

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1834

SPONSOR: Children and Families Committee and Senator Bennett

SUBJECT: Child and Vulnerable Adults Abuse

DATE: April 9, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dowds	Whiddon	CF	Favorable/CS
2.			JU	
3.			CJ	
4.			ACJ	
5.				
6.				

I. Summary:

Committee Substitute for SB 1834 modifies the statutes of limitations in s. 95.11, F.S., relative to intentional tort based on abuse to provide separate provisions for abuse of a vulnerable adult, abuse of a child, and childhood sexual abuse. These newly created intentional tort provisions expand the offenses and broaden the individuals and entities against which civil remedy may be sought for abuse of a child or vulnerable adult.

This bill substantially amends sections 95.11 of the Florida Statutes.

II. Present Situation:

Florida Statutes identify acts that are to be considered abuse and provide for criminal and civil action in response to such acts. Chapters 39 and 415, F.S., set forth those abusive acts from which children and vulnerable adults need protection. "Abuse" as defined in s. 39.01, F.S., is any willful act or threatened act that results in physical, mental, or sexual injury or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. It also includes omissions on the part of the caregiver. Action may also be initiated to protect a child if the child has been neglected or abandoned, both of which are also defined in s. 39.01, F.S. Abuse of vulnerable adults for the purpose of adult protective services is defined in s. 415.102(1), F.S., as any willful or threatened act, or omission of such act, "that causes or is likely to cause significant impairment to a vulnerable adult's physical, mental, or emotional health." Protections for children and vulnerable adults available through these chapters include, but are not limited to, removing the child or vulnerable adult from the home or abusive setting, providing services to prevent future abuse, and, in the case of abusive acts against a vulnerable adult pursuant to ch. 415, F.S., providing for civil action to recover actual and punitive damages.

Abuse, neglect, and abandonment are also defined in ch. 984, F.S. for the Children and Families in Need of Services provisions which mirror to a large extent the definitions of ch. 39, F.S.

The commission of abusive acts may also be considered a criminal offense. Examples of such criminal violations include the following:

- Incest, pursuant to s. 826.04, F.S., which provides for a third degree felony for any person to marry or have sexual intercourse with a person within the defined relationship;
- Abuse of children, pursuant to ch. 827, F.S., which includes
 - child abuse – intentional acts that cause injury or could reasonably be expected to cause injury which is a third degree felony,
 - aggravated child abuse – aggravated battery, willful torturing, or abuse that causes great bodily harm to a child which is a first degree felony, and
 - neglect of a child – caregivers failure to provide a child with the necessary care, supervision, and services to maintain the child’s physical and mental health which is either a second or third degree felony based on the harm caused by the act;
- sexual battery, pursuant to s. 794.11, F.S., which provides for a series of sexual battery offenses based on the age of the victim and perpetrator and the circumstances of the act, the offenses for which range from a third degree felony to a capital or life felony; and
- lewd and lascivious offenses, pursuant to s. 800.04, F.S., which consists of a series of acts, including lewd or lascivious battery, lewd and lascivious molestation, lewd or lascivious conduct, and lewd or lascivious exhibition, the offenses for which range from third to first degree felonies.

Chapter 95, F.S., provides for statutes of limitations within which civil actions may be initiated. The courts have recognized the purpose of the statutes of limitations as “to bar claims which have been dormant for a number of years and which have not been enforced by persons entitled to enforcement” (*Employers’ Fire Insurance Company v. Continental Insurance Company*, 326 So 2d 177, Fl 1976). Section 95.11, F.S., sets forth the prescribed time frames within which actions that are not for the recovery of real property must be commenced. Actions involving certain intentional torts¹, including battery and assault, must be commenced within 4 years with the exception of alleged abuse as defined in ss. 39.01, 415.102, or 984.03, or incest as defined in s. 826.04, F.S. For these alleged acts, action may be initiated within the following time frames, whichever occurs later: 7 years after the age of majority²; within 4 years after the injured person leaves the dependency of the abuser; or within 4 years from when the injury and the causal relationship between the injury and the abuse were discovered by the injured party.

III. Effect of Proposed Changes:

CS/SB 1834 modifies the statutes of limitations in s. 95.11, F.S., relative to intentional tort based on abuse to provide separate provisions for abuse of a vulnerable adult, abuse of a child, and childhood sexual abuse. These newly created intentional tort provisions expand the offenses and

¹ Intentional tort is defined in Black’s Law Dictionary as torts committed by someone acting with general or specific intent.

² Current law places the age of majority at 18 years (s. 743.07, F.S.). Additionally, the disability of nonage may be removed by other acts or means. Specifically, s. 743.015, F.S., allows for the removal of the disability of nonage under certain circumstances for persons 16 years of age or older.

broaden the individuals and entities against which civil remedy may be sought for abuse of a child or vulnerable adult.

CS/SB 1834 amends ch. 95, F.S., pertaining to the statutes of limitations to expand the current provision for general intentional tort based on abuse to create the three following separate actions for intentional tort relative to abuse:

- An intentional tort based on abuse of a vulnerable adult: Action based on alleged abuse as defined in s. 415.102, F.S., and incest as defined in s. 826.04, F.S., involving a vulnerable adult may be commenced within whichever time frame occurs later: 4 years after the injured person leaves the dependency of the abuser or 4 years from when the injured party or a person who is in a position of trust and confidence as defined in s. 415.102, F.S., discovers the injury and that the abuse caused the injury. A maximum of 7 years is established for commencing action. “Vulnerable adult” is defined for the purposes of this provision as a person age 18 years or older who has an impaired ability to perform normal activities of daily living or to care for or protect himself or herself due to a mental, emotional, physical, or developmental disability or dysfunction, brain damage or disability of age.
- An intentional tort based on abuse of a child: Actions based on alleged child abuse as defined ss. 39.01 and 984.03, F.S., and incest as defined in s. 826.04, F.S., may be commenced within 7 years after the injured person reaches age of majority, within 4 years after the person leaves the dependency of the abuser, or within 4 years from the injured person’s discovery of the injury and the causal relationship between the injury and the abuse, whichever time frame occurs later. “Child” is defined for the purposes of this subsection as any person under the age of 18 years who is unmarried and has not been emancipated by order of the court. Sexual abuse is specifically excluded from this intentional tort provision.
- An intentional tort based on childhood sexual abuse: Actions based on alleged childhood sexual abuse may be commenced within whichever time frame occurs later: 7 years after the injured person reaches age of majority, 4 years after the person leaves the dependency of the abuser, or 4 years from when the psychological injury or other illness occurred after the age of majority is discovered by the injured person. These time frames apply to the following actions: an action against a person who committed an act of childhood sexual abuse; an action for liability against a person or entity who has the duty of care and the wrongful, intentional, or negligent act of that person or entity was the legal cause of the childhood sexual abuse; and an action for liability against a person or entity for the intentional act that was the legal cause of the childhood sexual abuse.

Additional parameters for commencing the actions against a person or entity who had the duty of care and the actions against a person or entity where the intentional act was the legal cause of the childhood sexual abuse are established by the bill as follows:

- Actions must be commenced before the injured party’s 25th birthday unless the person or entity knew of the complaint for unlawful sexual conduct against an employee, volunteer, representative, or agent of the entity, or had reason to know of such a complaint, and reasonable action was not taken to prevent similar unlawful sexual

- acts in the future (requiring or providing counseling is not considered reasonable action); and
- Actions that would be barred as of January 1, 2004, solely because the applicable statute of limitation has expired are revived but must be commenced within 1 year.

The bill stipulates that the limitation of commencing the action before the injured party's 25th birthday does not apply to an action litigated to its finality prior to January 1, 2004, or to an executed settlement agreement entered into by both parties. "Childhood sexual abuse" is defined for the purposes of this intentional tort as any act defined in ss. 39.01, 794.011, 800.04, 827.03, or 984.03, F.S., or incest as defined in s. 826.04, F.S., or any former similar offense that was in effect at the time the act was committed which was committed on a person under the age of 18 years of age.

A severability clause is included in the bill which provides for the continued effect of other provisions of this act in the event a provision is declared unconstitutional.

The bill provides for an effective date of October 1, 2003.

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:

The bill expands the offenses for which the intentional tort applies and potentially broadens those individuals and entities against whom liability action may be taken, both of which potentially expand the liability action that may be sought.

C. Government Sector Impact:

The expanded ability to seek liability action may result in an increase in court actions which could have a fiscal impact on the courts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There is some potential overlap of offenses provided for the three newly created intentional tort provisions, as well as some inclusion of offenses that are more broadly defined than the intentional tort category may imply. The overlap of offenses may raise some potential conflicts in the statutes of limitations that apply to a particular victim or offender.

- Incest is an identified act to which the intentional tort provision for not only abuse of vulnerable adults and childhood sexual abuse applies but also child abuse. Further, the intentional tort provision for child abuse specifically excludes sexual abuse.
- The criminal charge of child abuse is an identified action for intentional tort relative to childhood sexual abuse but not abuse of a child.
- The criminal charge of child abuse to which the intentional tort provisions apply includes not only the offense of child abuse and aggravated child abuse but also neglect of a child which potentially allows for tort action for acts of neglect.
- The acts identified as childhood sexual abuse refer to *any act* defined in the referenced statutory cites. However, some of these cites include many more acts than those of a sexual nature. Section 39.01, F.S., includes a definition of not only “sexual abuse of a child,” “abuse” (which includes physical, mental, or sexual injuries), but also “abandonment” and “neglect.” Section 984.03, F.S., also includes definitions for “abuse,” “neglect,” and “abandoned,” as well as “substance abuse.”

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.
