

STORAGE NAME: h0855s2.lec

DATE: April 9, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
LAW ENFORCEMENT AND CRIME PREVENTION
ANALYSIS**

BILL #: CS/CS/HB 855

RELATING TO: Child Abuse & Neglect

SPONSOR(S): Committee on Law Enforcement & Crime Prevention, Committee on Family Law & Children, and Representative Murman

TIED BILL(S): None

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

- (1) FAMILY LAW AND CHILDREN YEAS 7 NAYS 0
 - (2) LAW ENFORCEMENT AND CRIME PREVENTION YEAS 6 NAYS 1
 - (3) HEALTH AND HUMAN SERVICES APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

This bill amends and expands certain provisions within the area of child protection. Specifically, this bill provides for the release of voice recordings of calls to or by the central abuse hotline relating to suspected or known child abuse, neglect, or abandonment, held by the Department of Children and Family Services, to law enforcement agencies and state attorneys for the purpose of investigating and prosecuting criminal charges. This bill requires the Department to immediately provide a copy of the written report received from the Central Abuse Hotline to the local law enforcement agency when allegations of criminal conduct have occurred. The law enforcement agency must determine whether a criminal investigation is warranted, under certain specified criteria, and coordinate investigative activities with the Department, where feasible. This bill requires that law enforcement take photographs documenting the child abuse or neglect, during an investigation, when appropriate; requires that all medical personnel participating on a child protection team must successfully complete the required child protection team training curriculum; provides who must review a case of abuse or neglect transmitted to the Department of Health child protection team; provides circumstances under which a face-to-face medical evaluation by a child protection team is not necessary; and provides for collaboration between the Department of Health child protection team quality assurance program and the Department of Children and Family Services, Family Safety Program Office quality assurance program, to ensure referrals and responses to child abuse, abandonment, and neglect reports are appropriate.

This bill provides that the act will take effect upon becoming law.

This bill may have a reduction in the fiscal impact of the Kayla McKean Child Protection Act.

This bill has stricken the name of Kayla McKean from s. 383.402, Florida Statutes.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

In 1999, the Legislature enacted legislation entitled "The Kayla McKean Child Protection Act" to address perceived gaps in the statutory framework of Florida's child protection system. See ch. 99-168, L.O.F.

Included in the Kayla McKean Act is the requirement that child protective investigators immediately notify law enforcement officials upon receipt of a report of child abuse or neglect received through the Department of Children and Family Services' Central Abuse Hotline. s. 39.301(2), F.S. Once contacted, law enforcement must determine if a criminal investigation of the case is warranted. *Id.* If a criminal investigation is warranted, then law enforcement must coordinate their criminal investigation, with the child protective investigation of the Department. *Id.* In addition, the Act requires a law enforcement agency, participating in a child abuse investigation, to take photographs of the child's living environment, and to keep those photographs as part of the investigation file. s. 39.301(17), F.S. As a result of the Kayla McKean Child Protection Act, some law enforcement agencies began responding to every report of child abuse or neglect. Many law enforcement agencies are dispatching officers along with child protective investigators, and the determination to conduct a criminal investigation is made on the scene by the law enforcement officer.

Under s. 39.201, F.S., the Department is required to voice record all incoming or outgoing phone calls that are received or placed by the central abuse hotline, relating to suspected or known child abuse. The recording then becomes part of the record of the report and is subject to the same confidentiality as is provided to the identity of the caller. This provision has proved problematic to law enforcement when they are investigating an allegation of false reporting, and to state attorneys for purposes of prosecuting false reports pursuant to s. 39.205, F.S.

Child protection teams are multidisciplinary groups composed of appropriate representatives of school districts, and appropriate health, mental health, social service, legal service, and law enforcement agencies. s. 39.303, F.S. The Department of Health is charged with the responsibility of developing, maintaining, and coordinating the services of these teams. *Id.* One or more teams must serve each of the service districts of the Department of Children and Family Services. *Id.* The child protection team must provide specialized diagnostic assessment, evaluation, coordination, consultation, and other

supportive services. *Id.* The Department of Children and Family Services must refer cases of child abuse, abandonment, and neglect to the child protection team for medical evaluation, when those cases involve: bruises, burns or fractures in a child; sexual abuse of a child; sexually transmitted disease; reported malnutrition and failure to thrive; reported medical neglect of a child; a family where a child has died because of abuse, abandonment, or neglect; symptoms of serious emotional problems; or injuries to a child's head. *Id.* A board certified pediatrician or a registered nurse practitioner under the supervision of a board certified pediatrician must review a case that included the above criteria to determine whether a face to face medical evaluation of the child by the child protection team is necessary. *Id.*

In 1999, the Legislature established a statewide multidisciplinary, multiagency child abuse death assessment and prevention system that consists of state and local review committees. See ch. 99-168, L.O.F. Under s. 383.402, F.S., a local child abuse death review committee is required to review all deaths resulting from child abuse which are reported to the Office of Vital Statistics; assist the state committee in collecting data on deaths that are the result of child abuse; submit written reports at the direction of the state committee; submit all records requested by the state committee at the conclusion of its review of a death resulting from child abuse; abide by the standards and protocols developed by the state committee; and request that the state committee review the data of a particular case, on a case-by-case basis. Within each district, a district administrator is required to appoint a child abuse death review coordinator. s. 383.402(18), F.S. Among other things, the coordinator is required to notify the district administrator, the Secretary of Children and Family Services, and the Deputy Secretary of Children's Medical Services Assistant Health Officer of all child abuse deaths within one day of learning of the child's death.

C. EFFECT OF PROPOSED CHANGES:

This bill would allow the release of the recorded incoming and outgoing calls received or placed by the central abuse hotline, to law enforcement agencies and state attorneys for the purpose of investigating and prosecuting criminal charges of false reporting. The recordings would otherwise remain confidential under s. 39.202, F.S.

Under the bill, the Department of Children and Family Services must immediately provide a copy of the written report received from the child abuse hotline to a local law enforcement agency. The law enforcement agency must review the facts alleged in the report and determine whether a criminal investigation is warranted, under specified criteria. If the law enforcement agency accepts the case for criminal investigation, the investigative activities must be coordinated with the Department whenever feasible. When conducting a criminal investigation into allegations of child abuse or neglect, the law enforcement agency must take photographs documenting the abuse or neglect, when appropriate. The state attorney has 15 days from receiving the case to report his or her findings and a determination of whether or not prosecution is justified, to the Department of Children and Family Services. In addition, the bill requires that the local office of the Department must complete its investigation no later than 60 days. This lengthens the time given under current law, which provided for 30 days to complete the investigation.

This bill requires that all medical personnel participating on a child protection team successfully complete the required child protection team training curriculum set forth in protocols determined by the Deputy Secretary for Children's Medical Services and the Statewide Medical Director for Child Protection. This bill provides clarification as to the

criteria for determining whether a case of child abuse, abandonment, or neglect needs to be referred to a child protection team. Under the bill, a child protection team member, who is also a physician licensed under ch. 458 or ch. 459, board certified in pediatrics; a licensed physician working under the direct supervision of a board certified pediatrician; an advanced registered nurse practitioner specializing in pediatrics; a physician assistant working under the direct supervision of a board certified pediatrician; or a registered nurse working under the direct supervision of a board certified pediatrician, must review a case of child abuse, abandonment, or neglect, to determine whether a face-to-face medical evaluation by the child protection team is necessary.

Under the bill, the Department of Health child protection team quality assurance program and the Department of Children and Family Services' Family Safety Program Office quality assurance program must collaborate to ensure referrals and responses to child abuse, abandonment, and neglect reports are appropriate.

This bill would require that photographs of sexual abuse trauma be made a part of the child protection team medical record.

Under the bill, the child abuse death review coordinator would be required to report a child abuse death meeting the criteria for review, to the district administrator, the Secretary of Children and Family Services, the Deputy Secretary for Children's Medical Services, and the Department of Health Child Abuse Death Review Coordinator, within one working day after verifying the child's death was due to abuse, neglect, or abandonment.

The bill removes the requirement that the case transfer process clearly identify the closure of the protective investigation and the initiation of service provision, but would instead require that at the conclusion of the investigation, the Department of Children and Family Services provide a complete summary of the findings of the investigation to the community-based agency.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends subsections (2), (7), (8), and (9) of s. 39.201, F.S., relating to mandatory reports of child abuse, abandonment, or neglect. This section provides for the release of voice recordings of calls to or by the central abuse hotline relating to suspected or known child abuse, neglect, or abandonment, held by the Department of Children and Family Services, to law enforcement agencies and state attorneys for the purpose of investigating and prosecuting criminal charges.

The bill amends subsection (2)(g) of s 39.201, F.S., relating to recording of the central abuse hotline. This section provides for the recording of incoming or outgoing calls that are received by the central abuse hotline which relate to suspected or known child abuse, neglect, or abandonment. The amendment allows that nothing in this subsection shall act to prohibit the use of recordings by hotline staff for quality assurance and training.

The bill further amends subsection (7) of s. 39.201, F.S., relating to persons not required to report child abuse, neglect or abandonment to the central abuse hotline. The amendment provides that an employee of the judicial branch need not again provide notice of reasonable cause to suspect child abuse, neglect, or abandonment when that child is currently being investigated by the Department, there is an existing dependency case, or the matter has previously been reported to the Department. This paragraph applies only

when the information has been provided to the officer or employee in the course of official duties.

Section 2. Amends subsection (4) of s. 39.202, F.S., relating to confidentiality of reports and records in cases of child abuse or neglect. This section adds the child protection team to the list of persons or groups who may receive the name of the person reporting child abuse or neglect.

Section 3. The bill amends subsection (1) of section 39.205, F.S., relating to persons required to report known child abuse, abandonment, or neglect. This amendment provides that a judge shall not be subject to criminal prosecution when information relating to child abuse, neglect, or abandonment was received in the course of official duties.

Section 4. Amends subsections (2), (8), (12), (14), (17), and (18) of s. 39.301, F.S., relating to the initiation of protective investigation. This section would require the Department to immediately provide a copy of the written report received from the child abuse hotline to a local law enforcement agency. The law enforcement agency would review the report and determine whether a criminal investigation is warranted, under certain specified criteria. If the law enforcement agency accepts the case for criminal investigation, coordination of investigative activities with the Department is required. This section also provides that law enforcement must take photographs documenting the abuse or neglect, when appropriate, during the criminal investigation. In addition, this section provides that the state attorney must report his or her findings, including a determination of whether or not prosecution is justified, to the department within 15 days after the case is received by the state attorney. This section also provides that the local office of the department must complete the investigation no later than 60 days after receiving the initial report.

The bill states that the Department shall forward allegations of criminal conduct to the municipality or county law enforcement agency in which the alleged conduct has occurred. Subsection (2)(b) defines criminal conduct and subsection (2)(c) provides that the local law enforcement agreement required in s. 39.306, F.S., shall describe the specific local protocols for implementing this section.

Section 5. Amends s. 39.303, F.S., relating to child protection teams. This section requires that all medical personnel participating in a child protection team must successfully complete the required child protection team training curriculum. This section clarifies the criteria for referring a case of child abuse, abandonment, and neglect to the child protection team. This section provides who must review a case of abuse or neglect transmitted to the Department of Health child protection team and the circumstances under which a face-to-face medical evaluation by a child protection team is considered not necessary. In addition, this section provides for collaboration between the Department of Health child protection team quality assurance program and the Department of Children and Family Services, Family Safety Program Office quality assurance program, to ensure referrals and responses to child abuse, abandonment, and neglect reports are appropriate.

This section also provides that an advanced registered nurse practitioner who specializes in family medicine or a physician assistant working under the supervision of a licensed physician, may review cases submitted to the child protection team for timely review.

The bill also provides that an advanced registered nurse practitioner is authorized to determine when a face-to-face medical evaluation is or is not necessary.

Section 6. Amends subsection (1) of s. 39.304, F.S., relating to photographs, medical examinations, X rays, and medical treatment of abused, abandoned, or neglected child. This section provides that photographs taken by a child protection team, that show physical abuse injuries must be provided to the Department for inclusion in the investigative file. This section also provides that photographs of sexual abuse trauma shall be made part of the child protection team medical record.

Section 7. Amends paragraph (f) of subsection (8) of s. 39.402, F.S., relating to placement in a shelter. This section provides that the Department of Children and Family Services shall inform the court of any identified current or previous case plans at the shelter hearing.

Section 8. Amends subsections (7) and (18) of s. 383.402, F.S., relating to child abuse death review; the State Child Abuse Death Review Committee; and local child abuse death review committees. This section removes the requirement that each local child abuse death review committee review all deaths resulting from child abuse which are reported to the Office of Vital Statistics. This section requires that a district child abuse death review coordinator, notify the Department of Health Child Abuse Death Review Coordinator, within 1 working day after verifying that a child's death was due to abuse, neglect, or abandonment.

The bill removes the name of Kayla McKean Child Protection Act, and inserts "provisions of 99-168, Law of Florida" in lieu thereof.

Section 9. Amends subsection (3) of s. 409.1671, F.S., relating to foster care and related services. This section removes the requirement that the case transfer process clearly identify the closure of the protective investigation and the initiation of service provision. This section requires that at the conclusion of the investigation, the Department of Children and Family Services must provide a complete summary of the findings of the investigation to the community-based agency.

Section 10. Provides that this act shall take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

In regards to the section of the bill dealing with the initiation of protective investigations, law enforcement agencies may see a reduction in fiscal impact in carrying out their responsibilities under the Kayla McKean Child Protection Act. The bill provides specific factors that must be found within a report of child abuse, abandonment, or neglect, in order for a law enforcement agency to conduct a criminal investigation. Therefore, there may be a reduction in the amount of investigations pursued by law enforcement agencies.

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 take an action requiring expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities 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 state sales tax shared with municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 15, 2000, the Committee on Family Law and Children adopted a strike-everything amendment to HB 855. The resulting CS/HB 855 differs substantially from HB 855. HB 855 provided that a child protective investigator from the Department of Children and Family Services should make a determination as to whether an allegation of child abuse or neglect, received by the child abuse hotline, warrants a criminal investigation; provided criteria for making that determination; provided for notification of the appropriate law enforcement agency if a criminal investigation is warranted, and for coordination of the agency's investigative activities with the Department; and also revised the circumstances under which photographs documenting child abuse or neglect are taken, during the investigation. CS/HB 855 addresses different issues, along with the requirement that the Department of Children and Family Services provide a written report of all calls received by the central abuse hotline. Please see "Section-by-Section Analysis" for more detail.

On April 4, 2000 the Committee on Law Enforcement and Crime Prevention adopted eleven (11) amendments to CS/HB 855. The resulting CS/CS/HB 855 differs substantially from CS/HB 855. The Committee amended section 1 of the bill to permit the use of recordings by hotline staff for the purposes of quality assurance and training. Section 1 of the bill was also amended to provide that employees of the judicial branch need not provide notice of child abuse, neglect or abandonment to the hotline when there is an existing case pending.

An amendment to section 2 of the bill provide that a judge shall not be subject to criminal prosecution for failure to report child abuse, neglect or abandonment when the information was received in the course of his or her official duties.

Section 4 was amended to require that the Department of Children & Families shall immediately forward allegations of criminal conduct to the municipality or county in which the alleged conduct has occurred. Criminal conduct has also been defined in an amendment to section 4.

Section 5 of the bill was amended to address the members of the "child protection team" that evaluates cases referred to them for review and assessment. The bill amends s. 39.303, F.S., to permit a registered nurse practitioner who specializes in family medicine, a physician assistant under the supervision of a licensed physician, or advance registered nurse practitioner to participate as members of the "child protection team".

The bill removes from s 383.402, F.S., the name of Kayla McKean, and replaces it with reference to chapter 99-168 Laws of Florida.

Please see "Section-by-Section Analysis" for more detail.

VII. SIGNATURES:

COMMITTEE ON FAMILY LAW AND CHILDREN:

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PAGE 9

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