

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1915 (PCB PS 03-07)                      **AGGRAVATED CHILD ABUSE**  
**SPONSOR(S):** COMMITTEE ON PUBLIC SAFETY AND CRIME PREVENTION  
**TIED BILLS:**    **IDEN./SIM. BILLS:** SB 2366

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) PUBLIC SAFETY AND CRIME PREVENTION	16 Y, 0 N	De La Paz	De La Paz
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

There are currently three ways a person commits the offense of aggravated child abuse. Section 827.03(2), F.S., provides that the crime occurs when a person:

- (a) Commits aggravated battery against 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.

The crime is a first degree felony punishable by a maximum of thirty years imprisonment. As to the ways to commit the offense specified in (b) above, *malicious punishment* has been included as an element of the offense using those exact terms since 1974. There is no statutory definition for the term “maliciously” punishing a child in current law. Courts have been applying a definition of “maliciously punishes” which requires proof that the defendant actually possessed “ill will, hatred, spite, and evil intent” when committing the offense.

House Bill 1915 provides a statutory definition of “maliciously” for purposes of aggravated child abuse. The definition provided in the HB uses an objective standard which would allow a jury to determine that a defendant “maliciously” punished a child if they 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 the acts served was to cause the child unjustifiable pain or injury.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

There are currently three ways a person commits the offense of aggravated child abuse. Section 827.03(2), F.S., provides that the crime occurs when a person:

- (a) Commits aggravated battery against 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.

The crime is a first degree felony punishable by a maximum of thirty years imprisonment. As to the ways to commit the offense specified in (b) above, *malicious punishment* has been included as an element of the offense using those exact terms since 1974.<sup>1</sup> There is no statutory definition for the term “maliciously” punishing a child in current law.

Recently in Reed v. State, 837So.2d 366 (Fla. 2002), the Florida Supreme Court overturned the First District Court of Appeal and reversed the defendant’s conviction for aggravated child abuse which was based on malicious punishment of a child.<sup>2</sup> The reason the Supreme Court held that the trial judge gave an erroneous definition of the term “maliciously” to the jury before they retired to deliberate their verdict.

The definition the trial judge gave to the jury came directly from the standard jury instructions previously approved by the Florida Supreme Court in 1981. Instead, the Supreme Court said that the correct definition of “maliciously,” which should have been used, was one found in the 1978 case of State v. Gaylord, 356 So.2d 313 (Fla. 1978)<sup>3</sup> This definition reads: “malice means ill will, hatred, spite, and evil intent.” By comparison the definition used by the trial judge read: “[m]aliciously’ means wrongfully, intentionally, without legal justification or excuse.” The Supreme Court included the following excerpt from a previous case in the 1<sup>st</sup> District Court of Appeal<sup>4</sup> which explained the distinction between the two definitions as follows:

The difference between the definition adopted in Gaylord and that included in the standard jury instruction is significant. The former is generally referred to as actual

<sup>1</sup> Prior to 1974, the statute used similar language which prohibited a person from unlawfully punishing a child with “malice.” See, Former s. 828.04(1) Florida Statutes (1973).

<sup>2</sup> See, Reed v. State, 783 So.2d 1192 (1<sup>st</sup> DCA, 2001).

<sup>3</sup> The standard jury instruction was amended in 2002 to conform the definition of “maliciously” to this 1978 interpretation.

<sup>4</sup> Young v. State, 753 So.2d 725 (Fla. 1<sup>st</sup> DCA, 2000).

malice, or malice in fact; whereas the latter is generally referred to as legal, or technical, malice. Actual malice, or malice in fact, requires proof of evil intent or motive. In contrast, legal malice merely requires proof of an intentional act performed without legal justification or excuse. **Legal malice may be inferred from one's acts, and does not require proof of evil intent or motive.** (Emphasis added)

....  
... The effect of the error was to permit the jury to return a guilty verdict without finding that appellant actually harbored "ill will, hatred, spite, [or] an evil intent" when she punished her son, thereby reducing the state's burden of proof on an essential element of the offense charged.  
Young, 753 So.2d at 728-29 (some citations omitted).

As the Supreme Court pointed out, with this "actual malice" definition, it is necessary for the prosecution to prove the subjective "evil" intent of the defendant in order to convict. Under the previous definition, the standard was not purely subjective, and it could be inferred from the circumstances whenever the act was intentional and without legal justification. The Reed decision will apply to cases still pending on direct review and other cases which are not yet final.

Using a retrial of the Reed case as an example, the State will have the task of proving that the defendant had "ill will, hatred, spite or an evil intent" running through her mind as she repeatedly beat the child with an electrical cord or stick.<sup>5</sup> The maliciousness of the punishment **could not** be inferred solely from her actions.

House Bill 1915 codifies the definition of "maliciously" used by the trial judge in the Reed case, that until last year had been the standard jury instruction, and adds an objective standard as a substitute for the purely subjective standard applied by the Court in the Reed case. The objective standard provided in the bill would allow a jury to determine that a defendant "maliciously" punished a child if they 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 the acts served was to cause the child unjustifiable pain or injury.

#### C. SECTION DIRECTORY:

Section 1. Amending s. 827.03, F.S., providing a definition for "maliciously" punishing a child for purposes of aggravated child abuse.

Section 2. Providing an effective date.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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<sup>5</sup> See, Reed v. State, 783 So.2d 1192 (1<sup>st</sup> DCA, 2001).

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES