**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 Children, Families, and Elder Affairs Committee

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| BILL: | SB 864 |
| INTRODUCER: | Senator Detert |
| SUBJECT: | Corporal Discipline |
| DATE: | March 23, 2009 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Toman | Walsh | CF | **Favorable** |
| 2. | | | CJ | |
| 3. | | | CA | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

## I. Summary:


Senate Bill 864 creates s. 827.032, F.S., making it a third degree felony for a parent, legal custodian, or caregiver to knowingly or willfully inflict "inappropriate or excessively harsh corporal discipline."

The bill defines "inappropriate or excessively harsh corporal discipline" to mean an act of discipline that results or could reasonably be expected to result in one of a list of injuries. The definition of "inappropriate or excessively harsh corporal discipline" incorporates acts that are specified as "harm" to a child's health or welfare in ch. 39, F.S.

The bill specifies that the new offense does not preclude prosecution under s. 827.03, F.S., which relates to child abuse and aggravated child abuse, when a violation of s 827.03, F.S., is charged in lieu of the new offense.

The bill amends the definition of "criminal conduct" in s. 39.301(2)(b), F.S., to include the offense of "inappropriate or excessively harsh corporal discipline" among those that may result in a criminal investigation.

The bill also amends s. 921.0022, F.S., to rank the new offense in Level 6 of the offense severity level ranking chart of the Criminal Punishment Code.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 39.301, 827.032 and 921.0022.

## II. Present Situation:

Courts and legislative bodies have repeatedly recognized the difficulty of delineating a precise line between permissible corporal (*i.e.*, physical) punishment and prohibited child abuse.[1] As acknowledged by the Florida Supreme Court, the task of doing so is principally a legislative function.[2]

In Florida, there are two statutes that address child abuse. Chapter 39, F.S., is a civil statute that contains the abuse reporting requirements and definitions relevant to child abuse investigations and interventions by the Department of Children and Families (DCF or the department). Section 827.03, F.S., is a criminal statute that defines the criminal offense of child abuse.

**Civil Child Abuse**
Chapter 39, F.S., defines "abuse" as:

> … any willful act or threatened act that results in any 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. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.[3]

"Harm" for purposes of ch. 39, F.S., occurs when any person inflicts or allows to be inflicted upon a child physical, mental or emotional injury. Injury includes, but is not limited to:

- Willful acts that cause:
  - Sprains, dislocations, or cartilage damage;
  - Bone or skull fractures;
  - Brain or spinal cord damage;
  - Intracranial hemorrhage or injury to other internal organs;
  - Asphyxiation, suffocation, or drowning;
  - Injury resulting from the use of a deadly weapon;
  - Burns or scalding;
  - Cuts, lacerations, punctures, or bites;
  - Permanent or temporary disfigurement; or
  - Permanent or temporary loss or impairment of a body part or function;
- Purposely giving a child poison, drugs or alcohol;
- Leaving a child without adult supervision appropriate to the child's age and physical condition; and
- Inappropriate or excessively harsh corporal discipline that results in one of the injuries noted above or in "significant bruises or welts."[4]

[1] *Raford v. State*, 828 So.2d 1012 (Fla. 2002).
[2] *Id.*
[3] Section 39.01(2), F.S.
[4] Section 39.01(32), F.S.

Pursuant to ch. 39, F.S., a report of known or suspected child abuse to the department may result in a protective investigation and, possibly, in dependency proceedings with respect to the child who is the subject of the report. In specified circumstances, the department must also forward allegations of "criminal conduct" to the local law enforcement agency for possible criminal investigation.[5]

Section 39.301(2)(b), F.S. defines "criminal conduct" to mean:

- A child is known or suspected to be the victim of child abuse or neglect as defined in the criminal statutes;
- A child is known or suspected to have died as a result of abuse or neglect;
- A child is known or suspected to be the victim of aggravated child abuse;
- A child is known or suspected to be the victim of sexual battery or of sexual abuse; or
- A child is known or suspected to be the victim of institutional child abuse or neglect.

Investigations by law enforcement agencies are coordinated with the investigation activities of the department whenever feasible.

**Criminal Child Abuse**
Section 827.03(1), F.S., a *criminal* statute, defines child abuse as:

- Intentional infliction of physical or mental injury upon a child;
- An intentional act that could reasonably be expected to result in physical or mental injury to a child; or
- 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.[6] This type of child abuse is often referred to as "simple" child abuse.

Section 827.03(2), F.S., defines *aggravated* child abuse, providing, in part, that aggravated child abuse occurs when someone knowingly and willfully abuses a child and in doing so *actually causes* great bodily harm, permanent disability, or permanent disfigurement to a child.

A person who is reported to have abused a child under ch. 39, F.S., may also be criminally charged with contributing to the dependency of a minor pursuant to s. 827.04, F.S.

*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.

[5] Section 39.301(2), F.S.
[6] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Sections 775.082, 775.083, or 775.084, F.S.

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."[7] 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][8]

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.[9] 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."[10]

Section 39.01(41), 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."

**Relationship Between Chapter 39 and Section 827.03, F.S.**

In *Raford v. State*,[11] the Florida Supreme Court described the difficulty that courts and legislative bodies have repeatedly recognized in delineating a precise line between permissible corporal punishment and prohibited child abuse. The Court traced the common law right of a parent to discipline his or her child in a "reasonable manner" back to at least the year 1893, quoting from *Marshall v. Reams.*[12] In *Marshall*, the Court recognized the "right of a parent, or one standing *in loco parentis*, to moderately chastise for correction a child under his or her control and authority."[13]

The tension between the right of a parent or parent substitute to use corporal punishment to discipline a child and the criminal statutes allowing prosecution for child abuse was recognized by the *Raford* court, which noted, "[i]t is apparent that there is a serious risk of 'going too far' every time physical punishment is administered."[14]

The *Raford* court held that a parent or parent substitute may be prosecuted for felony child abuse, since the Legislature made no exception for parents in defining this offense, but that the parent may assert as an affirmative defense to the charge his or her parental right to administer "reasonable" or "nonexcessive" corporal punishment, such as "a typical spanking."[15] In several

[7] *DuFresne v. State*, 826 So.2d 272, 275 (Fla. 2002).
[8] *Id.* at 275.
[9] *Id.* at 278.
[10] *Id*. at 279.
[11] 828 So.2d 1012, 1020-1021 (Fla. 2002) (citations omitted).
[12] 32 Fla. 499, 14 So. 95 (1893).
[13] *Id.* at 97.
[14] *Raford*, 828 So.2d at 1021, quoting *Herbert v. State*, 256 So.2d 709, 712 (Fla. 4th DCA 1988).
[15] *Id.* at 1014.

places in the opinion, the Court recognized the intertwining of the provisions of ch. 39, F.S., and ch. 827, F.S., in defining child abuse, particularly when deciding whether parental discipline has exceeded acceptable limits.

In *King v. State*,[16] the court cited the *Raford* decision and held that a school administrator's spanking that resulted in significant bruises or welts did not rise to the level of simple child abuse, but instead fell under the category of *civil* child abuse. The court noted, however, that its holding contradicted the plain language of s. 827.03(1), F.S. (defining child abuse as the intentional infliction of physical injury upon a child without causing great bodily harm, permanent disability, or permanent disfigurement). As such, the *King* court certified the following question to the Florida Supreme Court:

> Whether a spanking administered as corporal punishment that results in significant bruises or welts may constitute felony child abuse under Section 827.03(1), Florida Statutes.

Despite the seeming incongruity in the law, the Florida Supreme Court denied review.[17]

In essence, the courts appear to have created an "either or" approach to classifying excessive corporal discipline. Either excessive corporal discipline is *civil* child abuse, or it's *criminal* child abuse. The case law does not appear to contemplate that the same act of excessive corporal discipline (*e.g.*, a severe beating that causes significant bruises or welts) could qualify as both civil *and* criminal child abuse. This is despite the fact that the list of injuries that constitute excessive corporal discipline contained in ch. 39, F.S., encompasses a wide range of injuries (*e.g.*, injuries ranging from cuts and sprains to skull fractures, spinal cord damage, and permanent loss of a body part). If an act does not rise to the level of *criminal* child abuse simply because it qualifies as *civil* child abuse, it is unclear when, if ever, a court will find that excessive corporal discipline qualifies as simple, criminal child abuse.

## III. Effect of Proposed Changes:

Senate Bill 864 creates s. 827.032, F.S., which makes it a third degree felony for a parent, legal custodian, or caregiver to knowingly or willfully inflict "inappropriate or excessively harsh corporal discipline."

The bill defines "inappropriate or excessively harsh corporal discipline" to mean an act of discipline that results or could reasonably be expected to result in the following or similar injuries:

- Sprains, dislocations, or cartilage damage;
- Bone or skull fractures;
- Brain or spinal cord damage;
- Intracranial hemorrhage or injury to other internal organs;
- Asphyxiation, suffocation, or drowning;

[16] 908 So.2d 954 (Fla. 2nd DCA 2005).
[17] *State v. King*, 908 So.2d 1058 (Fla. 2005).

- Injury resulting from the use of a deadly weapon;
- Burns or scalding;
- Cuts, lacerations, punctures, or bites;
- Disfigurement;
- Loss or impairment of a body part or function;
- **Significant bruises or welts**; or
- **Mental injury, as defined in s. 39.01, F.S.**

The definition of "inappropriate or excessively harsh corporal discipline" incorporates acts that are specified as "harm" to a child's health or welfare in ch. 39, F.S. The incorporation of these specified acts into s. 837.032, F.S., would more closely align the two statutes.[18]

The bill provides that the new offense does not preclude prosecution under s. 827.03, F.S., which relates to child abuse and aggravated child abuse, when a violation of s 827.03, F.S., is charged in lieu of this new offense.

The bill amends the definition of "criminal conduct" in s. 39.301(2)(b), F.S., relating to the initiation of child protective and law enforcement investigations, to include the offense of "inappropriate or excessively harsh corporal discipline." As such, the department must forward allegations of known or suspected "inappropriate or excessively harsh corporal discipline" to law enforcement, which must then determine whether criminal investigation is warranted.

The bill also amends s. 921.0022, F.S., to rank the new offense in Level 6 of the offense severity level ranking chart of the Criminal Punishment Code for the purpose of scoring the lowest permissible sentence for a defendant convicted of this offense.

The bill provides that it will take effect on July 1, 2009.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[18] The bill includes "mental injury" in the list of injuries which may lead to prosecution. This injury is not included in the list of injuries in s. 39.01(32)(a)4., F.S., but is included in the introductory sentence of s. 39.01(32)(a), F.S.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

Pursuant to s. 921.001(9)(b), F.S., this bill, because it creates a felony, must be determined by the Criminal Justice Estimating Conference to have a net zero sum impact in the overall prison population, unless a sufficient funding source is provided. This bill has not yet been considered in conference, but a similar bill (SB 2266) was considered in 2006 and found to have insignificant impact.[19]

Since the bill creates a new felony, in order to allow the courts and other criminal justice stakeholders adequate time for planning and training, the Legislature might consider making the effective date October 1, 2009 rather than July 1, 2009.

## VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.



[19] Criminal Justice Impact Conference, 2006 Legislature (March 21, 2006). *See also*, Department of Corrections, Legislative Affairs, *SB 864-Corporal Punishment-2009* (February 23, 2009).