

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 Committee on Children, Families, and Elder Affairs

BILL: CS/SB 904

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Thompson

SUBJECT: Abuse of a Parent

DATE: April 1, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanford	Hendon	CF	Fav/CS
2.			CJ	
3.			ACJ	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 904 creates s. 784.09, F.S., to establish new criminal offenses involving actions by a child to a parent. It includes definitions for “child” and “parent.” It describes the new offenses of abuse of a parent, aggravated offense of a parent, exploitation of a parent’s assets, and emotional abuse of a parent. The bill establishes penalties for commission of each of these offenses. It allows for the reduction of felony charges to misdemeanors upon conviction of aggravated abuse of a parent or exploitation of a parent’s assets when such reduction is requested by the state attorney or defense attorney.

The bill requires any person with knowledge or reasonable cause to suspect that a parent is being abused or that a parent’s assets are being exploited by a child to report such knowledge or suspicion to the DCF central abuse hotline and provides that any person who files such a report or participates in an investigation resulting from such reporting in good faith is immune from prosecution for such reporting or participation.

The bill is not expected to have a significant fiscal effect on the state. It has an effective date of October 1, 2014.

II. Present Situation:

On July 15, 2013, Rosemary Pate, the 51-year-old mother of Everett Pate, was killed in her home. Her son has been charged with first degree murder as a result. The death and subsequent arrest of Everett Pate, along with two of his friends, received extensive media coverage in the Orange County area.^{1,2} As a result of that incident, family members have urged that legislation be enacted which would address crimes committed by children against their parents.³

Current law contains a number of statutes which address issues touched on by this bill, but these statutes do not specifically name parents or children as victims or perpetrators. Examples of current laws which appear to address offenses similar to those established in the bill are: s. 784.011, F.S., (assault); s. 784.021, F.S., (aggravated assault); s. 784.03, F.S., (battery; felony battery); s. 784.045, F.S., (aggravated battery); s. 812.014, F.S., (theft); ch. 825, F.S., (abuse, neglect, and exploitation of elderly persons and disabled adults); and s. 836.05, F.S., (threats, extortion).

Current law does not contain any provision specifically allowing for mitigation of an offense if requested by the state attorney or defense counsel when the parent is the victim of the offense.

Chapter 921, F.S., relates to sentencing of offenders convicted of felonies. It requires that all non-capital felonies either be assigned a severity ranking or be ranked by default.⁴ The rankings determine the level of punishment to be administered for each offense. The rankings range from one to 10, with level one being the least serious and level 10 the most serious.⁵

Section 39.201, F.S., currently requires reporting to the Department of Children and Families abuse hotline known or suspected cases of child abuse, and s. 39.205, F.S., provides that person's reporting in good faith are immune from liability. Similarly, s. 415.1034, F.S., requires reporting to the same hotline known or suspected cases of abuse to vulnerable adults, and s. 415.1036, F.S., provides immunity from liability for such reports. There is no legislative mandate to report known or suspected parental abuse.

III. Effect of Proposed Changes:

Section 1 creates s. 784.09, F.S., to establish new criminal offenses involving actions by a child to a parent. It includes definitions for "child" and "parent." The definition of "parent" is limited to the biological parent of the child. The bill describes the new offenses of abuse of a parent, aggravated offense of a parent, exploitation of a parent's assets, and emotional abuse of a parent.

¹ *Son Charged with murder in Ocoee mother's death, police say*, CLICKORLANDO, July 15, 2013, available at <http://www.clickorlando.com/news/police-investigate-possible-homicide-in-ocoe/20986684> (last visited Mar. 27, 2014). *Ocoee mother lived in fear of delinquent son charged with her murder*, ORLANDO SENTINEL, July 17, 2013, available at http://articles.orlandosentinel.com/2013-07-17/news/os-son-charged-murder-rosemary-pate-20130717_1_mother-and-son-ocoe-mother-multiple-times (last visited Mar. 27, 2014).

² According to the Orange County Office of the State Attorney, the criminal charges are still pending and Everett Pate is still incarcerated, as of March 27, 2014.

³ *Parent abuse would be a crime under proposed law*, ORLANDO SENTINEL, Feb. 24, 2014, available at <http://orlandosentinel.com/news/politics/os-parent-abuse-20140224,0,808333.story> (last visited March 27, 2014).

⁴ Section 921.0023, F.S.

⁵ Section 921.0022, F.S.

The bill establishes penalties for commission of each of these offenses. It allows for the reduction of felony charges to misdemeanors upon conviction of aggravated abuse of a parent or exploitation of a parent's assets when such reduction is requested by the state attorney or defense attorney. The reduced sentence may include probation or attendance in specialized intervention programs.

The bill requires any person with knowledge or reasonable cause to suspect that a parent is being abused or that a parent's assets are being exploited by a child to report such knowledge or suspicion to the DCF central abuse hotline and provides that any person who files such a report or participates in an investigation resulting from such reporting in good faith is immune from prosecution for such reporting or participation.

Section 2 provides for an effective date of October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill, in describing the offense of "aggravated abuse of a parent," refers to the underlying offenses of "aggravated battery pursuant to s. 784.045, F.S., or aggravated assault pursuant to s. 784.021, F.S." The constitutional prohibition against double jeopardy would limit sentencing for this offense, if convicted, to either the new offense or to one of the underlying offenses, since one cannot be sentenced twice for the same acts even if charged under two different statutory provisions.⁶

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

⁶ FLA. CONST. art I, s. 9.

C. Government Sector Impact:

The Department of Children and Families expects an indeterminate impact as a result of the increased calls to its hotline.

Similarly, the Office of the State Courts Administrator predicted an indeterminate impact on the courts as the result of adding these new offenses.

VI. Technical Deficiencies:

Since the bill does not rank the new offenses under s. 921.0022, F.S., the default provision of s. 921.0023, F.S., would apply, in some instances resulting in a lesser penalty than the underlying offense would have received.

The effect of calling the DCF hotline for these offenses is unclear, since DCF is not instructed to investigate the offenses or to take any particular action after receiving the calls.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 784.09 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on April 1, 2014:

The Committee Substitute:

- Changes the placement of the new provisions from ch. 741, F.S., relating to marriage and domestic violence, to ch. 784, F.S., relating to assault, battery, and culpable negligence.

B. Amendments:

None.