

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1285 Criminal Conduct
SPONSOR(S): Criminal Justice Subcommittee; Schwartz
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1172

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Cunningham	Cunningham
2) Justice Appropriations Subcommittee	14 Y, 0 N	Toms	Jones Darity
3) Judiciary Committee			

SUMMARY ANALYSIS

In 2001, s. 827.03, F.S. (the criminal child abuse statute), was challenged as being unconstitutionally vague because the statute does not define the term "mental injury." In 2002, the Florida Supreme Court held that the statute was not unconstitutionally vague because "mental injury" was defined in chapter 39, F.S., a related child-protection statute. However, the court suggested that it would be preferable for the Legislature to place a definition in s. 827.03, F.S.

The bill amends s. 827.03, F.S., to define the term "mental injury" as "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 definition significantly mirrors the definition found in s. 39.01, F.S.

The bill also 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 in a criminal child abuse case unless the physician 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 in a criminal child abuse case regarding mental injury unless the physician 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 in a criminal child abuse case regarding mental injury unless the psychologist is licensed under chapter 490, F.S.

The bill also amends the definition of the terms "victim" and "crime" contained in chapter 960, F.S. (the victim assistance chapter). The definition of the term "victim" is expanded to include a person younger than 18 who was the victim of a felony or misdemeanor offense that resulted in a psychiatric or psychological injury, but who was not physically injured. The term "crime" is amended to include felonies or misdemeanors committed by an adult or a juvenile which result in psychiatric or psychological injury to a person less than 18 years of age who was not physically injured by the criminal act. These changes expand the pool of persons eligible for victim compensation awards.

The Florida Office of the Attorney General reports that the bill's impact on the Crimes Compensation Trust Fund would be indeterminate. With the expanded definitions of the terms "victim" and "crime", there will be more victims eligible to receive awards. The Crimes Victims' Services Office would have to lower the rates of compensation given to each victim to stay within the budget of the Crimes Compensation Trust Fund.

The bill is effective October 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Criminal Child Abuse – Mental Injury

Section 827.03, F.S., Florida's criminal child abuse statute, currently provides the following:

- (1) "Child abuse" means:
 - (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.

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.¹

- (2) "Aggravated child abuse" occurs when a person:
 - (a) Commits aggravated battery on a child;
 - (b) Willfully tortures, maliciously punishes, or willfully and unlawfully cages a child; or
 - (c) Knowingly and willfully abuses a child and in doing so causes great bodily harm, permanent disability, or permanent disfigurement to a child.

A person who commits aggravated child abuse commits a first degree felony.²

In 2001, the criminal child abuse statute was challenged as being unconstitutionally vague based on the fact that the statute does not define the term "mental injury."³ In 2002, the Florida Supreme Court held that the statute was not unconstitutionally vague because "mental injury" was defined in chapter 39, F.S.,⁴ a related child-protection statute.⁵ However, the court suggested that it would be preferable for the Legislature to place a definition in s. 827.03, F.S.⁶

Effect of the Bill

The bill amends s. 827.03, F.S., to define the term "mental injury" as "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 definition significantly mirrors the definition found in s. 39.01, F.S.

The bill also reorganizes s. 827.03, F.S., to improve its readability, and amends the following statutes to conform them to these organizational changes.

- Section 775.084, F.S. (relating to violent career criminals, etc.)
- Section 775.0877, F.S. (relating to criminal transmission of HIV)
- Section 782.07, F.S. (relating to manslaughter, etc.)
- Section 921.0022, F.S. (the offense severity ranking chart)
- Section 948.062, F.S. (relating to reporting offenses committed by probationers)

¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

² A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

³ See *State v. DuFresne*, 782 So.2d 888 (Fla. 4th DCA 2001).

⁴ Section 39.01(42), F.S., defines "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."

⁵ See *DuFresne v. State*, 826 So.2d 272 (Fla. 2002).

⁶ The court stated in its opinion that "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." *Id.* at 279.

Criminal Child Abuse – 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.⁷ The weight and credibility given to expert testimony is a matter for the fact finder.⁸

In regards to medical expert testimony, courts have held that whether a doctor is qualified to testify as an expert depends upon whether he or she is known to have such skill, knowledge, or experience with respect to subject matter about which he or she is called to testify that it appears to the trial court that his or her opinion will aid a jury in resolution of the ultimate issue of fact.⁹ For example, Florida's 4th 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.¹⁰

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.

Effect of the Bill

The bill creates a new "expert testimony" subsection in s. 827.03, F.S., and 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 in a criminal child abuse case unless the physician 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.¹¹
- A physician may not provide expert testimony in a criminal child abuse case regarding mental injury unless the physician 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 in a criminal child abuse case regarding mental injury unless the psychologist is licensed under chapter 490, F.S.

Victim Assistance

The Florida Office of the Attorney General's (OAG) Division of Victim Services serves as an advocate for crime victims and administers a compensation program to ensure financial assistance for innocent victims of crime.¹² Currently, 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.¹³

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

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

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

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

¹¹ 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.

¹² Crime Victims' Services (<http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument>)(last visited on January 23, 2012).

¹³ *Id.*

Payment is made from the Crime Compensation Trust Fund.¹⁴ The sources of revenue in this trust fund are receipts from additional court costs, fines and from restitution received from the Federal Government. The OAG may adopt rules establishing compensation award limits, however, compensation awards may not exceed:

- \$10,000 for treatment;
- \$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 the OAG makes a written finding that the victim has suffered a catastrophic injury as a direct result of the crime.¹⁵

While s. 960.03(14), F.S., defines the term “victim” to include persons who have suffered *physical* injury, the term also includes certain victims who suffer *mental* injuries. Children under 16 who are 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 are not physically injured are considered “victims” for compensation purposes, as are people who suffer a psychiatric or psychological injury as a direct result of a forcible felony¹⁶ being committed upon them.¹⁷

Section 960.03(3), F.S., also defines the term “crime” for victim assistance purposes to include “a felony or misdemeanor offense committed by either an adult or a juvenile which results in physical injury or death.”

Effect of the Bill

The bill amends s. 960.03, F.S., to expand the definition of the term “victim” to include a person younger than 18 who was the victim of a felony or misdemeanor offender that resulted in a psychiatric or psychological injury, but who was not physically injured.

The bill also amends the definition of the term “crime” to include felonies or misdemeanors committed by an adult or a juvenile which result in psychiatric or psychological injury to a person less than 18 years of age who was not physically injured by the criminal act.

B. SECTION DIRECTORY:

Section 1. Amends s. 827.03, F.S., relating to abuse, aggravated abuse, and neglect of a child; penalties.

Section 2. Amends s. 775.084, F.S., relating to violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms.

Section 3. Amends s. 775.0877, F.S., relating to criminal transmission of HIV; procedures; penalties.

Section 4. Amends s. 782.07, F.S., relating to manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.

Section 5. Amends s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.

¹⁴ Section 960.21, F.S.

¹⁵ Section 960.13, F.S.

¹⁶ The term “forcible felony” means “treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.” Section 776.08, F.S.

¹⁷ Section 960.03, F.S.

Section 6. Amends s. 948.062, F.S., relating to reviewing and reporting serious offenses committed by offenders placed on probation or community control.

Section 7. Amends s. 960.03, F.S., relating to definitions; ss. 960.01-960.28.

Section 8. This bill takes effect October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons younger than 18, who are the victim of a criminal offense that resulted in a psychiatric or psychological injury, but no physically injury, will be eligible for victim compensation awards.

D. FISCAL COMMENTS:

Chapter 960, F.S. sets guidelines for the Crime Victims' Services Office within the OAG and allows the office to set the rates of compensation given to each victim based on yearly projections. The awards are provided out of the Crimes Compensation Trust Fund. Examples of victims who currently receive awards are:

- elderly persons or disabled adults who suffer a property loss that causes a substantial diminution in their quality of life;
- a child who suffers psychiatric or psychological injury as a direct result of online sexual exploitation;
- children who have been identified by the National Center for Missing and Exploited Children as a victim of child pornography.
- A victim of domestic violence who needs immediate assistance to escape from a domestic violence environment

The Florida Office of the Attorney General reports that the bill's impact on the Crimes Compensation Trust Fund would be indeterminate. With the expanded definitions of the terms "victim" and "crime", there will be more victims eligible to receive awards. The Crimes Victims' Services Office would have to lower the rates of compensation given to each victim to stay within the budget of the Crimes Compensation Trust Fund.

The bill will not have an impact to the General Revenue Fund.

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:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2012, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment creates a new "expert testimony" subsection in s. 827.03, F.S., and specifies that physicians and psychologists can only provide expert testimony in criminal child abuse cases if they meet certain requirements.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.