

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 1088

INTRODUCER: Children, Families, and Elder Affairs Committee and Senators Altman and Detert

SUBJECT: Criminal Conduct

DATE: April 5, 2011

REVISED: 04/12/11

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Walsh	CF	<b>Fav/CS</b>
2.	Dugger	Cannon	CJ	<b>Fav/1 amendment</b>
3.			JU	
4.			BC	
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |                                         |
|------------------------------|-------------------------------------|-----------------------------------------|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input checked="" type="checkbox"/> | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The bill changes the organizational structure of s. 827.03, F.S., the criminal child abuse statute, by creating a definition section, followed by an offenses section that describes the conduct proscribed by the statute and the applicable penalties.

Substantively, the bill adds a definition of “mental injury” to mean “injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability of the child to function within the normal range of performance and behavior as supported by expert testimony.”

The bill also amends s. 960.03, F.S., changing the definition of “crime” and “victim” as used in the Florida Crimes Compensation Act (Compensation Act). Specifically, the bill expands the definition to include any offense that results in psychiatric or psychological injury to a minor who was not physically injured by the criminal act.

This bill substantially amends sections 827.03 and 960.03 of the Florida Statutes. It also conforms cross-references to the following sections: 775.084, 775.0877, 782.07, 921.0022, and 948.062.

## II. Present Situation:

### Criminal Child Abuse

Pursuant to s. 827.03, F.S., criminal child abuse is defined as:

- Intentional infliction of physical or mental injury upon a child;
- An intentional act that could reasonably be expected to result in physical or mental injury to a child; or
- 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.

### Mental Injury

In recent years, the criminal child abuse statute has been challenged as unconstitutionally vague for its failure to define the term “mental injury.” In 2002, in *DuFresne v. State*, the Florida Supreme Court considered this issue.

In *DuFresne*, the Court acknowledged that “in order to withstand a vagueness challenge, a statute must provide persons of common intelligence and understanding adequate notice of the proscribed conduct.”<sup>1</sup> The Court noted, however, that

. . . the legislature’s failure to define a statutory term does not in and of itself render a penal provision unconstitutionally vague. In the absence of a statutory definition, resort may be had to case law or related statutory provisions which define the term . . . [internal citations omitted]<sup>2</sup>

The Court found that the child protection provisions of ch. 39, F.S., were “plainly interrelated” with the provisions of the criminal child abuse statute and that, as such, the criminal child abuse statute was not unconstitutionally vague because the term “mental injury” was adequately defined in ch. 39, F.S.<sup>3</sup> The Court held, “While it may obviously be preferable for the Legislature to place the appropriate definition in the same statute, citizens should be on notice that controlling definitions may be contained in other related statutes.”<sup>4</sup>

Section 39.01(42), F.S., defines the term “mental injury” as an “injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability to function within the normal range of performance and behavior.”

### Victim Assistance

The Compensation Act is established in ss. 960.01-960.28, F.S. For purposes of the Compensation Act, the term “victim” is defined to include:

- A person who suffers personal physical injury or death as a direct result of a crime;

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<sup>1</sup> *DuFresne v. State*, 826 So.2d 272, 275 (Fla. 2002).

<sup>2</sup> *Id.* at 275.

<sup>3</sup> *Id.* at 278.

<sup>4</sup> *Id.* at 279.

- A person less than 18 years of age who was present at the scene of a crime, saw or heard the crime, and suffered a psychiatric or psychological injury because of the crime, but who was not physically injured; or
- A person against whom a forcible felony was committed and who suffers a psychiatric or psychological injury as a direct result of that crime but who does not otherwise sustain a personal physical injury or death.<sup>5</sup>

Also for purposes of the Compensation Act, the term “crime” is defined to include “a felony or misdemeanor offense committed by either an adult or a juvenile which results in physical injury or death . . .”<sup>6</sup>

The Compensation Act provides that the following persons are eligible for awards:

- Victim;
- Intervener;
- Surviving spouse, parent or guardian, sibling, or child of a deceased victim or intervener; and
- Any other person who is dependent for his or her principal support upon a deceased victim or intervener.<sup>7</sup>

The Florida Attorney General’s Division of Victim Services<sup>8</sup> serves as an advocate for crime victims and victims’ rights and administers a compensation program to ensure financial assistance for innocent victims of crime.<sup>9</sup> Injured crime victims may be eligible for financial assistance for medical care, lost income, funeral expenses and other out-of-pocket expenses directly related to the injury.<sup>10</sup> Payment is made from the Crimes Compensation Trust Fund (Trust Fund),<sup>11</sup> and awards to eligible victims are limited as follows:

- No more than \$10,000 for treatment;
- No more than \$10,000 for continuing or periodic mental health care of a minor victim whose normal emotional development is adversely affected by being the victim of a crime;
- A total of \$25,000 for all compensable costs; or
- \$50,000 when there is a finding that a victim has suffered catastrophic injury.<sup>12</sup>

The Department of Legal Affairs has rulemaking authority to establish limits on awards within the statutory guidelines.

Pursuant to Rule 2A-2.002, F.A.C., application and benefit payment criteria, limitations, and procedures for victim assistance are provided in a publication entitled “Victim Compensation Assistance,” which is incorporated into the rules by reference.<sup>13</sup> This publication provides that

<sup>5</sup> Section 960.03(14), F.S.

<sup>6</sup> Section 960.03(3), F.S.

<sup>7</sup> Section 960.065(1), F.S.

<sup>8</sup> The Division of Victim Services is housed within the Office of Attorney General/Department of Legal Affairs.

<sup>9</sup> See <http://myfloridalegal.com/victims> (last visited March 15, 2011).

<sup>10</sup> *Id.*

<sup>11</sup> Section 960.21, F.S.

<sup>12</sup> Section 960.13(9)(a), F.S.

<sup>13</sup> The publication is in fact entitled Victim Compensation (BVC P-001), Office of the Attorney General, Division of Victim

the following mental health benefits are available to eligible individuals, up to the statutory limits, when the treatment is directly related to the crime and when such services are rendered by a person licensed to provide mental health counseling services:

- Inpatient mental health care for adults and minors but only for acute, crisis stabilization up to a maximum of seven days, and not to exceed \$10,000;
- Outpatient mental health care for adults (18 years of age or older), up to \$2,500;
- Mental health care for minors under the age of 16 who saw or heard the crime incident, and who suffered a psychological or psychiatric injury as a result of the crime, but were not physically injured, up to \$2,500;
- Mental health care for persons who suffer a psychiatric or psychological injury as a result of a forcible felony against the person, up to \$2,500;<sup>14</sup>
- Mental health care (outpatient) for a surviving minor child of a deceased victim, or a minor victim who was physically injured, up to \$10,000;<sup>15</sup> and
- Mental health care for a surviving spouse, parent, adult child or sibling of a deceased victim up to \$2,500, provided total benefits do not exceed \$10,000 per claim.<sup>16</sup>

When the Department of Legal Affairs determines that the monies available in the Trust Fund are insufficient to pay the program's anticipated expenditures, the department may limit the payment of benefits to a percentage of allowable benefits.<sup>17</sup>

### III. Effect of Proposed Changes:

The bill changes the organizational structure of s. 827.03, F.S., the criminal child abuse statute, by creating a definition section, followed by an offenses section that describes the conduct proscribed by the statute and the applicable penalties.

Substantively, the bill adds a definition of "mental injury" to mean "injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability of the child to function within the normal range of performance and behavior as supported by expert testimony." (This new definition is the same as the definition of mental injury s. 39.01, F.S., except that the definition in s. 39.01, F.S., does not include the language relating to expert testimony.)

The bill makes conforming changes to the following sections of the Florida Statutes:

- Section 775.084, F.S., relating to the definition of violent career criminals;
- Section 775.0877, F.S., relating to the criminal transmission of HIV;
- Section 782.07, F.S., relating to manslaughter;
- Section 921.0022, F.S., relating to the "Offense Severity Ranking Chart;" and

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Services and Criminal Justice Programs (effective January 1, 2000).

<sup>14</sup> This is the only benefit available to victims who do not suffer physical injury or death.

<sup>15</sup> When the child or victim reaches the age of 18, payment for outpatient services are limited to an additional \$2,500 or three years, whichever comes first, provided total benefits do not exceed \$10,000 per claim.

<sup>16</sup> Victim Compensation (BVC P-001), Office of the Attorney General, Division of Victim Services and Criminal Justice Programs (effective January 1, 2000).

<sup>17</sup> *Id.*

- Section 948.062, F.S., relating to the review of certain cases involving offenders on probation.

Finally, the bill amends s. 960.03, F.S., by changing the definition of “crime” and “victim” as used in the Compensation Act. Specifically, the bill expands the definition to include any offense that results in psychiatric or psychological injury to a minor who was not physically injured by the criminal act.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill, by expanding the definition of crime to include offenses that result in only psychiatric or psychological injury to a minor, increases the number of persons potentially eligible for compensation awards.

C. Government Sector Impact:

The bill expands the number of persons eligible to receive compensation awards to include minors who suffer only psychiatric or psychological injury as the result of an offense. Because the compensable costs for a minor in these circumstances will typically include only treatment expenses, the fiscal impact will likely be limited to \$10,000<sup>18</sup> times the number of minor victims who might become eligible.

#### **VI. Technical Deficiencies:**

None.

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<sup>18</sup> Section 960.13, F.S.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Children, Families, and Elder Affairs on March 22, 2011:**

Makes a number of changes to the bill, including:

- Amending the definition of “mental injury” to not require multiple instances caused by the same abuser in order to qualify as mental injury and to allow psychologists licensed under chapter 490, F.S., to provide testimony as an expert witness;
- Removing the affirmative defense provisions in the bill; and
- Providing that a victim of mental injury is included in the definition of “victim” as used in the Florida Crimes Compensation Act.

**B. Amendments:****Barcode 598956 by Criminal Justice on April 12, 2011:**

- Deletes the three years of previous specialized practice necessary to qualify to give expert testimony on mental injury under the bill.