

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 246

SPONSOR: Criminal Justice Committee and Senator Mitchell

SUBJECT: Offenses Committed against or in the Presence of Children

DATE: March 10, 1999 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>CF</u>	_____
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

The CS would require, rather than allow, the court to apply the current sentencing enhancer under the Criminal Punishment Code (subtotal sentence points are multiplied by 1.5) when the primary offense is an act of domestic violence committed in the presence of a child under 16 years of age by a family member. The CS would also provide a statutorily authorized preferred arrest policy statement for the criminal investigation of child abuse cases, similar to domestic violence cases.

The CS substantially amends, creates, or repeals the following sections of the Florida Statutes: 901.15, 921.0024.

## II. Present Situation:

Child abuse is punishable as a third degree felony under s. 827.03, F.S. It requires intentional infliction of physical or mental injury to a child, an intentional act that could reasonably be expected to result in injury to a child, or the active encouragement to commit an act that results or could reasonably be expected to result in injury to a child. A person who knowingly or willfully abuses a child *without causing* great bodily harm, permanent disability, or permanent disfigurement to that child commits child abuse under s. 827.03(1), F.S.

A person who knowingly or willfully abuses a child and *causes* great bodily harm, permanent disability, or permanent disfigurement to the child commits aggravated child abuse, which is punishable as a second degree felony under s. 827.03(2), F.S. It is also aggravated child abuse to commit an aggravated battery on a child or to willfully torture, maliciously punish, or willfully and unlawfully cage a child under this section.

Presently, the term "domestic violence" is defined in the domestic violence statute to mean "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnaping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same

single dwelling unit.” s. 741.28(1), F.S. The criminal penalty for domestic violence depends upon what the punishment is for the specific offense that is committed against a family or household member. For instance, if a battery is committed, it is punishable as a first degree misdemeanor. If an aggravated battery is committed, it is punishable as a second degree felony.

Under the Criminal Punishment Code in s. 921.0024(1)(b), F.S. (Supp.1998), there is a *discretionary* 1.5 multiplier of total sentencing points if the primary offense is an act of domestic violence committed in the presence of a child under 16 years of age by a family member. This sentencing multiplier gives the court the ability to enhance the penalty for committing an act of felony domestic violence in a child’s presence.

Section 901.15, F.S. (Supp. 1998), allows a law enforcement officer to conduct a warrantless arrest when the officer has probable cause to believe that a person has committed an act of domestic violence, child abuse, any battery on another person, or an act of criminal mischief or a graffiti-related offense. s. 901.15(7), F.S. (Supp. 1998).

This section also provides a preferred arrest policy for domestic violence cases by providing that the decision to arrest does not require the consent of the victim or consideration of the relationship of the parties. Furthermore, the statute expressly provides that it is the public policy of the state to strongly discourage arrest and charges of both parties for domestic violence on each other and to encourage training of law enforcement and prosecutors in this area of the law. The statute also provides law enforcement acting in good faith and exercising due care in making an arrest under this subsection with immunity from prosecution. s. 901.15(7), F.S. (Supp. 1998). There is currently no similar preferred arrest policy statement for child abuse cases in the statute.

### **III. Effect of Proposed Changes:**

The CS would require, rather than allow, the court to apply the current sentencing enhancer under the Criminal Punishment Code (subtotal sentence points are multiplied by 1.5) when the primary offense is an act of domestic violence committed in the presence of a child under 16 years of age by a family member. This sentencing multiplier would give the court the ability to enhance the penalty anytime the primary offense is for committing an act of felony domestic violence in the presence of a child under 16 years of age.

The CS would also provide a preferred arrest policy statement for child abuse cases, similar to what is currently provided in statute for domestic violence cases. Section 901.15, F.S. (Supp. 1998), would be amended to provide that the decision for law enforcement to conduct a warrantless arrest for committing child abuse would not require the consent of the victim or consideration of the relationship of the parties. The statute would expressly provide that it is the public policy of the state to protect abused children by strongly encouraging the arrest and prosecution of persons who commit child abuse. The CS would also provide law enforcement acting in good faith and exercising due care with immunity from civil liability in making an arrest under this subsection.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The Criminal Justice Estimating Conference will consider this bill for potential fiscal impact during the week of March 7, 1999.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Governor's Task Force on Child Abuse recommended in a report issued in May of 1998 that the Legislature should amend s. 901.15, F.S., to require a preferred arrest policy in the criminal investigation of child abuse cases, similar to what exists in the law for domestic violence cases, including immunity for law enforcement for such arrests.

**VIII. Amendments:**

None.