

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

**SELECT COMMITTEE ON PROTECTING FLORIDA'S
CHILDREN**

**Senator Negron, Chair
Senator Joyner, Vice Chair**

MEETING DATE: Thursday, November 3, 2011
TIME: 12:30 —2:00 p.m.
PLACE: *Mallory Horne Committee Room, 37 Senate Office Building*

MEMBERS: Senator Negron, Chair; Senator Joyner, Vice Chair; Senators Evers, Flores, and Smith

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Discussion of potential legislation		Discussed
2	Public testimony		Discussed
Other related meeting documents			

**Florida Statutes Relating to:
Duty to Report, Abuse of Children, and False Information
(with Staff Summaries)**

Duty to Report:

406.12 Duty to report; prohibited acts.—It is the duty of any person in the district where a death occurs, including all municipalities and unincorporated and federal areas, who becomes aware of the death of any person occurring under the circumstances described in s. 406.11 to report such death and circumstances forthwith to the district medical examiner. Any person who knowingly fails or refuses to report such death and circumstances, who refuses to make available prior medical or other information pertinent to the death investigation, or who, without an order from the office of the district medical examiner, willfully touches, removes, or disturbs the body, clothing, or any article upon or near the body, with the intent to alter the evidence or circumstances surrounding the death, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 7, ch. 70-232; s. 353, ch. 71-136.

Summary:

- Provides that it is the duty of any person, if aware of a death occurring under the circumstances described in s. 406.11, F.S. (including, but not limited to, death by accident or criminal violence), to report the death to the district medical examiner.
- Provides that it is a first degree misdemeanor to knowingly fail or refuse to report such death and circumstances, refuse to make available prior medical or other information pertinent to the death investigation, or, without an order from the office of the district medical examiner, willfully touch, remove, or disturb the body, clothing, or any article upon or near the body, with the intent to alter the evidence or circumstances surrounding the death.

Abuse of Children:

Chapter 827, Abuse of Children

827.01 Definitions.—As used in this chapter:

- (1) “Caregiver” means a parent, adult household member, or other person responsible for a child’s welfare.
- (2) “Child” means any person under the age of 18 years.
- (3) “Placement” means the giving or transferring of possession or custody of a child by any person to another person for adoption or with the intent or purpose of surrendering the control of the child.

History.—s. 48, ch. 74-383; s. 1, ch. 77-174; s. 7, ch. 96-322.

Summary:

- Provides definitions for “caregiver” (parent or other person responsible for child’s welfare), “child” (person under 18 years), and “placement” (giving up custody of child by adoption or surrendering control of child).

827.03 Abuse, aggravated abuse, and neglect of a child; penalties.—

(1) “Child abuse” means:

- (a) Intentional infliction of physical or mental injury upon a child;
- (b) An intentional act that could reasonably be expected to result in physical or mental injury to a child; or
- (c) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

A person who knowingly or willfully abuses a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) “Aggravated child abuse” occurs when a person:

- (a) Commits aggravated battery on a child;
- (b) Willfully tortures, maliciously punishes, or willfully and unlawfully cages a child; or
- (c) Knowingly or willfully abuses a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child.

A person who commits aggravated child abuse commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3)(a) “Neglect of a child” means:

- 1. A caregiver’s failure or omission to provide a child with the care, supervision, and services necessary to maintain the child’s physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child; or
- 2. A caregiver’s failure to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person.

Neglect of a child may be based on repeated conduct or on a single incident or omission that results in, or could reasonably be expected to result in, serious physical or mental injury, or a substantial risk of death, to a child.

(b) A person who willfully or by culpable negligence neglects a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A person who willfully or by culpable negligence neglects a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) For purposes of this section, “maliciously” means wrongfully, intentionally, and without legal justification or excuse. Maliciousness may be established by circumstances from which one could conclude that a reasonable parent would not have engaged in the damaging acts toward the child for any valid reason and that the primary purpose of the acts was to cause the victim unjustifiable pain or injury.

History.—s. 1, ch. 4721, 1899; s. 1, ch. 4971, 1901; GS 3236, 3238; RGS 5069, 5071; s. 1, ch. 9331, 1923; CGL 7171, 7173; s. 1, ch. 65-113; s. 1, ch. 70-8; s. 940, ch. 71-136; s. 49, ch. 74-383; s. 30, ch. 75-298; s. 1, ch. 84-238; s. 8, ch. 96-322; s. 16, ch. 99-168; s. 1, ch. 2003-130.

Note.—Former s. 828.04.

Summary:

Child Abuse [See (1)]:

- Defines “child abuse” as intentionally inflicting physical or mental injury on a child; committing an intentional act reasonably expected to result in physical or mental injury to a child; or actively encouraging the commission of an act resulting in physical or mental injury to a child.
- Provides that it is a third degree felony offense to knowingly or willfully abuse a child without causing great bodily harm, permanent disability, or permanent disfigurement.

Aggravated Child Abuse [See (2)]:

- Defines “aggravated child abuse” as committing aggravated battery on a child; willfully torturing, maliciously punishing, or willfully and unlawfully caging a child; or knowingly or willfully abusing a child, thereby causing great bodily harm, permanent disability, or permanent disfigurement.
- Defines “maliciously” as wrongfully, intentionally, and without legal justification or excuse. May be established by circumstances suggesting that a reasonable parent would not engage in such acts for any valid reason and that the acts purposefully caused the child unjustified pain or injury.
- Provides that it is a first degree felony offense to commit aggravated child abuse.

Neglect [See (3)]:

- Defines “neglect” as a caregiver’s failure or omission to provide a child with care and supervision necessary to maintain the child’s physical and mental health (such as food, shelter, clothing, and medical services) that a prudent person would consider essential for the well-being of the child; or a caregiver’s failure to make reasonable efforts to protect a child from abuse, neglect, or exploitation by another person.
- Provides that neglect may be based on a single incident or repeated conduct resulting in or reasonably expected to result in serious physical or mental injury, or substantial risk of death to a child.
- Provides that it is a second degree felony offense to willfully or by culpable negligence neglect a child, thereby causing great bodily harm, permanent disability, or permanent disfigurement.
- Provides that it is a third degree felony offense to willfully or by culpable negligence neglect a child without causing any great bodily harm, permanent disability, or permanent disfigurement.

827.035 Newborn infants.—It shall not constitute neglect of a child pursuant to s. 827.03 or contributing to the dependency of a child pursuant to s. 827.04, if a parent leaves a newborn infant at a hospital, emergency medical services station, or fire station or brings a newborn infant to an emergency room and expresses an intent to leave the infant and not return, in compliance with s. 383.50.

History.—s. 8, ch. 2000-188; s. 24, ch. 2001-53.

Summary:

- Provides that it is not neglect if a parent drops off a newborn at certain authorized places with the intent to permanently leave it there pursuant to s. 383.50, F.S.

827.04 Contributing to the delinquency or dependency of a child; penalty.—

(1) Any person who:

(a) Commits any act which causes, tends to cause, encourages, or contributes to a child becoming a delinquent or dependent child or a child in need of services; or

(b) Induces or endeavors to induce, by act, threat, command, or persuasion, a child to commit or perform any act, follow any course of conduct, or live in a manner that causes or tends to cause such child to become or to remain a dependent or delinquent child or a child in need of services,

commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) It is not necessary for any court exercising juvenile jurisdiction to make an adjudication that any child is delinquent or dependent or a child in need of services in order to prosecute a violation of this section. An adjudication that a child is delinquent or dependent or a child in need of services shall not preclude a subsequent prosecution of a violation of this section.

(3) A person 21 years of age or older who impregnates a child under 16 years of age commits an act of child abuse which constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person who impregnates a child in violation of this subsection commits an offense under this subsection regardless of whether the person is found to have committed, or has been charged with or prosecuted for, any other offense committed during the course of the same criminal transaction or episode, including, but not limited to, an offense proscribed under s. 800.04, relating to lewd, lascivious, or indecent assault or act upon any person under 16 years of age. Neither the victim's lack of chastity nor the victim's consent is a defense to the crime proscribed under this subsection.

History.—s. 50, ch. 74-383; s. 30, ch. 75-298; s. 1, ch. 77-73; s. 1, ch. 77-429; s. 4, ch. 88-151; s. 8, ch. 90-53; s. 2, ch. 96-215; s. 10, ch. 96-322.

Summary:

- Provides that it is a first degree misdemeanor offense to commit (or induce a child to commit) any act causing or contributing to a child becoming a delinquent, a dependant, or a child in need of services.
- Provides that it is third degree felony child abuse for a person at least 21 years of age to impregnate a child under 16 years of age.

827.06 Nonsupport of dependents.—

(1) The Legislature finds that most parents want to support their children and remain connected to their families. The Legislature also finds that while many parents lack the financial resources and other skills necessary to provide that support, some parents willfully fail to provide support to their children even when they are aware of the obligation and have the ability to do so. The Legislature further finds that existing statutory provisions for civil enforcement of support have not proven sufficiently effective or efficient in gaining adequate support for all children.

Recognizing that it is the public policy of this state that children shall be maintained primarily from the resources of their parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through public assistance programs, it is the intent of the Legislature that the criminal penalties provided for in this section are to be pursued in all appropriate cases where civil enforcement has not resulted in payment.

(2) Any person who willfully fails to provide support which he or she has the ability to provide to a child or a spouse whom the person knows he or she is legally obligated to support commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any person who is convicted of a fourth or subsequent violation of subsection (2) or who violates subsection (2) and who has owed to that child or spouse for more than 1 year support in an amount equal to or greater than \$5,000 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Upon a conviction under this section, the court shall order restitution in an amount equal to the total unpaid support obligation as it exists at the time of sentencing.

(5)(a) Evidence that the defendant willfully failed to make sufficient good faith efforts to legally acquire the resources to pay legally ordered support may be sufficient to prove that he or she had the ability to provide support but willfully failed to do so, in violation of this section.

[1](b) The element of knowledge may be proven by evidence that a court or tribunal as defined by s. 88.1011(22) has entered an order that obligates the defendant to provide the support.

(6) It is the intent of the Legislature for the state attorneys, the Florida Prosecuting Attorneys Association, and the Department of Revenue to work collaboratively to identify strategies that allow the criminal penalties provided for in this section to be pursued in all appropriate cases, including, but not limited to, strategies that would assist the state attorneys in obtaining additional resources from available federal Title IV-D funds to initiate prosecution pursuant to this section.

History.—s. 52, ch. 74-383; s. 31, ch. 75-298; s. 200, ch. 91-224; s. 1282, ch. 97-102; s. 1, ch. 2001-51; s. 14, ch. 2002-173; s. 41, ch. 2005-39; s. 153, ch. 2007-5; s. 38, ch. 2008-61; s. 77, ch. 2011-92.

[1]Note.—Section 81, ch. 2011-92, provides that “[e]xcept as otherwise expressly provided in this act, this act shall take effect upon the earlier of 90 days following Congress amending 42 U.S.C. s. 666(f) to allow or require states to adopt the 2008 version of the Uniform Interstate Family Support Act, or 90 days following the state obtaining a waiver of its state plan requirement under Title IV-D of the Social Security Act.” Section 77, ch. 2011-92, amended paragraph (5)(b), to read:

(b) The element of knowledge may be proven by evidence that a court or tribunal as defined by s. 88.1011 has entered an order that obligates the defendant to provide the support.

Summary:

- Provides that it is a first degree misdemeanor offense to willfully fail to provide support to a child or spouse when the person has the ability to pay and knows of his or her legal obligation to do so.
- Provides that a fourth or subsequent conviction, or the first conviction if the amount of support owed is at least \$5,000 and has been owed for at least one year, is a third degree felony.

827.071 Sexual performance by a child; penalties.—

(1) As used in this section, the following definitions shall apply:

(a) “Deviate sexual intercourse” means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

(b) “Intentionally view” means to deliberately, purposefully, and voluntarily view. Proof of intentional viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation over any period of time.

(c) “Performance” means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

(d) “Promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do the same.

(e) “Sodomasochistic abuse” means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

(f) “Sexual battery” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, “sexual battery” does not include an act done for a bona fide medical purpose.

(g) “Sexual bestiality” means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.

(h) “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sodomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother’s breastfeeding of her baby does not under any circumstance constitute “sexual conduct.”

(i) “Sexual performance” means any performance or part thereof which includes sexual conduct by a child of less than 18 years of age.

(j) “Simulated” means the explicit depiction of conduct set forth in paragraph (h) which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

(2) A person is guilty of the use of a child in a sexual performance if, knowing the character and content thereof, he or she employs, authorizes, or induces a child less than 18 years of age to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child less than 18 years of age. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) It is unlawful for any person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child. The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5)(a) It is unlawful for any person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The possession, control, or intentional viewing of each such photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or presentation is a separate offense. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) This subsection does not apply to material possessed, controlled, or intentionally viewed as part of a law enforcement investigation.

(6) Prosecution of any person for an offense under this section shall not prohibit prosecution of that person in this state for a violation of any law of this state, including a law providing for greater penalties than prescribed in this section or any other crime punishing the sexual performance or the sexual exploitation of children.

History.—s. 4, ch. 83-75; s. 1, ch. 85-273; s. 1, ch. 86-38; s. 1, ch. 91-33; s. 1, ch. 92-83; s. 1283, ch. 97-102; s. 1, ch. 2001-54; s. 4, ch. 2007-143; s. 15, ch. 2011-220.

Summary:

- Provides three separate second degree felony offenses for knowingly using a child in a sexual performance [see (2)], knowingly promoting a sexual performance by a child [see (3)], or for possessing with intent to promote a picture or other representation that includes sexual conduct by a child [see (4)].
- Provides that it is a third degree felony offense to knowingly possess or view a picture or other representation which includes sexual conduct by a child [see (5)].

827.08 Misuse of child support money.—Any person who willfully misapplies funds paid by another or by any governmental agency for the purpose of support of a child shall, for the first offense, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and for a second or subsequent conviction under this section, be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person shall be deemed to have misapplied child support funds when such funds are spent for any purpose other than for necessary and proper home, food, clothing, and the necessities of life, which expenditure results in depriving the child of the above named necessities. All public welfare agencies shall give notice of the provisions of this section at least once to each payee of any public grant made for the benefit of any child and shall report violations of this section to the proper prosecuting officer.

History.—s. 1, ch. 61-216; s. 956, ch. 71-136; s. 65, ch. 74-383.

Note.—Former s. 828.201.

Summary:

- Provides that it is a first degree misdemeanor to commit willful misapplication of child support funds paid by another or any governmental agency.
- Provides that a second or subsequent conviction is a third degree felony.

False Information:

837.055 False information to law enforcement during investigation.—Whoever knowingly and willfully gives false information to a law enforcement officer who is conducting a missing person investigation or a felony criminal investigation with the intent to mislead the officer or impede the investigation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 2006-142

Summary:

- Provides that it is a first degree misdemeanor to knowingly and willfully give false information to a law enforcement officer who is conducting a missing person investigation or a felony criminal investigation with the intent to mislead the officer or impede the investigation.

DRAFT

28-00372A-12

1 A bill to be entitled

2 An act relating to knowingly and willfully giving
3 false information to a law enforcement officer;
4 amending s. 837.055, F.S.; providing that it is a
5 third-degree felony for a person to knowingly and
6 willfully give false information to a law enforcement
7 officer conducting a missing person investigation
8 involving a child 12 years of age or younger with the
9 intent to mislead the officer or impede the
10 investigation if the child suffers great bodily harm,
11 permanent disability, permanent disfigurement, or
12 death; providing criminal penalties; providing an
13 effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Section 837.055, Florida Statutes, is amended to
18 read:

19 837.055 False information to law enforcement during
20 investigation.—

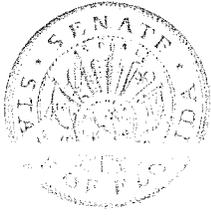
21 (1) Whoever knowingly and willfully gives false information
22 to a law enforcement officer who is conducting a missing person
23 investigation or a felony criminal investigation with the intent
24 to mislead the officer or impede the investigation commits a
25 misdemeanor of the first degree, punishable as provided in s.
26 775.082 or s. 775.083.

27 (2) Whoever knowingly and willfully gives false information
28 to a law enforcement officer who is conducting a missing person
29 investigation involving a child 12 years of age or younger with

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30 the intent to mislead the officer or impede the investigation
31 and the child who is the subject of the investigation suffers
32 great bodily harm, permanent disability, permanent
33 disfigurement, or death commits a felony of the third degree,
34 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

35 Section 2. This act shall take effect July 1, 2012.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Budget
Budget - Subcommittee on Education Pre-K - 12
Appropriations
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability
Reapportionment
Rules

SENATOR ANITERE FLORES

Majority Whip
38th District

September 1, 2011

The Honorable Joe Negron
Chair of Committee on Protecting Florida's Children
510 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Negron:

I respectfully request to be excused from the Committee on Protecting Florida's Children during the months of September, October and November. I have been informed by my doctor that I should refrain from travel until after I have given birth which is expected to be at the end of October.

Please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Anitere Flores".

Anitere Flores

CC: Ms. Amanda Cannon, Staff Director, Committee on Protecting Florida's Children

REPLY TO:

☐ 10691 North Kendall Drive, Suite 309, Miami, Florida 33176 (305) 270-6550
☐ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5130

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

CourtSmart Tag Report

Room: LL 37

Case:

Type:

Caption: Select Committee on Protecting Florida's Children 12:30 p.m.

Judge:

Started: 11/3/2011 12:34:32 PM

Ends: 11/3/2011 1:03:29 PM

Length: 00:28:58

12:34:34 PM Recording Paused
12:34:34 PM Recording Resumed
12:36:51 PM Opening Comments by Chair Negron
12:38:04 PM Sen. Negron discuss potential legislation
12:40:29 PM Committee discussion
12:40:49 PM Senator Smith
12:42:44 PM Senator Joyner
12:42:55 PM Senator Evers
12:45:59 PM Senator Joyner
12:49:33 PM Senator Evers
12:49:40 PM Senator Smith
12:50:23 PM Representative Jose Diaz
12:57:00 PM Senator Negron
12:58:21 PM Rep. Diaz
1:02:04 PM Senator Negron
1:03:07 PM Move to rise