

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1239

Child Abuse

**SPONSOR(S):** Detert

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2266

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>6 Y, 0 N</u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>Future of Florida's Families Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>Criminal Justice Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

Courts and legislative bodies have repeatedly recognized the difficulty in delineating a precise line between permissible corporal punishment and prohibited child abuse. However, the task of doing so is principally a legislative function.

Florida has two statutes that address child abuse. Chapter 39, F.S., is a civil statute relating to dependency that defines child abuse and specifically defines what constitutes excessive corporal punishment. Section 827.03, F.S., is a criminal statute that defines "child abuse" (simple child abuse) and "aggravated child abuse", but does not specifically address corporal punishment.

Courts have looked to the above statutes in an attempt to determine when corporal discipline rises to the level of criminal child abuse. The courts' analyses and opinions have resulted in an "either or" approach to classifying excessive corporal discipline. Either excessive corporal discipline is *civil* child abuse, or it's *simple* (or aggravated) criminal abuse. The caselaw does not appear to contemplate that the same act of excessive corporal discipline (e.g. a severe beating the causes significant bruises or welts) could qualify as both civil *and* simple child abuse.

This bill amends the definition of the term "child abuse" in s. 827.03(1), F.S., to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver. The bill then defines the term "inappropriate or excessively harsh corporal discipline" as "an act of discipline that results in or could reasonably be expected to result in any of the following or other similar injuries:

- sprains, dislocations, or cartilage damage;
- bone or skull fractures;
- brain or spinal cord damage;
- intracranial hemorrhage or injury to other internal organs;
- asphyxiation, suffocation, or drowning;
- injury resulting from the use of a deadly weapon;
- burns or scalding;
- cuts, lacerations, punctures, or bites;
- disfigurement;
- loss or impairment of a body part or function;
- significant bruises or welts;
- mental injury.

As a result, courts will no longer have to look to Ch. 39, F.S., to try and glean the legislature's intent in regards to when excessive corporal punishment rises to the level of criminal child abuse.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1239a.CRJU.doc

**DATE:** 3/15/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty → The bill amends the definition of child abuse contained in s. 827.03, F.S., to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver and defines the term “inappropriate or excessively harsh corporal discipline.”

Promote Personal Responsibility → The bill amends the definition of child abuse contained in s. 827.03, F.S., to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver and defines the term “inappropriate or excessively harsh corporal discipline.”

#### B. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Courts and legislative bodies have repeatedly recognized the difficulty in delineating a precise line between permissible corporal punishment and prohibited child abuse.<sup>1</sup> However, as stated by the Florida Supreme Court, the task of doing so is principally a legislative function.<sup>2</sup> Florida has two statutes that address child abuse. Chapter 39, F.S., is a civil statute that defines child abuse and specifically defines what constitutes excessive corporal punishment. Section 827.03, F.S., is a criminal statute that defines child abuse, but does not specifically address corporal punishment.

##### Chapter 39 – Civil Child Abuse

Chapter 39, F.S., a *civil* statute, designates certain types of excessive corporal punishment as *civil* child abuse.<sup>3</sup> Section 39.01, F.S., provides that “corporal discipline may be considered excessive or abusive when it results in any of the following or other similar injuries:

- Sprains, dislocations, or cartilage damage;
- Bone or skull fractures;
- Brain or spinal cord damage;
- Intracranial hemorrhage or injury to other internal organs;
- Asphyxiation, suffocation, or drowning;
- Injury resulting from the use of a deadly weapon;
- Burns or scalding;
- Cuts, lacerations, punctures, or bites;
- Permanent or temporary disfigurement;
- Permanent or temporary loss or impairment of a body part or function;
- Significant bruises or welts.”

Under Chapter 39, F.S., protective investigations and dependency proceedings could result if there is a report that a child has been abused. A person who is found to have abused a child under Ch. 39, F.S., could also be charged with contributing to the dependency of a minor pursuant to s. 827.04, F.S.

##### Section 827.03(1), F.S. – Criminal Child Abuse

Section 827.03(1), F.S., a *criminal* statute, defines child abuse as:

- (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.

<sup>1</sup> See, e.g., *State v. McDonald*, 785 So.2d 640 (Fla. 2<sup>nd</sup> DCA 2001); *Corsen v. State*, 784 (So.2d 535 (Fla. 5<sup>th</sup> DCA 2001); *Moakley v. State*, 547 So.2d 1246 (Fla. 5<sup>th</sup> DCA 1989).

<sup>2</sup> *Raford v. State*, 828 So.2d 1012 (Fla. 2002).

<sup>3</sup> *Id.*

A person who knowingly or willfully abuses a child *without* causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a third degree felony<sup>4</sup>. This type of child abuse is often referred to as “simple” child abuse.

Section 827.03(2), F.S., defines *aggravated* child abuse, and provides, in part, that aggravated child abuse occurs when someone knowingly and willfully abuses a child and in doing so actually *causes* great bodily harm, permanent disability, or permanent disfigurement to a child.<sup>5</sup>

#### Caselaw - Relationship Between Chapter 39 and Section 827.03, F.S.

It would appear from the plain language of the statutes that a person who commits excessive corporal discipline, as defined by Ch. 39, F.S., could also be also be charged with a crime under s. 827.03, F.S. (either simple or aggravated depending on how serious the injury was). The courts, however, have used a different analysis.

In 2002, the Florida Supreme Court held that there is no parental privilege barring prosecution for simple child abuse under s. 827.03(1), F.S.<sup>6</sup> In its decision, the court discussed corporal punishment and when such punishment rises to the level of simple child abuse. After reviewing the legislative histories of Ch. 39 and s. 827.03, F.S., the court stated that a parent can be charged with *simple* child abuse for excessive corporal punishment that falls between the level of abuse required to establish *civil* child abuse and that required to prove *aggravated* child abuse.<sup>7</sup> The court stated that if a parent commits *civil* child abuse when a spanking results in significant welts, the legislature intended more serious beatings that do not rise to the level of aggravated child abuse to be treated as simple child abuse.<sup>8</sup>

In *King v. State*, 903 So.2d 954 (Fla. 2<sup>nd</sup> DCA 2005), the court cited the *Raford* case and held that a school administrator’s spanking that resulted in significant bruises or welts did not rise to the level of simple child abuse, but instead fell under the category of *civil* child abuse. The court noted, however, that their holding contradicted the plain language of s. 827.03(1), F.S. (defining child abuse as the intentional infliction of physical injury upon a child without causing great bodily harm, permanent disability, or permanent disfigurement). As such, the *King* court certified the following question to the Florida Supreme Court:

“Whether a spanking administered as corporal punishment that results in significant bruises or welts may constitute felony child abuse under Section 827.03(1), Florida Statutes.”

Despite the seeming incongruity in the law, the Florida Supreme Court denied review.<sup>9</sup>

#### Effect of the Caselaw

In essence, the courts appear to have created an “either or” approach to classifying excessive corporal discipline. Either excessive corporal discipline is *civil* child abuse, or it’s *simple* (or aggravated) criminal abuse. The caselaw does not appear to contemplate that the same act of excessive corporal discipline (e.g. a severe beating the causes significant bruises or welts) could qualify as both *civil* and simple child abuse. This is especially puzzling considering that the list of injuries that constitute excessive corporal discipline contained in Ch. 39, F.S. encompass a wide range of injuries (e.g. injuries ranging from cuts and sprains to skull fractures, spinal cord damage, and permanent loss of a body part). If an

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<sup>4</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>5</sup> s. 827.03(2), F.S.

<sup>6</sup> *Raford v. State*, 828 So.2d 1012, 1020 (Fla. 2002)

<sup>7</sup> *Id.* See also, *State v. McDonald*, 785 So.2d 640 (Fla. 2<sup>nd</sup> DCA 2001) (If a parent can be charged with civil child abuse when a spanking results in significant welts, the legislature intended more serious beatings that do not result in permanent disability or permanent disfigurement to be treated as simple child abuse.)

<sup>8</sup> *Id.* at 1019.

<sup>9</sup> *State v. King*, 908 So.2d 1058 (Fla. 2005).

act does not rise to the level of *simple* child abuse simply because it qualifies as *civil* child abuse, it is unclear when, if ever, a court will find that excessive corporal discipline qualifies as simple child abuse.

### **Effect of the Bill**

This bill amends the definition of the term “child abuse” in s. 827.03(1), F.S., to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver. The bill then defines the term “inappropriate or excessively harsh corporal discipline” as “an act of discipline that results in or could reasonably be expected to result in any of the following or other similar injuries:

- sprains, dislocations, or cartilage damage;
- bone or skull fractures;
- brain or spinal cord damage;
- intracranial hemorrhage or injury to other internal organs;
- asphyxiation, suffocation, or drowning;
- injury resulting from the use of a deadly weapon;
- burns or scalding;
- cuts, lacerations, punctures, or bites;
- disfigurement;
- loss or impairment of a body part or function;
- significant bruises or welts;
- mental injury.”<sup>10</sup>

As a result, courts will no longer have to look to Ch. 39, F.S., to try and glean the legislature’s intent in regards to when excessive corporal punishment rises to the level of criminal child abuse.

The bill also reenacts ss. 775.082(9)(a), 787.04(5), and 901.15(8), F.S., to incorporate the amendments to s. 827.03, F.S., in references thereto.

### **C. SECTION DIRECTORY:**

**Section 1.** Amends s. 827.03, F.S.; revising the definition of the term “child abuse” to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver; providing a penalty; defining “inappropriate or excessively harsh corporal discipline.

**Section 2.** Reenacting s. 775.082(9)(a), F.S., relating to mandatory minimum sentences for certain reoffenders previously released from prison, to incorporate the amendment to s. 827.03, F.S., in references thereto.

**Section 3.** Reenacting s. 787.04(5), F.S., relating to removing minors from the state or concealing minors contrary to state agency order or court order, to incorporate the amendment to s. 827.03, F.S., in references thereto.

**Section 4.** Reenacting s. 901.15(8), F.S., relating to when an arrest by an officer without a warrant is lawful, to incorporate the amendment to s. 827.03, F.S., in references thereto.

**Section 5.** This act takes effect July 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

#### **1. Revenues:**

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<sup>10</sup> This definition largely mirrors the language in Ch. 39, F.S.

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution, because it is a criminal law.

2. Other:

In *Marshall v. Reams*, 32 Fla. 499, 14 So. 95 (1893), the Florida Supreme Court recognized the "right of a parent, or one standing in loco parentis, to moderately chastise for correction a child under his or her control and authority." This bill would not remove this right from parents. As stated in *Raford*, "a parent may assert as an affirmative defense his or her parental right to administer 'reasonable' or 'nonexcessive' corporal punishment, i.e., a typical spanking, in a prosecution for simple child abuse."<sup>11</sup>

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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<sup>11</sup> *Raford v. State*, 828 So.2d 1012, 1020.