

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain: By adding additional positions to the Department of Children and Family Services to handle the increase in reports received by the central abuse hotline and the increased number of investigations that are anticipated as a result of the provisions of the bill, government is expanded.

B. EFFECT OF PROPOSED CHANGES:

Florida law defines the term "other person responsible for a child's welfare" as:

the child's legal guardian, legal custodian, or foster parent; an employee of a private school, public or private child day care center, residential home, institution, facility, or agency; or any other person legally responsible for the child's welfare in a residential setting; and also includes an adult sitter or relative entrusted with a child's care. For the purpose of departmental investigative jurisdiction, this definition does not include law enforcement officers, or employees of municipal or county detention facilities or the Department of Corrections, while acting in an official capacity.¹

The bill expands the definition to include volunteers at a public or private school, and employees of or volunteers at religious organizations.

Florida law defines the term "abuse" as:

any willful act or threatened act that results in any physical, mental, or **sexual injury or harm** that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.²

The definition of abuse in chapter 39, Florida Statutes, includes sexual injury or harm.

Florida law also provides that a person who is required to report known or suspected child abuse, abandonment, or neglect and who either knowingly or willfully fails to report or who knowingly and willfully prevents another person from reporting is guilty of a first degree misdemeanor.³

¹ See §39.01(47), Florida Statutes

² See §39.01(2), Florida Statutes

³ See §39.205, Florida Statutes

The bill increases the penalty for failure to report or preventing another person from reporting from a first degree misdemeanor to a felony of the third degree in cases of child sexual abuse.

C. SECTION DIRECTORY:

Section 1. Amends §39.01 Florida Statutes, relating to definitions, to expand the definition of the term, "other person responsible for a child's welfare" to include volunteers at a public or private school, and employees of, or volunteers at, religious institutions.

Section 2. Amends §39.205, Florida Statutes, relating to penalties for failure to report known or suspected child abuse, abandonment, or neglect, to provide that someone who is required to report known or suspected sexual abuse of a child and who willfully and knowingly fails to report, or prevents another person from reporting, is guilty of a third degree felony.

Section 3. Provides for an effective date of October 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Children and Family Services estimates that expanding the definition of the term "other person responsible for a child's welfare" will result in increased calls to the hotline and an increased number of investigations that will cause a fiscal impact of \$2,320,330 on the department and sheriffs. The fiscal impact is a result of new positions necessary to carry out the provisions of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public policy existing today in all states, including Florida, relating to child protective services and mandatory reporting of abuse and neglect has evolved over the past 125 years. Historically, discussions about keeping children safe from parental or caregiver abuse and neglect began in 1874 with the story of an eight year old child named Mary Ellen Wilson who was abused by her caregivers. Even though the maltreatment was brought to the attention of the church, the local police, and the New York City Department of Charities, it has long been reported that the Society for the Prevention of Cruelty to Animals filed an appeal on Mary Ellen's behalf and the court agreed to accept her case because she was a member of the animal kingdom in need of protection. Organized efforts to protect children from abuse and neglect spread rapidly as a result of Mary Ellen. By 1922 there were 57 societies for the prevention of cruelty to children and 307 humane societies advocating for both children and animals.⁴

The current child protection system took shape in the 1960's and our nation's mandatory reporting laws played a significant role in the evolving child welfare system. The 1960 White House Conference on Children and Youth urged states to enact legislation that would give a single agency mandated responsibility for cases of child abuse and neglect. 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". As a result states began passing laws mandating that professionals working with children report cases of suspected child abuse. At the same time the Federal Children's Bureau published a model statute to serve as a guideline for state child protection legislation. Between 1963 and 1967 every state, as well as the District of Columbia, had passed some form of child abuse reporting legislation. These mandatory reporting laws were popular for a variety of reasons:

- They legalized the problem of child abuse and neglect;
- They were proof that states were doing something about protecting children;
- and
- They served to decriminalize child abuse and neglect perpetrated by parents and caregivers with the exception of a child death.⁵

The child protection system and mandatory reporting laws evolved in order to help protect children from abuse and neglect by their parents and caregivers. The criminal justice system serves to protect children from abuse and neglect by individuals outside familial or caregiver relationships. The distinction was made between the two categories of perpetrators in order to avoid treating parents and caregivers as criminals. Efforts were made to keep families together by providing services and supports, rather than by sending the abuser to jail. Expanding the definition of the term "other person responsible for a child's welfare" to include individuals farther removed from members of the family or persons in caregiving roles, increases the risk that the dependency system will become even more overwhelmed than it is currently by accepting cases outside the scope of its original mission.

⁴ See Costin, Karger, and Stoesz. The Politics of Child Abuse in America. 1996.

⁵ See Karger and Stoesz. American Social Welfare Policy. 1994.

An alternative means to address volunteers at a public or private school, and employees of or volunteers at religious organizations provided for in the bill, might be to increase existing criminal penalties for the abuse and neglect of children being perpetrated by someone more distant from the child than a parent or caregiver, but, who at the same time has some duty of care to the child.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On **April 1, 2003**, the **Subcommittee on Children's Services** adopted an amendment that clarified the language related to increasing the criminal penalty for failure to report child abuse pursuant to chapter 39, Florida Statutes, if the abuse was sexual abuse.