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**DATE:** April 16, 1999

**HOUSE OF REPRESENTATIVES  
AS FURTHER REVISED BY THE COMMITTEE ON  
HEALTH AND HUMAN SERVICES APPROPRIATIONS  
ANALYSIS**

**BILL #:** HB 481

**RELATING TO:** Child Protection

**SPONSOR(S):** Representative Murman

**COMPANION BILL(S):** CS/SB 338

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

- (1) Family Law and Children YEAS 7 NAYS 0
  - (2) CHILDREN & FAMILIES (W/D)
  - (3) HEALTH AND HUMAN SERVICES APPROPRIATIONS YEAS 8 NAYS 0
  - (4)
  - (5)
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**I. SUMMARY:**

House Bill 481 creates the Kayla McKean Child Protection Act to address gaps in the statutory framework of Florida's child protection system. The bill amends a number of provisions of chapter 39, Florida Statutes, related to the central abuse hotline of the Department of Children and Family Services (DCF), child protective investigations, child protection teams, and penalties for failing to report child abuse.

In addition, the bill amends provisions pertaining to private providers that contract with the department to provide protective services and creates the State and local Child Abuse Death Review Committees. The bill modifies and adds penalties relating to the abuse of a child and requires the Department of Health to develop a plan for child protection team support in each county.

The bill requires an evaluation of the central abuse hotline and provides an appropriation for that purpose.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Children dying as a result of child abuse, neglect, or abandonment remains a serious problem in the State of Florida. The most recent data available from the Department of Children and Family Services shows that 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). Ninety-two 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 show that many infants and young children suffer numerous beatings before dying indicating that they may have been observed 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 state 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 those protection systems 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 died November 25, 1998 at the age of six, 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 Kayla's death. 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 the supposedly accidental injuries this child received. 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 remained in an out of home placement.

The Grand Jury's recommendations in this case include the following:

- require that the medical records from any physical exams for abuse be made part of the investigative file;
- require that investigators photograph all injuries to the child and include the photographs in the investigative file;
- 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;
- improve the exchange of information between the service provider and the investigator;
- 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;
- require that a staffing be conducted involving the investigator, the service provider caseworker, and their respective supervisors before a case is closed;
- require that the child protection team evaluate each child who sustains physical injuries from child abuse;
- provide information to the reporter about the outcome of the investigation; and
- improve the training of child protective investigators.

**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, and 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., provides 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., provides 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 (now the Department of Children and Family Services) and the Department of Law Enforcement to establish two model programs for receiving, disseminating, and investigating reports of child abuse, neglect, and exploitation. The 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.

### **CHILD PROTECTIVE INVESTIGATIONS/REMOVING THE CHILD FROM THE HOME**

Section 39.301,(4) F.S., provides 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 those related to sexual abuse. Other factors are considered such as whether or not the family is 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.

## **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.

### **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.

### **CHILD ABUSE DEATH REVIEWS**

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.

### **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.

### **B. EFFECT OF PROPOSED CHANGES:**

#### **ABUSE REPORTS**

The bill amends s. 39.201(1), Florida Statutes, to provide that:

- judges are added to the list of occupational groups that must report child abuse, abandonment, or neglect;
- department to accept for investigation any report from a judge, teacher or other professional school official;
- the department voice-record all incoming or outgoing calls that are received or placed by the central abuse hotline and consider the recording confidential information;
- the department's quality assurance program 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.

The bill amends s. 39.202, F.S., to require 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.

The bill amends s. 39.301, F.S., to require the department 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.

The bill 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, Florida Statutes, to 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**

The bill amends s. 39.01, Florida Statutes, to provide that:

- the definition of "harm," include those circumstances when, in order to impede or avoid a protective investigation, the parent, legal custodian, or caregiver makes the child unavailable.
- 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.

The bill amends s. 39.301, Florida Statutes, to provide that:

- that upon notification from DCF staff, the designated child protection investigator shall immediately notify appropriate law enforcement and law enforcement must review the report and determine whether or not a criminal investigation is warranted. If an investigation is warranted, it should be coordinated if possible with the department.
- that the department shall 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.
- 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, that the department is required to conduct a multidisciplinary staffing when a new investigator is assigned to investigate a second and subsequent report involving a child, and that the department is directed to develop a rule that ensures that all required investigatory activities are completed and reviewed in a timely manner and signed and dated.
- that the assessment of risk and perceived needs of the child and family must 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.
- that onsite visits and face-to-face interviews with the child or family be unannounced unless it would threaten the safety of the child.
- that the department adopt a rule that specifies behaviors or conditions that are factors under which the department must take the child into custody or petition the court under chapter 39, F.S., for removal of the child from the home; specifying that those factors must include, but not be 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.
- for a change in the time frame for the department to send certain written abuse reports to the local state attorney, county sheriff, or local police department. It must occur within 3 days rather than "as soon as possible."
- that a law enforcement agency participating in an investigation take photographs of the child's living environment that become a part of the investigative file.

- that the department's district training program 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.
- The bill amends s. 39.306, Florida Statutes, to authorize local law enforcement agencies to share local criminal history information with department personnel who are conducting child protective investigations.

### **CHILD PROTECTION TEAMS**

The bill amends s. 39.303, Florida Statutes, to provide that:

- representatives of school districts be included in the group of professionals that may constitute child protection teams.
- certain reports of child abuse, abandonment, and neglect shall be referred to the child protection teams for a medical evaluation and available support services.
- 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.
- any child with injuries to the head who is the subject of an abuse report be referred to the child protection team.
- 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.
- 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.

The bill 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.

### **PROVISION OF CHILD PROTECTION SERVICES BY COMMUNITY-BASED AGENCIES**

The bill amends s. 39.01(50), Florida Statutes, 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.

The bill also amends s. 409.1671, Florida Statutes, to:

- establish a case transfer process 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.
- require 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.
- require that each provider furnish status reports of its cases to the department.
- require the community-based agency to submit a written case summary, including an assessment of the child and family, to the department within seven days after discontinuing services.



- require 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.

### **CHILD ABUSE DEATH REVIEW**

The bill creates s. 383.402, Florida Statutes, to establish a State Child Abuse Death Review Committee within the Department of Health and to also establish local child abuse death review 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 community wide 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.

### **CRIMINAL PENALTIES**

The bill amends s. 39.205, Florida Statutes, 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. This penalty would authorize a sentence of up to 5 years in prison. An exception is made for those individuals that the court has determined are victims of domestic violence.

The bill also amends s. 777.03, Florida Statutes, to include an accessory after the fact for persons who maintain or assist 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*. An exception is made for those individuals that the court has determined are victims of domestic violence.

The bill amends s. 827.03, Florida Statutes, to increase the penalties for aggravated child abuse from a second degree felony to a first degree felony, which would authorize a possible sentence of up to 30 years in prison.

The bill amends s. 921.0022, Florida Statutes, to modify the Offense Severity Ranking chart by 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.

C. 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?

N/A

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

Yes, it increase responsibilities for the Department of Children and Family Services, the Department of Health, law enforcement, child protection teams and the courts.

(3) any entitlement to a government service or benefit?

No.

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

(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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

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

N/A

4. Individual Freedom:

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

N/A

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

N/A

5. Family Empowerment:

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

- (1) Who evaluates the family's needs?

The Department of Children and Family Services, the child protection teams and the courts.

- (2) Who makes the decisions?

All of the above.

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

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

N/A

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

N/A

- 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

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

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

**E. SECTION-BY-SECTION ANALYSIS:**

**Section 1. Creates the “Kayla McKean Child Protection Act”.**

**Section 2. Provides** legislative intent for the act. The intent of the Legislature is to identify gaps and shortcomings in the child protection system as it currently exists in order to make that system more responsive to children who are at risk of child abuse or neglect.

**Section 3. Amends s. 39.01, Florida Statutes, 1998 Supplement,** to include 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. An exception is provided when the court determines that the parent, legal custodian, or caregiver was fleeing from a domestic violence situation.

The section also provides that the provider under contract with the Department of Children and Family Services 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.

**Section 4. Amends s. 39.201, Florida Statutes, 1998 Supplement,** to add judges to the list of occupational groups that must report child abuse, neglect, or abandonment and to require that the department accept for investigation any report from a judge, teacher, or other professional school official, or physician who is acting in his or her professional capacity.

The section adds a new subsection to require that the department voice-record all incoming or outgoing calls that are received or placed by the central abuse hotline and provide confidentiality to the recordings. The recording shall become a part of the record of the report.

The section also directs 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 for the department may refer a case for investigation when warranted.

**Section 5. Amends s. 39.202, Florida Statutes, 1998 Supplement,** to require the department to provide, upon request, a written summary of the outcome of the investigation to reporters in the occupational groups specified in s. 39.201(1), Florida Statutes who report in his or her official capacity.

**Section 6. Amends s. 39.205, Florida Statutes, 1998 Supplement,** to provide a penalty of a felony of the third degree to anyone 18 years of age or older who lives in the same house or living unit as a child who is known or suspected to be a victim of child abuse, child neglect or aggravated child abuse and knowingly and willingly fails to report the abuse. The penalty would not apply if the person failing to report was a victim of domestic violence. A third degree felony is punishable as provided in ss. 775.082, 775.083 or 775.084, Florida Statutes.

**Section 7. Amends s. 39.301, Florida Statutes, 1998 Supplement,** to provide:

- that upon notification from DCF staff, the designated child protection investigator shall immediately notify appropriate law enforcement and law enforcement must review the report and determine whether or not a criminal investigation is warranted. If an investigation is warranted, it should be coordinated if possible with the department.
- that the department shall maintain a master file for each child whose report is accepted by the abuse hotline for investigation and that file must be made available to any department staff or agent of the department given the responsibility for conducting a protective investigation relating to the same child.
- 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, that the department is required to conduct a multidisciplinary staffing when a new investigator is assigned to investigate a second and subsequent report involving a child, and that the department is directed 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.
- that the assessment of risk and perceived needs of the child and family must 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.
- that onsite visits and face-to-face interviews with the child or family be unannounced unless it would threaten the safety of the child.
- that the department adopt a rule that specifies behaviors or conditions that are factors under which the department must take the child into custody or petition the court under chapter 39, F.S., for removal of the child from the home; specifying that those factors must include, but not be 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.
- for a change in the time frame for the department to send certain written abuse reports to the local state attorney, county sheriff, or local police department. It must occur within 3 days rather than "as soon as possible."
- that a law enforcement agency participating in an investigation take photographs of the child's living environment that become a part of the investigative file.
- that the department's district training program 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.

**Section 8. Amends s. 39.302, Florida Statutes, 1998 Supplement,** to provide that a protective investigation must include an onsite investigation of the child's place of residence and that such investigation visits shall be unannounced unless the safety of the child would be threatened.

**Section 9. Amends s. 39.303, Florida Statutes, 1998 Supplement,** to provide that:

- representatives of school districts are included in the group of professionals that may constitute child protection teams.
- certain reports of child abuse, abandonment, and neglect must be reported to the child protection teams for a medical evaluation and available support services.
- any child with an injury to the head who is the subject of an abuse report must be referred to the child protection team.
- all cases be referred to the child protection team in the district and be timely reviewed by 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.

**Section 10. Amends s. 39.304, Florida Statutes, 1998 Supplement,** to require that child protection teams take, or cause to be taken, photographs of any area of trauma visible on a child during an examination that becomes a part of the investigative file.

**Section 11. Amends s. 39.306, Florida Statutes, 1998 Supplement,** to add local criminal history to the information that may be shared among agencies involved in child abuse investigations.

**Section 12. Amends s. 39.402, Florida Statutes, 1998 Supplement,** to provide that the court may order additional time in shelter care, not to exceed 72 hours, to obtain and review documents in order to assess risk to the child. During the shelter hearing, the department must inform the court of any current or previous case plans with parents or caregivers, any adjudication of the parents or caregivers of delinquency, any past or current injunction for protection against domestic violence, and all of the places of residence for the child for the past 12 months.

**Section 13. Amends s. 39.823, Florida Statutes, 1998 Supplement,** to correct a statutory reference.

**Section 14. Creates s. 383.402, Florida Statutes,** to establish a State Child Abuse Death Review Committee within the Department of Health and to establish 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 community wide 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.

The membership and duties and responsibilities of the state and local child abuse death review committees are provided for.

**Section 15. Amends s. 409.1671, Florida Statutes, , 1998 Supplement,** by:

- establishing a case transfer process 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 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 within seven days 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.

**Section 16. Amends. S. 777.03, Florida Statutes, as amended by section 16 of chapter 97-14, Laws of Florida,** to provide that any person, regardless of the relation to the offender, 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, is an accessory after the fact. An exception is provided if the court determines the individual to be a victim of domestic violence.

**Section 17. Amends s. 827.03, Florida Statutes,** to change the penalty for aggravated child abuse from a second degree felony to a first degree felony, which would provide for a possible sentence of up to 30 years in prison.

**Section 18. Amends. S. 921.0022, Florida Statutes, 1998 Supplement,** to modify the Offense Severity Ranking chart by 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 increase the lowest sentence a judge is authorized to impose upon an offender.

**Section 19. Amends s. 934.03, Florida Statutes,** to allow employees of the central abuse hotline to intercept and record incoming wire communications on published emergency telephone numbers.

**Section 20. Provides** for the Department of Health, the Department of Children and Family Services, and the Florida Association of Counties to submit a plan to the President of the Senate and the Speaker of the House of Representatives by October 1, 1999 describing the resources that are necessary to provide adequate support for child protection teams in each county.

**Section 21. Provides** for the Department of Children and Family Services to contract with an independent entity to evaluate the effectiveness and efficiency of the central abuse hotline.

**Section 22. Provides** for an appropriation in the Departments of Health and Children and Families.

**Section 23. Provides** that FTE's within the Department of Children and Family Services related to child abuse investigations are not subject to position-lapse adjustments in the GAA or to agency imposed position-lapse adjustments.

**Section 24.** Provides for an effective date of July 1, 1999.

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

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

##### 1. Non-recurring Effects:

See fiscal note attached.

##### 2. Recurring Effects:

	Recurring	Non-Rec
<u>Department of Health</u>		
Child Protection Team Screening	\$2,210,207	\$414,179
Child Abuse Death Review	\$203,027	\$21,683

<u>Department of Children and Families</u>		
Eight Positions	\$349,888	\$60,024
Hotline		\$380,681
Quality Assurance		\$40,000

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

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 the law.

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

The bill provides an appropriation to the Department of Children and Families for 8 positions and \$216,931 from recurring General Revenue Funds, \$457,896 from non-recurring General Revenue Funds and \$155,767 from the Federal Grants Trust Fund to implement sections 4 and 21 of the bill. The bill also appropriates to the Department of Health 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. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

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



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

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

**C. 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.

**V. COMMENTS:**

None.

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

The **Committee on Family Law and Children** adopted a "strike everything" amendment during the March 18, 1999 committee meeting.

On April 16, 1999, the **Committee on Health and Human Services Appropriations** adopted a substitute amendment to the amendment that replaced the language in HB 481 with the language in CS/CS/SB 338 with one exception. Section 23, was deleted which provided an exception to the normal budgeted position lapse for all FTEs involved in the investigation of child abuse and neglect and modified the appropriation in section 22 to reflect the elimination of section 23. A major difference between the House and Senate bills was a provision in section 7, of HB 481 that would require the Department of Children and Family Services to take a child into custody or file a petition under certain circumstances. Currently the department files petitions on approximately 16 percent of investigated reports. If the department were required to take the child into custody and/or file a petition if one of the two elements stated in the bill were present, no matter what the circumstances, the number of dependency cases and children sheltered could increase by 50 percent or 8,725 children. The estimated first year costs would be approximately \$21.5 million. HB 481 as amended also provides for quarterly reports by the Office of Program Policy Analysis and Government Accountability on all cases for which an administrative review is conducted under section 39.301(12)(c), Florida Statutes, and the Department of Children and Family Services does not take the child into custody or file a petition under chapter 39 Florida Statutes.

**VII. SIGNATURES:**

**COMMITTEE ON FAMILY LAW AND CHILDREN:**

Prepared by:

Carol E. Preston

Staff Director:

Carol E. Preston

**AS REVISED BY THE COMMITTEE ON CHILDREN & FAMILIES:**

Prepared by:

Bob Barrios

Staff Director:

Bob Barrios

**STORAGE NAME:** h0481a.hhs

**DATE:** April 16, 1999

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AS REVISED BY THE COMMITTEE ON CHILDREN & FAMILIES:  
Prepared by: Staff Director:

\_\_\_\_\_  
Bob Barrios

\_\_\_\_\_  
Bob Barrios

AS FURTHER REVISED BY THE COMMITTEE ON HEALTH AND HUMAN SERVICES  
APPROPRIATIONS:  
Prepared by: Staff Director:

\_\_\_\_\_  
Tom Weaver

\_\_\_\_\_  
Lynn Dixon