

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 1816

INTRODUCER: Criminal Justice Committee and Senator Benacquisto

SUBJECT: Protection of Vulnerable Persons

DATE: January 31, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|-----------------------------------------|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The major features of the bill are described as follows:

- Requires reporting of child abuse, abandonment, or neglect by *any person* to the Department of Children and Family Services (DCF) (current law: duty to report child abuse, etc., is limited to a parent, legal custodian, caregiver, or other person responsible for the child’s welfare).
- Provides that any report of child abuse, etc., by a person other than the child’s caregiver shall be taken by the Florida Abuse Hotline and forwarded to the appropriate county sheriff’s office as currently provided in s. 39.201(2)(b), F.S.
- Creates two new reporting violations for which a Florida College System institution, state university, or nonpublic college, university, or school is subject to a \$1 million fine for each reporting violation and loss of *all* state funding for a period of 2 years. These violations involve:
 - Personnel of the Florida College System institution, etc., who knowingly and willfully fail to report known or suspected child abuse, etc., committed on the property of the institution, etc., or during an event or function sponsored by the institution, etc., or who knowingly and willfully prevent another person from doing so.

- A law enforcement agency of the institution, etc., which fails to transmit to prosecutorial authorities any report of known or suspected child abuse, etc., committed on the property of the institution, etc., or during an event or function sponsored by the institution, etc.
- Reclassifies the felony or misdemeanor degree of any violation of ch. 796, F.S., other than s. 796.03, F.S., or s. 796.035, F.S., in which a minor engages in prostitution, lewdness, assignation, sexual conduct, or other conduct as defined in or prohibited by ch. 796, F.S., but the minor is not the person charged with the violation.
- Broadens the current authority of the Department of Legal Affairs to award a one-time payment of up to \$1,500 on any one claim and a lifetime maximum of \$3,000 to certain domestic violence victims to include such awards to certain victims of sexual violence who reasonably fear for their safety.

This bill substantially amends ss. 39.01, 39.201, 39.205, 39.302, 794.056, 938.085, and 960.198, F.S., and creates s. 796.036, F.S.

II. Present Situation:

For a discussion of the provisions of ss. 39.01, 39.201, 39.205, 39.302, 794.056, 938.085, and 960.198, F.S., amended by the bill, see the “Effect of Proposed Changes” section of this analysis.

III. Effect of Proposed Changes:

Section 1 amends s. 39.01, F.S., the definitions section of ch. 39, F.S. It deletes the current definition of the term “other person responsible for a child’s welfare.”

Section 2 amends s. 39.201, F.S., relating to mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; and the central abuse hotline. Currently, this statute provides, in part, that 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 DCF. The bill requires this reporting when any person knows, or has reasonable cause to suspect that a child is abused, abandoned, or neglected by *any person*.

Additionally, it is provided that any report of child abuse, abandonment, or neglect by a person other than the child’s caregiver as defined in s. 39.01(10), F.S., shall be taken by the Florida Abuse Hotline and forwarded to the appropriate county sheriff’s office as provided in s. 39.201(2)(b), F.S., which provides that if the report is of an instance of known or suspected child abuse by someone other than a parent, legal custodian, caregiver, or other person responsible for the child’s welfare as defined in ch. 39, F.S., the report or call shall be immediately electronically transferred to the appropriate county sheriff’s office by the central abuse hotline.

Section 3 amends s. 39.205, F.S., which addresses penalties for acts relating to reporting child abuse, abandonment, or neglect. The bill creates two new reporting violations for which a Florida College System institution, state university, or nonpublic college, university, or school, as defined in s. 1000.21, F.S., or s. 1005.02, F.S., is subject to a \$1 million fine for each

reporting violation and loss of *all* state funding, including the funds under the Florida Resident Access Grant program, for a period of 2 years. These violations involve:

- Personnel of the Florida College System institution, etc., who knowingly and willfully fail to report known or suspected child abuse, etc., committed on the property of the institution, etc., or during an event or function sponsored by the institution, etc., or who knowingly and willfully prevent another person from doing so.
- A law enforcement agency of the institution, etc., which fails to transmit to prosecutorial authorities any report of known or suspected child abuse, etc., committed on the property of the institution, etc., or during an event or function sponsored by the institution, etc.

While the substantial fine and loss of state funding are based on knowing and willful failure to report child abuse, etc., it is possible this knowing and willful failure may have been by personnel of the institution without the knowledge of the institution's administrators.

Section 4 amends s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment, or neglect. Currently, this statute, provides, in part, that the DCF shall conduct a child protective investigation of each report of institutional child abuse, abandonment, or neglect. Upon receipt of a report that alleges that an employee or agent of the DCF, or any other entity or person covered by s. 39.01(33) or (47), F.S., acting in an official capacity, has committed an act of child abuse, etc., the DCF shall initiate a child protective investigation as provided in the statute. The bill deletes reference to s. 39.01(47), F.S. This change is conforming since Section 1 of the bill deletes the current definition of the term "other person responsible for a child's welfare," which is contained in s. 39.01(47), F.S.

Section 5 creates s. 796.036, F.S., which reclassifies as follows the felony or misdemeanor degree of any violation of ch. 796, F.S., other than s. 796.03, F.S., or s. 796.035, F.S., in which a minor engages in prostitution, lewdness, assignation,¹ sexual conduct, or other conduct as defined in or prohibited by ch. 796, F.S., but the minor is not the person charged with the violation:

- A second degree misdemeanor is reclassified to a first degree misdemeanor.
- A first degree misdemeanor is reclassified to a third degree felony.
- A third degree felony is reclassified to a second degree felony.
- A second degree felony is reclassified to a first degree felony.
- A first degree felony is reclassified to a life felony.

Section 6 amends s. 960.198, F.S., relating to relocation assistance for victims of domestic violence. Under this statute, the Department of Legal Affairs is authorized to award a one-time payment of up to \$1,500 on any one claim and a lifetime maximum of \$3,000 to a victim of domestic violence who needs immediate assistance to escape from a domestic violence environment, if specific criteria are met.² The statute is amended to also authorize these

¹ "Assignation" is the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement. Section 796.07(1)(c), F.S.

² As with domestic violence, there must be proof that a sexual violence offense was committed and the sexual violence offense must be reported to proper authorities. Further, consistent with the current requirement that the domestic violence

payments for a victim of sexual violence who reasonably fears for her or his safety and meets criteria of the statute. Conforming changes are made to the statute title and text to reference “sexual violence” and, relevant to victims of sexual violence, require that the victim’s need for assistance is certified by a certified rape crisis center.

Section 7 amends s. 794.056, F.S., relating to the Rape Crises Program Trust Fund. This fund is created within the Department of Health to provide funds for rape crisis centers in this state. Trust fund moneys must be used exclusively for the purpose of providing services for victims of sexual assault. Funds credited to the trust fund consist of those funds collected as an additional court assessment in each case in which a defendant pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, an offense provided in any number of specified statutes or statutory provisions. The statute is amended to delete reference to s. 796.045, F.S., which punishes sex trafficking. (See Technical Deficiencies” section of this analysis.)

Section 8 amends s. 938.085, F.S., which provides, in part, that in addition to any sanction imposed when a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, a violation of any of a number of specified statutes or statutory provisions, the court shall impose a surcharge of \$151.³ The statute is amended to delete reference to s. 796.045, which punishes sex trafficking. (See Technical Deficiencies” section of this analysis.)

Section 9 provides that the act takes effect October 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

victim’s need for assistance be certified by a certified domestic violence shelter in this state, the sexual violence offense victim’s need for assistance must be certified by a certified rape crisis center in this state.

³ Payment of the surcharge is a condition of probation, community control, or any other court-ordered supervision. This surcharge is deposited into the Rape Crisis Program Trust Fund.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Fiscal impact and other information regarding the bill was requested from the Department of Education, the Florida Department of Law Enforcement, and the Division of Risk Management. Agency analyses were not received at or prior to the time this bill analysis was completed.

POTENTIAL DCF IMPACT

Section 2 of the bill amends s. 39.201, F.S., relating to mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; and the central abuse hotline. Currently, this statute provides, in part, that 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 DCF. The bill requires this reporting when any person knows, or has reasonable cause to suspect that a child is abused, abandoned, or neglected by *any person*.

While the DCF provided a fiscal analysis of the original bill, the bill has changed to provide that any report of child abuse, abandonment, or neglect by a person other than the child's caregiver as defined in s. 39.01(10), F.S., shall be taken by the Florida Abuse Hotline and forwarded to the appropriate county sheriff's office as provided in s. 39.201(2)(b), F.S., which provides that if the report is of an instance of known or suspected child abuse by someone other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare as defined in ch. 39, F.S., the report or call shall be immediately electronically transferred to the appropriate county sheriff's office by the central abuse hotline.

While it is likely that the DCF will incur a fiscal impact as a result of Section 2 as modified, there is currently no fiscal analysis by the DCF of Section 2 as modified.

POTENTIAL IMPACT ON EDUCATIONAL INSTITUTIONS

Section 3 of the bill creates two new reporting violations for which a Florida College System institution, state university, or nonpublic college, university, or school, as defined in s. 1000.21, F.S., or s. 1005.02, F.S., is subject to a \$1 million fine for each failure and loss of state funding, including the funds under the Florida Resident Access Grant program, for a period of 2 years. It is uncertain if an institution, etc., subject to a \$1 million fine and loss of all state funding for a period of 2 years would be able to continue to operate.

POTENTIAL IMPACT ON DEPARTMENT OF LEGAL AFFAIRS

Section 6 of the bill amends s. 960.198, F.S., relating to relocation assistance for victims of domestic violence. Under this statute, the Department of Legal Affairs is authorized to award a one-time payment of up to \$1,500 on any one claim and a lifetime maximum of

\$3,000 to a victim of domestic violence who needs immediate assistance to escape from a domestic violence environment, if specific criteria are met. The statute is amended to also authorize these payments for a victim of sexual violence who reasonably fears for her or his safety and meets criteria of the statute.

HB 1355, in its original form, contained a provision similar to Section 6 of SB 1816. The Department of Legal Affairs provided the following information relevant to this provision:

- The 2010 Crime in Florida Annual Report indicated that there were 9,885 Forcible Sex Offenses. It is unknown how many of these forcible sex victims may have qualified as a domestic violence victim, as well. It is unknown how many would have requested relocation assistance as a sexual violence victim.
- Revenues for the Crimes Compensation Trust Fund are derived from the collection of state and federal criminal assessments. The funds are used to run the Crimes Compensation Program. Crime victims serviced by this program include victims of assault, battery, homicide, sexual offenses, domestic violence, driving while intoxicated, hit and run, stalking, robbery, terrorism, kidnapping, arson, and all other violent crimes. Eligible expenses currently paid by the victims compensation program include medical/dental, mental health treatment, crime scene clean-up, funeral/burial, wage loss, loss of support, disability, forensic sexual assault examinations, property loss (for elderly and disabled adults only), and relocations expenses for victims of domestic violence. Since Fiscal Year 2005-06, the claims workload has increased by 19.3 percent and the dollars paid has increased by 40 percent. However, the Crimes Compensation Trust Fund has had declining revenue collections in that time.
- In Fiscal Year 2010-11, the Crimes Compensation Trust Fund collected \$21,493,324 in revenues a 14 percent decrease from the previous fiscal year. Any additional payments to victims could reduce payments to all other victims.⁴

VI. Technical Deficiencies:

The bill amends ss. 794.056, F.S. (Rape Crisis Program Trust Fund) and s. 938.085, F.S. (Additional cost to fund rape crisis centers) to delete reference to s. 796.045, F.S., which punishes sex trafficking. The original bill repealed s. 796.045, F.S., and therefore, the deletion of the reference to s. 796.045, F.S., in ss. 794.056 and 938.085, F.S., was simply a conforming change. However, the current bill does not repeal s. 796.045, F.S., and therefore, there is no longer a need for the conforming change. Consequently, the bill sponsor may wish to consider removing Sections 7 and 8 from the bill to avoid confusion.

VII. Related Issues:

None.

⁴ See *House of Representatives State Analysis* (HB 1355), House Judiciary Committee, dated January 25, 2012.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on January 31, 2012:

- Removes from the bill provisions in the original bill that amended ss. 90.404, 772.102, 787.06, 796.035, 796.07, 895.02, 921.0022, and 932.701, F.S., and that repealed ss. 787.05 and 796.045, F.S.
- Provides that any report of child abuse, abandonment, or neglect by a person other than the child's caregiver as defined in s. 39.01(10), F.S., shall be taken by the Florida Abuse Hotline and forwarded to the appropriate county sheriff's office as provided in s. 39.201(2)(b), F.S.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
