

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 338

SPONSOR: Committee on Fiscal Policy, Committee on Children and Families, and Senator Cowin

SUBJECT: Protection of Children

DATE: April 8, 1999 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barnes/Whiddon</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable/CS</u>
2.	<u>Peters</u>	<u>Hadi</u>	<u>FP</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

Committee Substitute for Committee Substitute for SB 338 creates the Kayla McKean Child Protection Act which addresses gaps in the statutory framework of Florida's child protection system. The legislation includes provisions relating to the central abuse hotline of the Department of Children and Family Services (DCF); child protective investigations; child protection teams; community-based agencies under contract with the department; and criminal penalties relating to the abuse of a child. The bill creates the State and local Child Abuse Death Review Committees. The major provisions of the bill include the following:

### Abuse Reports

- adding judges to the list of occupational groups who must report child abuse, abandonment, or neglect.
- requiring the department to accept for investigation any report from a judge, teacher or other professional school official.
- requiring the department's district child protective investigator to immediately notify the appropriate law enforcement agency in the county in which the abuse, abandonment, or neglect is believed to have occurred so that law enforcement may determine if a criminal investigation of the case is warranted and, if so, coordinate their investigation whenever possible with the child protective investigation.
- requiring the department to voice-record all incoming and outgoing calls that are received or placed by the central abuse hotline and to consider the recording confidential information.
- requiring the department to contract with an independent entity to evaluate the hotline to determine its effectiveness and efficiency and address the need to monitor the hotline on an ongoing basis and if an ongoing evaluation is recommended to propose the monitoring process.

**Child Protective Investigations/Removing the Child from the Home**

- including in the definition of “harm” making the child unavailable in order to impede or avoid a protective investigation unless the court determines that the parent, legal custodian, or caregiver was fleeing from a situation involving domestic violence.
- requiring the department to maintain a master file for each child whose report is accepted by the abuse hotline for investigation.
- directing the department to develop an internal operating procedure that ensures that all required investigatory activities are completed and reviewed in a timely manner and signed and dated.
- requiring that the assessment of risk of the child include a face-to-face interview with the child, other siblings, parents, and other adults in the household and an onsite assessment of the child’s residence.
- requiring that onsite visits and face-to-face interviews with the child or family be unannounced unless it would threaten the safety of the child.
- directing the department to adopt a rule that specifies factors requiring the department to take the child into custody, petition the court for removal of the child from the home, or conduct an administrative review. The Office of Program Policy Analysis and Government Accountability will analyze and submit a report on cases referred for administrative review to the Legislature by January 1, 2000 and January 1, 2001.
- authorizing the court to continue a child in shelter care for up to 72 additional hours in order for the court to obtain and review critical documents.
- requiring the department to provide to the court at the shelter hearing copies of any available law enforcement, medical, or other professional reports and pertinent abuse hotline reports.
- requiring the department to inform the court at the shelter hearing of specific information such as current or previous case plans and any problems with compliance, any delinquency adjudication of the parents or caregivers and all of the child’s places of residence during the past 12 months.
- requiring that full-time equivalent positions directly involved in the investigation of child abuse or neglect not be subject to position lapse adjustments in the General Appropriation Act or imposed by the department in its annual operating budget.

**Child Protection Teams**

- including representatives of school districts in the group of professionals that may constitute child protection teams.

- requiring rather than permitting that certain reports of child abuse, abandonment, and neglect be referred to the child protection teams for a medical evaluation.
- specifying that a child with injuries to the head who is the subject of a report be referred to the child protection team.
- requiring that all cases referred to the child protection team be timely reviewed by a board certified pediatrician or registered nurse practitioner who is under the supervision of the board certified pediatrician; a face to face medical evaluation is not necessary in these cases *only* if the examining physician and the child protection team pediatrician or nurse practitioner conclude that further medical evaluation is not necessary.
- requiring the Department of Health to develop a plan for child protection team support in each county.

### **Provision of Child Protection Services By Private Providers**

- requiring that each community-based agency under contract with the department furnish status reports of its cases to the department and notify the department in writing when services are discontinued.
- establishing a seamless child protection system by including provisions in the contract between the community-based agency and the department for a case transfer process by clearly identifying the closure of the protective investigation and the initiation of service by the community-based agency.
- requiring that the department provide the community-based agency with a complete summary of the findings of the investigation when the case is transferred to the agency and that the agency provide a written case summary to the department after discontinuing services.
- requiring that the annual contract between the department and community-based agencies include provisions specifying procedures for resolving their differences concerning interpretations of the contract or to resolve disputes as to the adequacy of their compliance with respective obligations under the contract.

### **Criminal Penalties**

- increasing the penalty from a second degree misdemeanor to a first degree misdemeanor for persons who knowingly and willfully fail to report child abuse, abandonment, or neglect.
- creating the penalty of third degree felony for persons who are 18 years of age or older who live in the same house or living unit as a child known or suspected to be a victim of abuse and who knowingly and willfully fail to report the abuse unless the court finds that the person is a victim of domestic violence or that other mitigating circumstances exist.
- providing that a person who assists the perpetrator of child abuse, neglect of a child, aggravated child abuse, aggravated manslaughter of a child under 18 years of age, or murder of a

child under 18 years of age is an accessory after the fact unless the court finds that the person is a victim of domestic violence.

- changing the penalties for aggravated child abuse from second degree felony to first degree felony.
- modifying the Offense Severity Ranking chart by moving “aggravated child abuse” from Level 8 to Level 9 and by moving “aggravated manslaughter of a child” from Level 9 to Level 10, which will serve to increase the lowest sentence a judge is authorized to impose upon an offender.

## **Appropriations**

The bill provides an appropriation of to the Department of Children and Families of 8 positions and \$878,031 from recurring General Revenue Funds, \$457,896 from non-recurring General Revenue Funds and \$515,825 from the Federal Grants Trust Fund to implement Sections 4, 21 and 23 of the bill. The bill also appropriates 3 positions and \$2,413,234 from recurring General Revenue Funds and \$435,862 from non-recurring General Revenue Funds to implement Sections 9 and 13 of the bill.

This bill substantially amends ss. 39.01, 39.201, 39.202, 39.205, 39.301, 39.302, 39.303, 39.304, 39.402, 409.1671, 777.03, 827.03, 921.0022, 934.03, 39.823, Florida Statutes, and creates s. 383.402, Florida Statutes.

## **II. Present Situation:**

Child death as a result of child abuse, neglect, or abandonment continues to plague Florida’s communities. Based on the most recent data available from the Department of Children and Family Services, 72 children died in 1997 in Florida as a result of abuse or neglect (63 percent as a result of abuse and 37 percent as a result of neglect); 92 percent of the victims were six years of age or younger. Maltreatment-related fatalities occurred in 23 of the 67 counties during 1997 and 47 percent occurred in five counties (Duval, Marion, Manatee, Orange, and Dade). Drowning, severe head trauma and beatings are among the leading causes of abuse and neglect deaths. Mothers were responsible for 25 percent of the deaths, fathers and the mother’s boyfriends were responsible for 34 percent, and both parents were responsible for 14 percent of the deaths.

Recent national studies state that many infants and young children suffer numerous beatings before dying indicating that they may have been seen by an official, family member, or a neighbor who might have intervened to save them. Of 350 child maltreatment fatalities in Florida over a five year period (1993-1997), 31 percent of the children had current or prior involvement with the state’s child protection system. Based on data available from 16 states, the National Committee on Prevention and Child Abuse reports that 41 percent of children who died from maltreatment between 1995-97 had current or prior contact with child protection systems. The 350 child fatalities mentioned above represent less than one tenth of a percent of all the child victims of abuse known to the system during the same five year period.

As of November 1998, 140 (or 40 percent) of the perpetrators from the 350 child abuse and neglect deaths that occurred during the five year period (from 1993 through 1997) had been

prosecuted and convicted. Prosecution was still pending in 10 percent of the deaths for this five year period.

Kayla McKean (six years of age) died November 25, 1998 apparently as a result of being physically beaten by her natural father. A Grand Jury in the Fifth Judicial Circuit convened on December 14, 1998 to investigate the death of Kayla McKean. According to their report, during the last six months of her life, Kayla was seen and assessed by as many as ten different professionals who were either child protective investigators with the Department of Children and Family Services or employees of the Bridges Program, a private provider under contract with the department. The report states that not one of these professionals saw Kayla more than once and none of them conducted a complete review of the entire history of supposedly accidental injuries this child suffered. Each professional looked only at the immediate facts before them and concluded that the explanation given for her injuries was plausible and that the injuries did not indicate abuse. The Grand Jury report states that the “available facts” of the Kayla McKean case lead to the conclusion that this child should not have returned to live with her father but should have continued to live in an out of home placement.

The Grand Jury’s recommendations in this case include the following: 1) require that the medical records from any physical exams for abuse be made part of the investigative file; 2) require that investigators photograph all injuries to the child and include the photographs in the investigative file; 3) give the reports of abuse from school employees a “presumption of validity” and, if possible, respond to those reports on the same school day in which the report was made; 4) improve the exchange of information between the service provider and the investigator; 5) require that service providers submit a report to the investigator within two weeks of the inception of services detailing the cooperation of the family and the results of assessments; 6) require that a staffing be conducted involving the investigator, the service provider caseworker, and their respective supervisors before a case is closed; 7) require that the child protection team evaluate each child who sustains physical injuries from child abuse; 8) provide information to the reporter about the outcome of the investigation; and 9) improve the training of child protective investigators.

### **III. Effect of Proposed Changes:**

Overall, the bill does the following: 1) amends a number of provisions in chapter 39, F.S., pertaining to the central abuse hotline, child protective investigations, child protection teams, and penalties for failing to report child abuse; 2) establishes the State and local Child Abuse Death Review Committees; 3) amends provisions pertaining to private providers that contract with the department to provide protective services; 4) modifies and adds penalties relating to the abuse of a child; 5) requires the Department of Health to develop a plan for child protection team support in each county; and 6) requires an evaluation of the central abuse hotline and provides an appropriation of \$75,000 for that purpose.

#### **1. Abuse Reports**

The statutory provisions for reporting child abuse, neglect, or abandonment to the central abuse hotline in the Department of Children and Family Services on the single statewide toll-free number are contained in Part II of chapter 39, F.S. According to s. 39.201, F.S., reporting to the hotline is

the responsibility of any person who knows or has reasonable cause to suspect that a child is abused, abandoned, or neglected. Reporters in certain occupation groups are required under s. 39.201 (1), F.S., to provide their names to the abuse hotline staff. These categories include occupations such as physicians, health or mental health professionals, school teachers, day care center workers, or law enforcement officers. The department is directed to electronically record the telephone number from which all abuse reports are made.

When a call is received, the hotline counselor makes a decision about whether the call fits the abuse report criteria and can be accepted for investigation. For FY 1997-98, there were 188,405 calls received by the hotline alleging child abuse or neglect. Of that total, 121,777 child abuse investigations were initiated by the district child protective investigators.

Section 39.301, F.S., specifies that the abuse hotline staff is responsible for determining those reports that require an immediate onsite protective investigation. Upon making such a determination, the hotline staff immediately notifies the department's designated children and families district staff who initiates an immediate onsite protective investigation. For those reports not requiring an immediate onsite protective investigation, s. 39.201(5), F.S., specifies that the investigation must be initiated within 24 hours. Data provided by the department indicates that investigations of reports requiring immediate response are initiated within an average of 4.1 hours; the remaining investigations are initiated within an average of 16.2 hours.

Pursuant to s. 39.301(1), F.S., the hotline staff must provide to the district information regarding any previous reports concerning a subject of the present report or any pertinent information relative to the present report or any noted earlier reports.

Section 29 in chapter 95-228, Laws of Florida, directed the Department of Health and Rehabilitative Services and the Department of Law Enforcement to establish two model programs for receiving, disseminating, and investigating reports of child abuse, neglect, and exploitation. Palm Beach County's Sheriff's Office was one site selected for a model. That office has a computer connection with the hotline information system which automatically prints all abuse and neglect reports for the county. The Sheriff's Office contacts the department's district office when there is a need to coordinate the criminal investigation with the child protection investigation. The department also contacts the Sheriff's Office or other law enforcement agency when it is necessary to initiate a joint investigation. The department reports that this system in Palm Beach county has been in place for several years and is working very well.

**Effect of proposed changes:**

Committee Substitute for Committee Substitute for SB 338:

- Amends s. 39.201(1), F.S., by:
  - adding judges to the list of occupational groups that must report child abuse, abandonment, or neglect;
  - requiring the department to accept for investigation any report from a judge, teacher or other professional school official;

- requiring the department to voice-record all incoming or outgoing calls that are received or placed by the central abuse hotline and to consider the recording confidential information;
  - directing the department's quality assurance program to review reports to the hotline involving three or more unaccepted reports on a single child to detect such things as harassment and situations that warrant an investigation because of the frequency or variety of the source of the reports; as a result of this review, the Assistant Secretary may refer a case for investigation when warranted.
- Amends s. 39.202, F.S., by requiring the department to provide a written summary of the outcome of the investigation to reporters in occupational groups specified in s. 39.201(1) who report in his or her official capacity.
  - Amends s. 39.301, F.S., by requiring the department's district child protective investigator to immediately notify the appropriate law enforcement agency in the county in which the abuse, abandonment, or neglect is believed to have occurred so that law enforcement may determine if a criminal investigation of the case is warranted and, if so, to take the lead on such investigation and to coordinate it whenever possible with the child protective investigation.
  - Requires that the department contract with an independent entity to evaluate the central abuse hotline to determine its effectiveness and efficiency in performing its responsibilities under chapter 39, F.S., to address the need to monitor the hotline on an ongoing basis and, if an ongoing evaluation is recommended, to propose the monitoring process.

## **2. Child Protective Investigations/Removing the Child from the Home**

Section 39.301(4) F.S., specifies that child protective investigations are performed by the department or by its agents. The department reports that each district office determines the policy for assigning cases to their investigators. For example, some of the larger offices have investigators who specialize in certain types of reports such as sexual abuse. Other factors are considered such as the family currently receiving services from the department. Assignments are usually based on the "next available" investigator in the smaller district offices.

Section 39.301(6), F.S., specifies that the department must perform an onsite investigation for each report received. Rule 65C-10.003, Florida Administrative Code, states that the child must be observed in every reported case of abuse or neglect and the parents, adult household members, and when located, other persons responsible for the child must be interviewed. Even though an onsite investigation is required in statute, evidence suggests that it does not always occur as in the case of Kayla McKean. The department reports that the initial family visit in response to an abuse or neglect report is almost always unannounced but neither the law nor rule addresses this issue. According to the department, parents may be notified when asked to meet the investigator at the child's school so that the child, parents, and teachers may be interviewed.

Comprehensive information about the child and the family to be gathered in the child protective investigation is specified in s. 39.301(6), F.S. The protective investigator determines the

immediate and long-term risk to each child through the use of a standardized risk assessment instrument (Initial Response Child safety Assessment and Decision). Neither the department's operating procedures nor the training curriculum for the child protection staff include details on the application of the risk assessment instrument. According to recent statements from department leadership, there appears to be a lack of statewide uniformity on the application of the risk assessment instrument.

The department further reports that all prior abuse information is provided to the investigators to be considered in their comprehensive assessment. However, it was pointed out in the Grand Jury investigation of the death of Kayla McKean that the ten different professionals involved in the investigation of her case looked only at the immediate information and failed to examine the entire history of the "supposedly accidental injuries" that Kayla suffered.

The investigation determines not only the need for immediate or long-term protection for the child but also determines if services are needed such as medical care, day care, crisis counseling, protective supervision, foster care, and shelter care. Section 39.301(8), F.S., states that the first services to the child and family are to be offered for voluntary acceptance by the family unless there are "high risk" factors that impact the ability of the parents, legal guardians or caregivers to exercise judgment. The law provides that these high risk factors *may include* such things as their young age, history of substance abuse or domestic violence. If voluntary services are refused, and the department determines that the child needs protection, the law directs the department to take the child into protective custody or petition the court under the provisions of chapter 39 F.S.

Section 39.401, F.S., specifies the reasonable grounds for removal of the child from the home by law enforcement or by an authorized agent of the department. The first reason for removal is 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. The law specifies that if the child is taken into custody by or is delivered to an authorized agent of the department, the agent must review the facts supporting the removal of the child with an attorney representing the department. The department reports that the investigator furnishes the attorney with copies of the hotline report, the strengths/needs assessment if possible, and other pertinent information about the case. Staffings regarding any judicial action are held between the investigator and the attorney. If the facts are sufficient to support the filing of a shelter hearing, the department's attorney must request that a hearing be held as quickly as possible and not to exceed 24 hours after the removal of the child from the home. While awaiting the shelter hearing, the authorized agent of the department may place the child in licensed shelter care or may release the child to a parent, legal custodian, caregiver, or responsible adult relative.

The law provides no direction regarding the information which must be provided to the court at a shelter hearing. The department reports that it is "departmental policy" to provide the court with all available information regarding the child and family.

Section 39.301(6)(c), F.S., requires that the child protective investigation conduct state and federal record checks on the parents, legal custodians, or caregivers and any other person in the same household. Department of Corrections and local criminal history information is not currently specified in the statute and could be very helpful to the investigator in determining a child's risk.



To address the periods of time when authorized positions are vacant due to normal turnover, delays in program start up or other unexpected events, the Legislature in the FY 1998-99 General Appropriations Act implemented a two percent lapse of positions in all state agencies. The Department of Children and Family Services usually includes an additional lapse amount at headquarters and in the districts in order to cover other anticipated shortfalls in funding for services or fixed overhead costs such as rent and utilities. The problem of vacant positions in the child protection system results in high caseloads and a backlog of abuse/neglect reports waiting for an investigation. The ability of the districts to keep front line staff child welfare positions such as child protective investigators is critical to the ongoing supervision and safety of children.

The 1998 Legislature funded a pool of child protective investigators to help address the vacancy problem. Districts report that the implementation of this provision enabling districts to hire and train workers before vacancies occur has improved the vacancy problem.

**Effect of proposed changes:**

Committee Substitute for Committee Substitute for SB 338:

- Amends s. 39.01, F.S., by:
  - including in the definition of “harm,” those circumstances when, in order to impede or avoid a protective investigation, the parent, legal custodian, or caregiver makes the child unavailable unless they are fleeing from a situation involving domestic violence.
  - specifying that the provider under contract to provide protective services may be designated as a participant at the discretion of the court in order to inform the court of relevant information about the child or family.
- Amends s. 39.301, F.S., by:
  - requiring the department to maintain a master file for each child whose report is accepted by the abuse hotline for investigation and made available to any department staff or agent of the department given the responsibility for conducting a protective investigation relating to the same child.
  - requiring that all protective investigations for an individual child be conducted to the extent that is practical by the same worker or at least supervised by the same supervisor.
  - requiring the department to conduct a multidisciplinary staffing when a new investigator is assigned to investigate a second and subsequent report involving a child.
  - directing the department to develop an internal operating procedure that ensures that all required investigatory activities are completed and reviewed in a timely manner and signed and dated.

- requiring the assessment of risk and perceived needs of the child and family to include a face-to-face interview with the child, other siblings, parents, and other adults in the household and an onsite assessment of the child's residence.
  - requiring that onsite visits and face-to-face interviews with the child or family be unannounced unless it would threaten the safety of the child.
  - directing the department to adopt a rule that specifies behaviors or conditions that are factors under which the department must take the child into custody, petition the court under chapter 39, F.S., for removal of the child from the home or conduct an administrative review; specifying that those factors must include but are not limited to: noncompliance with the case plan developed by the department or its agent and the family, and prior abuse reports that involve the child or caregiver.
  - requiring the department's district training program to include periodic reviews of cases handled within the district to identify weaknesses as well as effective interventions that were used in their handling of the investigation.
  - modifying the provision for the department to send certain written abuse reports to the local state attorney, county sheriff, or local police department to require that it occur within 3 days rather than "as soon as possible."
  - requiring a law enforcement agency participating in an investigation to take photographs of the child's living environment that become a part of the investigative file.
  - allowing the child to continue in shelter care for up to 72 additional hours in order for the court to obtain and review documents pertinent to the decision about removing the child from the home because of certain risks.
  - requiring the department to provide to the court at the shelter hearing copies of any available law enforcement, medical, or other professional reports and pertinent abuse hotline reports.
  - requiring the department to inform the court at the shelter hearing of specific information such as current or previous case plans negotiated under chapter 39, F.S., with the parents or caregivers and any problems with compliance, delinquency adjudication of the parents or caregivers and all of the child's places of residence during the past 12 months.
  - requiring that full-time equivalent positions directly involved in the investigation of child abuse or neglect not be subject to position lapse adjustments in the General Appropriation Act or imposed by the department in its annual operating budget.
  - authorizing the department to access the Department of Corrections records when assessing immediate and long-term risks to the child.
- Amends s. 39.306, F.S., by authorizing local law enforcement agencies to share local criminal history information with department personnel who are conducting child protective investigations.

- The Office of Program Policy Analysis and Government Accountability will analyze cases referred for administrative review and submit a report to the Legislature by January 1, 2000 and January 1, 2001.

### **3. Child Protection Teams**

Section 39.303, F.S., establishes the child protection teams in the Division of Children's Medical Services of the Department of Health to supplement the assessment and protective supervision activities of the family safety and preservation program within the Department of Children and Family Services. Each service district of the Department of Children and Family Services has one or more multidisciplinary child protection team that is comprised of representatives of appropriate health, mental health, social service, legal service, and law enforcement agencies. The specialized diagnostic assessment and evaluation services of the child protection teams include such activities as medical diagnosis and evaluation; telephone consultation services in emergencies; psychological and psychiatric diagnosis and evaluation services for the child, parents, or caregivers; professional testimony in court cases; case staffings for developing treatment plans; and training services for staff of the Department of Children and Family Services and the Department of Health.

Section 39.303(2), F.S., specifies the types of child abuse, abandonment, and neglect cases that are appropriate for referral to the child protection teams. These cases include factors such as bruises, burns, or fractures in a child under the age of 3 years or in a nonambulatory child of any age; unexplained or implausibly explained bruises, burns, fractures, or other injuries in a child of any age; and reported medical, physical, or emotional neglect of a child.

The Department of Health reports that approximately 25 percent of the cases investigated by the Department of Children and Families are referred to the child protection teams. In FY 1996-97, the child protection teams conducted 17,707 assessments of abused or neglected children referred by the department (26 percent received a medical evaluation and 37 percent received a medical review by a physician or an Advanced Registered Nurse Practitioner).

Operating procedure of the Department of Children and Family Services' operating policy states that the investigator must contact the child protection team coordinator if the attending physician in a hospital or emergency room examining a child's physical injuries suspected to be the result of abuse or neglect is unsure about the cause of the child's injuries (CFOP 175-69). The child protection team medical professional is then to be consulted on the case to advise the investigator if the injuries were consistent or not consistent with injuries resulting from abuse. Each district of the Department of Children and Family Services must establish protocols in consultation with the child protection team, defining when it is appropriate for the consultations to be on-site or by telephone and when on-site child protection team medical assessments are needed.

#### **Effect of proposed changes**

Committee Substitute for Committee Substitute for SB 338:

- Amends s. 39.303, F.S., by:

- including representatives of school districts in the group of professionals that may constitute child protection teams.
  - requiring, rather than permitting, that certain reports of child abuse, abandonment, and neglect be referred to the child protection teams for a medical evaluation and available support services.
  - specifying that a child of any age with bruises, burns, or fractures who is the subject of an abuse report be referred to the child protection team rather than only those children under three years or for whom no plausible explanation for an injury is given.
  - specifying that any child with injuries to the head who is the subject of an abuse report be referred to the child protection team.
  - specifying that all cases be referred to the child protection team in the district and be timely reviewed by a board certified pediatrician or registered nurse practitioner who is under the supervision of the board certified pediatrician; a face to face medical evaluation is required unless the examining physician and the child protection team pediatrician or nurse practitioner consult and conclude that further medical evaluation is not necessary.
  - requiring that the child protection team take photographs of any area of trauma visible on a child during their examination that becomes part of the investigative file.
- Requires that the Department of Health in consultation with the Department of Children and Family Services and the Florida Association of Counties develop a plan describing the resources necessary, from both the county and the state, to provide adequate support for child protection teams in each county in Florida and providing that the Department of Health submit the plan to the Governor and Legislature by October 1, 1999.

#### **4. Provision of Child Protection Services By Community-Based Agencies**

The department contracts with community-based agencies for many of the services needed by the child and family that are identified in the protective investigation process such as social, legal, health, mental health, substance abuse, foster care, emergency shelter, and many other related services. As the department continues to implement statewide the privatization of foster care and related services under s. 409.1671, F.S., it becomes increasingly important to develop policies and operating procedures to assure that there are no gaps, delays, or confusion in the provision of services to children and families.

Section 39.501, F.S., states that any person who has knowledge of the facts pertaining to a child being abused or neglected may file a petition for dependency. When a community-based agency seeks to file a dependency petition under chapter 39, F.S., or to provide information to the court about an abused, neglected, or abandoned child, the agency uses existing child welfare legal attorneys housed in DCF, with the state attorney or the Attorney General. Some providers believe that using these attorneys restricts their ability to access the court in the best interests of the child who is under their care.

The definition of “participant” in s. 39.01(50), F.S., does not specifically state that a community-based agency under contract with the department to provide protective services may provide information to the court in judicial proceedings regarding the child. There are situations where it is necessary for the community-based agency to provide pertinent information to the court relating to the child’s safety when the child has already been adjudicated dependent and is living with his/her parents.

### **Effect of proposed changes**

Committee Substitute for Committee Substitute for SB 338:

- Amends s. 39.01(50), F.S., by authorizing that a community-based agency under contract with the department to provide protective services be designated as a “participant” at the discretion of the court in order to inform the court of relevant information about the child or family at shelter hearing, dependency proceeding, or termination of parental rights proceeding.
- Amends s. 409.1671, F.S., by:
  - establishing a case transfer process in the contract between the community-based agency and the department that clearly identifies the closure of the protective investigation and the initiation of service by the community-based agency.
  - requiring that the department provide the community-based agency with a complete summary of the findings of the investigation when the case is transferred to the agency.
  - requiring that each provider contract include provisions for the provider to furnish status reports of its cases to the department.
  - requiring the community-based agency to submit a written case summary, including an assessment of the child and family, to the department after discontinuing services.
  - requiring that the annual contract between the department and community-based agencies include provisions specifying procedures for resolving their differences concerning interpretations of the contract or to resolve disputes as to the adequacy of their compliance with respective obligations under the contract.

### **5. Child Abuse Death Review**

There are no provisions in current law designating a review of the deaths of children who die as a result of child abuse or neglect. The department has an internal death review procedure governing the review of all child deaths resulting from alleged abuse or neglect and of all children who die while in the custody of or receiving services from one of the department’s child welfare programs, whether or not there are allegations of death due to abuse or neglect. The primary objectives of the department’s review are to identify causes and circumstances of these deaths for prevention purposes, to achieve overall improvement of the child protection system, to identify training needs, to provide technical assistance, and to educate the public about child abuse and neglect.

This child death review process is coordinated with the community-based child fatality review teams, where available, under the Children's Medical Services Medical Foster Care Program.

### **Effect of proposed changes**

Committee Substitute for Committee Substitute for SB 338:

- Creates s. 383.402, F.S., establishing a State Child Abuse Death Review Committee within the Department of Health and establishing local child abuse death committees that would be responsible for:
  - reviewing the facts and circumstances of all deaths of children from birth through 18 years of age which occur as a result of child abuse or neglect and for whom at least one report of abuse or neglect was accepted by the central abuse hotline.
  - developing a better understanding of the causes and contributing factors of deaths resulting from child abuse and developing a communitywide approach to addressing these cases and contributing factors.
  - identifying gaps, deficiencies, or problems in the delivery of services to children and families by public and private agencies and making recommendations for improvement to laws, policies, and professional practices.
  - collecting data on child abuse deaths and preparing an annual report on the incidence and causes of death resulting from child abuse.
  - educating the public on the Kayla McKean Child Protection Act and ways by which child deaths from abuse or neglect may be prevented.

### **6. Criminal Penalties**

Section 39.205, F.S., states that the penalty for failing to report child abuse, neglect, or abandonment is a misdemeanor of the second degree punishable as provided in s. 775.082 or s. 775.083, F.S., which authorizes a maximum sentence of 60 days in a county jail. The Department of Children and Family Services reports that, to the best of their knowledge, there have been no prosecutions in Florida under this section.

“Accessory after the fact” is defined in s. 777.03, F.S., as any person who is not standing in the relation of husband or wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity to the offender who maintains or assists the principal or accessory before the fact, or gives the offender any other aid, knowing that the offender had committed a felony or been accessory before the fact, with the intent that the offender avoids or escapes detection, arrest, trial or punishment. Penalties for accessory after the fact are specified in s. 777.03(2), F.S., and the level of severity depends on the substantive felony offense committed by the offender.

Section 827.03, F.S., specifies that the penalty for aggravated child abuse is a felony of the second degree punishable as provided in s. 775.082, s. 775.083, or 775.084, F.S. A second degree felony

is punishable by a maximum sentence of 15 years in prison. Under the Criminal Punishment Code, a judge has the discretion to sentence a first-time offender to the statutory maximum sentence. Under s. 921.0022(3), F.S., the Offense Severity Ranking Chart, “aggravated child abuse” is classified as Level 8 and “aggravated manslaughter of a child” is classified as Level 9, which establishes the points assessed to an offender’s sentence score to establish the lowest sentence that the court is authorized to impose.

### **Effect of proposed changes:**

Committee Substitute for Committee Substitute for SB 338

- Amends s. 39.205, F.S., by:
  - increasing the penalty from a second degree misdemeanor to a first degree misdemeanor for persons who knowingly and willfully fail to report child abuse, abandonment, or neglect, which would authorize a possible sentence of up to one year in a county jail .
  - creating the penalty of third degree felony for persons who are 18 years of age or older who live in the same house or living unit as a child known or suspected to be a victim of abuse and who knowingly and willfully fails to report the abuse unless the court finds that the person is a victim of domestic violence or that other mitigating circumstances exist. This penalty would authorize a sentence of up to 5 years in prison.
- Amends s. 777.03, F.S., by including an accessory after the fact for any person (unless the court finds that he or she is a victim of domestic violence) who maintains or assists the principle or accessory before the fact, or gives the offender any other aid knowing that the offender had committed the offense of child abuse, neglect of a child, aggravated child abuse, aggravated manslaughter of a child under 18 years of age, or murder of a child under 18 years of age, or had been accessory before the fact with the intent that the offender avoids or escapes detection, arrest, trial, or punishment, *regardless of the person’s relationship to the offender*.
- Amends s. 827.03, F.S., by changing the penalties for aggravated child abuse from second degree felony to first degree felony, which would authorize a possible sentence of up to 30 years in prison.
- Amends s. 921.0022, F.S., by modifying the Offense Severity Ranking chart moving “aggravated child abuse” from Level 8 to Level 9 and moving “aggravated manslaughter of a child” from Level 9 to Level 10, which will serve to increase the lowest sentence a judge is authorized to impose upon an offender.

## **7. Appropriation**

The bill provides an appropriation of to the Department of Children and Families of 8 positions and \$878,031 from recurring General Revenue Funds, \$457,896 from non-recurring General Revenue Funds and \$515,825 from the Federal Grants Trust Fund to implement Sections 4, 21 and 23 of the bill. The bill also appropriates 3 positions and \$2,413,234 from recurring General

Revenue Funds and \$435,862 from non-recurring General Revenue Funds to implement Sections 9 and 13 of the bill.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Companion bill, SB 928, would exempt from public review specified information and portions of meetings of the child abuse death review committees.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who fail to report abuse or who assist the offender as described in section 16 of this bill would be subject to penalties and fines as provided in law.

C. Government Sector Impact:

**Department of Children and Family Services**

1. Accept for investigation any report received by the central abuse hotline from a judge, teacher or other professional school official, or physician who is acting in his or her professional capacity.

The department estimates (through a survey of hotline counselors and supervisors) that an additional 8 positions (1,095 reports divided by 12 months divided by 12 reports) would be required at a cost of \$830,593 in FY 1999-00 (positions are lapsed 3 months) and an annualized cost of \$427,056 in FY 2000-2001. [The 1,095 reports are generated by assuming 3 additional reports would be received per day per year (3 reports X 365 days)].

2. Voice-record all incoming or outgoing calls that are received or placed by the central abuse hotline which relate to suspected or known child abuse, neglect, or abandonment.



The department estimates \$305,681 in non-recurring funds for FY 1999-00 (\$303,181 for equipment and software and \$2,500 for computer related costs). This estimate was received from Siemens Rolm whose telephone system is currently used by the hotline.

3. Review reports to the hotline involving three or more unaccepted reports on a single child through the department's quality assurance program; cases are authorized to be referred for investigation if warranted.

The department estimates that \$40,000 in non-recurring funds would be required in FY 1999-00 to create an interim automated information database.

4. Evaluation of the abuse hotline

The departments estimates that \$75,000 in non-recurring funds would be required in FY 1999-00 for the evaluation of the hotline.

5. Requires that full-time equivalent positions directly involved in the investigation of child abuse and neglect or related to child protection not be subject to position lapse adjustments in the General Appropriation Act or imposed by the department in its annual operating budget.

The estimated cost to fund the 2% lapse is \$1,021,161 for the Intake and Assessment program component in FY 1999-00.

### **Department of Health**

1. a) Child protection teams (CPT) review all cases transmitted that meet the criteria in s. 39.303(2) to determine whether a face-to-face medical evaluation by the CPT is necessary. Face-to-face would not be required if the child was examined by a physician for the alleged abuse or neglect and a consultation between the CPT board-certified pediatrician or nurse practitioner and examining physician concludes that further medical evaluation is unnecessary.

b) CPTs review all cases involving bruises, burns, or fractures for a child of any age and all cases involving injuries to a child's head.

The estimate for the Department of Health for the cost of these requirements is \$2,624,386 for FY 1999-00 and \$2,747,788 for FY 2000-01.

2. State Child Abuse Death Review Committee and local child abuse death review committees.

The Department of Health estimates these costs to be \$224,710 for FY 1999-00 and \$238,658 for FY 2000-01. Of the FY 2000-01 amount, \$188,258 is related to 3 positions and associated salaries and benefits, expenses and OCO. The remaining \$50,400 relates to medical consultation of death reviews (\$700 average per review x 72 child abuse death cases). The number of child abuse death cases relates to calendar year 1997 and was provided

by the Department of Children and Family Services, Office of Family Safety and Preservation, Quality Assurance unit.

**State Court System**

1. a) Accept for investigation any report received by the central abuse hotline from a judge, teacher or other professional school official.

b) Quality assurance reviews of all cases if three or more “unaccepted” reports which may result in additional investigations.

c) Taking a child into custody, filing a petition with the court if certain behaviors or conditions exist, or holding a departmental administrative review.

d) Authorizing the court to continue a child in shelter up to 72 additional hours.

According to the State Court System, these provisions are expected to result in additional dependency cases being filed throughout the state as a result of unidentified child abuse being identified. These increased filings may result in a need for an increase in circuit judges assigned to the juvenile dependency bench. Further, additional time in shelter care will increase the time required for the judge to prepare for and conduct shelter hearings in dependency cases. Since the proposed changes included in this bill are intended to uncover a hidden number of children who are currently being abused, abandoned, or neglected, the State Court System could not estimate how many new case filings will result from the proposed changes.

2. New criminal penalties.

According to the State Court System, creating a new crime can be expected to result in additional prosecutions, thus increasing the judicial workload for circuit judges handling criminal cases. The Criminal Justice Impact Conference met on March 11, 1999 and determined minimum prison bed impact.

3. Notification of all abuse and neglect cases transmitted for investigation by the district to the appropriate law enforcement agency. This cost is indeterminate.

**Summary of Fiscal Impact**

<b>Item Description</b>	<b>1999-00 Recurring</b>	<b>1999-00 Non-Recr</b>	<b>1999-00 Total</b>	<b>2000-01 Total</b>
Child Protection Team Screening - DOH	\$2,210,207	\$414,179	\$2,624,386	\$2,747,788
Child Abuse Death Review - DOH	\$203,027	\$21,683	\$224,710	\$238,658

Sub-Total DOH	\$2,413,234	\$435,862	\$2,849,096	\$2,986,446
Abuse Hotline Investigations - DCF	\$349,888	\$480,705	\$830,593	\$427,056
Position Lapse - DCF	\$1,021,161		\$1,021,161	\$1,021,161
Sub-Total DCF	\$1,371,049	\$480,705	\$1,851,754	\$1,448,217
General Revenue	\$878,031	\$457,896	\$1,335,927	\$925,875
Trust Fund	\$493,018	\$22,809	\$515,827	\$522,342
TOTAL ALL	\$3,784,283	\$916,567	\$4,700,850	\$4,434,663
General Revenue	\$3,291,264	\$893,758	\$4,185,022	\$3,912,321
Trust Fund	\$493,019	\$22,809	\$515,828	\$522,342

**VI. Technical Deficiencies:**

None

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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