

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. Senate Bill 30

PRINTER'S NO. 1429

AMOUNT

\$1.027 Million

FUND

General Fund

DATE INTRODUCED

March 15, 2013

PRIME SPONSOR

Senator Erickson

HISTORY OF BILL

Referred to AGING AND YOUTH, March 15, 2013
Reported as amended, Sept. 24, 2013
First consideration, Sept. 24, 2013
Second consideration, Sept. 25, 2013
Re-referred to APPROPRIATIONS, Sept. 25, 2013
Re-reported as amended, Oct. 1, 2013

DESCRIPTION AND PURPOSE OF BILL

Senate Bill 30 amends Title 23 (Domestic Relations) by establishing accountability and due process protections for individuals working with children in school and child-care settings and creates an offense for filing false claims of suspected child abuse.

The bill adds the definitions:

- "Child-care services." As follows:
 - Child day-care centers.
 - Group and family day-care homes.
 - Foster homes.
 - Adoptive parents.
 - Boarding homes for children.
 - Juvenile detention center services or programs for delinquent or dependent children.
 - Mental health, mental retardation, early intervention and drug and alcohol services for children.
 - Other child-care services which are provided by or subject to approval, licensure, registration or certification by the Department of Public Welfare or a county social services agency or which are provided pursuant to a contract with these departments or a county social services agency.

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

- The term does not include such services or programs which may be offered by public and private schools, intermediate units or area-vocational-technical schools.
- "School." A facility providing elementary, secondary or postsecondary educational services. The term includes the following:
 - Any school of a school district.
 - An area vocational-technical school.
 - A joint school.
 - An intermediate unit.
 - A charter school or regional charter school.
 - A cyber charter school.
 - A private school licensed under the Private Academic Schools Act.
 - A private school accredited by an accrediting association approved by the State Board of Education.
 - A nonpublic school.
 - A community college.
 - An independent institution of higher education.
 - A state-owned university.
 - A state-related university.
 - A private school licensed under the Private Licensed Schools Act.
 - Hiram G. Andrews Center.
 - A private residential rehabilitative institution.

The bill deletes the language of §6341 (amendment or expunction of information) of Title 23 and replaces provisions to:

- Require a county agency to inform the department that:
 - The child abuse report or complaint has been determined to be unfounded, indicated or founded; and
 - There is any acceptance for services and if not, whether the family was referred for other community services.
 - Each case must bear a notation as to the effect of its outcome.
- Require a review of the final determination by the county agency solicitor and county administrator or designee.
- If there is a failure to make a determination:
 - A report of suspected child abuse must be considered unfounded if within 60 days of the date of the initial report an investigation the county agency does not determine that the report is founded, indicated or unfounded.
 - If there is court action but the court has not determined that a report is founded within 60 days of the initial report, the report will be identified as pending in the Statewide database and updated upon court determination.

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

- The county must advise the department that court action or an arrest has been initiated so the database is current.
- Within 24 hours of entering the information in the Statewide central registry, the department must send notice of a final determination to the subjects of the report, other than the abused child, and the mandated reporter. The notice must include:
 - The status of the report.
 - The perpetrator's right to request the secretary to amend the report.
 - The right of the subjects of the report to services from the county agency.
 - The effect of the report upon future employment opportunities involving children.
 - The fact that the name of the perpetrator, the nature of the abuse and the final status of the report will be kept on file indefinitely if the perpetrator's social security number or date of birth is known.
 - The perpetrator's right to appeal an indicated finding of abuse within 45 days of the conclusion of the investigation that determined the report to be indicated.
 - The perpetrator's right to a fair hearing on the merits on an appeal of an indicated report.
 - The burden on the investigative agency to prove its case by substantial evidence in an appeal of an indicated report.
- The secretary may amend any record at any time upon good cause shown and with notice to the appropriate subjects of the report and the county agency.
- Perpetrators in an indicated report may request within 45 days of final determination that the secretary amend the report on grounds that it is inaccurate.
- If the secretary refuses the request or does not act within 30 days, the perpetrator has the right to a hearing before the secretary or a designated agent to determine whether the summary of the indicated report should be amended or expunged. The perpetrator has 45 days to request a hearing from the date of the letter giving them notice of the refusal by the secretary. The county agency and law enforcement officials must be given notice of the hearing and the burden of proof is on the county agency with the department assisting as necessary.
- Perpetrators may appeal a denial of the secretary's refusal and the county may appeal the granting of the request.
- Indicated reports may be corrected by the secretary or designated agent.

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

- Provides for appeals of indicated reports by:
 - Requiring appeals to be received within 45 days of the conclusion of the investigation determining that a report is indicated.
 - Automatically staying administrative appeals when there is a pending criminal proceeding.
 - Requiring the appeal hearing to be scheduled:
 - Within 10 days of receipt of an appeal.
 - With reasonable efforts to coordinate the hearing date with both the appellee and appellant.
 - Commencing proceedings within 90 days of the date the scheduling order is entered. If proceedings and hearings cannot be scheduled on consecutive days, than they must be concluded no later than 30 days from commencement.
 - Requiring the investigative agency to bear the burden of proving by substantial evidence that the report should remain indicated.
 - Making evidence that the child has suffered child abuse of such a nature as would not ordinarily be sustained or exist except by reason of the act or failure to act by the alleged perpetrator prime facie evidence of child abuse by either or both the parents or any other person responsible for the child's welfare.
 - Permitting child victims and material witnesses to testify via closed-circuit television when available.
 - Permitting an out-of court statement to be admissible if the following apply:
 - It was made by a child under the age of 10 years or by a child older than 10 years who is intellectually disabled.
 - The statement alleges, explains, denies, or describes any of the following:
 1. An act of sexual penetration or contact performed with or on the child.
 2. An act of sexual penetration or contact with or on another child and observed by the child making the statement.
 3. An act involving bodily injury or serious physical neglect of the child by another.
 4. An act involving bodily injury or serious physical neglect of another child and observed by the child making the statement.
 - The Administrative Law Judge (ALJ) or hearing officer finds that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability.

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

- The proponent of the statement notifies other parties of an intent to offer the statement and the particulars of the statement sufficiently in advance of the proceeding at which the proponent intends to offer the statement into evidence, to provide the parties with a fair opportunity to meet the statement.
- An out-of-statement includes video, audio or other recorded statement.
- Requiring the ALJ or hearing officer to make a decision within 15 days of the hearing's conclusion, unless extended for good cause by the tribunal. No extension may delay the entry of the decision more than 45 days of the conclusion of the hearing.
- Permitting parties to appeal BHA decisions to the secretary within 15 calendar days from the mailing date of the final order or appeal to Commonwealth Court within 30 calendar days.
- Requiring the notice of decision to be made to the Statewide database, the appropriate county agency and law enforcement and all subjects of the report.

The bill adds a provision to provide immunity when acting in good faith for the following:

- Making a report of suspected child abuse or making a referral for general protection services;
- cooperating or consulting with an investigation, including providing information to a child fatality or near-fatality review team;
- testifying in a proceeding arising out of an instance of child abuse;
- engaging in actions relating to medical tests and x-rays, taking the child into protective custody, admission to hospitals or mandatory reporting and postmortem investigation of deaths; and
- includes immunity to Department of Public Welfare and county employees who refer a case in good faith to law enforcement. Good faith is presumed unless actual malice can be proven.

This act shall take effect on January 1, 2014.

FISCAL IMPACT:

SB 30 is estimated to cost the Commonwealth \$1.027 million. This estimate is based on the one-time cost for staff costs (\$807,678), operating costs (\$12,438) and court reporting costs (\$207,100) for the expedited appeals.

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

The enactment of this legislation will require the department to modify its already existing statewide central register of child abuse computer system. However, the Department of Public Welfare is in Phase 1 of the development of our Statewide Child Welfare Information Solution (CWIS) which focuses on referrals and screening functions, including system changes required to expand state level access to referrals, screening, and clearances. The cost for Phase 1 has already been factored into our budget.

The department's Bureau of Hearing and Appeals did an analysis of the average annual number of appeals that have been filed that will now be expedited appeals included in this legislation. They estimate an average of 42,000 appeals are filed annually which they determined will require an additional Administrative Law Judge (\$85,125) and Legal Assistant I (\$45,594) in each of their four regional offices and a and Legal Assistant II (\$51,990) for docket and scheduling. The estimated salary cost is \$574,866, for the nine positions and an estimated \$232,812 for benefits. The additional hearings will require a court reporting costs of \$207,100. Finally, it is estimated to cost \$12,438 for telephones, computers and attorney licenses for the additional staff.