

### SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: March 19, 1998 Revised: \_\_\_\_\_

Subject: Abuse or Neglect of a Child, Elderly Person, or Disabled Adult

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Whiddon</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable/CS</u>
2.	<u>_____</u>	<u>_____</u>	<u>CJ</u>	<u>_____</u>
3.	<u>_____</u>	<u>_____</u>	<u>WM</u>	<u>_____</u>
4.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

#### I. Summary:

Committee Substitute for SB 1024 adds the following tools which can be used to take action against individuals who file false abuse reports:

- The Department of Children and Families is directed to refer certain abuse reports to the local law enforcement agency having jurisdiction for an investigation into whether a false report has been filed, and the law enforcement agency is directed to refer a report to the state attorney when it determines sufficient evidence exists for prosecution.
- The department is directed to report annually to the Legislature the number of reports it refers to law enforcement for investigation as a false report.
- The penalty for filing a false report is elevated from a second degree misdemeanor to a third degree felony.
- State attorneys are directed to publish their procedures to facilitate the prosecution of persons who file false reports and other specified offenses and to report annually to the Legislature the number of cases that have resulted in the filing of an information or indictment.
- The administrative fine that can be imposed for knowingly and willfully making a false abuse report is increased from \$1,000 to \$10,000.

This committee substitute substantially amends the following sections of the Florida Statutes: 415.107, 415.111, 415.1113, 415.513, and 415.5131.

## **II. Present Situation:**

Under the provisions of chapter 415, F.S., any person who has reason to believe that a child, an elderly person or a disabled adult is the victim of abuse or neglect is required to report it to the Department of Children and Families (DCF) through the central abuse hotline. The department must conduct an onsite investigation of every report accepted by the hotline even when the department suspects the report is a false report. Sections 415.102(14) and 415.503(7), F.S., define “false report” as one maliciously made for the purpose of harassing, embarrassing, or harming another person; personal financial gain for the reporter; acquiring custody of a child, an elderly person, or a disabled adult; or personal benefit for the reporter in any other private dispute involving a child, elderly person, or disabled adult.

Sections 415.111 and 415.513, F.S., provide that a person who “knowingly and willfully makes a false report, or who advises another to make a false report, is guilty of a misdemeanor of the second degree...;” direct DCF to establish procedures for determining whether a false report has been made and for submitting all identifying information relating to such a report to the state attorney for prosecution (and, in the case of child abuse, to the appropriate law enforcement agency); and require each state attorney to establish procedures to facilitate the prosecution of persons for filing false abuse reports. In addition, ss. 415.1113 and 415.5131, F.S., authorize DCF to impose a fine, not to exceed \$1,000, upon anyone who files a false report, provide for due process, and require the department, prior to imposing the fine, to prove by clear and convincing evidence that the person filed a false report.

Application of these statutory provisions by DCF and state attorneys is insufficient. The department does not have written procedures in place for determining that a false report has been filed, but it is DCF’s practice that when a hot line counselor believes a report being given is false, a recording is played advising the reporter of the penalties associated with making a false report. Further, a code is available for protective investigators to note in the investigation record that they believe a false report was filed, but the code is inconsistently used and few reports are actually submitted to law enforcement or the state attorney for prosecution. DCF reports, as well, that it has not used the authority to impose an administrative fine.

The Florida Prosecuting Attorneys Association reports that procedures exist for facilitating the prosecution of filing a false report but is unable to document the number of cases that have been prosecuted. The number is believed to be quite low.

The failure on behalf of DCF and state attorneys to use the current statutory tools relating to the filing of false reports is tied to the fact that it is particularly difficult to prove that a false report has been filed.

## **III. Effect of Proposed Changes:**

The Committee Substitute for SB 1024 amends chapter 415, F.S., primarily as follows:

- The department is directed, with the consent of the alleged perpetrator, to refer an abuse report that it determines is false to law enforcement for an investigation to determine if there is sufficient evidence to refer the case for prosecution as a false report in which case the law enforcement agency must refer the case to the appropriate state attorney for prosecution. All subsequent reports on the same family or concerning the same elderly person or disabled adult are to be handled by the local law enforcement agency according to the appropriate provisions in chapter 415, F.S.
- The department is directed to annually report to the Legislature the number of reports it refers to law enforcement for investigation into whether a false report has been made.
- The penalty for knowingly and willfully making a false abuse report is elevated from a second degree misdemeanor to a third degree felony.
- In addition to having procedures to facilitate the prosecution of persons for filing false reports and other violations listed in ss. 415.111 and 415.513, F.S., state attorneys are directed to publish those procedures and to report annually to the legislature the number of complaints which have resulted in the filing of an information or indictment under that section.
- The administrative fine that can be imposed for knowingly and willfully making a false abuse report is increased from \$1,000 to \$10,000.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

Individuals found to have committed a felony of the third degree would be subjected to fines of \$5,000, and under the provisions of ss. 415.1111 and 415.5131, F.S., individuals who make false abuse reports could be fined up to \$10,000.

**C. Government Sector Impact:**

The requirement in the proposed committee substitute that certain abuse reports be turned over to the local law enforcement agency of jurisdiction for investigation will increase the workload of those agencies, but the amount of the increase cannot be determined.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

One of the reasons it is difficult to prove allegations of a false report is that many reports are made anonymously. This practice is allowed under Florida law just as it is in most, if not all, other states. Sections 415.1034 and 415.504, F.S., provide that a specified list of professionals must give their names when reporting abuse, but current law does not require other persons reporting abuse to give their names. It is believed that such a requirement would have a dangerously chilling effect on many individuals' willingness to report abuse.

Section 415.504, F.S., also specifies that hotline counselors must be trained to encourage reporters to provide their names, and, as a result, the percentage of reports that are anonymous is down. In FY 1995-96, 8.52 percent of child abuse reports and 5.56 percent of elder and adult abuse reports were anonymous. It is reasonable to assume that a significant percentage of false reports are made anonymously.

Using the fairly recent authority provided in s. 415.504 (1)(e), F.S., the department does electronically capture the telephone number from which abuse reports are made, and the telephone number is made part of the record which, though confidential, is available to law enforcement or the state attorney.

**VIII. Amendments:**

None.