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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CHILD & FAMILY SECURITY
ANALYSIS**

BILL #: HB 1313 (PCB CFS 02-02)
RELATING TO: Department of Children and Family Services Abuse Records
SPONSOR(S): Committee on Child & Family Security, and Representative(s) Detert and Murman

TIED BILL(S):

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

- (1) CHILD & FAMILY SECURITY YEAS 7 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

Several recent newspaper articles and a grand jury report have found that employees of the Department of Children and Families falsified child abuse records in highly publicized child deaths. According to these reports missing information was filled after the fact, information was whited-out and new pages inserted, reports were not signed, and unidentified people accessed and altered computer records.

Current law does not contain any specific provisions covering unlawful acts related to records of child and adult abuse investigations. Although current statutes criminalize certain acts that s. 839.27, F.S., seeks to prohibit, evidentiary standards make it difficult to prosecute under the circumstances of a protective investigation. Section 839.25, F.S., prohibits official misconduct by a public servant and makes it a third-degree felony. Section 918.13, F.S., prohibits tampering with or fabricating physical evidence in a criminal trial or proceeding, and also makes it a third-degree felony. Currently, three conditions must be met to prosecute falsification of records as official misconduct:

- that the falsification was done with corrupt intent,
- that it was done to the benefit of the person, and
- that it directly injured the public.

The bill creates new section 839.27, F.S., that makes it unlawful for any person to knowingly falsify, alter, destroy, deface, overwrite, remove, or discard records of the Department of Children and Family Services relating to abuse investigations. The offense is a first-degree misdemeanor except in cases involving great bodily harm or death, when it is a third-degree felony to reflect the seriousness of the conduct to be prohibited.

The proposed bill provides several evidentiary advantages over current criminal statutes pertaining to alteration or destruction of public records. Any person who "knowingly" falsifies investigative records of the department commits the offense. There is no requirement to demonstrate corrupt intent to obtain a benefit or cause unlawful harm to another. Additionally, there is no requirement of evidence to show the person knew "that a criminal trial or proceeding or an investigation ...is pending or about to be instituted."

The bill provides that the act shall take upon becoming law.

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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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:

Investigations of Abuse or Neglect of a Child, Elder Person or Disabled Adult

Chapter 39, F.S., requires reporting of suspected child abuse or neglect to the Florida Abuse Hotline. The Department of Children and Families conducts a protective investigation within 60 days to assess the child's safety and determine services that may be needed. The investigation may be carried out by department employees or by law enforcement employees where services are contracted out. Chapter 415, F.S., requires reporting and investigation of suspected abuse or neglect of elderly persons or disabled adults.

Falsification of Abuse and Neglect Investigation Records

In August 2000, during the course of a protective investigation conducted by the Department of Children and Families, a two-year-old child died as a result of physical abuse. Concerns were raised about the sufficiency of the protective investigation undertaken in this and other similar cases. Concerns were also raised that, after the death of the child, employees of the department may have falsified or destroyed child abuse records made during the investigation in an attempt to cover up employee mistakes, malfeasance, or negligence in carrying out the investigation.

A Palm Beach County Grand Jury submitted its report on these cases March 2, 2001. It found a clear pattern of negligence, misfeasance and incompetence that included case documents that were untimely, incomplete and contained inaccurate information. The report found evidence of:

- Poor record keeping and missing pages.
- An unknown individual who changed or entered data in records.
- A supervisor who updated records after a case was transferred to another unit, and after the child died.
- A case worker who requested the Child Protection Team that completed an independent medical examination to alter and supplement its records to support department records.

Attorneys involved in the grand jury report found that despite the clear pattern of negligence, misfeasance and incompetence it was unable to prosecute department staff for falsification of these records because of the limitations of current statutes regarding official misconduct.

Current Statutes That Address Public Records

Current law does not contain any provisions that specifically address the alteration of records of child and adult abuse investigations. There are current statutes that generally prohibit official misconduct and tampering with evidence.

Section 839.25, F.S., defines the offense of "official misconduct" and makes it a third-degree felony. Under this statutory provision "official misconduct" means the commission of the following act by a public servant, with corrupt intent to obtain a benefit for himself or herself or another, or to cause unlawful harm to another: knowingly falsifying, or causing another to falsify, any official record or official document.

Section 918.13, F.S., defines the offense of tampering with or fabricating physical evidence and also makes it a third-degree felony. This offense prohibits acts that: "alter, destroy, conceal, or remove any record, document, or thing with the purpose to impair its verity or availability" in a criminal trial or proceeding; or to "make, present, or use any record, document, or thing, knowing it to be false" in a criminal trial or proceeding. Additionally, this requires that a person know "that a criminal trial or proceeding or an investigation by a duly constituted prosecuting authority, law enforcement agency, grand jury or legislative committee of this state is pending or is about to be instituted" (s. 918.13(1), F.S.).

Falsification of Protective Investigation Records Difficult to Prosecute

According to the grand jury attorney, falsification of records as official misconduct is difficult to prosecute because three conditions must be met that are difficult to prove under the circumstances of protective investigations:

- that the falsification was done with corrupt intent,
- that it was done to the benefit of the person, and
- that it directly injured the public.

While negligent handling of the case by a department employee may have contributed to the death of a child, the cause of death was action by another person and falsification of records was done to protect the employee's job, not to benefit from fraud.

The offense tampering with or fabricating physical evidence has serious criminal penalties, but evidentiary standards require that the defendant know "that a criminal trial or proceeding or an investigation by a duly constituted prosecuting authority, law enforcement agency, grand jury or legislative committee of this state is pending or is about to be instituted". Additionally, it has an element of intent requiring proof of "purpose to impair the verity or availability of records in such proceeding or investigation."

Department Policy Prohibits Falsification of Records

The Department of Children and Families policy prohibits falsification of records and provides for dismissal of employee for violation of these standards.

Disciplinary standards for employee conduct are established in department Operating Procedures (CFOP 60-05) for career service employees. Section 3-16, Standards for Disciplinary Actions, specifically provides for disciplinary action for Falsification of Records or Statements. Falsification of records includes an intentional act of misrepresentation, falsification or omission of any fact, whether verbal or written, including client records.

Recommended disciplinary actions for Falsification of Records or Statements are:

- First Occurrence--Written reprimand to dismissal.
- Second Occurrence--Ten-day suspension to dismissal.
- Third Occurrence--Dismissal.

These standards are also included in the Department of Children and Families Employee Handbook, CFP 60-1. Section 9 on Employee Accountability states that employees shall not knowingly omit information or submit inaccurate or false information for, or on, any Department record, report or document.

Examples of omitting information or submitting inaccurate or false information include,

- Falsifying client records and accounts
- Repeatedly failing to make timely changes (updates) in client case files which result in inappropriate services or benefits for clients
- Giving false or incorrect information during investigations
- Documenting direct counseling or other services when these were not actually provided
- Falsifying client treatment plans

The employee handbook also includes employee accountability pursuant to the Florida Computer Crimes Act, Chapter 815, F.S., that provides that the introduction of fraudulent records into a computer system, alteration or destruction of computerized information is prohibited. Computer crimes are in violation of the department's disciplinary standards and may also result in felony criminal charges.

C. EFFECT OF PROPOSED CHANGES:

The proposed bill seeks to protect the maintenance and integrity of child and adult, abuse records. It is designed to specifically deal with records of the Department of Children and Family Services relating to child abuse investigations and investigations relating to abuse of elderly persons or disabled adults. The bill covers all documents, papers, letters, maps, books, tapes, photographs, sound recordings, data processing software, and other materials made or received in the course of such an investigation.

Any person who knowingly falsifies, alters, destroys, defaces, overwrites, removes or discards such records commits a first-degree misdemeanor. In cases involving great bodily harm or death to a child or an elderly person or disabled adult, the offense becomes a third-degree felony.

The proposed bill provides several evidentiary advantages over current criminal statutes pertaining to alteration or destruction of public records. Any person who "knowingly" falsifies investigative records of the department commits the offense. There is no requirement to demonstrate corrupt intent to obtain a benefit or cause unlawful harm to another. Additionally, there is no requirement of evidence to show the person knew "that a criminal trial or proceeding or an investigation by a duly constituted prosecuting authority, law enforcement agency, grand jury or legislative committee of this state is pending or about to be instituted." Section 918.13(1), F.S.

The proposed bill does not apply to the disposal of records or the archiving of records, nor to correcting or updating records, so long as the original entries are not altered or destroyed.

D. SECTION-BY-SECTION ANALYSIS:

Section 1, creates section 839.27, F.S.--Unlawful acts relating to records of abuse of a child, elderly person, or disabled adult—

Subsection (1), provides definitions of abuse and neglect by reference to existing statute and defines records made or received by the department in the course of an investigation of child abuse or abuse of an elderly person or disabled adult.

Subsection (2), provides that it is unlawful for any person to knowingly falsify, alter, destroy, deface, overwrite, remove, or discard records of the department relating to investigations of abuse of a child, elderly person or disabled adult.

- Provides that violation is a misdemeanor of the first degree.
- Provides that if the victim suffers great bodily harm or death it is a felony of the third degree.
- Provides for punishment by reference to s. 775.082, s. 775.083, s. 775.084, F.S.

Subsection (3), provides the court may not suspend, defer or withhold adjudication.

Subsection (4), provides that the section does not apply to disposal or archiving of records as otherwise provided in law and that it does not prohibit anyone from correcting or updating records, so long as the original records are not altered or destroyed.

Section 2, provides the act shall take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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:

The bill will not reduce the authority of municipalities and counties to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CHILD & FAMILY SECURITY:

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