

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2356  
 SPONSOR: Senator Villalobos  
 SUBJECT: Proceedings Relating the Children  
 DATE: March 29, 2003      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>    Dowds    </u>	<u>    Whiddon    </u>	<u>    CF    </u>	<u>    Favorable    </u>
2.	<u>                    </u>	<u>                    </u>	<u>    CJ    </u>	<u>                    </u>
3.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
4.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
5.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
6.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

**I. Summary:**

Senate Bill 2356 expands the jurisdiction of the child protection provisions in ch. 39, F.S., to include volunteers and employees in public schools and religious organizations, as well as volunteers in all of the programs, agencies, and settings in which employees are currently identified as persons responsible for the child by this law. The bill also raises the criminal penalty for failure to report child abuse from a misdemeanor of the first degree to a third degree felony, if the abuse not reported was suspected sexual abuse.

This bill substantially amends sections 39.01 and 39.205 of the Florida Statutes.

**II. Present Situation:**

Acts that are considered child abuse, neglect, or abandonment for the purpose of ch. 39, F.S., and the interventions set forth in this chapter to protect the child apply if such acts are committed by a parent, legal custodian, caregiver, or other person responsible for the child’s welfare [ss. 39.01(1), (10), and (30), 39.201, and 39.202, F.S.]. The focus of ch. 39, F.S., is the safety of the children in their homes and in certain other settings into which children are entrusted. Excluded from the jurisdiction of ch. 39, F.S., are acts of child abuse committed by persons other than the parent, legal custodian, caregiver, or other person responsible for the child’s welfare, such as a neighbor, a storekeeper, or a person not known by the child or family. Acts of child abuse by these individuals would be handled in the criminal justice arena through the application of appropriate criminal offenses, such as child abuse or aggravated child abuse in s. 826.03, F.S., sexual battery in s. 794.011, F.S., and lewd and lascivious acts in s. 800.04, F.S.

For the purposes of ch. 39, F.S., “parents,” “legal custodians,” “caregivers,” and “other persons responsible for the child’s welfare” are defined in s. 39.01, F.S., as follows:

- “Parent” -- a woman who gave birth to a child and a man from whom consent for an adoption would be required. The definition further stipulates what “parent” does and does not mean as it pertains to adoption and termination of parental rights.
- “Legal custodian” (actually defined as “legal custody”) -- the person with whom a legal status created by a court order or letter of guardianship has been vested which provides for that person’s right to have physical custody of the child and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education, and ordinary medical, dental, psychiatric, and psychological care.
- “Caregiver” -- the parent, legal custodian, adult member of the household, or other person responsible for the child’s welfare.
- “Other person responsible for the child’s welfare” -- the child’s legal guardian, legal custodian, or foster parent; an employee of a public or private child care center, a residential home, a private school, an institution, a facility, or an agency; any other person responsible for a child in a residential setting; or an adult sitter or relative entrusted with the child’s care. The definition specifically excludes law enforcement officers or employees of municipal or county detention facilities or the Department of Corrections while they are acting in an official capacity.

The definitions of “parent,” “legal custodian,” “caregiver,” and “other persons responsible for the child’s welfare” are used to determine if the alleged perpetrator and, therefore, the report alleging child abuse fall under the jurisdiction of ch. 39, F.S., and will, in turn, be accepted for investigation. While the parent, legal custodian, caregiver, and foster parent are usually responsible for the child in the home, persons responsible for the child’s welfare other than these individuals, as defined in s. 39.01, F.S., serve to identify not only the alleged perpetrator but also the setting in which the child protection law applies. Section 39.302, F.S., specifically provides for child protective investigations in these other settings, referred to as institutional settings. Child protective investigations are conducted of allegations of child abuse by employees in child care centers, Department of Juvenile Justice facilities, private schools, Department of Children and Families institutions for persons with developmental disabilities or persons who are mentally ill, foster homes, and other residential homes or facilities in which children are placed. Alleged abuse by volunteers at these settings is currently not considered under the jurisdiction of ch. 39, F.S., and, therefore, reports of alleged abuse by these volunteers are not accepted for investigation.

Section 39.201(1), F.S., requires *any* person who knows or has reasonable cause to suspect that child abuse, neglect, or abandonment has occurred by the parent or other person responsible for the child to report such suspicion or knowledge to the department’s central abuse hotline. Several professions are specifically identified as being ones whose members are required to report child abuse but with clarification that persons required to report are not limited to these professions [s. 39.201(1), F.S.]. Knowingly and willfully failing to report known or suspected child abuse, neglect, or abandonment, or knowingly or willfully preventing another person from reporting is a misdemeanor of the first degree. Pursuant to ss. 775.082 and 775.083, F.S., a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed 1 year and a fine not to exceed \$1,000.

**III. Effect of Proposed Changes:**

SB 2356 expands the jurisdiction of the child protection laws in ch. 39, F.S., to include volunteers and employees in public schools and religious organizations, as well as volunteers in all of the programs, agencies, and settings in which employees are currently identified as persons responsible for the child by this law. The bill also raises the criminal penalties for failure to report child abuse from a misdemeanor of the first degree to a third degree felony, if the abuse not reported was suspected sexual abuse.

Specifically, SB 2356 amends s. 39.01(47), F.S., to add to the definition of “other person responsible for a child’s welfare” public schools and religious organizations, as well as volunteers at both these new settings and the existing settings identified in the subsection. This amendment adds employees and volunteers of public schools and religious organizations, as well as volunteers at private schools, public or private child care centers, residential homes, institutions, facilities, or agencies to the group that places a report within the jurisdiction of ch. 39, F.S., for investigation and intervention. As a result, investigations can be conducted in response to reports received if the alleged perpetrator is an employee or volunteer of a public school or religious organization or a volunteer at one of the existing settings identified.

The bill elevates from a misdemeanor of the first degree to a felony of the third degree the penalty for knowingly or willfully failing to report suspected sexual abuse or knowingly or willfully preventing another person from reporting sexual abuse. Pursuant to ss. 775.082 and 775.083, F.S., a felony of the third degree is punishable by a term of imprisonment not to exceed 5 years and a fine not to exceed \$5,000.

The bill provides an effective date of October 1, 2002.

**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:**

Persons found guilty of failing to report suspected sexual abuse will be required to pay a higher fine with this bill.

**C. Government Sector Impact:**

The Department of Children and Families reports that the addition of these groups of individuals who could be considered alleged perpetrators for the purposes of ch. 39, F.S., will increase the reports accepted and investigated. The addition of public schools is estimated to increase the annual number of reports received and accepted by 1,755 and the addition of reports from religious organizations and volunteers by another 3,511 for a total projected annual increase of 5,266. The estimated fiscal impact of the increased workload is \$2,815,358 for FY 2003-2004 and \$2,980,422 for FY 2004-2005. This projection is based on an additional staffing need of 30 investigators, four supervisors, and eight support staff for the department and seven investigators, one supervisor and two support staff for the sheriffs' offices that are conducting child protection investigations.

The Department of Health estimates that 26 percent of the 5,266 additional reports anticipated (or 1,370 reports) will require a Child Protection Team (CPT) assessment. The estimated fiscal impact of the additional CPT assessments is \$530,284 for the FY 2003-2004 and \$493,796 for FY 2004-2005.

Although the Department of Education reports that the legislation could result in increased referrals to the Office of Professional Practices Services, it is unclear how that impact would occur.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Department of Education reports the department's Office of Professional Practices Services determines cause for and may investigate reported allegations of unprofessional, incompetent, unethical, or criminal conduct. However, the Office of Professional Practices Services has jurisdiction to conduct an investigation only relative to certificated educators or applicants for a Florida Educator's Certificate, not when the allegation of suspected child abuse or neglect involves a non-certificated school district staff member. Such calls would be directed to law enforcement. The Office of Professional Practices Services receives reports from a number of sources. However, complaints must be submitted in writing and signed, thus limiting the ability of the office to accept anonymous calls. Finally, s. 1012.796(1)(c), F.S., requires that each school district file in writing all legally sufficient complaints against teachers and administrators within 30 days of such matter coming to the attention of the district.

**VIII. Amendments:**

None.

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

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