



330518

CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: FAV	.	
3/12/2008	.	
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	.	

1 The Committee on Children, Families, and Elder Affairs (Hill)  
 2 recommended the following **amendment**:

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 4 **Senate Amendment (with directory and title amendments)**

5 Delete line(s) 57-95

6 and insert:

7 (d) "Mental injury" means multiple instances of injury  
 8 caused by the same abuser to the intellectual or psychological  
 9 capacity of a child as evidenced by a discernible and  
 10 substantial impairment in the ability of the child to function  
 11 within the normal range of performance and behavior as supported  
 12 by expert testimony. A person may not give expert testimony  
 13 regarding mental injury unless that person is a licensed health  
 14 care provider under chapter 458 or chapter 459 and has devoted  
 15 professional time during the 3 years immediately preceding the

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16 date of the occurrence to the active clinical practice of, or  
17 consulting with respect to, a specialty that includes the  
18 evaluation, diagnosis, or treatment of the condition that is the  
19 subject of the offense.

20 (e)(3)(a) "Neglect of a child" means:

21 1. A caregiver's failure or omission to provide a child  
22 with the care, supervision, and services necessary to maintain  
23 the child's physical and mental health, including, but not  
24 limited to, food, nutrition, clothing, shelter, supervision,  
25 medicine, and medical services that a prudent person would  
26 consider essential for the well-being of the child; or

27 2. A caregiver's failure to make a reasonable effort to  
28 protect a child from abuse, neglect, or exploitation by another  
29 person.

30  
31 Except as otherwise provided in the section, neglect of a child  
32 may be based on repeated conduct or on a single incident or  
33 omission that results in, or could reasonably be expected to  
34 result in, serious physical or mental injury, or a substantial  
35 risk of death, to a child.

36 (2) OFFENSES.--

37 (a) A person who commits aggravated child abuse commits a  
38 felony of the first degree, punishable as provided in s.  
39 775.082, s. 775.083, or s. 775.084.

40 (b) A person who willfully or by culpable negligence  
41 neglects a child and in so doing causes great bodily harm,  
42 permanent disability, or permanent disfigurement to the child



43 commits a felony of the second degree, punishable as provided in  
44 s. 775.082, s. 775.083, or s. 775.084.

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

50 (d) ~~(e)~~ A person who willfully or by culpable negligence  
51 neglects a child without causing great bodily harm, permanent  
52 disability, or permanent disfigurement to the child commits a  
53 felony of the third degree, punishable as provided in s.  
54 775.082, s. 775.083, or s. 775.084.

55 (3) AFFIRMATIVE DEFENSES.--

56 (a) If the offense is based solely on oral statements of  
57 the defendant, it is an affirmative defense to a prosecution  
58 under this section that the conduct giving rise to the offense  
59 was solely speech protected by the First Amendment to the United  
60 States Constitution. This affirmative defense does not apply to  
61 speech that was directed to inciting or producing imminent  
62 lawless action and that was likely to incite or produce such  
63 action.

64 (b) If the offense is based solely on a claim of mental  
65 injury because of a caregiver's failure to make a reasonable  
66 effort to protect a child from an abuser other than the  
67 defendant, it is an affirmative defense to a prosecution under  
68 this section that the defendant was a victim of an act of  
69 domestic violence or had reasonable cause to believe that he or  
70 she was about to become a victim of an act of domestic violence



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71 as defined in s. 741.28, and the defendant had reasonable cause  
 72 to believe that the action or failure to act was necessary in  
 73 order for the defendant to escape from, or protect himself or  
 74 herself from, the domestic violence or to preserve the minor or  
 75 incompetent person from exposure to domestic violence. However,  
 76 this affirmative defense is not available to any person in  
 77 relation to instances of child abuse arising after the defense  
 78 has been previously asserted with respect to the same abuser.

79  
80 ===== T I T L E A M E N D M E N T =====

81 And the title is amended as follows:

82 Delete line(s) 3-5

83 and insert:

84 F.S.; defining the term "mental injury" with respect to  
 85 the offenses of abuse, aggravated abuse, and neglect of a  
 86 child; requiring that a person acting as an expert witness  
 87 have certain credentials; providing affirmative defenses  
 88 to the offenses of child abuse, aggravated child abuse,  
 89 and neglect; amending ss.