

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis: Senate Bill 372 amends the child abuse and neglect act to include a private right of action against a department or law enforcement agency that fails to investigate or an individual who fails to report and such failures result in injury to a child resulting from abuse or neglect.

FISCAL IMPLICATIONS

Allowing a private cause of action against the government requires the government and the taxpayers to pay any judgment. If any of these causes of action are against the Attorney General’s Office, the Attorney General’s Office may be required to expend resources to defend against the litigation.

Having expanded the scope of potential litigation against law enforcement, it seems inevitable that the Attorney General’s Office will be required to defend itself against lawsuits and may potentially be liable for the payment of any judgment, including attorneys’ fees and costs.

SIGNIFICANT ISSUES

Senate Bill 372 provides a private cause of action for a department or law enforcement agency that fails to investigate when the department or law enforcement agency has actual or constructive notice of abuse or neglect to a child. This provision is overbroad and potentially includes activity that is reasonable and non-negligent. For example, an agency could have actual or constructive notice of the abuse and neglect to a child, follow all reasonable procedures, fail to investigate, or fail to investigate before a child is injured, and be subject to suit.

Senate Bill 372 includes the same provision for incapacitated adults under the abuse and neglect act. The Attorney General’s Office has a Unit which investigates abuse and neglect, but does not have the authority pursuant to its federal grant to investigate every single allegation of abuse and neglect. Under this act, if the Unit were to close or refer out an allegation of abuse and neglect, it could be subject to suit, even though it complied with all lawful requirements.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A