

STORAGE NAME: h0793s1.sgc.doc
DATE: February 27, 2002

HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS

BILL #: CS/HB 793
RELATING TO: Child Abuse/Mandatory Reporting
SPONSOR(S): Council for Smarter Government and Representative Baker
TIED BILL(S):

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

- (1) JUDICIAL OVERSIGHT YEAS 10 NAYS 0
 - (2) CHILD & FAMILY SECURITY YEAS 8 NAYS 0
 - (3) COUNCIL FOR SMARTER GOVERNMENT YEAS 12 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill removes the requirement that the abuse, neglect or abandonment of a child that is required to be reported to the Department of Children and Family Services (DCF) via the department's central abuse hotline be limited to abuse, neglect or abandonment by a parent, legal custodian, caregiver, or other person responsible for the child's welfare.

This bill is estimated to have a recurring fiscal impact on state government of \$67,090,900 annually. This bill does not appear to have a fiscal impact on local governments.

On February 12, 2002, the Committee on Judicial Oversight adopted a strike everything amendment that substantially amended the bill. It provides a criminal penalty against school instructional or administrative personnel for failure to report student-on-student sexual battery.

The amendment changes the fiscal impact to zero. See "Amendments or Committee Substitute Changes" herein.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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: The bill expands the incidences of child abuse, neglect, and abandonment that must be reported to the hotline, to include those where the alleged perpetrator is not a parent, legal custodian, caregiver, or other person responsible for the child's welfare.

B. PRESENT SITUATION:

The child welfare movement began in the United States in 1875 with the founding of the New York Society for the Prevention of Cruelty to Children. By 1922 there were 57 societies for the prevention of cruelty to children and 307 humane societies advocating for both animals and children. All were voluntary organizations that removed children from unsafe homes and prosecuted parents.

Even as these organizations continued to be established, the protection of children from abuse was in actuality being added to a growing number of other concerns of the public child welfare system. While instances of severe physical abuse occupied public attention and elicited substantial support for the efforts of the children's aid societies, the main focus of these societies remained the welfare of the thousands of abandoned and orphaned children. The problem of child abuse and the resulting protective services issues were absorbed into public child welfare and, as a result, there was almost no mention of child abuse per se in public policy literature from 1920 to the 1960's.

There are generally two accepted conceptions or models of social welfare service provision. The residual model views social welfare as being primarily a "safety net" function in which programs and assistance are temporary substitutes for the shortcomings of individuals and institutions. It says that the public should provide social services and public assistance only to those people who, due to extraordinary circumstances, are unable to receive necessary help through family or other immediate support groups and the marketplace. This is in contrast to the institutional model that views social welfare as having a "mainline" function (equal to the other social institutions such as family, religion, economics, and politics) in which programs are permanent and provide for the overall security and emotional support of all individuals.

Child welfare services are characterized as residual services. From the time of its origination, the child welfare system has focused on the children left out. In the United States, the fundamental responsibility for the care and safety and nurturing of children is placed with the family. The public child welfare system is called upon for intervention only when the family has failed, or is in danger of failing, to meet the child's basic needs. Collective responsibility for the care of children has therefore been limited to "rescuing" children from homes where the family has been unable to meet its obligations toward children.

Federal legislative enactments that provide for child welfare services contain definitions to support a residual framework. The Social Security Act of 1935 and the Adoption Assistance and Child Welfare Act of 1980 both identify particular groups of children and address specific problems affecting those children. In order to be eligible for services, children must be “dependent,” “abused,” “neglected,” “abandoned” and have problems associated with those situations.

Since the beginning of the child welfare system, any individual could report suspected or known child abuse to agencies charged with the protection of children. Mandatory reporting by professionals working with children and their families did not become law in most states until the early 1960s. Mandatory reporting laws were popular among states for a variety of reasons; they legalized the problem of child abuse, they were proof that states were doing something about protecting children, they were believed to be the least expensive policy option available, and they served to decriminalize child abuse and neglect, with the exception of a child death.

The catalyst for the institution of the earliest child abuse reporting laws was the creation of a formal medical profile for abused children. In 1962 child abuse was “rediscovered” after publication of an article by Dr. C. Henry Kempe in the Journal of the American Medical Association describing the “battered child syndrome.” It became, and remains, the single most influential article on child maltreatment and was based on the work of pediatricians and other physicians. In addition to detailing injuries that characterized children who were victims of the battered child syndrome, Kempe also reported that physicians many times failed to report such injuries for a variety of reasons. As a result, states began passing laws, and between 1963 and 1967 every state, as well as the District of Columbia, had passed some form of child abuse reporting legislation, most requiring only physicians to report. At the subsequent urging of physicians, who did not want to remain the only professionals responsible for reporting the abuse and neglect of children by parents or other caretakers, states have broadened and expanded their own reporting laws to include other professionals as mandatory reporters of abuse and neglect. When all states are surveyed, there are nearly 40 different professions specifically named in mandatory reporting laws. It has become increasingly common for states, including Florida, to require reporting by **any** person who suspects the abuse of a child.

The federal Child Abuse Prevention and Treatment Act of 1974 (CAPTA) set the standard for mandatory reporting laws to be used by states **by** defining child abuse and neglect to be reported as:

the physical or mental injury, sexual abuse, negligent treatment, or maltreatment of a child under the age of 18 by a person who is responsible for the child’s welfare under circumstances which indicate the child’s health or welfare is harmed or threatened thereby as determined in accordance with regulations prescribed. (Child Abuse Prevention and Treatment Act of 1974, Section 3.)

This supports the premise that child protection services are residual; parents or other persons responsible for the welfare of a child have caused harm to that child, making it necessary for the welfare service system to intervene. The mandatory reporting system used by states serves as a gateway to those services.

Section 39.201, Florida Statutes, requires

“any person...who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child’s welfare shall report such knowledge or suspicion...to the department’s central abuse hotline on the single statewide toll-free telephone number...”.

Section 39.201, Florida Statutes, also provides that

...if the report is of an instance of known or suspected child abuse by a noncaretaker, the call shall be immediately electronically transferred to the appropriate county sheriff's office by the central abuse hotline, and

...reports involving known or suspected institutional child abuse or neglect shall be made and received in the same manner as all other reports made pursuant to this section.

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 39.201, Florida Statutes, to remove the requirement that abuse, neglect or abandonment of a child that is required to be reported to the Department of Children and Family Services via the department's central abuse hotline is limited to abuse, neglect or abandonment by a parent, legal custodian, caregiver, or other person responsible for the child's welfare. This would mean that child abuse, neglect and abandonment perpetrated by a noncaretaker must be reported to the central abuse hotline.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Children and Family Services reports that the bill would create the potential for a substantial increase in the number of reports of abuse, neglect or abandonment received by the

hotline. DCF anticipates a 50 percent increase in the number of reports received. Based on the 176,555 reports received in FY 2002-01, a 50 percent increase would be 88,278 additional reports. With a cost of \$760 per investigation, the department would incur an additional annual cost of \$67,090,900.

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 counties or 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 a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None

C. OTHER COMMENTS:

This bill can be predicted to increase the number of calls received by the central abuse hotline. However, since the statutes already provide that, "...if the report is of an instance of known or suspected child abuse by a noncaretaker, the call shall be immediately electronically transferred to the appropriate county sheriff's office by the central abuse hotline," the number of actual investigations may not increase substantially. In that case, the DCF estimate of financial impact is inflated.

If the intent of the bill is to require DCF investigations in cases of noncaretaker abuse, then additional changes to the bill would have to be made. Requiring DCF investigations in instances of noncaretaker abuse would substantially change the direction of child welfare policy in the state.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 12, 2002, the Committee on Judicial Oversight adopted a strike everything amendment that provides a criminal penalty against school instructional or administrative personnel for failure to report student-on-student sexual battery.

The bill was then reported favorably, as amended.

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VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

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