been returned to the custody of the parent or legal guardian, the department must file the petition and schedule a hearing under s. 39.401, F.S., and the emergency shelter hearing must be held before the circuit court within 24 hours after the child's removal. While waiting for the emergency shelter hearing, the department may place the child into the licensed shelter care, or may release the child to a parent, guardian, legal custodian, responsible adult relative who must be given priority consideration over placement with a non-relative, or to a responsible adult approved by the department.

A child may not be placed in a shelter prior to a court hearing unless there are reasonable grounds for removal, and the removal is necessary to protect the child. s. 39.402, F.S.

Presently, there are no criminal penalties specifically available against an agent of the department who inappropriately takes a child into custody. Further, agents of the department have good faith immunity for their actions in the investigation and reporting of child abuse and neglect, including the taking of a child into protective custody. s. 415.111, F.S.

In cases where a child is taken into custody, the Department is required to notify the parents or legal guardian immediately, and provide them with a summary of the dependency procedures and their right to obtain their own attorney. s. 39.402, F.S. Further, the parents or legal custodians of the child must be given actual notice of the date, time, and location of the emergency shelter hearing. *Id.* In those cases where these notification efforts were unsuccessful, the person providing, or attempting to provide, the notice must advise the court, either in person, or by sworn affidavit, of his or her attempts to provide notice, and the result of those attempts. *Id.* At the emergency shelter hearing, the Department must establish probable cause that reasonable grounds for removal of the child exist, and that the provision of appropriate and available services will not eliminate the need for placement. The parents or legal custodians must be given an opportunity to be heard, and to present evidence, at the emergency shelter hearing. *Id.* Currently, only parents who are found by the court to be indigent may have counsel appointed in dependency proceedings, including the emergency shelter hearing. s. 39.017, F.S.

Current law provides that parents be notified of all proceedings involving the child including shelter hearings. s. 39.405, F.S. However, the parent or guardian of a child involved in these proceedings currently may not have access to the file regarding the allegations for up to 30 days after the department receives the report of abuse, neglect or abandonment. s. 415.51(2)(d), F.S. Any released information must have removed from it information that would be confidential or exempt by law. *Id.* No exception is made permitting an attorney for the child's parent or guardian access to the information regarding the allegation, and it is a misdemeanor for anyone, including the parent, to reveal this information to a person who is not specifically provided access in the statute. s. 415.513, F.S. Thus, a parent may not have obtained access to the department's file until after the emergency hearing has occurred and even the time for the dependency hearing has run and at no time does the statute provide specifically for access to the file by the attorney for the child's parent or guardian.

## **DEPENDENCY PROVISIONS**

The procedures for the filing of a petition for dependency are set out in s. 39.404, F.S. Dependency proceedings are initiated by the filing of a petition by either an attorney for the Department or a person who has knowledge of the alleged facts. *Id.* In cases where a child is taken into custody, a petition alleging dependency must be filed within 7 days after the child is taken into custody. s. 39.404(4), F.S.

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In all other cases, the petition must be filed within a reasonable time after the date the child was referred for a protective investigation under s. 39.403, F.S.

When a child has been detained by order of the court, an arraignment hearing must be held within 14 days from the date the child is taken into custody for the parent, guardian, or custodian to admit, deny, or consent to findings of dependency alleged in the petition. s. 39.408, F.S. It is important for the parent to know the contents of the petition in order for them to prepare a response. If the parent, guardian, or custodian admits or consents to the findings in the petition, the court must proceed as set forth in the Florida Rules of Juvenile Procedure. If the parent, guardian, or custodian denies any of the allegations contained in the petition, the court must hold an adjudicatory hearing within 7 days from the date of the arraignment hearing unless a continuance is granted pursuant to s. 39.402(11), F.S. Adjudicatory hearings are conducted by the judge without a jury, applying rules of evidence used in civil cases, and adjourning the hearings from time to time as necessary. In a hearing on a petition in which it is alleged that the child is dependent, *a preponderance of evidence* is required to establish the state of dependency. If the child named in the petition is not dependent, the order is entered and the case is dismissed. s. 39.409, F.S.

Dependency adjudicatory hearings may be delayed when a continuance is granted at the request of the department's attorney because of the lack of evidence when the attorney has exercised "due diligence" to obtain evidence, and there is reason to believe that evidence will be available within 30 days. If the Department is not prepared to present its case within 30 days, the parent or guardian may move for issuance of an order to show cause or the court on its own motion may impose appropriate sanctions which could include dismissal of the petition. A delay may be granted to allow the attorney for the department additional time to prepare the case because of the exceptional circumstances of the case. The child's attorney or the parents' attorney may also request reasonable periods of delay. s. 39.402(10), F.S.

Currently, there is no authority for the child's parent or guardian to pursue an award of attorneys' fees and costs in a chapter 39 proceeding.

## **ABUSE HOTLINE**

Part IV of chapter 415, F.S., contains the provisions for Florida's comprehensive protective services for abused and neglected children. The law requires that reports of each abused and neglected child be made to the Department in an effort to prevent further harm to the child, or any other children, living in the home, and to preserve the family life of the parents and children to the maximum extent possible by enhancing the parental capacity for adequate child care.

Any person who knows, or has reason to believe, that a child is an abused or neglected child, must report that knowledge or suspicion to the Department. s. 415.504, F.S. The Department must establish and maintain a central abuse hotline which receives all reports of child abuse or neglect in writing, or through a single toll-free (abuse hotline) telephone number 24 hours a day, 7 days a week. *Id.* Reports are received from persons who disclose their identity, and those who wish to remain anonymous. Current law requires that the reporters in occupation categories designated in s. 415.504(1), F.S., must provide their names to the hotline staff when making a report. *Id.* Hotline counselors must receive periodic training in encouraging reporters to provide their names when reporting abuse. *Id.* Anyone reporting child abuse or neglect under chapter 415 who is acting in good faith is immune from liability. s. 415.511, F.S.

However, anyone who knowingly and willfully makes a false report of child abuse or neglect, or advises another to make a false report is guilty of a misdemeanor of the second degree, punishable as provided in ss. 775.082 or 775.083, F.S.; and, in addition, may be subject to an administrative fine by the department, not to exceed \$1000 for each violation. ss. 415.53(4), F.S., and 415.5131(1), F.S., respectively. There

is currently no cause of action that may be pursued against a person filing a false report by anyone other than the department or the state attorney.

The department is required to install electronic equipment which automatically provides to the hotline the number from which the call is placed. s. 415.504, F.S. The number will be entered into the report and will be confidential pursuant to s. 415.51(9), F.S. *Id.*

Currently, the name of any person reporting child abuse, abandonment, or neglect, may not be released to any persons other than Department employees responsible for child protective services, the central abuse hotline, or the appropriate state attorney, unless written consent is given by the reporting person. s. 415.51(4), F.S. There is now no legal standing for the alleged perpetrator to receive the name of the person reporting the alleged abuse.

### **AUDIO-RECORDING AND VIDEOTAPING OF INTERVIEWS**

There is presently no requirement that an interview with a child be audio or video taped. There is no prohibition against care givers audio or video taping interactions with Department personnel, but it is a felony to audio or video tape a person without the consent of the person being recorded. s. 934.03, F.S.

### **JUVENILE DETENTION HEARINGS**

Provisions for a child who is taken into custody under s. 39.044(1), F.S., for a delinquent act or violation of law, and placed into non-secure, or home detention care, or detained in secure detention care prior to a detention hearing, are set out in s. 39.044, F.S.

### **FLORIDA EQUAL ACCESS TO JUSTICE ACT**

In the Florida Equal Justice Act, the legislature recognized that certain persons may be deterred from seeking redress against unreasonable governmental action because of the expense of legal proceedings. s. 57.111(1), F.S. In that act, the legislature found that because of the greater resources of the state, the standard for an award of attorneys' fees and costs against the state should be different from the standard for an award against a private litigant, to diminish the deterrent effect of such costs in seeking redress. *Id.* This section provides guidelines for pursuing an award of attorneys' fees and costs in an action initiated by a state agency if the opposing party "prevails" in that action.

### **EFFECT OF PROPOSED CHANGES:**

#### **SHELTER PROVISIONS**

The bill amends current law to state that the circumstances under which an agent of the Department or law enforcement officer may take a child into custody *without a court order* are:

1. a medical emergency; or
2. if, in the judgment of that official, the child is in imminent danger of illness or injury as result of abuse, neglect, or abandonment; or
3. if, in the judgment of that official, the child has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care; or
4. the belief that the child is a runaway or is truant from school (*law enforcement only*).

A person who takes a child into custody without a valid court order is guilty of a misdemeanor of the first degree and subject to statutory penalties. s. 39.4015, F.S.

This narrows the current criteria that a child taken into custody shall not be placed in a shelter prior to hearing unless "there are reasonable grounds for removal and removal is necessary to protect the child". s. 39.402(1). Such grounds include: that the child has been abused, neglected, or abandoned, or is suffering from or is in imminent danger of illness or injury as result of abuse, neglect, or abandonment; that the custodian of the child has materially violated a condition of placement imposed by the court; or that the child has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care. s. 39.401, F.S.

In situations that do not meet the criteria for taking a child into protective custody without a court order, the Department must petition the court for an emergency order to remove a child from the home. The petition must be accompanied by a sworn affidavit by the Department's agent who has personal knowledge of the case, and must contain an allegation that the child appears to have been abused, neglected, or abandoned and the basis for that allegation. If it is necessary for the protection of the child to avoid delay, the petition, affidavit or order may be done orally so long as it is subsequently reduced to writing and a copy is provided to the child's parent or guardian before the emergency shelter hearing.

A person who knowingly makes or assists another person in making a false statement in a sworn affidavit stating that a child is in immediate danger, is guilty of a felony of the third degree, and subject to statutory penalties. s. 39.402(2)(c), F.S. A person acting in good faith is immune from this criminal liability. *Id.* The Florida Casualty Insurance Risk Management Trust Fund defined in sections 284.30 and 284.31, F.S., does include financial liability protection for state employees against whom criminal charges and penalties are filed. There is no civil immunity for officers, employees, or agents of the state if the person acted in bad faith or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. s. 768.28, F.S.

The bill repeals s. 933.18, F.S., which currently permits a law enforcement officer to take a child into protective custody when the officer discovers a child in imminent danger during a search conducted pursuant to a warrant. However, as the provisions created by the bill permitting removal of child by a law enforcement officer without court order use the same imminent danger criteria, the repeal would appear to have no real effect.

## **DEPENDENCY PROVISIONS**

The bill shortens from 7 days to 5 days the time within which a petition alleging dependency must be filed. s. 39.404, F.S. It also shortens from 14 days to 7 days, after the child is first taken into custody, the time within which the arraignment hearing must be held. s. 39.408, F.S. Because the adjudicatory hearing occurs 7 days after the date of the arraignment hearing, the time frame for the adjudicatory hearing would change to 14 days after the child is taken into custody.

This bill requires that the parents receive a copy of the dependency petition at least 48 hours before the arraignment hearing. The bill specifies that in an adjudicatory hearing on dependency, "clear and convincing" evidence would be required to establish the state of dependency, rather than the current "preponderance of the evidence" standard. These changes may result in cases being more difficult to prove because the department would be given less time to substantiate its case. The State Court Administrator's Office estimates that changing the evidence standard will approximately double the time required for dependency proceedings from the average of 4 hours to a minimum of one full day.

Current statutory provisions that allow the Department to seek a continuance for additional time to prepare for the adjudicatory hearing because of the unavailability of evidence material to the case are retained by the bill, except the provision allowing additional time "because of an exceptional circumstance". s. 39.402(10)(b)2., F.S.

The bill provides that when the child named in the petition is found not to be dependent that the court may award the attorney's fees and costs to the parent or guardian under s. 57.111, F.S., or to the county if the parent or guardian was represented by court appointed counsel. Section 57.11, F.S. is amended to include the concept of "prevailing parent" defined as a parent or guardian who was a party to the proceeding under chapter 39 which did not result in an adjudication of dependency under s. 39.409, F.S. This section provides that an award of attorney's fees shall be paid to the prevailing party unless the actions of the agency "were substantially justified or special circumstances exist which would make the award unjust." Application for attorney's fees must be made within 60 days after the person becomes "prevailing parent" by submission of an affidavit by the person's attorney itemizing the fees and costs sought to the court which conducted the chapter 39 proceeding. Payment of these fees when awarded will come from the department's budget.

### **ABUSE HOTLINE**

The bill requires that anonymous reports that need an immediate protective investigation be referred to the district for investigation within 24 hours, and the investigation must be limited in scope to the original allegations reported. s. 415.504, F.S. The investigator would report any additional evidence of other abuse that may be observed while conducting the investigation. This proposal is consistent with current departmental policy for investigating anonymous reports.

The bill provides that in the context of ch. 61, F.S., or ch. 741, F.S., proceedings, the court, upon good cause shown, can release the department's file on an allegation of child abuse to the alleged perpetrator if the court determines that there is no danger to the child or the reporter. s. 415.51, F.S. Further, the bill allows an award of attorney's fees regarding the motion to gain access to the file if the court determines the report is false. s. 61.16, F.S. In addition to the current criminal penalties and administrative fines that may be faced by a person making a false report of child abuse to the department or a person who advised another to make a false report, the bill provides a civil cause of action for up to threefold damages with minimum damages in the amount of \$1,000 and reasonable attorney's fees and costs in trial and appellate court.

### **AUDIORECORDING AND VIDEOTAPING OF INTERVIEWS**

This bill requires that the department staff audio record or videotape all interviews with the child that are conducted outside the presence of the child's parent or legal guardian. s. 415.5017, F.S. Audiorecording or videotaping the interviews would provide an accurate record that could protect the child, the family and the worker.

When the investigator is denied access to the child, the bill amends current law to require the department to show cause to the court that it is necessary to examine and interview the child, and to obtain a court order prior to examining and interviewing the child. s. 415.505, F.S. The interview must be audio recorded, or videotaped.

### **JUVENILE DETENTION HEARING**

The bill allows detention hearings to be conducted by closed circuit television if the child has immediate access to his legal representative, and is given the opportunity to confer privately with his legal representative. s. 39.044, F.S.

A. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. CS/HB 3197 would increase potential liability for Department agents and others if they make, or assist in making, false statements, or, in the case of Department agents, improperly take a child into custody without a court order.

(3) any entitlement to government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

NOT APPLICABLE.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

Not directly.



b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes, inasmuch as individuals would be empowered, due to a provision that counsel be assigned to parents or guardians contesting the removal of a child in a subsequent emergency shelter hearing.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A.

(2) Who makes the decisions?

N/A.

(3) Are private alternatives permitted?

N/A.

(4) Are families required to participate in program?

N/A.

(5) Are families penalized for not participating in program?

N/A.

b. Does the bill directly affect the legal rights and obligations between family members?

Yes. It provides for the appointment of counsel for parents or guardians in certain situations, and reduces the time for hearings and arraignments, potentially resulting in much less time that children would be removed from their families, in circumstances where dependency was not established.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

**B. STATUTE(S) AFFECTED:**

The bill amends the following sections of Florida Statutes: ss. 39.401, 39.402, 39.404, 39.408, 39.409, 415.5017, 415.504, 415.505, 415.51, 415.513, 933.18, 985.211, 985.215, 39.415, 57.111, and 61.16.

**C. SECTION-BY-SECTION RESEARCH:**

Section 1 - Providing a citation for this act as the "Child Protection Act".

Section 2 - Amends s. 39.401 providing when Department agents or law enforcement agents may take a child into custody; requiring the court to hold an emergency hearing within 24 hours after the child is taken into custody; requiring the Department to give parents or guardians actual notice, including their rights, concerning the emergency shelter hearing; providing for criminal penalties for knowingly, and willfully taking a child into custody without a valid court hearing; providing criteria for the Department to petition the court of an emergency order; providing for criminal penalties for knowingly making a false statement in a sworn affidavit, or a person providing false information so used; providing that an order of the court is effective immediately, but that the court must hold an emergency shelter hearing within 24 hours to determine whether protective custody should continue; providing the Department file an affidavit with the court if actual notice cannot be given to the parent or guardian; removing the language concerning when a child may be taken into custody; requiring a person taking custody of a child, who is not an authorized agent of the Department, to make a written report of the circumstances, including information sufficient to establish probable cause, to the Department within 24 hours, reduced from 3 days; conforming section numbering.

Section 3 - Amends s. 39.402 providing replacement language that a child may not be held in a shelter longer than 24 hours unless the court so orders, after an emergency shelter hearing; removes existing language concerning reasonable grounds for placing a child in a shelter prior to a hearing, notification requirements, probable cause that reasonable grounds for removal exist, and that parents or legal custodians be given the opportunity to present evidence; providing replacement language concerning probable cause and reasonable grounds; providing for the appointment of an attorney to represent parents or guardians at the emergency shelter hearing; providing for oral petition and order, with stipulations; providing that a child may not be held in a shelter under an order so directing, for more than 14 days, reduced from 21 days, after the emergency hearing; providing that within 5 days after the child is taken into custody, reduced from 7 days, a petition alleging dependency must be filed, and within 7 days after the child is taken into custody, reduced from 14 days, an arraignment hearing must be held for the child's parent, or guardian, or custodian to address the alleged dependency; removing language allowing the attorney for the Department additional time, relative to the holding period and petition, to prepare the case due to "exceptional circumstances"; conforming section numbering.

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Section 4 - Amends subsection (4) of s. 39.404, F.S., providing that a petition alleging dependency be filed within 5 days, reduced from 7 days; providing that the child's parent, guardian or custodian must be served with a copy of the petition at least 48 hours before the arraignment hearing.

Section 5 - Amends s. 39.408, F.S., conforming section references; establishing an arraignment date limitation of 7 days; modifying the standard of evidence required to establish dependency from "a preponderance", to the higher standard of "clear and convincing" evidence.

Section 6 - Amends s. 39.409 providing for the awarding of reasonable attorney's fees and costs to the parent or guardian of the child, under s. 57.111, F.S., or to the county, if the parent or guardian was represented by court-appointed counsel. Such fees and costs would be paid from the Department's budget.

Section 7 - Amends s. 415.5017(2), F.S., adding subsections (h), and (i), requiring family service response system district staff to audiorecord, or videotape all interviews with the child, and requiring any agency that interviews a child shall audiorecord or videotape such interview.

Section 8 - Amends s. 415.504(4), F.S.; requiring anonymous reports of known, or suspected, abuse or neglect requiring an immediate protective investigation, to be referred to the district within 24 hours, but limiting the scope of the investigation to the original allegations, with a provision for the reporting of additional evidence of other abuse observed while the investigation was being conducted.

Section 9 - Amends s. 415.505(1), F.S., provides that the Department, if denied reasonable access to a child by his or her parents or other person responsible for the child's welfare, may seek an appropriate court order or other legal authority *prior* to examining and interviewing the child, and that the Department must show cause to the court that it is necessary; provides that if the Department interviews a child, the interview must be audiorecorded or videotaped; provides that if the Department determines that a child requires immediate, or long-term protection through medical or special services, and that such services, after being offered to the child's parent or other person for the child's welfare, and having been refused, or if the Department deems that the child's need for protection so requires, the Department shall petition the court as provided in Chapter 39.

Section 10 - Amends s. 415.51(4), F.S.; provides that by court order, the name of any person reporting child abuse, abandonment, or neglect, may be released to the alleged perpetrator; provides that any person who is a party to an action involving a determination of custody or visitation of a child brought under chapter 61, F.S., or chapter 741, F.S., which is pending, and who is named as an alleged perpetrator in a report, may move the court to require the Department to give such alleged perpetrator a copy of the Department's file concerning the report; requires the court to conduct an in camera review of the Department's file, and conditionally may order a copy of the file, along with the name of the reporting person, to be released to the alleged perpetrator if the court finds that doing so creates no danger either to the person who reported the child abuse or neglect or to the child.

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Section 11 - Amends s. 415.513, F.S., providing that a person named in a false report as a perpetrator has a cause of action against the person who made the false report, and against any person who advised another to make a false report; provides remedies for such action, if the plaintiff proves by the greater weight of evidence that the report was knowingly and willfully false, and that the plaintiff suffered damages as a result of the report. Provides that if the person against whom the perpetrator has files such a cause of action is a Department employee who prevails in such action, that he or she is entitled to reasonable attorneys' fees and costs at the local and appellate levels.

Section 12 - Amends s. 933.18, F.S.; removes language in the subsection which provides that, during a search pursuant to a warrant issued, a law enforcement officer may remove a child from the private dwelling and take the child into protective custody, pursuant to s. 415.506, F.S.

Section 13 - Amends s. 985.211(2), F.S., removing language providing the release of a child from custody to "an authorized agent pursuant to s. 39.401(2)(b)"; permitting the release only to a shelter approved by the Department.

Section 14 - Amends s. 985.215(2), F.S., providing that a child meeting the criteria of this subsection, and ordered to be detained, shall be given a hearing that may be conducted by means of closed circuit television if the child has immediate access to his or her legal representative and is given the opportunity to confer privately with his or her legal representative.

Section 15 - Amends s. 39.415, F.S.; providing that court appointed counsel is entitled to receive compensation in a dependency hearing which shall not exceed \$500.00 at the emergency shelter hearing level.

Section 16 - Amends s. 57.111, F.S., adding a definition of the term "prevailing parent" to mean the parent or legal guardian who was a party to a proceeding under chapter 39, which did not result in an adjudication of dependency under s. 39.409, F.S.; conforming the added term to the entire section; conforming section numbering.

Section 17 - Amends s. 61.16(1), F.S., providing that in the case of a motion filed under s. 415.51(4), attorney's fees and costs shall be assessed against the person who made the allegations if that person is a party to an action under this chapter to which the movant is also a party and if the court finds that the allegation at issue was false, and the person making the allegation knowingly and willfully made the false allegation.

Section 18 - Provides an effective date of October 1 of the year in which enacted.

### III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

#### A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Department estimates \$309,250; presumably for 5 audiotape recorders with 100 tapes per district, and 5 videotape recorders with 100 tapes per district.

2. Recurring Effects:

Based on 610 dependency petitions dismissed in fiscal year 1994-1995, the potential cost for awarded attorney's fees and costs would be \$305,000 per year. The addition of "prevailing parent" to s. 57.111 means that awards of up to \$15,000 for attorney's fees and costs in each action entered into by the Department which did not result in an adjudication of dependency pursuant to s. 30.409, F.S. The total cost related to cases which go to the trial level is difficult to estimate, but if every one of the estimated 610 dismissed petitions were to be considered, the potential annual cost, according to the Department, could be another \$4,575,000.

3. Long Run Effects Other Than Normal Growth:

See Recurring Effects, and note that the Department believes the provision of the bill permitting the disclosure of an abuse reporter's name in a proceeding involving false reporting may result in a significant loss of federal funding. The Department believes that The Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C., s.5101, et seq.), forbids such disclosure. Florida's grant from this federal program amounts to about \$1.7 million. Additionally, according to the Department, CAPTA requirements also apply to Titles IV-B and IV-E funding, resulting in jeopardy of up to \$113.4 million additional dollars. This assumption is based on a letter from the U.S. Health and Human Services Department dated March 31, 1997, which is somewhat vague. This letter points out that record confidentiality must be preserved "in order to protect the rights of the child and the child's parents or guardians, except in certain specific situations". The letter makes generic references to the applicable regulations, but does not cite with specificity the provisions therein which would warrant such an assumption.

4. Total Revenues and Expenditures:

See Recurring Effects and Long Run Effects.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS WHOLE:

1. Non-recurring Effects:

There would be a fiscal impact on local governments if they purchase audio and video equipment (see State Agency Non-Recurring Effects).

2. Recurring Effects:

The Department estimates 35 shelter hearings per district, per month at \$500 per hearing, as provided in this bill. This would result in an annual cost per district of up to \$175,000 for such hearings.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The Department estimates the cost to private agencies to purchase audio and video equipment to be approximately \$129,000, with recurring costs of \$72,000.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

According to the data from the Florida Abuse Hotline Information System, the child protective investigator removed the child in 7.11 percent of the total cases investigated during FY 1993-94 and 6.61 percent of the cases investigated during FY 1994-95. The following table presents the number of child protective investigations and placements by the department for Fiscal Years 1993-94, 1994-95 and 1995-96. The data includes, by fiscal year, the number of children not placed out of the home, the number of children placed in emergency shelter, the number of children released to relatives with parental consent, and the number of children detained with relatives without parental consent:

Fiscal Year	Not Placed		Emergency Shelter		Detained With Relative		Placed With Relative		Total	
	#	%	#	%	#	%	#	%	#	%
1993-94	147,639	92.89%	5,619	3.54%	1,229	0.77%	4,453	2.80%	158,940	100.00%
1994-95	153,110	93.26%	5,388	3.28%	1,182	0.72%	4,489	2.73%	164,169	100.00%
1995-96	152,704	93.52%	5,117	3.13%	1,122	0.69%	4,349	2.66%	163,292	100.00%

According to these figures, 10, 588 children were detained with a relative, placed with a relative, or placed in emergency shelter pending an emergency shelter hearing. The bill provides that the parent or guardian of each child requiring an emergency shelter hearing will be appointed an attorney and caps compensation for that representation at \$500. Assuming two parents per child (this takes into account the number of children with less than one parent and those with more than two parents) and the maximum fee allowed incurred in each case, this results in an estimated maximum cost of \$5,294,000. However, according to the department's general counsel, approximately 75% of these parents and guardians already receive representation under s. 39.017, F.S., indigency provisions. Thus, the impact of this portion of the bill would actually be

approximately \$1,323,500. The State Court Administrator's office states that providing legal representation to all parents and guardians at the emergency hearing stage is expected to be among the recommendations of the Dependency Court Improvement Project currently examining the dependency courts of Florida under a multimillion dollar grant. Currently, Broward County appoints an attorney for the parent or guardian of each child at an emergency shelter hearing.

**IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:**

**E. APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

**F. REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

**G. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

**IV. COMMENTS:**

2.) In Section 3 of the bill, at the reference to s. 39.402(2)(g), the subject matter changes from the "shelter hearing", or "emergency shelter hearing", to oral petitions and orders. Consequently, the reference to "the petition and order under this subsection" found on page 11, line 2, may be clearer if it were a reference to "the petition and order under this paragraph".

**V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

The Committee on Governmental Operations, at its meeting on March 12, 1998, adopted three amendments. The first two amendments add language to bill sections 11, an 17, clarifying that action by alleged perpetrators are in order against persons who *knowingly and willfully* make false reports.

The third amendment adds language to bill section 11, providing that in actions against a Department employee by an alleged perpetrator, in which the employee prevails, the employee is entitled to reasonable attorneys' fees and costs at both local and appellate levels.



**STORAGE NAME:** h3197s1.go

**DATE:** March 12, 1998

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VI. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Legislative Research Director:

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Russell J. Cyphers, Jr.

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Jimmy O. Helms