

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/SB 1910

SPONSOR: Criminal Justice Committee and Senator Laurent

SUBJECT: Child Welfare

DATE: April 5, 2000 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barnes</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/3 amendments</u>
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill includes provisions relative to child protection teams, law enforcement’s involvement in the child protection system, and child abuse protection.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes or Laws of Florida: 39.201, 39.202, 39.205, 39.301, 39.303, 39.304, 39.402, 383.402, 409.1671, and s.1, ch. 99-168, Laws of Florida.

II. Present Situation:

The Kayla McKean Child Protection Act, which was adopted in the 1999 Legislative Session (ch. 99-168, L.O.F.), focused on tightening Florida’s process for protecting children. The legislation made substantial revisions to the operation of a number of components of the child protection system, including to the central abuse hotline; child protective investigations; child protection teams; and community based agencies under contract with the department. As Florida continues its efforts to provide an effective and efficient infrastructure for its child protection system, refinements to the operational revisions adopted last year are necessary, as are additional improvements.

Child Protection Teams

Section 39.303, F.S., establishes the child protection teams (CPTs) 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 program within the Department of Children and Family Services. Each service district of the Department of Children and Family Services has one or more multi-disciplinary child protection teams that are comprised of representatives of appropriate health, mental health, social services, legal service, and law enforcement agencies. Section 39.303, F.S., requires that all abuse and neglect reports transmitted from the hotline to the district also be transmitted to the CPT for a determination as to which contain indicators of harm or

maltreatment. Section 39.303, F.S., also requires that every report of child abuse, abandonment, and neglect that involves one of the specified indicators of harm or maltreatment be referred to the CPT for a face-to-face evaluation. The only exception allowed is if a physician has examined the child and a consultation with a CPT physician or registered nurse practitioner concludes that a further examination is unnecessary.

The indicators of harm or maltreatment that are used to identify those cases that must be referred to the CPTs are delineated in s. 39.303(2), F.S., and are as follows:

- Bruises, burns, or fractures in a child of any age;
- Sexual abuse of a child;
- Venereal disease or any other sexually transmitted disease in a prepubescent child;
- Reported malnutrition of a child and failure of a child to thrive;
- Reported medical, physical, or emotional neglect of a child;
- Any family in which one or more child has died as a result of child abuse;
- Symptoms of serious emotional problems; or
- Injuries to the child's head.

Section 39.303(3), F.S., identifies who can review a referred case to determine if a face-to-face medical evaluation is needed. Currently, all referrals must be reviewed by a CPT physician or registered nurse practitioner (under the supervision of the CPT physician) to determine if a face-to-face medical evaluation is needed, or a consultation between the examining physician and either the CPT physician or nurse practitioner can determine that a face-to-face medical evaluation is not necessary. Child protection teams are required to take photographs of the trauma area of a child who is suspected of being abused, abandoned, or neglected (s. 39.304(1), F.S.). These photographs are to be provided to the Department of Children and Family Services to be included in their investigative file.

As written, the effect of the 1999 Bill on the child protection teams has been a substantial and, to some degree, inappropriate increase in the number of children referred to the child protection system for a face-to-face medical evaluation. During 1998-99, a total of 20,676 children were referred to the CPTs, with medical evaluations conducted on 4,034 of the children. For 1999-2000, Children's Medical Services estimates that 37,762 children will be referred and 22,072 children will receive medical evaluations. Between October and December of 1999, the percentage of children evaluated for whom no findings were found to support the allegation that one of the specified injuries had occurred ranged from 46 to 49 percent. Not only has there been an enormous increase in the number of cases for which the CPTs are conducting medical evaluations, but almost half of those cases did not meet the criteria warranting a CPT evaluation.

The State Child Abuse Death Review Committee was established by the Kayla bill in s. 383.402, F.S., within the Department of Health. County Health Departments are also authorized to establish local child abuse death review committees. These committees are charged with reviewing the facts and circumstances of all child deaths that result from child abuse or neglect.

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Law Enforcement

Section 39.301, F.S., was amended in ch. 99-168, L.O.F., to specify that upon notification by the central abuse hotline within the Department of Children and Family Services of a report of known or suspected child abuse, abandonment, or neglect, the child protective investigator in the appropriate service district immediately notifies the appropriate law enforcement agency of the county in which the known or suspected child abuse, abandonment, or neglect is believed to have occurred. The law enforcement agency then *reviews* the report and determines whether a criminal investigation of the case is warranted. If so, the law enforcement agency conducts the criminal investigation and coordinates the investigation, whenever possible, with the child protective investigation being conducted by the department or with its agent.

The department reports that from July 1, 1999 through February, 2000, there were 115,270 reports of alleged child abuse, abandonment, or neglect referred to local law enforcement agencies to review and determine if a criminal investigation was warranted. There is no available data base to determine the number of these reports for which law enforcement conducted a criminal investigation.

There have been varying interpretations of the law enforcement agency's responsibility to determine if a criminal investigation of the referred case is warranted. Some law enforcement agencies have interpreted this provision to require that the case be investigated only if the information in the report indicates that a crime has been committed, as suggested by the term "review." However, there are also interpretations that it is the law enforcement agency's responsibility to determine if a violation of law has occurred. As a result, some law enforcement agencies have conducted a criminal investigation on every case referred from the hotline in order for law enforcement to accurately determine if a violation of law has occurred. While the number of cases referred to all law enforcement agencies has been reported to have increased, the counties which have interpreted their responsibility in statute as determining whether a criminal investigation is warranted regardless of the information contained in the report, have reported a tremendous increase in workload. The overriding thrust of this provision is to place the responsibility for determining if a crime has been committed with law enforcement, where that expertise exists, instead of the Department of Children and Family Services.

Child Abuse Protection

Section 39.201, F.S., sets forth the requirements for reporting child abuse, abandonment, or neglect. The Department of Children and Family Services is directed to voice record all incoming or outgoing calls received or placed by the central abuse hotline which relate to child abuse, neglect, or abandonment (s. 39.201(2)(g), F.S.). The recordings are to become a part of the file, but are provided with the same confidentiality as the identity of the callers is provided in s. 39.202, F.S. Section 39.202(4), F.S., provides that the name of the person reporting child abuse, neglect, or abandonment may not be released to any person other than employees of the department responsible for child protective services, the central abuse hotline, law enforcement, or the appropriate state attorney, without the written consent of the person reporting. The

Department of Children and Family Services' quality assurance program is directed 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 (s. 39.201(9), F.S.).

III. Effect of Proposed Changes:

The CS for SB 1910 continues the efforts of the Kayla McKean Child Protection Act adopted in the 1999 Legislative Session, to provide an effective and efficient infrastructure for protecting Florida's children. This bill includes provisions relative to child protection teams, law enforcement's involvement in the child protection system, foster care, and child abuse protection. The specific provisions of the bill are as follows:

Section 39.201(2)(g), F.S., is amended to clarify that the voice recordings of the central abuse hotline calls can be released to law enforcement, the state attorneys, and employees of the department for the purposes of investigating and either prosecuting criminal charges or seeking administrative fines associated with making a false report of child abuse or neglect. This language mirrors the currently referenced confidentiality provision of s. 39.202, F.S., as specified in subsection (4), which allows employees of the department, law enforcement, and state attorneys access to the name of the person reporting child abuse.

Section 39.201(7), F.S., is amended to add the provision that a judicial officer or employee of the judicial branch is not required to provide notice of reasonable cause to suspect abuse, neglect or abandonment when the child is already being investigated by the department, there is an existing dependency case, or the matter has been previously reported, provided there is reasonable cause to believe the information is already known to the department.

The reference to "privatization" in s. 39.201(8), F.S., is changed to "community-based care." This modification reflects the Department of Children and Family Services' intended direction of transitioning to community-based systems of care, versus strictly privatizing the current system of services.

Section 39.201(9), F.S., is amended to make a technical adjustment and change the word "reports" to the word "calls" relative to the target of the department's quality assurance program review. The intent of this quality assurance review is to monitor the calls not accepted as reports, not the reports resulting from the calls. In addition, language is added to limit the calls which the department will monitor for the purpose of this quality assurance review to those calls that specifically relate to ch. 39, F.S., definitions of harm. Numerous calls are received at the hotline which are outside the realm of ch. 39, F.S., definitions of harm, such as requests for information, situations where there is no caretaker or for other reasons clearly not departmental jurisdiction. This amendment provides clarification of the calls intended to be monitored for the purposes of this paragraph.

Section 39.202(4), F.S., adds the child protection teams (CPTs) to those individuals identified who may have access to the name of the person reporting the child abuse, abandonment, or neglect. With the new responsibility to review all reports of abuse and neglect to determine if the

criteria of harm or maltreatment is met, the Department of Health maintains that CPTs now need all the information contained in the report, including the name of the reporter.

Section 39.205(1), F.S., is amended to provide that a judge shall not be subject to criminal prosecution when information comes to the judge during the course of official duties that a child may be abused, abandoned or neglected, and the judge does not report it.

Section 39.301(2), F.S., is amended to provide clear parameters to law enforcement for determining when they become responsible for conducting a criminal investigation, and their responsibilities for these cases. These parameters include specifying the exact laws, which if violated, require law enforcement to conduct a criminal investigation. There is specific direction to law enforcement that the determination as to whether one of the specified laws has been violated is solely based on the facts alleged in the original report provided by the Department of Children and Family Services or on additional facts discovered by the department during the course of its investigation. Law enforcement's responsibilities for cases that fall within these parameters is to conduct a criminal investigation and to coordinate its investigative activities with the department whenever feasible. Language is also amended in s. 39.301(2), F.S., to stipulate that a written report will be provided by the hot line to law enforcement, and to identify the department as the party responsible for providing the report to law enforcement instead of the child protective investigator. These parameters are intended to relieve law enforcement of the responsibility of conducting criminal investigations on every report received from the department's central abuse hotline. It limits their responsibility to only those cases where there is sufficient information provided by the department and that information indicates that one of the designated laws has been violated. Subsection (c) is added to s. 39.301(2), F.S., to clarify that the local law enforcement agreement required in s. 39.306, F.S., shall describe the specific local protocols for implementing this section of the statute.

The specification in s. 39.301(8)(b), F.S., that cases involving parents of young age, the use of illegal drugs, or domestic violence, are automatically classified as high risk cases for which a petition for dependency is required to be filed, is modified to be factors that the department *may* consider in determining whether a case is high-risk. Currently, a petition for dependency must be filed for all cases where there is a parent of a young age, the use of illegal drugs, and the existence of domestic violence. This modification will allow the department to determine when these circumstance make the case high-risk and warrant that a petition for dependency be filed.

Section 39.301(12)(c), F.S., is amended to clarify that the department's administrative review must include written documentation in the file that law enforcement had input in the review, in those cases where local law enforcement accepted the case for criminal investigation, and the same is required in cases which are referred to the child protection team.

Section 39.301(14), F.S., is amended to require the department to complete its protective investigation no later than 60 days after receiving the initial report. This time is an extension of the current 30 day completion requirement.

Section 39.301(17), F.S., is amended to make permissive the requirement that law enforcement take photographs of the child's living environment and broadens the scope of photographs to those that document the abuse or neglect. The provision that the photographs become part of the

investigative file is eliminated. Photographs of the child's living environment may not be applicable or necessary in all allegations of child abuse. The abuse may have occurred in settings other than the child's home. This modification allows the law enforcement agency conducting the criminal investigation the flexibility to determine when photographs are appropriate and necessary, and allows for photographs documenting the abuse or neglect, even if not in the child's living environment. These photographs taken by law enforcement form evidence in a criminal investigation and, as such, are to be a part of the criminal investigation file and not the department's file.

The time frame provided for the state attorney to report on their determination of whether or not prosecution of a case is justified in s. 39.301(18), F.S., is changed from 15 days after their completion of the investigation of the case, to 15 days after the case is reported to the state attorney.

The modification to s. 39.303, F.S., corrects terminology by changing "director of" to "Deputy Secretary for" Children's Medical Services.

Currently, the evaluations conducted by CPTs are described as, and limited to, medical evaluations. However, the children may need more than or something other than a medical evaluation depending on the injury or situation. A new subparagraph is added to s. 39.303(1), F.S., to more clearly identify the full scope of the child protection team assessment. As provided in the new subparagraph, the child protection team assessments may include a medical evaluation, medical consultation, family psychosocial interviews, specialized clinical interviews, or forensic interviews. References to the medical evaluation are changed to the CPT assessment in other provisions of this bill. The current Department of Health policy that all medical personnel participating in the child protection team must have successfully completed the required child protection team training is included in statute to formalize the requirement for any medical personnel joining CPTs.

Section 39.303(2), F.S., which specifies those cases which must be referred to CPT for an assessment, has been modified to clarify and better identify the cases of maltreatment that necessitate a CPT review. The specifications of the cases to be referred have been modified as follows:

- ▶ Sub-paragraph (a) "Bruises, burns, or fractures in a child of any age" and sub-paragraph (h) "Injuries to a child's head," are redefined into two criteria which are based on the age of the child: "Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age"; and "Bruises anywhere on a child 5 years of age or under."
- ▶ The term "venereal disease" is removed from the criteria which had referred to both venereal disease and sexually transmitted disease. The terms are redundant.
- ▶ Reported "emotional" neglect is removed from the current sub-paragraph (e), since it is covered in sub-paragraph (g).

With these revisions children over the age of 5 years with bruises to areas of the body other than the neck or head would no longer be a required referral for a CPT assessment. Since bruises to the areas of the body other than the neck and head for older children are usually attributable to reasons other than abuse, Children's Medical Services estimates that these revisions will still

capture virtually all of the bruises that are abusive, while reducing the number of referrals to be assessed by child protection teams.

Section 39.303(3), F.S., revises the identification of personnel authorized to conduct a review of a child referred to the CPT to determine if a face-to-face medical evaluation is needed. The individuals who can conduct the reviews are broadened to include the following:

- ▶ A physician whose certification is in a specialty other than pediatrics, but only under the direction of a board certified pediatrician who is a member of the CPT;
- ▶ A registered nurse, but only under the direct supervision of a board certified pediatrician who is a member of a CPT;
- ▶ A physician assistant, also only under the direct supervision of a board certified pediatrician who is a member of a CPT;

A new sub-paragraph (4) of s. 39.303, F.S., is created to expand the circumstances under which a face-to-face medical evaluation is determined not needed to the following:

- ▶ In addition to the currently allowed non-CPT physician consulting with a CPT physician or an advanced registered nurse practitioner who can determine that a face to face medical evaluation is not necessary, the non-CPT physician can also consult with a CPT advanced registered nurse practitioner or a physician assistant to make this determination. The registered nurse and physician assistant must both be under direct supervision of a CPT physician.
- ▶ The child protective investigator who, with supervisory approval, has found that none of the criteria of harm or maltreatment, as delineated in paragraph (2), sub-paragraphs (a) through (h) of s. 39.303, F.S., are met, **and** that none of the following are present in the family:
 - a history of substance abuse,
 - a history of domestic violence,
 - prior reports with indications or verified findings of abuse,
 - prior reports that the family did not keep a CPT referral appointment, or
 - prior reports of law enforcement involvement.**and** a CPT physician reviews the safety assessment and reaches the same conclusion, can determine that a medical evaluation is not needed. The safety assessment conducted by the child protective investigator and the supervisory approval must be received by the CPT within 4 days.

Subsection (4) of s. 39.303, F.S., further provides that regardless of any determination made not to conduct a face-to-face medical evaluation, a CPT physician or CPT advanced registered nurse practitioner can determine that a face-to-face medical evaluation is, in fact, needed. This provides the CPT with final authority as to whether or not a face-to-face medical evaluation is necessary.

The new provisions of ss. 39.303(3) and (4), F.S., will expand the circumstances under which a face-to-face medical evaluation can be determined not necessary, and expand who can make this determination, while retaining final authority and control with the CPT. This will provide opportunities to eliminate the inappropriate referrals and, in turn, reduce the number of children who require an actual face-to-face CPT medical evaluation. The expertise of the CPT will be more accurately targeted on the children who have actually experienced some form of injury, while providing some form of a review by a medical personnel for all children.

A new subsection (6) to s. 39.303, F.S., is added to require that the quality assurance programs in both the Department of Health and Department of Children and Family Services include a review of the children's records for whom no findings of abuse were found, to determine if these findings were appropriate. The results of these reviews are to be included in each department's quality assurance reports. This provision establishes a retrospective review to confirm the accuracy of the determinations.

Section 39.304(1)(a), F.S., is amended to require that photographs of sexual abuse trauma be excluded from the Department of Children and Family Services' investigative file and included only in the CPT record. Current statutory language leaves open for interpretation whether sexual abuse trauma photographs could be placed in the Department of Children and Family Services' file. The bill delineates between photographs of physical abuse injuries for which duplicates can be placed in the Department of Children and Family Services records and sexual abuse trauma photographs which, because of their particular sensitivity, can only be made part of the CPT medical record.

Section 39.402 (8)(f), F.S., is amended to clarify that the department must notify the court at a shelter hearing of any identified current or previous case plans.

Section 383.402 (3)(i), F.S., is amended to delete a reference to the Kayla McKean Child Protection Act and to include a reference to chapter 99-168, Laws of Florida.

The requirement that local child abuse death review committees review all deaths resulting from child abuse which are reported to the Office of Vital Statistics was modified to eliminate the reference to reports from the Office of Vital Statistics in s. 383.402(7), F.S. The Office of Vital Statistics does not maintain child death information based on child abuse and, therefore, cannot be the source for identifying child abuse deaths.

Section 383.402(18)(g), F.S., is amended to substitute the Department of Health Child Abuse Death Review Coordinator for the Assistant Health Officer of the Department of Health in the identified group who the district child abuse death review coordinators are to notify of all child abuse deaths meeting the specified criteria for review. Clarification is also provided that the one working day for reporting child abuse deaths is one day after verifying the child's death was due to abuse, neglect, or abandonment, not after learning of the child's death.

Section 409.1671(3), F.S., is amended to delete the requirement that the case-transfer process, from the department to a community-based agency, clearly identify the date of the transition. There is an added requirement that the department provide a complete summary of the findings of the protective investigation, not only at the point of transfer, but at the conclusion of the investigation as well.

The CS for SB 1910 repeals section 1 of chapter 99-168, Laws of Florida, which included a reference to the Kayla McKean Child Protection Act.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The redefining of the cases that are to be referred to child protection teams for review, combined with an expansion of the circumstances under which a face-to-face medical evaluation can be determined not necessary and an expansion of who can make those determinations, should result in a major decrease in the number of children referred for reviews and the number of actual medical evaluations that need to be conducted. This will prevent a workload increase that appeared necessary as a result of the 1999 Kayla legislation.

The establishment of clear parameters to law enforcement for determining when they become responsible for conducting a criminal investigation and their specific responsibilities for these cases, may prevent the need for all or a portion of the appropriations being sought by law enforcement for the increase in the criminal investigations they were conducting as a result of the 1999 legislation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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