

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1239 CS Child Abuse
SPONSOR(S): Detert
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2266

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N	Cunningham	Kramer
2) Future of Florida's Families Committee	6 Y, 0 N	Preston	Collins
3) Criminal Justice Appropriations Committee	6 Y, 0 N	DeBeaugrine	DeBeaugrine
4) Justice Council	9 Y, 0 N, w/CS	Cunningham	De La Paz
5) _____	_____	_____	_____

SUMMARY ANALYSIS

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 *criminal* child abuse. The case law does not appear to contemplate that the same act of excessive corporal discipline (e.g., a severe beating that causes significant bruises or welts) could qualify as both civil *and* criminal child abuse.

This bill creates s. 827.032, F.S., entitled "Inappropriate or excessively harsh corporal discipline; penalties," and 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; or
- mental injury.

There is no fiscal impact anticipated to either local or state governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility – The bill creates s. 827.032, F.S., which defines the term “inappropriate or excessively harsh corporal discipline” and provides penalties.

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.¹ However, as stated by the Florida Supreme Court, the task of doing so is principally a legislative function.² 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, F.S. – Civil Child Abuse

Chapter 39, F.S., a *civil* statute, designates certain types of excessive corporal punishment as *civil* child abuse.³ 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; or
- 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.

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

² *Raford v. State*, 828 So.2d 1012 (Fla. 2002).

³ *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.⁴ 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.

Case law - Relationship Between Chapter 39 and Section 827.03, F.S.

It might 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 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.⁵ 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.⁶ 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.⁷

In *King v. State*, 908 So.2d 954 (Fla. 2nd 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.⁸

Effect of the Case law

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 *criminal* child abuse. The case law does not appear to contemplate that the same act of excessive corporal discipline (e.g., a severe beating that causes significant bruises or welts) could qualify as both *civil and criminal* child abuse. This is despite the fact that the list of injuries that constitute excessive corporal discipline contained in Ch. 39, F.S., encompasses a wide range of injuries (e.g., injuries ranging from cuts and sprains to skull

⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082, 775.083, or s. 775.084, F.S.

⁵ *Raford v. State*, 828 So.2d 1012, 1020 (Fla. 2002)

⁶ *Id.* See also, *State v. McDonald*, 785 So.2d 640 (Fla. 2nd 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.)

⁷ *Id.* at 1019.

⁸ *State v. King*, 908 So.2d 1058 (Fla. 2005).

fractures, spinal cord damage, and permanent loss of a body part). If an act does not rise to the level of *criminal* 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 creates s. 827.032, F.S., entitled “Inappropriate or excessively harsh corporal discipline; penalties.” The bill 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; or
- mental injury.”⁹

The bill further provides that a parent, legal custodian, or caregiver who knowingly or willingly inflicts inappropriate or excessively harsh discipline upon a child commits a felony of the third degree.

C. SECTION DIRECTORY:

Section 1. Amends s. 39.301, F.S., including the term “inappropriate or excessively harsh corporal discipline” to the definition of “criminal conduct” in relation to protective investigations.

Section 2. Creates s. 827.032, F.S., defining “inappropriate or excessively harsh corporal discipline;” prohibiting parents, legal custodians, and caregivers from inflicting inappropriate or excessively harsh corporal discipline; providing penalties; providing applicability.

Section 3. Amends s. 921.0022, F.S., adding s. 827.032, F.S, to the list of offenses included in Level Six of the Offense Severity Ranking Chart.

Section 4. Provides for an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Estimating Conference predicted an insignificant impact on the inmate population as a result of the provisions of this bill.

⁹ This definition largely mirrors the language in Ch. 39, F.S.

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."¹⁰

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 25, 2006, the Justice Council adopted a strike-all amendment and reported the bill favorably with committee substitute. The strike all amendment:

- Amends s. 39.301, F.S., to include the term "inappropriate or excessively harsh corporal discipline" to the definition of "criminal conduct" in relation to protective investigations.
- Creates s. 827.032, F.S., defining "inappropriate or excessively harsh corporal discipline", prohibiting parents, legal custodians, and caregivers from inflicting inappropriate or excessively harsh corporal discipline, providing penalties, and providing applicability.
- Amends s. 921.0022, F.S., to add s. 827.032, F.S., to the list of offenses included in Level Six of the Offense Severity Ranking Chart.
- Provides for an effective date of October 1, 2006.

¹⁰ *Raford v. State*, 828 So.2d 1012, 1020.