

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 Committee on Children, Families, and Elder Affairs

BILL: SB 256

INTRODUCER: Senator Baxley

SUBJECT: Child Protection Teams

DATE: February 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	Favorable
2.			JU	
3.			RC	

I. Summary:

SB 256 provides sovereign immunity protections of the state to members of a child protection team, when they are carrying out duties as a team member. Child protection teams (CPT) are medically directed, multidisciplinary teams that supplement the child protective investigation efforts of the Department of Children and Families (DCF or department) and local sheriffs' offices in cases of child abuse and neglect.

The bill has an indeterminate fiscal impact and has an effective date of July 1, 2019.

II. Present Situation:

Child Protection Teams

A child protection team is a medically directed, multidisciplinary team that supplements the child protective investigation efforts of the department and local sheriffs' offices in cases of child abuse and neglect.¹ They are independent, community-based programs that provide expertise in evaluating alleged child abuse and neglect, assessing risk and protective factors, and provide recommendations for interventions to protect children and to enhance a caregiver's capacity to provide a safer environment when possible.²

Child abuse, abandonment and neglect reports to the DCF central abuse hotline that must be referred to child protection teams include cases involving:

- Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.
- Bruises anywhere on a child five years of age or younger.

¹ Florida Department of Health, Children's Medical Services. Child Protection Teams, *available at* http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html (last visited January 25, 2019).

² *Id.*

- Any report alleging sexual abuse of a child.
- Any sexually transmitted disease in a prepubescent child.
- Reported malnutrition or failure of a child to thrive.
- Reported medical neglect of a child.
- A sibling or other child remaining in a home where one or more children have been pronounced dead on arrival or have been injured and later died as a result of suspected abuse, abandonment or neglect.
- Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.³

Once a referral from DCF or law enforcement has been accepted, the CPT may provide one or more of the following services:

- Medical diagnosis and evaluation,
- Nursing assessments,
- Child and family assessments,
- Multidisciplinary staffing,
- Psychological and psychiatric evaluations,
- Specialized and forensic interviews, or
- Expert court testimony.⁴

The Department of Health currently contracts with a variety of community-based organizations to provide CPT services statewide. Employees of the 22 CPTs are independent contractors and are not covered by section 768.28, F.S., which provides sovereign immunity in tort actions and limits financial recoveries. The teams are medically directed by one board certified pediatrician and in the case of a large geographical areas, some may have an associate medical director to ensure adequate coverage.⁵

Some CPTs employ individuals to provide services while others provide these services through subcontractors. The total number of all CPT members statewide is approximately 364; these 364 positions do not include CPT medical directors, who are all employees of the state and have liability protection when acting in the scope of their employment.⁶ Of the 364 positions, approximately 126 are employed by state universities or operated by county governments.⁷ Those CPT members employed by state universities or counties currently have sovereign immunity in their roles on CPTs. The CPT employees are employed as physicians, registered nurses (RN), advanced registered nurse practitioner (ARNP), physician assistants (PA), medical assistants, team coordinator or supervisor, case coordinator or other staff (administrative or data).⁸

³ Section 39.303, F.S.

⁴ *Supra* at Note 1.

⁵ *Id.*

⁶ Florida Department of Health, 2019 Agency Legislative Bill Analysis, SB 256. January 8, 2019. On file with the Senate Committee on Children, Families and Elder Affairs.

⁷ *Id.*

⁸ *Id.*

Sovereign Immunity

Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of such governments unless the immunity is expressly waived. Article X, Section 13, of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive such immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Under this statute, officers, employees, and agents of the state will not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function.

Instead, the state steps in as the party litigant and defends against the claim. The recovery by any one person is limited to \$200,000 for one incident and the total for all recoveries related to one incident is limited to \$300,000.⁹ The sovereign immunity recovery caps do not prevent a plaintiff from obtaining a judgment in excess of the caps, but the plaintiff cannot recover the excess damages without action by the Legislature.¹⁰ However, personal liability may result from actions in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.¹¹

Whether sovereign immunity applies depends on the degree of control of the agent of the state retained by the state.¹² In *Stoll v. Noel*, the Florida Supreme Court held that independent contractor physicians may be agents of the state for purposes of sovereign immunity. The court examined the employment contract between the physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship and held that it did.¹³

The *Stoll* court explained that whether the Children's Medical Services (CMS) physician consultants are agents of the state turns on the degree of control retained or exercised by CMS. The manuals and guides given to physician consultants demonstrated that CMS had final authority over all care and treatment provided to CMS patients, and that CMS could refuse to allow a physician consultant's recommended course of treatment of any CMS patient for either medical or budgetary reasons.¹⁴ Furthermore, the court's conclusion was supported by the state's acknowledgement that the manual creates an agency relationship between CMS and its physician consultants, and the state acknowledged full financial responsibility for the physicians' actions. The court stated that the state's interpretation of its manual is entitled to judicial deference and great weight.¹⁵

A memorandum from the Deputy State Health Officer for Children's Medical Services (CMS) to all CMS physicians stated:

⁹ Section 768.28(5), F.S.

¹⁰ *Id.*

¹¹ Section 768.28(9)(a), F.S.

¹² *Stoll v. Noel*, 694 So. 2d 701, 703 (Fla. 1997).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

In *Stoll v. Noel*, the Florida Supreme Court established the principal that in appropriate factual circumstances contract physician providers for CMS may be deemed agents of the state for purposes of liability protection under section 768.28, Florida Statutes.

Application of that principle, however, does not establish a bright line legal test to determine when a CMS contracted physician will be deemed to be an agent of the state as a matter of law.

The Department has stated that it cannot make any definitive statement of when contract physicians, individually or collectively, may be deemed an agent of the state for purposes of liability protection.¹⁶

III. Effect of Proposed Changes:

Section 1 amends s. 768.28(9)(b), F.S., adding “a member of a child protection team, as defined in s. 39.01, when carrying out his or her duties as a team member” to the definition of “officer, employee or agent.” This explicitly includes CPT members as falling under the sovereign immunity protections of the state.

Section 2 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

¹⁶ Florida Department of Health. Memorandum from Dennis Cookro, Interim Deputy Secretary for Health and Deputy State Health Officer for CMS to all CMS physicians. February 6, 2013. On file with the Senate Committee on Children, Families and Elder Affairs.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Under SB 256, members of a CPT team that are under contract would be provided sovereign immunity, which may reduce the need for some healthcare professionals on the teams to purchase liability insurance.

C. Government Sector Impact:

The DOH estimates that the fiscal impact to the agency will include the increased cost of legal representation, potential settlement costs, and other associated fees for the CPT employees newly covered by sovereign immunity protections.¹⁷ The DOH states that the impact cannot be determined but could be significant.¹⁸ Because 126 of the 364 statewide CPT employees are already covered by sovereign immunity, the number of additional employees contributing to any potential fiscal impact is approximately 238.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 768.28 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

¹⁷ Florida Department of Health, 2019 Agency Legislative Bill Analysis, SB 256. January 8, 2019. On file with the Senate Committee on Children, Families and Elder Affairs.

¹⁸ *Id.*