

**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 1172

**INTRODUCER:** Criminal Justice Committee and Senator Detert

**SUBJECT:** Criminal Conduct

**DATE:** February 9, 2012      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.			JU	
3.			BC	
4.				
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 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.” (This new definition is the same as the definition of mental injury in s. 39.01, F.S., except that the definition in s. 39.01, F.S., does not include the language relating to expert testimony.) Expert testimony requirements under the bill only apply to criminal court cases, not family or dependency court cases.

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 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 Statute

Section 827.03, F.S., Florida's criminal child abuse statute, provides as follows.

"Child Abuse" is defined to mean:

- Intentionally inflicting physical or mental injury upon a child;
- Committing an intentional act reasonably expected to result in physical or mental injury to a child, or;
- Actively encouraging the commission of an act resulting in physical or mental injury to a child.

It is a third degree felony offense to knowingly or willfully abuse a child without causing great bodily harm, permanent disability, or permanent disfigurement.<sup>1</sup>

"Aggravated child abuse" is defined to mean:

- Committing aggravated battery on a child;
- Willfully torturing, maliciously punishing, or willfully and unlawfully caging a child; or
- Knowingly or willfully abusing a child, thereby causing great bodily harm, permanent disability, or permanent disfigurement.

It is a first degree felony to commit aggravated child abuse.<sup>2</sup>

### 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>3</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>4</sup>

<sup>1</sup> A third degree felony is punishable by potentially serving up to 5 years in prison and paying up to a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>2</sup> A first degree felony is punishable by potentially serving up to 30 years in prison and paying up to a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>3</sup> *DuFresne v. State*, 826 So.2d 272, 275 (Fla. 2002).

<sup>4</sup> *Id.* at 275.

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>5</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>6</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.”

### **Expert Testimony**

Florida’s evidence code specifically addresses expert testimony. Section 90.702, F.S., provides that if scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion. However, the opinion is admissible only if it can be applied to evidence at trial. The determination of a witness’s qualifications to express an expert opinion is within the discretion of the trial judge, whose decision will not be reversed absent a clear showing of error.<sup>7</sup> The weight and credibility given to expert testimony is a matter for the fact finder.<sup>8</sup>

In regards to medical expert testimony, courts have held that whether a doctor is qualified to testify as an expert depends upon whether the doctor is known to have such skill, knowledge, or experience with respect to the subject matter about which the doctor is called to testify that it appears to the trial court that the doctor’s opinion will aid a jury in resolving the ultimate issue of fact.<sup>9</sup> For example, Florida’s Fourth District Court of Appeal held that the testimony of a physician which outlined her formal training and experience and her licensing as a physician in two states with a specialty in child and adolescent psychiatry established her qualifications to render an opinion on whether the victim of alleged sexual assault was suffering from posttraumatic stress syndrome.<sup>10</sup>

Outside of the requirements contained in s. 90.702, F.S., Florida law does not place limitations as to who can provide expert testimony in criminal child abuse cases. In other words, anyone can provide expert testimony in such cases so long as the trial judge determines that the person is qualified to express an expert opinion.

### **Victim Assistance**

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

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<sup>5</sup> *Id.* at 278.

<sup>6</sup> *Id.* at 279.

<sup>7</sup> *See, Anderson v. State*, 863 So.2d 169 (Fla.2003).

<sup>8</sup> *See, Horowitz v. American Motorist Inc. Co.*, 343 So.2d 1305 (Fla. 2nd DCA 1977).

<sup>9</sup> *See, Pearson v. State*, 254 So.2d 573 (Fla. 3rd DCA 1971).

<sup>10</sup> *Kruse v. State*, 483 So.2d 1383 (Fla. 4th DCA 1986).

- A person who suffers personal physical injury or death as a direct result of a crime;
- 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>11</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>12</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>13</sup>

The Florida Office of the Attorney General’s Division of Victim Services<sup>14</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>15</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>16</sup> Payment is made from the Crimes Compensation Trust Fund (Trust Fund).<sup>17</sup> The Office of Attorney General may adopt rules establishing compensation award limits: however, compensation awards to eligible victims are statutorily 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
- Fifty thousand dollars when there is a finding that a victim has suffered catastrophic injury.<sup>18</sup>

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<sup>11</sup> Section 960.03(14), F.S.

<sup>12</sup> Section 960.03(3), F.S.

<sup>13</sup> Section 960.065(1), F.S.

<sup>14</sup> The Division of Victim Services is housed within the Office of Attorney General/Department of Legal Affairs.

<sup>15</sup> See <http://myfloridalegal.com/victims> (last visited February 1, 2012).

<sup>16</sup> *Id.*

<sup>17</sup> Section 960.21, F.S.

<sup>18</sup> Section 960.13(9)(a), F.S.

### III. Effect of Proposed Changes:

#### **Criminal Child Abuse Statute**

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 in 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 also creates a new “expert testimony” subsection in s. 827.03, F.S., specifying the following requirements:

- A physician may not provide expert testimony in a criminal child abuse case unless he or she is a physician licensed under chapters 458 or 459, F.S., or has obtained certification as an expert witness pursuant to s. 458.3175, F.S.<sup>19</sup>
- A physician may not provide expert testimony regarding mental injury unless he or she is a physician licensed under chapters 458 or 459, F.S., who is board certified in psychiatry, or has obtained certification as an expert witness pursuant to s. 458.3175.
- A psychologist may not give expert testimony regarding mental injury unless the psychologist is licensed under chapter 490, F.S.

The bill specifies that these expert testimony requirements only apply to criminal court cases, not family court or dependency court cases.

#### **Victim Assistance**

The bill also 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.

Finally, 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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<sup>19</sup> Section 458.3175, F.S., requires the Department of Health to issue a certificate authorizing a physician who holds an active and valid license to practice medicine in another state or a province of Canada to provide expert testimony in this state, if the physician submits a registration application and an application fee.

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

**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 crime compensation awards.

**C. Government Sector Impact:**

The bill expands the number of persons eligible to receive crime compensation awards to include minors who suffer psychiatric or psychological injury as the result of an offense. The Office of Attorney General indicates that “unless Victims Compensation can estimate the number of persons under the age of 18 who received a psychiatric or psychological injury and the amount of assistance they will require, a fiscal estimate is difficult. Without additional data, the fiscal impact on the Crimes Compensation trust fund would be indeterminate but potentially very significant.”<sup>20</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>20</sup> E-mail from Legislative Affairs in the Florida Office of the Attorney General, dated January 23, 2012, on file with the Senate Criminal Justice Committee staff.

**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 Criminal Justice on February 9, 2012:**

Specifies that physicians and psychologists can only provide expert testimony in criminal child abuse cases if they meet the following requirements:

- A physician may not provide expert testimony unless he or she is a physician licensed under chapters 458 or 459, F.S., or has obtained certification as an expert witness pursuant to s. 458.3175, F.S.
- A physician may not provide expert testimony regarding mental injury unless he or she is a physician licensed under chapters 458 or 459, F.S., who is board certified in psychiatry, or has obtained certification as an expert witness pursuant to s. 458.3175, F.S.
- A psychologist may not give expert testimony regarding mental injury unless the psychologist is licensed under chapter 490, F.S.

- B. **Amendments:**

None.