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REVIEW OF STATE CHILD ABUSE REGISTRIES

Statement of the Issue

Section 39.201, Florida Statutes, mandates reporting of child abuse, abandonment and neglect in Florida. Suspected child abuse is reported through the Florida Department of Children and Family Services' (DCF) Florida Abuse Hotline. Once the report is made, DCF maintains records of the reports through a central registry, which contains information about the child abuse reports such as the name of the child and suspected abuser. Pursuant to sections 39.201 and 39.202, Florida Statutes, various agencies and entities can access the child abuse registry. For example, central registries are checked in some circumstances when an individual is seeking employment in the child services area and also by DCF before placing a foster child with a family.

While these registries can be helpful to child protective investigators, due process concerns have been raised, specifically with regard to false reporting. For example, when a false report is made and the individual is cleared from suspected abuse, is there a process for removing his or her name from the central child abuse registry? Recently, the North Carolina Court of Appeals issued an opinion that North Carolina's statutory procedures pertaining to the expunction process and the child abuse registry list are unconstitutional. The court did not object to the use of the central abuse registry, but rather held that placing an individual on the list before providing a hearing violated North Carolina's constitution.

In addition, there has been recent activity on the federal level regarding the creation of a national child abuse registry. The methods of maintaining records, providing due process, limiting access to records, and determining which cases should be included in the national registry are still being explored.

Discussion

National Child Abuse Registry – Adam Walsh Child Protection and Safety Act

The Adam Walsh Child Protection and Safety Act (Act) became effective in 2006.¹ The Act requires the U.S. Department of Health and Human Services (HHS) to “collect in a central electronic registry information on persons reported as ... perpetrators of a substantiated case of child abuse or neglect.”² The purpose of the national registry is to centralize information and allow names to be checked across jurisdictions so that states may track and identify child abusers.³

The Act also requires states to check any child abuse and neglect registry maintained by the state for information on any prospective or adoptive parent and to request that information from any other state in which any prospective parent has resided for the preceding five years.⁴ The state is also required to check on any other adult

¹ Public Law 109-248 was signed into law on July 27, 2006 and became effective on October 1, 2006. Adam Walsh Child Protection and Safety Act of 2006, H.R. 4472, 109th Cong. (2006).

² U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, OFFICE OF THE ASSISTANT SECRETARY FOR PLANNING AND EVALUATION, INTERIM REPORT TO THE CONGRESS ON THE FEASIBILITY OF A NATIONAL CHILD ABUSE REGISTRY, May 2009, available at <http://aspe.hhs.gov/hsp/09/childabuseregistryinterimreport/index.shtml> (last visited October 1, 2010) [hereinafter FEASIBILITY STUDY].

³ Sady Doyle, *Do We Need a Child Abuse Registry?*, SALON, Mar. 29, 2010, available at http://www.salon.com/life/broadsheet/2010/03/29/schumer_tracking_child_abusers (last visited October 1, 2010).

⁴ *State Child Abuse Registries*, National Resource Center for Permanency and Family Connections, Jun. 29, 2010, available at http://www.hunter.cuny.edu/socwork/nrcfcpp/downloads/policy-issues/State_Child_Abuse_Registries.pdf. (last visited October 1, 2010).

living in the home of such a prospective parent.⁵ This will “enable the state to check any child abuse and neglect registry maintained by such other State for such information, before the prospective foster or adoptive parent may be finally approved for placement of a child” and to “comply with any request [for that information] that is received from another State.”⁶

Approximately 45 states already maintain child abuse registries.⁷ The national registry will be compiled from lists submitted by the states to the federal government.⁸ However, states are not required to submit a list to the national child abuse registry.⁹ If a state chooses to participate, it must submit a list of only substantiated cases.¹⁰ The Feasibility Study notes, “The law provides no incentives for a state that maintains a child abuse registry to submit data to a national registry and there are no consequences for not doing so.”¹¹ Additionally, the Act explicitly prohibits HHS “from requiring states and Indian tribes to modify their existing registries or child maltreatment records in complying with the Act.”¹² Furthermore, if a state currently does not have a child abuse registry, the Act prohibits the federal government from requiring a state to establish one.¹³

To date, seven states have submitted lists to the national child abuse registry.¹⁴ One reason little progress has been made on the national child abuse registry is that the process for submitting names to child abuse registries is not uniform among the states, because states define their own standards for creating a child abuse registry.¹⁵ For example, states apply different due process procedures to the decision to substantiate a child maltreatment allegation and include or remove a perpetrator’s name in a state’s child abuse registry.¹⁶ West Virginia includes only criminal convictions in its registry, while South Carolina and Missouri include only cases in which the child abuse finding has been confirmed in court.¹⁷

Another “important aspect of state child abuse registries that varies considerably is the standard of proof required to make an investigative determination that a case is substantiated, and thus that the perpetrator would potentially be included in a national registry.”¹⁸ The below table illustrates the various standards of proof:

1 state (Pennsylvania)	Clear and convincing evidence
27 states (this includes Florida)	Preponderance of the evidence
22 states and the District of Columbia	Some credible evidence (or another comparatively weaker standard)

Because the national system is voluntary, Florida may choose whether or not to participate.¹⁹ Through the Interstate Compact on the Placement of Children (ICPC), Florida already complies with the sections of the Act which require states to check any child abuse and neglect registry maintained by the state for information on any

⁵ *Id.*

⁶ *Id.*

⁷ FEASIBILITY STUDY, *supra* note 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* This criteria is problematic, because about half of the states include both substantiated and non-substantiated cases in their registries. *Hotline Constitutionality Issues*, Florida Department of Children and Families (on file with the Children, Families, and Elder Affairs Committee).

¹¹ FEASIBILITY STUDY, *supra* note 2.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Hotline Constitutionality Issues*, *supra* note 10.

¹⁸ FEASIBILITY STUDY, *supra* note 2.

¹⁹ If Florida chooses to participate in the national registry, DCF reports that there will be a fiscal impact in implementing a child abuse registry in Florida, which includes the cost of implementing the new classification system and adding name clearing hearings through the Florida Division of Administrative Hearings (DOAH). Interview with Alan Abramowitz, Peggy Sanford, and Julie Mayo, Florida Department of Children and Family Services (Aug. 5, 2010).

prospective or adoptive parent.²⁰

The Florida Abuse Hotline

Pursuant to section 39.201, Florida Statutes, Florida mandates reporting of child abuse. Any person who knows or has reasonable cause to suspect that a child is abused, neglected, or abandoned is required to make a report to the Florida Abuse Hotline. This report may be made anonymously and begins the record keeping process for a child abuse case.²¹ In FY 2008-09, the Hotline received 436,745 total calls, including reports of abuse for adults and children, helpline calls from investigative staff, and information and referral calls.²²

History

In Florida, a child abuse registry was established in 1971 and was used primarily for diagnostic, tracking, and statistical purposes.²³ In 1985, legislation was enacted which marked a turning point in the use of registry data in the screening process.²⁴ The legislation required that the Department of Health and Rehabilitative Services (HRS)²⁵ screen persons seeking employment or volunteering in jobs providing supervisory care for children and the developmentally disabled to ensure that they were of “good moral character.”²⁶ Screening included an employment history check, statewide and federal criminal records checks, and an abuse registry clearance.²⁷ A person who was identified as being the subject of a “substantiated indicated” report of abuse was disqualified from employment in a caretaker position for a period of 50 years.²⁸ While the statute contained provisions for exemptions for specific employment, such exemptions did not operate to remove the name from the list.²⁹

Over the next five years, a classification system for reports of child abuse was developed. In 1987, the Legislature changed the name of the disqualifying status on the registry to “confirmed.”³⁰ Initially, “confirmed” reports were to remain indefinitely on the registry unless removed after a hearing by the Division of Administrative Hearings (DOAH) or the courts.³¹ In 1989, the Legislature set the retention period for “confirmed” reports of abuse at 50 years. In 1990, a new category of reports, “proposed confirmed,” was established, which allowed for the first time challenges to be made to classifications prior to their being placed on the registry.³² The category of “confirmed” reports was limited to those reports upheld after administrative hearing and to those in which the person failed after notice to request to have the record amended or expunged.³³ Reports in the “proposed confirmed” category were to be retained until they were converted into “confirmed” reports or were placed in some other category by

²⁰ The Interstate Compact on the Placement of Children (ICPC), which was passed in 1974 and is law in all 50 states, requires states to do this.. *Guide to the Interstate Compact on the Placement of Children*, Revised 2002, Association of Administrators of the Interstate Compact on the Placement of Children, available at http://icpc.aphsa.org/Home/Doc/Guidebook_2002.pdf (last visited October 1, 2010). The ICPC is codified at FLA. STAT. §§ 409.401-409.408 (2010).

²¹ The report can be made by calling the Hotline, faxing, or making a web-based report. *Reporting Abuse of Children and Vulnerable Adults, Florida Abuse Hotline 2009-2010*, Florida Department of Children & Families, available at <http://www.dcf.state.fl.us/programs/abuse/publications/mandatedreporters.pdf>. (last visited October 1, 2010).

²² *Department of Children and Families Florida Abuse Hotline*, Government Program Summaries, Office of Program Policy Analysis & Government Accountability, available at <http://www.oppaga.state.fl.us/profiles/5050/> (last visited October 1, 2010).

²³ “Central registries shall be established and maintained by the department [of Health and Rehabilitative Services]. Each registry shall contain information as to the name of the abused child, the name of the family or other persons responsible for his care and the result of the investigation. The information contained in the registry shall not be open to inspection by the public...” FLA. STAT. § 828.041(7)(1971).

²⁴ *Status Report: The Use of Confirmed Reports of Child Abuse in Employment Screening in Florida*, Interim Project, Florida House of Representatives Committee on Aging and Human Services, Nov. 1994 (on file with the Children, Families, and Elder Affairs Committee)[hereinafter *Status Report*].

²⁵ The child abuse registry was formerly maintained by the Department of Health and Rehabilitative Services, the predecessor agency of DCF.

²⁶ *Status Report*, supra note 24.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

administrative or court hearing.³⁴ Only the “confirmed” reports were to be available on the registry for screening purposes.³⁵

Problems arose when employment screening was linked to the registry. Huge costs were associated with conducting name-clearing hearings,³⁶ and DCF’s (HRS) classifications were upheld at those hearings less than 50 percent of the time.³⁷ The requirement that an “unfounded” report be expunged within 30 days resulted in child protective investigators being unable to track a pattern of suspected abuse by an individual, as expunction of the report would delete evidence of the pattern.³⁸ To illustrate this point, a call of suspected abuse could come in to DCF every 40 days and each time could be classified as “unfounded,” yet there would be no record of the calls having been made alleging abuse by the same individual. Furthermore, the name clearing hearing proceedings were often lengthy, and while they were ongoing, no classification on the individual was made and recorded. Thus, the alleged abuser could reoffend, and while DCF investigated the new report of abuse, the DCF investigator would have no record of the previous allegations.³⁹

To address these concerns, in 1995, the Florida Legislature changed the name of the registry to the Florida Abuse Hotline (Hotline). Other significant changes were made to the way the information on reports of abuse were collected and disseminated.⁴⁰ Importantly, the Legislature eliminated use of the Hotline for employment screening purposes.⁴¹ As a result of the changes and in contrast to the previous system, after a report is received and the child protective services worker conducts an investigation, a determination is made that the findings are “verified,” “not substantiated,” or “no indication.”⁴²

Checking the Hotline

As noted above, the Hotline is the first step of the record keeping process associated with a case of child abuse.⁴³ When a call is accepted at the Hotline, a child protective services worker must conduct an investigation.⁴⁴ Protective investigators are required to inform the subject of the investigation of the ways in which the information obtained from him or her may be used,⁴⁵ and DCF must make available to the alleged abuser access

³⁴ *Id.* There were two additional ways a report of child abuse could be classified: “unfounded,” or closed without classification. If a case was determined to be “unfounded,” then all identifying information in the central abuse registry and tracking systems or other records was expunged within 30 days. Reports closed without classification were maintained for seven years.

³⁵ *Id.*

³⁶ Interview with Alan Abramowitz, Peggy Sanford, and Julie Mayo, Florida Department of Children and Family Services (Aug. 5, 2010).

³⁷ Bill Analysis for Senate Bill 1536, House of Representative Select Committee on Child Abuse and Neglect, Jun. 22, 1995 (on file with the Children, Families, and Elder Affairs Committee). DCF attributes this in part to the general lack of evidence in child abuse cases, and in part because the evidence that they had could not meet the required burden of proof.

³⁸ Bill Analysis for Senate Bill 1536, House of Representative Select Committee on Child Abuse and Neglect, Jun. 22, 1995 (on file with the Children, Families, and Elder Affairs Committee).

³⁹ Interview with Alan Abramowitz, Peggy Sanford, and Julie Mayo, Florida Department of Children and Family Services (Aug. 5, 2010).

⁴⁰ Section 1, ch. 95-228, L.O.F.

⁴¹ Chapter 95-228, authorized the agency to continue to use information contained in the Hotline to evaluate applicants for employment or licensure by DCF or its contracted providers and employees of the Agency for Persons with Disabilities (APD); eliminated DOAH review of classification decisions made by DCF, thereby eliminating name clearing hearings; and increased the retention period for reports to the Hotline.

⁴² The term “verified” replaces the older classification of “proposed confirmed.” *Annual Report to the Legislature: False Reports of Child Abuse, Neglect or Abandonment Referred to Law Enforcement - FY 2008-2009*, March 2010, available at <http://www.dcf.state.fl.us/programs/childwelfare/docs/2010LMRs/FalseRreportsFY2008-2009.pdf> [hereinafter *Annual Report to the Legislature, FY 2008-2009*]. However, the term “verified” does not appear anywhere in the Florida Statutes. DCF is currently pursuing rulemaking to eliminate use of the term “verified.” Interview with Alan Abramowitz, Peggy Sanford, and Julie Mayo, Florida Department of Children and Family Services (Aug. 5, 2010).

⁴³ In the context of this Issue Brief, the term “Hotline” includes all of the electronic case records kept by DCF. The currently-used recordkeeping system is known as the Florida Safe Families Network (FSFN).

⁴⁴ FLA. STAT. §§ 39.301(1) and 39.302(1) (2010).

⁴⁵ FLA. STAT. § 39.301(5)(a)(3). DCF reports that many protective investigators give the subject of the investigation the Department’s “Rights and Responsibilities” brochure, which provides that and other information to parents and families

to its investigative records no later than 30 days after the initial Hotline report is received.⁴⁶ Although not statutorily required to do so, in some cases, DCF sends the alleged abuser a closure letter at the completion of its investigation.⁴⁷

According to DCF, whenever a check is requested, a DCF employee searches the Hotline.⁴⁸ The automated system has a query capability, allowing for a search by name and associated demographic information. Potentially matching case records are identified and examined to determine the involvement of the individual in the case(s). The records will indicate whether the offense is verified, not substantiated, or no indicators.

The Hotline is checked for four purposes.

FOR PROSPECTIVE EMPLOYEES OF APD OR OF DCF OR ITS CONTRACTED PROVIDERS⁴⁹

Pursuant to s. 39.202, F.S., when an individual applies to work at APD, DCF, or as a DCF contracted provider,⁵⁰ an employment screening is conducted, and the Hotline record is checked.^{51, 52} There are no automatic disqualifiers to employment — for example, a finding of verified in the applicant's record is not an automatic bar to employment. There are no statutory guidelines to determine whether an individual will be disqualified;⁵³ instead determinations regarding employment are made on a case-by-case basis.⁵⁴ The DCF employee conducting the screening will look at the specifics of the case, including the facts, the outcome, and the position for which the individual is applying. Any record in the database will factor in to an offer of employment, but according to DCF, the decision will not be based solely on any findings in the Hotline record.⁵⁵

FOR PLACEMENT OF CHILDREN⁵⁶

The Hotline is also checked for decisions relating to the placement of a child, *e.g.*, in shelter or relative care. When a child protective investigator removes a child from his or her home, the investigator is required to complete a Hotline check.⁵⁷ While there are no automatic disqualifiers related to prior DCF involvement when considering placement, any history obtained through the search results are considered in the placement decision. If it is decided not to place a child in a prospective caregiver's home, the protective investigator will so advise the person and inform him of his right to petition the dependency court to care for the child.⁵⁸

involved in a child abuse case, as required by FLA. STAT. §§39.301(5) and (6).

⁴⁶ FLA. STAT. § 39.201(2)(e).

⁴⁷ Telephone interview with Chris Compton, Child Protection & Child Welfare Services, Florida Department of Children and Family Services, Sep. 23, 2010.

⁴⁸ *Id.*

⁴⁹ FLA. STAT. § 39.202(2)(e)(3) (2010).

⁵⁰ Materials provided by DCF indicate that employment screenings are conducted on DCF contracted providers. *Hotline Constitutionality Issues*, *supra* note 10. However, DCF's General Counsel issued a legal opinion (Sep. 22, 2010) that states that contracted providers cannot use the information for employment screening, as access is limited to DCF and APD only. Email from Alan Abramowitz, State Director, Florida Safety Program Office, Florida Department of Children and Families, (Sep. 27, 2010, 12:06 PM EST)(on file with the Children, Families and Elder Affairs Committee).

⁵¹ FLA. STAT. § 39.202(2)(h)(3) (2010).

⁵² Criminal justice agencies have access to the information in the Hotline report. These agencies include the Agency for Healthcare Administration, the Department of Juvenile Justice, and APD. Agencies that use the Hotline for child abuse investigations must sign a user-agreement attesting that they will use the Hotline information for purposes of the child abuse investigation only and not for employment screening. Telephone interview with Chris Compton, Child Protection & Child Welfare Services, Florida Department of Children and Families, Sep. 22, 2010.

⁵³ This is in sharp contrast to the disqualifying offenses codified in Chapter 435, Florida Statutes, relating to background screening.

⁵⁴ Telephone interview with Chris Compton, Child Protection & Child Welfare Services, Florida Department of Children and Families, Sep. 22, 2010.

⁵⁵ *Id.*

⁵⁶ FLA. STAT. § 39.0138(1) (2010)

⁵⁷ FLA. STAT. § 39.0138(1) (2010).

⁵⁸ Email from Alan Abramowitz, State Director, Florida Safety Program Office, Florida Department of Children and Families (Sep. 27, 2010, 12:06 PM EST)(on file with the Children, Families and Elder Affairs Committee).

FOR PROSPECTIVE ADOPTIVE AND FOSTER PARENTS⁵⁹

As described earlier, a Hotline check is completed on prospective adoptive and foster parents as required by the ICPC.

FOR LICENSURE OF CHILD CARE OWNERS OR OPERATORS⁶⁰

Hotline information is used by DCF, the Department of Health and county child care licensing agencies as part of their licensure or registration processes for child care facilities and family foster homes, residential child-caring agencies, and child-placing agencies.

In none of these instances is a prior hearing available to persons wishing to challenge the accuracy of information held by the Hotline.⁶¹

Challenges to Registries in Other States

Due process is secured to the federal government by the 5th amendment and to the states by the 14th amendment to the U.S. Constitution.⁶² The government is prohibited from depriving any person of “life, liberty, or property without due process of law,”⁶³ and “the monetary benefits of employment are considered property.”⁶⁴ Because state child abuse registries are checked for employment purposes, in several states suits have been brought to challenge the inclusion of names on the registry on due process grounds.

Due process requires first that there be state action, *i.e.*, an act by the federal or by the state government. “Procedural due process limits the exercise of power by the state and federal governments by requiring that they follow certain procedures in criminal and civil matters,”⁶⁵ and is implicated when the government is attempting to deprive a person of life, liberty, or property. Property includes items such as personal belongings, real property, intellectual property, money, or any entitlement to which a legitimate claim attaches.⁶⁶ Additionally, the right to engage in a particular occupation may receive due process protection.⁶⁷ Deprivation of liberty occurs when a person loses significant freedom of action or when a person is denied a constitutional or statutory right.⁶⁸

Substantive due process is the doctrine that “require[s] legislation to be fair and reasonable in content as well as application,”⁶⁹ and is the guarantee that laws will not be arbitrary or irrational. In the past, courts used substantive due process analysis to strike down various economic and social regulations. More recently, courts have shown great deference to legislative findings when examining such regulation.⁷⁰ Courts will presume that regulations affecting employment, business, lifestyle, and other socio-economic fields are valid, unless these regulations are wholly unrelated to the objective sought. Regulations which affect fundamental rights, however, are more carefully examined.⁷¹

Courts have examined whether “adequate protections for individual’s rights are available before an individual’s name is included in a child abuse registry. The potential federal use of this information in ways not contemplated

⁵⁹ FLA. STAT. §§ 409.401-409.408 (2010)

⁶⁰ FLA. STAT. § 39.201(6) (2010).

⁶¹ *Hotline Constitutionality Issues*, *supra* note 10.

⁶² FEASIBILITY STUDY, *supra* note 2.

⁶³ *Id.*

⁶⁴ “If information is used for investigative purposes only, these issues are less relevant, though some court cases have also examined whether there are liberty interests involved if information from a registry is used to take away parental rights or deny adoption applications.” *Id.*

⁶⁵ *Procedural Due Process*, *Due Process of Law*, available at <http://legal-dictionary.thefreedictionary.com/Due+Process+of+Law> (last visited October 1, 2010).

⁶⁶ *Goldberg v. Kelly*, 397 U.S. 254 (1970).

⁶⁷ *Board of Regents v. Roth*, 408 U.S. 564 (1972).

⁶⁸ *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982).

⁶⁹ BLACK’S LAW DICTIONARY, 1429 (7th ed. 1990).

⁷⁰ *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59 (1978).

⁷¹ Fundamental rights include: the right to travel; the right of privacy (including marital and procreative rights); the right to vote; and First Amendment rights.

by state procedures further raises the significance of these issues.⁷² In some instances, litigation has forced changes in these states.

- **North Carolina.** In March 2010, a North Carolina appeals court ruled that the North Carolina registry is unconstitutional because suspected abusers on the child abuse list were not given an opportunity to defend themselves before being listed.⁷³ Thus, placing an individual's name on an abuse registry used for employment screening prior to a hearing violates the North Carolina constitution.⁷⁴
- **New York.** In New York a class-action settlement was approved "on behalf of thousands of people who were improperly denied the chance for a hearing to get removed from the statewide Abuse and Maltreatment Registry."⁷⁵ The New York State Office of Children and Family Services was reportedly closing cases without the opportunity for a hearing.⁷⁶ The settlement will allow the class members the opportunity for a hearing and a chance to clear their names.⁷⁷
- **California.** The U.S. Supreme Court will hear⁷⁸ an appeal of a 2008 California appellate decision⁷⁹ holding the state's child abuse and neglect reporting Act unconstitutional because there was no mechanism by which the innocent could clear their names.
- **Missouri.** The Missouri Supreme Court held that nurses' due process rights were violated when their names were placed on a state child abuse registry prior to a hearing.⁸⁰
- **New Hampshire.** In a 1998 case, the New Hampshire Supreme Court held that due process requires a preponderance of evidence standard where an individual would be excluded from working in his or her profession due to being listed on their abuse registry.⁸¹
- **Georgia.** The Georgia Supreme Court found in 1998 that the entire state scheme for registering child abusers was unconstitutional, holding that due process requires that individuals have a right to compel and confront witnesses in a name clearing hearing.⁸²

False Reporting

To illustrate the problem of allowing names to be on the list without providing a name clearing hearing is the issue of individuals manipulating the Hotline and making false reports⁸³ of child abuse. In Florida, anyone can file

⁷² FEASIBILITY STUDY, *supra* note 2.

⁷³ *In the Matter of W.B.M.*, 690 S.E.2d 41 (N.C. Ct. App. 2010); Child Abuse Registry Hits Stumbling Blocks, CBS News, Apr. 26, 2010, available at <http://www.cbsnews.com/stories/2010/04/26/national/main6432571.shtml> (last visited October 1, 2010).

⁷⁴ *In the Matter of W.B.M.*, 690 S.E.2d 41 (N.C. Ct. App. 2010); *Hotline Constitutionality Issues*, *supra* note 10.

⁷⁵ Child Abuse Registry Hits Stumbling Blocks, *supra* note 73. The settlement was for approximately 25,000 people, however, the number of people who actually had their case closed without the opportunity for a hearing has not been determined. Rick Karlin, Changes in Statewide Child Abuse List, TIMES UNION, Feb. 23, 2010.

⁷⁶ Karlin, *supra* note 52.

⁷⁷ *Id.*

⁷⁸ *Los Angeles County, California v. Craig Arthur Humphries, et ux.*, No. 09-350, scheduled for Oral Argument October 5, 2010. Supreme Court of the United States Hearing List October Term, 2010, available at http://www.supremecourt.gov/oral_arguments/hearinglists/HearingList-October2010.pdf (last visited October 1, 2010).

⁷⁹ *Humphries v. County of Los Angeles*, 554 F.3d 1170 (9th Cir. 2009); Child Abuse Registry Hits Stumbling Blocks, *supra* note 73.

⁸⁰ *Jamison v. State Department of Social Services, Division of Family Services*, 218 S.W.3d 399 (Mo. 2007).

⁸¹ *Petition of Preisendorfer*, 719 A.2d 590 (N.H. 1998).

⁸² *State v. Jackson*, 496 S.E.2d 912 (Ga. 1998).

⁸³ A "false report" is a report of abuse, neglect, or abandonment of a child to the central abuse hotline, which is **maliciously** made for the purpose of: (a) Harassing, embarrassing, or harming another person; (b) Personal financial gain for the reporting person; (c) Acquiring custody of a child; or (d) Personal benefit for the reporting person in any other private disputes involving the child. The term does **not** include a report of abuse, neglect or abandonment of a child made in good faith to the central abuse hotline. [emphasis supplied] FLA. STAT. § 39.01(28) (2010).

a child abuse report, and while most people do so to protect a child, a small percentage have other motives. For example, a landlord hoping to evict a tenant, an angry neighbor, or a rebellious child can each call the Hotline and file reports, regardless of whether there exists evidence of abuse. Once the report is made, the alleged abuser's name will continue to be in the system indefinitely. Additionally, each report must be investigated, requiring DCF to expend time and resources which would otherwise be used working legitimate cases.

Florida imposes the most severe penalties in the country for false reports of child abuse,⁸⁴ being one of nine states classifying it as a felony, as well as imposing civil liability and administrative fines.⁸⁵ Florida law provides three avenues for an individual alleged to have perpetrated abuse or neglect to seek remedies if it can be proven that the report was made maliciously.⁸⁶

- Criminal penalty pursued by the state attorney for false reporting or advising another to make a false report, prosecuted as a felony of the third degree punishable by up to 5 years in prison and \$5,000;⁸⁷
- Civil liability for damages, including attorney fees and costs; and
- Departmental imposition of an administrative fine, not to exceed \$10,000, as authorized by Section 39.206(1), F.S., and subject to the hearing and other requirements of Chapter 120, F.S.⁸⁸

Approximately 30 other states impose penalties for any person who willfully or intentionally makes a report of child abuse or neglect that the reporter knows to be false.⁸⁹ Most states impose misdemeanor penalties or simple fines for violation of the law.⁹⁰ Several states raise the penalty for false reporting to felonies for subsequent offenses and impose civil liability for any damages caused by the report.⁹¹

According to DCF, it flags a small percentage of reports as potential false reports.⁹² If a report is flagged as a false report, DCF must decide whether or not to pursue an administrative fine, pass the report on to local law enforcement for further investigation, pursue both options, or pursue neither option. According to DCF, it rarely pursues an administrative fine.⁹³

From July 1, 2008 through June 30, 2009, 156,609 reports of child abuse were made to the Hotline, and there were 177 suspected false reports.⁹⁴ Of those 177 suspected false reports, 31 reports were reviewed for an

⁸⁴ *Penalties for Failure to Report and False Reporting of Child Abuse and Neglect*, Child Welfare Information Gateway (2007) available at http://www.childwelfare.gov/systemwide/laws_policies/statutes/report.cfm (last visited October 1, 2010) [hereinafter *Penalties for Failure to Report*].

⁸⁵ *Annual Report to the Legislature: False Reports of Child Abuse, Neglect or Abandonment Referred to Law Enforcement - FY 2005-2006*, March 2007, available at <http://www.dcf.state.fl.us/programs/childwelfare/docs/2006LMRs/2006FalseReportsChildAbuseAbandonmentNeglectReport.pdf> (last visited October 1, 2010) [hereinafter *Annual Report to the Legislature, FY 2005-2006*].

⁸⁶ "Maliciously" is defined as wrongfully, intentionally, and without legal justification or excuse. FLA. STAT. § 827.03(4) (2010).

⁸⁷ *Penalties for Failure to Report*, *supra* note 84.

⁸⁸ In these cases, the standard of knowingly and willfully also applies. *Annual Report to the Legislature, FY 2005-2006*, *supra* note 85.

⁸⁹ *Id.*; *Penalties for Failure to Report*, *supra* note 84.

⁹⁰ *Annual Report to the Legislature, FY 2005-2006*, *supra* note 85.

⁹¹ The following table represents how the states classify reporting of child abuse:

32 states and the Virgin Islands	Misdemeanor or similar charge
Florida, Tennessee, and Texas	Felony
Arkansas, Illinois, Indiana, Missouri, and Virginia	Second or subsequent offenses are upgraded to felonies
Michigan	Can be either a misdemeanor or a felony, depending on the seriousness of the alleged abuse in the report.

In six states (California, Colorado, Idaho, Indiana, Minnesota, and North Dakota), in addition to any criminal penalties, the reporter may be civilly liable for damages caused by the report. *Penalties for Failure to Report*, *supra* note 84.

⁹² *False Reports of Child Abuse, Abandonment, or Neglect*, The Florida Senate Committee on Children, Families, and Elder Affairs, Interim Project Report 2008-105, October 2007, available at http://www.flsenate.gov/data/Publications/2008/Senate/reports/interim_reports/pdf/2008-105cf.pdf (last visited October 1, 2010) [hereinafter *Interim Project Report 2008-105*].

⁹³ *Id.*

⁹⁴ *Annual Report to the Legislature, FY 2008-2009*, *supra* note 42.

administrative fine; two fines were levied and collected.⁹⁵ Additionally, 27 reports were referred to law enforcement, of which six reports were criminally prosecuted.⁹⁶

Although Florida has strict laws for making a false report of child abuse, prosecution of false reports of child abuse are rare because authorities have difficulty establishing that people willingly and knowingly provided false information.⁹⁷ Often there is simply not enough evidence to convict.⁹⁸ One reason it is difficult to prove allegations of a false report is that many reports are made anonymously, a practice allowed in Florida law and most other states⁹⁹ and intended to encourage reporting. DCF does, however, capture the telephone number from which the abuse report is made, which is made available to law enforcement or the state attorney.¹⁰⁰ DCF reports that the workload associated with the preparation and pursuit of false reports consumes a substantial amount of its attorney time.¹⁰¹ Additionally, because the probability of conviction is considered so low, it deters efforts at prosecution.¹⁰²

One potential solution to false reporting is being demonstrated in seven Florida counties, including Citrus County.¹⁰³ In those locations, a sworn law enforcement officer is assigned to each DCF unit doing protective investigations in each county or circuit.¹⁰⁴ When a report is made and investigated and suspected to be false, the officer visits the individual suspected of making the false report, reads the individual his or her rights, and conducts a taped interview, during which the officer explains why he or she believes the report is false.¹⁰⁵ Most often, the individual admits to having made a false report. The State Attorney's Office works with the individual and law enforcement to agree on payment of restitution, rather than imposition of jail time.¹⁰⁶ The payment recovers the cost of the investigation. This has resulted in a large drop in the number of false reports filed in Citrus County.¹⁰⁷

In other circumstances where false reporting has been an issue in Florida, for example, false reports made to the 911 system,¹⁰⁸ civil citations have been successfully used. Civil citations are used in Florida for a variety of other situations, including juvenile offenders,¹⁰⁹ traffic infractions,¹¹⁰ and violations of local ordinances.¹¹¹ Some states

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Megan O'Matz, Was Tiger Woods the Victim of False Child Abuse Report?, SOUTH FLORIDA SUN SENTINEL, Jan. 11, 2010 (on file with the Children, Families, and Elder Affairs Committee).

⁹⁸ O'Matz, *supra* note 97.

⁹⁹ Interim Project Report 2008-105, *supra* note 92.

¹⁰⁰ Telephone number are made available pursuant to the authority in s. 415.504(1)(e), F.S. Florida Senate Staff Analysis for SB 1024 (1998) (on file with the Children, Families and Elder Affairs Committee).

¹⁰¹ *Annual Report to the Legislature: False Reports of Child Abuse, Neglect or Abandonment Referred to Law Enforcement - FY 2007-2008*, March 2009, available at http://www.dcf.state.fl.us/programs/childwelfare/docs/2009LMRs/S09_003473_2009NumberFalseReprotLawEnf.pdf (last visited October 1, 2010).

¹⁰² *Id.*

¹⁰³ Broward, Seminole, Manatee, Pinellas, Hillsborough and Pasco Counties also have these assignments. Telephone Interview with Lt. Dave Wyllie, Child Protective Investigations Office, Citrus County Sheriff, Sep. 10, 2010.

¹⁰⁴ If defined by circuit, each officer would cover approximately three to five counties. *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ In Citrus County, 100 percent of the suspects offered this arrangement have taken it. *Id.*

¹⁰⁷ Lt. Wyllie of the Citrus County Sheriff's Office estimates that their office has gone from approximately 50-60 false reports of abuse each year to none so far in 2010. *Id.*

¹⁰⁸ If a 911 call is received and determined to be false, an investigation is conducted and a civil citation may be issued. Even though the caller may not provide his or her name or other identifying information, if a county or municipality has an enhanced 911 system, the caller's name and location (if calling from a landline) is automatically recorded. Julia Layton, *How 9-1-1 Works, How Stuff Works*, available at <http://people.howstuffworks.com/9-1-1.htm/printable> (last visited October 1, 2010).

¹⁰⁹ Civil citations are issued for individuals under 18 who commit non-serious delinquent offenses. Prior to the implementation of civil citations, the state attorney's office was inundated with juvenile justice cases for school-related offenses that were basically common school misbehaviors. As part of the civil citation process, the juvenile must admit to a misdemeanor and consent to participate in the civil litigation program, where upon successful completion of the program, he or she will not have an arrest record. This system allows the juvenile to be held accountable and take responsibility for his or

issue civil citations for an even broader range of infractions, including false home alarms and unregistered day care.¹¹² Iowa imposes a similar penalty for those who violate environmental laws.¹¹³

The basic features of a civil citation system are:

- They are issued for non-serious offenses.
- Procedures for accepting the civil citation are instituted.
- By accepting the civil citation, the offender admits guilt. If the offender does not want to accept the civil citation, then he or she chooses to pursue court action, which can result in arrest and prosecution.
- If necessary, a civil citation will be referred to the state attorney's office that will investigate and proceed with further legal action.¹¹⁴
- The civil citation programs seek to identify and address the underlying cause of misconduct and punish it with disciplinary action that is most likely to decrease future occurrences of misbehavior.¹¹⁵

If the use of civil citations were to be extended to false reports of child abuse, DCF investigators could be empowered to issue the citations. They are most familiar with the case and are in the best position to take immediate action. DCF could be authorized to establish clear guidelines for usage.

Giving DCF investigators such authority may also solve some of the problems raised by infrequent prosecution. Currently, DCF reports suspected false reporting to law enforcement. Despite the fact that false reporting of child abuse is a felony, DCF notes that they have had a difficult time getting officers to make false reports a priority.

Civil citations may also have a deterrent effect, as the individual that filed a false report will be required to pay a fine. The fine can be set to allow DCF to recover some of the costs associated with investigating the false report.

her actions, but without the stigma of an arrest record. *Appropriate Punishment: Civil Citations for Juvenile Misbehavior*, Eckerd Family Foundation, available at http://www.eckerdfamilyfoundation.org/docs/Civil_Citations.pdf (last visited October 1, 2010).

¹¹⁰ A non-criminal traffic infraction is a violation not punishable by jail, which can be disposed of by payment of a civil penalty or attendance at a defensive driving course. *Frequently Asked Questions*, Leon County Clerk of Courts, available at http://www.clerk.leon.fl.us/index.php?section=204&server=&page=clerk_services/faqs/index.php&division=traffic (last visited October 1, 2010). Examples of civil charges include: not wearing your seat belt, expired driver's license, and running a stop sign. *Nonmoving Violations*, Clerk of the Circuit and County Courts, Duval County Florida, available at <http://www.duvalclerk.com/ccWebsite/Traffic.department> (last visited October 1, 2010). More serious citations, such as driving 30 miles per hour over the speed limit, require a court appearance. *Civil Traffic*, Franklin County Clerk of Court, available at http://www.franklinclerk.com/Civil_Traffic.aspx (last visited October 1, 2010). There are three basic options for disposing of civil traffic citations: pay the citation within 90 days, elect defensive driving school, or elect a court hearing. *Nonmoving Violations*, Clerk of the Circuit and County Courts, Duval County Florida, available at <http://www.duvalclerk.com/ccWebsite/Traffic.department> (last visited October 1, 2010).

¹¹¹ See FLA. STAT. §§ 365.172(13), 318.21 (2010).

¹¹² In addition to false reports made to the 911 system, law enforcement in some Maryland counties are authorized to issue civil citations if the police repeatedly respond to false home alarms or if an individual provides unregistered daycare. *Unregistered Family Day Care*, Civil Citations, available at <http://www.msde.maryland.gov/NR/rdonlyres/FC2A331B-2285-4158-A2D1-A69805D59476/13754/49.pdf> (last visited October 1, 2010). Civil citations are given to the user of a home alarm if the police respond to more than three false alarms within a 30-day period. *Alarms at Businesses and Private Residences*, Ann Arundel County Police Department Written Directive, available at <http://docs.google.com/viewer?a=v&q=cache:SB2A-mGZu9QJ:www.aacounty.org/Police/RulesRegs/Sections17-19/1812Alarms.pdf+Alarms+at+business+and+private+residence+-+Ann+Arundel+County+Police+Department+Written+Directive+-&hl=en&gl=us&pid=bl&srcid=ADGEEShbR0NyOAOdGWxvojnKAJDDSP1RwJoX6NAg21AdSr9DVp9U2EUxIYechUc kOm5aQii8jk9-K3NImzsHOjKg0jygpXMLGDBQ6zf-uL84TMuCwg7phvNMDBAHBf7O-MDBJ9FBBO2d&sig=AHIEtbQ4DQmk3ZLhkrG06h-2zJYKHiIAkw> (last visited October 1, 2010).

¹¹³ *Municipal Infractions*, Code of Ordinances, Grimes, Iowa, available at <http://www.grimesiowa.com/pdf/code/municipalinfractions.pdf> (last visited October 1, 2010).

¹¹⁴ *FAQs*, Civil Citation of Hillsborough County, available at <http://cchillsborough.org/faq.html> (last visited October 1, 2010).

¹¹⁵ *Id.*