

STORAGE NAME: h2409.cp

DATE: April 20, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: HB 2409

RELATING TO: Delinquency or Dependency of a Child

SPONSOR(S): Representative Murman

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) CRIME AND PUNISHMENT

(2)

(3)

(4)

(5)

I. SUMMARY:

The contributing to the delinquency or dependency of a child statute, s. 827.04, F.S., was recently held to be unconstitutionally vague in State v. Fuchs, 24 Fla. L. Weekly D2310 (Fla. 5th DCA Oct. 8, 1999), *rev. granted*, No 96,766 (Fla. Dec., 20, 1999), for failing to provide definitions for the terms "child in need of services" "delinquent child" and "dependent child."

This bill amends s. 827.04, F.S., by providing definitions for these terms. The bill defines "child in need of services" "delinquent child" and "dependent child," by cross-referencing to the relevant definitions in chapters 39 and 984, F.S.

This bill takes effect on July 1, 2000.

This bill substantially amends, creates, or repeals the following section of the Florida Statutes: 827.04.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Section 827.04(1), F.S., provides for the criminal offense of contributing to the delinquency or dependency of a child, as follows:

Any person who:

(a) Commits any act which causes, tends to cause, encourages, or contributes to a child becoming a delinquent or dependent child or a child in need of services; or

(b) Induces or endeavors to induce, by act, threat, command, or persuasion, a child to commit or perform any act, follow any course of conduct, or live in a manner that causes or tends to cause such child to become or to remain a dependent or delinquent child or a child in need of services,

commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.

The terms "*delinquent*," "*dependent*," and "*child in need of services*," are elements of the offense, but are not defined in s. 827.04(1), F.S. These terms are defined in chapters 39 and 984, F.S., however, s. 827.04, F.S., contains no cross-references to these definitions.

A. Statute ruled unconstitutional

In State v. Fuchs, 24 Fla. L. Weekly D2310 (Fla. 5th DCA Oct. 8, 1999), *rev. granted*, No 96,766 (Fla. Dec., 20, 1999), the Fifth District Court of Appeal affirmed a trial court's ruling that the statute was unconstitutionally vague. The Court held that the terms "delinquent," "dependent," and "child in need of services," are terms of art which are not common enough to be understood by persons as to provide a reasonable warning of the behavior proscribed by the statute.

A previous version of s. 827.04(1)(a), F.S., stated: "a delinquent or dependent child or a child in need of services, as defined under the laws of Florida..." s. 827.04(3), F.S. (1995). When the Legislature amended the statute in 1996, the phrase "under the laws of Florida"

was deleted. As the Fuchs Court noted, this version of the statute, and its predecessors, have survived vagueness challenges on several occasions because of the inclusion of this phrase. See, Purvis v. State, 377 So.2d 674 (Fla. 1979); State v. Barone, 124 So. 2d 490 (Fla. 1960); State v. Lindsay, 284 So. 2d 377 (Fla. 1973).

On March 8, 2000, the Florida Supreme Court heard oral argument in the state's appeal of the Fifth District Court of Appeal's decision in Fuchs. A decision is expected in several months.

B. Definitions in current law

The terms delinquent or dependent child and child in need of services are presently defined in Florida Statutes in multiple places in chapters 39, 984 and 985, F.S. These chapters relate to dependent children (chapter 39, F.S.), children and families in need of services (CINS/FINS)(chapter 984, F.S.), and juvenile delinquency (chapter 985, F.S.). The following are excerpts of the relevant definitions.

"Child in need of services" means a child for whom there is no pending investigation into an allegation or suspicion of abuse, neglect, or abandonment; no pending referral alleging the child is delinquent; or no current supervision by the Department of Juvenile Justice or the Department of Children and Family Services for an adjudication of dependency or delinquency. The child must also, pursuant to this chapter, be found by the court:

(a) To have persistently run away from the child's parents or legal custodians despite reasonable efforts of the child, the parents or legal custodians, and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts shall include voluntary participation by the child's parents or legal custodians and the child in family mediation, services, and treatment offered by the Department of Juvenile Justice or the Department of Children and Family Services;

(b) To be habitually truant from school, while subject to compulsory school attendance, despite reasonable efforts to remedy the situation pursuant to ss. 232.17 and 232.19 and through voluntary participation by the child's parents or legal custodians and by the child in family mediation, services, and treatment offered by the Department of Juvenile Justice or the Department of Children and Family Services; or

© To have persistently disobeyed the reasonable and lawful demands of the child's parents or legal custodians, and to be beyond their control despite efforts by the child's parents or legal custodians and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts may include such things as good faith participation in family or individual counseling.

s. 984.03(9), F.S.

"Child who has been found to have committed a delinquent act" means a child who, pursuant to the provisions of this chapter, is found by a court to have committed a violation of law or to be in direct or indirect contempt of court, except that this definition shall not include an act constituting contempt of court arising out of a dependency proceeding or a proceeding pursuant to part III of this chapter.

s. 985.03(10), F.S.

"*Child who is found to be dependent*" means a child who, pursuant to this chapter, is found by the court:

(a) To have been abandoned, abused, or neglected by the child's parent or parents or legal custodians;

(b) To have been surrendered to the department, the former Department of Health and Rehabilitative Services, or a licensed child-placing agency for purpose of adoption;

© To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, the department, or the former Department of Health and Rehabilitative Services, after which placement, under the requirements of this chapter, a case plan has expired and the parent or parents or legal custodians have failed to substantially comply with the requirements of the plan;

(d) To have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a parent or parents have signed a consent pursuant to the Florida Rules of Juvenile Procedure;

(e) To have no parent or legal custodians capable of providing supervision and care; or

(f) To be at substantial risk of imminent abuse, abandonment, or neglect by the parent or parents or legal custodians.

s. 39.01(14), F.S.

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 827.04, F.S., the contributing to the delinquency or dependency of a child statute, to provide definitions for the terms "*child in need of services*," "*delinquent child*," and "*dependent child*," by cross-referencing to the relevant definitions in chapters 39, 984, and 985 F.S. (Present situation contains excerpts to these definitions).

The intended effect is to provide clear notice of what conduct is prohibited, addressing the constitutional issues identified in State v. Fuchs, 24 Fla. L. Weekly D2310 (Fla. 5th DCA Oct. 8, 1999), *rev. granted*, No 96,766 (Fla. Dec., 20, 1999).

This bill takes effect on July 1, 2000.

D. SECTION-BY-SECTION ANALYSIS:

See Effect of Proposed Changes.

III. 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:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The bill defines "*child in need of services*," "*delinquent child*," and "*dependent child*," by cross-referencing to the relevant definitions in chapters 39, 984 and 985 F.S. In doing so, the bill follows the suggestion contained in State v. Fuchs, 24 Fla. L. Weekly D2310 (Fla. 5th DCA Oct. 8, 1999), *rev. granted*, No 96,766 (Fla. Dec., 20, 1999):

Although the statute does not have to be completely self-contained so that terms of art such as "dependent," "delinquent" or "child in need of services" are defined each time they are used in the penal statutes, there must be some ascertainable source to determine the meaning of those words.

Id. at D2311 (See present situation for general discussion on Fuchs).

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

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