

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1263 Child-on-Child Sexual Abuse

**SPONSOR(S):** Criminal Justice Subcommittee; Waldman

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1404

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Cunningham	Cunningham
2) Appropriations Committee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Section 39.201, F.S., requires a person who knows, or has reasonable cause to suspect, that a child is the victim of childhood sexual abuse to report such knowledge or suspicion to the Department of Children and Families' (DCF) central abuse hotline (hotline). If the report involves a known or suspected juvenile sexual offender or a child who has exhibited inappropriate sexual behavior, the hotline must determine the age of the alleged offender and:

- If the alleged offender is 12 or younger, transfer the report to the county sheriff's office, conduct an assessment, assist the family in receiving services pursuant to s. 39.307, F.S., and send a written report of the allegation to the county sheriff's office within 48 hours after the initial report is made; and
- If the alleged offender is 13 or older, transfer the report or call to the county sheriff's office and send a written report to the county sheriff's office within 48 hours after the initial report to the hotline.

Upon receiving a report, s. 39.307, F.S., requires DCF, to assist the family in receiving services to address the allegations of the report. In doing so, DCF must comply with a variety of requirements set forth in the statute.

For purposes of the above-described provisions, the terms "alleged juvenile sexual offender" and "child who has exhibited inappropriate sexual behavior" are defined in a manner that limits their application to children 12 years of age or younger.

The bill removes the definition of the term "alleged juvenile sexual offender" and replaces it with the definition of the term "juvenile sexual abuse," which means "any sexual behavior by a child which occurs without consent, without equality, or as a result of coercion." The definition of "child who has exhibited inappropriate sexual behavior" is also amended so that it applies to all children (not just those 12 years of age or younger). As a result, the provisions of s. 39.201, F.S. (relating to reporting child abuse), and s. 39.307, F.S. (relating to child protective investigations), will apply to all children under the age of 18, not just those 12 years of age or younger.

In addition to the above-described protective investigation requirements, the bill requires:

- DCF to ensure that information describing a child's history of juvenile sexual abuse is included in the child's electronic record;
- A child's electronic record to include information describing the services that the child has received as a result of his or her involvement with juvenile sexual abuse; and
- Placement decisions for a child who has been involved with juvenile sexual abuse to include consideration of the needs of the child and any other children in the home being considered for placement.

The bill may have a negative fiscal impact on DCF. See fiscal section.

The bill is effective July 1, 2014.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Definitions Relating to Child Abuse and Protective Investigations**

Parts II and III of ch. 39, F.S., contain a variety of provisions establishing the processes and procedures for reporting child abuse and for conducting child protective investigations.

For purposes of these provisions, s. 39.01, F.S., defines the following terms:

- “Alleged juvenile sexual offender” means:
  - A child 12 years of age or younger who is alleged to have committed a violation of ch. 794, F.S. (sexual battery), ch. 796, F.S. (prostitution), ch. 800, F.S. (lewd or lascivious offenses), s. 827.071, F.S. (sexual performance by a child), or s. 847.0133, F.S. (obscene materials); or
  - A child who is alleged to have committed any violation of law or delinquent act involving juvenile sexual abuse.<sup>1</sup>
- “Juvenile sexual abuse” means any sexual behavior<sup>2</sup> which occurs without consent,<sup>3</sup> without equality,<sup>4</sup> or as a result of coercion.<sup>5</sup>
- “Child who has exhibited inappropriate sexual behavior” means a child who is 12 years of age or younger and who has been found by the Department of Children and Families (DCF) or the court to have committed an inappropriate sexual act.

#### Effect of the Bill

The bill removes the definition of the term “alleged juvenile sexual offender” and replaces it with the definition of the term “juvenile sexual abuse,” which is defined as “any sexual behavior by a child which occurs without consent, without equality, or as a result of coercion.” The definition of the term “child who has exhibited inappropriate sexual behavior” is also amended so that it applies to all children (not just those 12 years of age or younger). As a result, the below-described provisions of s. 39.201, F.S. (relating to reporting child abuse), and s. 39.307, F.S. (relating to child protective investigations), will apply to all children under the age of 18, not just those 12 or younger.

The bill makes conforming changes in ss. 39.0132, 39.302, and 985.04, F.S., to remove references to the term “juvenile sexual offender.”

#### **Mandatory Reports of Child Abuse**

Section 39.201, F.S., requires a person who knows, or has reasonable cause to suspect, that a child is the victim of childhood sexual abuse or the victim of a known or suspected juvenile sexual offender to report such knowledge or suspicion to DCF’s central abuse hotline (hotline).<sup>6</sup> If the report involves a known or suspected juvenile sexual offender or a child who has exhibited inappropriate sexual behavior, the hotline must determine the age of the alleged offender, if known, and:

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<sup>1</sup> Section 39.01(7), F.S.

<sup>2</sup> Juvenile sexual offender behavior ranges from noncontact sexual behavior such as making obscene phone calls, exhibitionism, voyeurism, and the showing or taking of lewd photographs to varying degrees of direct sexual contact, such as frottage, fondling, digital penetration, rape, fellatio, sodomy, and various other sexually aggressive acts. Section 39.01(7), F.S.

<sup>3</sup> “Consent” means an agreement, including all of the following:

- Understanding what is proposed based on age, maturity, developmental level, functioning, and experience.
- Knowledge of societal standards for what is being proposed.
- Awareness of potential consequences and alternatives.
- Assumption that agreement or disagreement will be accepted equally.
- Voluntary decision.
- Mental competence

<sup>4</sup> “Equality” means two participants operating with the same level of power in a relationship, neither being controlled nor coerced by the other.

<sup>5</sup> “Coercion” means the exploitation of authority or the use of bribes, threats of force, or intimidation to gain cooperation or compliance.

<sup>6</sup> Section 39.207(1)(c) and (2)(a) and (b), F.S.

- If the alleged offender is 12 years of age or younger, immediately electronically transfer the report or call to the county sheriff's office. In such instances, DCF must also conduct an assessment and assist the family in receiving appropriate services pursuant to s. 39.307, F.S. (described below), and send a written report of the allegation to the appropriate county sheriff's office within 48 hours after the initial report is made to the hotline; and
- If the alleged offender is 13 years of age or older, immediately electronically transfer the report or call to the appropriate county sheriff's office and send a written report to the appropriate county sheriff's office within 48 hours after the initial report to the hotline.<sup>7</sup>

### Effect of the Bill

The bill amends s. 39.201, F.S., to require *all* incidents of juvenile sexual abuse, regardless of the age of the child involved, to be reported to DCF and to be investigated by DCF. Specifically, the bill requires reports involving "juvenile sexual abuse" or a child who has exhibited inappropriate sexual behavior to be made to the hotline. Once reported, DCF must determine the age of the offender and:

- Immediately electronically transfer the report or call to the county sheriff's office, conduct an assessment, assist the family in receiving appropriate services pursuant to s. 39.307, F.S., and send a written report of the allegation to the appropriate county sheriff's office within 48 hours after the initial report is made to the hotline; and
- Ensure that the fact and results of any investigation of juvenile sexual abuse involving a child in the custody or under the protective supervision of DCF are made known to the court at the next hearing or included in the next report to the court concerning the child.

### **Protective Investigations**

Section 39.307, F.S., requires DCF, upon receiving a report alleging juvenile sexual abuse, to assist the family in receiving appropriate services to address the allegations of the report. In doing so, DCF, the contracted sheriff's office providing protective investigation services, or contracted case management personnel responsible for providing services must adhere to certain procedures.

First, the possible consequences of DCF's response, and the name and office telephone number of the person responding must be provided to the caregiver of the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior and the victim's caregiver (caregiver).<sup>8</sup> The caregiver must be involved to the fullest extent possible in determining the nature of the sexual behavior concerns and the nature of any problem or risk to other children.<sup>9</sup>

DCF district staff, the child protection team of the Department of Health (DOH), and other providers under contract with DCF must conduct an assessment of risk and the perceived treatment needs of the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior, the victim, and respective caregivers.<sup>10</sup> If necessary, DOH's child protection team must conduct a physical examination of the victim.<sup>11</sup>

Based on the information obtained from the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior, his or her caregiver, the victim, and the victim's caregiver, an assessment of service and treatment needs must be completed and, if needed, a case plan developed within 30 days.<sup>12</sup>

DCF must classify the outcome of the report as follows:

- Report closed. Services were not offered because DCF determined that there was no basis for intervention.
- Services accepted by the alleged juvenile sexual offender. Services were offered to the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior and accepted by the caregiver.

<sup>7</sup> Section 39.207(2)(c), F.S.

<sup>8</sup> Section 39.307(2)(a), F.S.

<sup>9</sup> Section 39.307(2)(b), F.S.

<sup>10</sup> Section 39.307(2)(c), F.S.

<sup>11</sup> Section 39.307(2)(e), F.S.

<sup>12</sup> Section 39.307(2)(f), F.S.

- Report closed. Services were offered to the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior, but were rejected by the caregiver.
- Notification to law enforcement. The risk to the victim's safety and well-being cannot be reduced by the provision of services or the caregiver rejected services, and notification of the alleged delinquent act or violation of law to the appropriate law enforcement agency was initiated.
- Services accepted by victim. Services were offered to the victim and accepted by the caregiver.
- Report closed. Services were offered to the victim but were rejected by the caregiver.<sup>13</sup>

If services are accepted by the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior, the victim, and respective caregivers, DCF must designate a case manager and develop a specific case plan.<sup>14</sup> The case manager must periodically review the progress toward achieving the objectives of the plan in order to:

- Make adjustments to the plan or take additional action as provided in this part; or
- Terminate the case if indicated by successful or substantial achievement of the objectives of the plan.<sup>15</sup>

If the family or caregiver of the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior fails to adequately participate or allow for the adequate participation of the child in the services or treatment delineated in the case plan, the case manager may recommend that DCF:

- Close the case;
- Refer the case to mediation or arbitration, if available; or
- Notify the appropriate law enforcement agency of failure to comply.<sup>16</sup>

#### Effect of the Bill

The bill broadens the pool of children that DCF must conduct protective investigations upon. Specifically, the bill applies all of the above-described requirements relating to protective investigations involving juvenile sexual abuse to investigations involving children that have exhibited inappropriate sexual behavior (redefined as described above to include all children - not just those 12 years of age or younger).

In addition to the above-described protective investigation requirements, the bill requires:

- DCF to ensure that information describing a child's history of juvenile sexual abuse is included in the child's electronic record;
- A child's electronic record to include information describing the services that the child has received as a result of his or her involvement with juvenile sexual abuse; and
- Placement decisions for a child who has been involved with juvenile sexual abuse to include consideration of the needs of the child and any other children in the home being considered for placement.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 39.01, F.S., relating to definitions.

Section 2. Amends s. 39.201, F.S., relating to mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.

Section 3. Amends s. 39.307, F.S., relating to reports of child-on-child sexual abuse.

Section 4. Amends s. 39.0132, F.S., relating to oaths, records, and confidential information.

<sup>13</sup> Section 39.307(2)(g), F.S.

<sup>14</sup> Section 39.307(3), F.S. Services provided to the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior, the victim, and respective caregivers or family must be voluntary and of necessary duration. Section 39.307(4), F.S.

<sup>15</sup> Section 39.307(3)(b), F.S.

<sup>16</sup> Section 39.307(5), F.S.

Section 5. Amends s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment, or neglect.

Section 6. Amends s. 985.04, F.S., relating to oaths; records; confidential information.

Section 7. Provides an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state government revenues.

#### 2. Expenditures:

The bill requires all incidents of juvenile sexual abuse (regardless of the age of the child involved) to be reported to DCF, and broadens the pool of children that DCF must conduct protective investigations upon. This may have a negative fiscal impact on DCF.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill may require DCF to amend or create rules. However s. 39.012, F.S., requires DCF to adopt rules for the efficient and effective management of all programs, services, facilities, and functions necessary for implementing ch. 30, F.S. This rulemaking authority appears adequate.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 24, 2014, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Clarified that “juvenile sexual behavior” involves sexual behavior *by a child*;
- Removed the provision requiring DCF to:
  - Create a unified system for identifying and tracking the provision of services to child victims of juvenile sexual abuse; AND
  - Measure the number of children in out-of-home care or under supervision of the court who are victims of juvenile sexual abuse; and
- Added a provision requiring:
  - DCF to ensure that information describing a child’s history of juvenile sexual abuse is included in the child’s electronic record, and requiring the electronic record to include information describing the services that the child has received as a result of his or her involvement with juvenile sexual abuse; and
  - Placement decisions for a child who has been involved with juvenile sexual abuse to include consideration of the needs of the child and any other children in the home being considered for placement.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.