

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.)

Prepared By: Criminal Justice Committee

BILL: CS/CS/SB 2266

INTRODUCER: Criminal Justice Committee, Children and Families Committee, and Senators Rich, and Lynn

SUBJECT: Child Abuse

DATE: April 20, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanford</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill makes it a third degree felony for a parent, legal custodian, or caregiver to knowingly or willfully inflict “inappropriate or excessively harsh corporal discipline,” a term which is defined in the bill. The definition of this term incorporates acts that are specified as “harm” to a child’s health or welfare in the definition of that term found in s. 39.01(30), F.S. Section 39.01, F.S., is the definitions section for ch. 39, F.S., which pertains to child protection and activities and proceedings relating to such protection (child abuse reporting, protective investigations, shelter hearings, changes of custody, termination of parental rights, guardian ad litem, etc.). The incorporation in s. 837.032, F.S., of these specified acts makes this statute and the definition section of the child protection chapter more consistent in their definition of what constitutes excessive corporal discipline.

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, F.S. (Initiation of protective investigations), to include the offense of “inappropriate or excessively harsh corporal discipline” in that definition.

The new offense is ranked 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.

This bill creates s. 827.032, F.S., and substantially amends s. 921.0022, F.S.

II. Present Situation:

Nationally, the right of a parent to use corporal discipline has been hotly debated for many years. Many states have prohibited corporal discipline in schools while allowing judicious use by parents and caregivers. States have also struggled with defining the line between appropriate use of corporal discipline and child maltreatment. In Florida, child abuse is addressed by both civil and criminal statutes.

Civil Child Abuse Statutes

Chapter 39, F.S. (Proceedings Relating to Children), 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).

Chapter 39, F.S., contains the following relevant definitions:

(2) “Abuse” means 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.** (emphasis supplied).

(10) “Caregiver” means the parent, legal custodian, adult household member, or other person responsible for a child’s welfare as defined in subsection (47).

(30) “Harm” to a child’s health or welfare can occur when any person:

(a) Inflicts or allows to be inflicted upon the child physical, mental or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating any physical, mental, or emotional injury to a child: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Such injury includes, but is not limited to:

1. Willful acts that produce the following specific injuries:
 - a. Sprains, dislocations, or cartilage damage.
 - b. Bone or skull fractures.
 - c. Brain or spinal cord damage.
 - d. Intracranial hemorrhage or injury to other internal organs.
 - e. Asphyxiation, suffocation, or drowning.
 - f. Injury resulting from the use of a deadly weapon.
 - g. Burns or scalding.
 - h. Cuts, lacerations, punctures, or bites.
 - i. Permanent or temporary disfigurement.
 - j. Permanent or temporary loss or impairment of a body part or function.

As used in this subparagraph, the term “willful” refers to the intent to perform an action, not to the intent to achieve a result or to cause an injury.

2. Purposely giving a child poison, alcohol, drugs, or other substances that substantially affect the child's behavior, motor coordination, or judgment or that result in sickness or internal injury. For the purposes of this subparagraph, the term "drugs" means prescription drug not prescribed for the child or not administered as prescribed, and controlled substances as outlined in Schedule I or Schedule II or s. 893.03.

3. Leaving a child without adult supervision or arrangement appropriate for the child's age or mental or physical condition, so that the child is unable to care for the child's own needs or another's basic needs or is unable to exercise good judgment in responding to any kind of physical or emotional crisis.

4. Inappropriate or excessively harsh disciplinary action that is likely to result in physical injury, mental injury as defined in this section, or emotional injury. The significance of any injury must be evaluated in light of the following factors: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Corporal discipline may be considered excessive or abusive when it results in any of the following or other similar injuries:

- a. Sprains, dislocations, or cartilage damage.**
- b. Bone or skull fractures.**
- c. Brain or spinal cord damage.**
- d. Intracranial hemorrhage or injury to other internal organs.**
- e. Asphyxiation, suffocation, or drowning.**
- f. Injury resulting from the use of a deadly weapon.**
- g. Burns or scalding.**
- h. Cuts, lacerations, punctures, or bites.**
- i. Permanent or temporary disfigurement.**
- j. Significant bruises or welts.** (emphasis supplied).

(b) Commits, or allows to be committed, sexual battery, as defined in chapter 794, or lewd or lascivious acts, as defined in chapter 800, against the child.

(c) Allows, encourages, or forces the sexual exploitation of a child, which includes allowing, encouraging, or forcing the child to:

- 1. Solicit for or engage in prostitution; or
- 2. Engage in a sexual performance, as defined by chapter 827.

(d) Exploits a child, or allows a child to be exploited, as provided in s. 450.151.

(e) Abandons the child. Within the context of the definition of "harm," the term "abandons the child" means that the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the person responsible for the child's welfare, while being able, makes no provision for the child's support and makes no effort to communicate with the child, which situation is sufficient to evince a willful rejection of parental obligation. If the efforts of such a parent or legal custodian or person primarily responsible for the child's welfare to support and communicate with the child are only marginal efforts that do not evince a settled purpose to assume all parental duties, the child may be determined to have been abandoned. The term "abandoned" does not include an abandoned newborn infant as described in s. 383.50.

(f) Neglects the child. Within the context of the definition of “harm,” the term “neglects the child” means that the parent or other person responsible for the child’s welfare fails to supply the child with adequate food, clothing, shelter, or health care, although financially able to do so or although offered financial or other means to do so. However, a parent or legal custodian who, by reason on the legitimate practice of religious beliefs, does not provide specified medical treatment for a child may not be considered abusive or neglectful for that reason alone, but such an exception does not:

1. Eliminate the requirement that such a case be reported to the department;
2. Prevent the department from investigating such a case; or
3. Preclude a court from ordering, when the health of the child requires it, the provision of medical services by a physician, as defined in this section, or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.

(g) Exposes a child to a controlled substance or alcohol. Exposure to a controlled substance or alcohol is established by:

1. Use by the mother of a controlled substance or alcohol during pregnancy when the child, at birth is demonstrably adversely affected by such usage; or
2. Continued chronic and severe use of a controlled substance or alcohol by a parent when the child is demonstrably adversely affected by such usage.

As used in this paragraph, the term “controlled substance” means prescription drugs not prescribed for the parent or not administered as prescribed and controlled substances as outlined in Schedule I or Schedule II or s. 893.03.

(h) Uses mechanical devices, unreasonable restrains, or extended periods of isolation to control a child.

(i) Engages in violent behavior that demonstrates a wanton disregard for the presence of a child and could reasonably result in serious injury to the child.

(j) Negligently fails to protect a child in his or her care from inflicted physical, mental, or sexual injury caused by the acts of another.

(k) Has allowed a child’s sibling to die as a result of abuse, abandonment, or neglect.

(l) Makes the child unavailable for the purpose of impeding or avoiding a protective investigation unless the court determines that the parent, legal custodian, or caregiver was fleeing from a situation involving domestic violence. (emphasis supplied).

(45) “Mental injury” means an injury to the intellectual or psychological capacity of a child as evidenced by a discernable and substantial impairment in the ability to function within the normal range of performance and behavior.

(47) “Other person responsible for a child’s welfare” includes the child’s legal guardian, legal custodian, or foster parent; an employee of a private school, public or private child day care center, residential home, institution, facility, or agency; or any other person legally responsible for the child’s welfare in a residential setting; and also includes an adult sitter or relative entrusted with a child’s care. For the purpose of departmental investigative jurisdiction, this definition does not include law enforcement officers, or employees of municipal or county detention facilities or the Department of Corrections, while acting in an official capacity.

The department is required to maintain a central abuse hotline capable of receiving reports of child abuse, neglect, or abandonment at any hour of the day, every day of the year.¹ Any person who knows or who has reasonable cause to suspect that a child is abused, neglected, or abandoned, is required by law to report such knowledge or suspicion to the central abuse hotline.² If a report is accepted by the hotline, the department institutes a child protective investigation either immediately or within 24 hours, as circumstances dictate.³ In addition to conducting its own child protective investigation, the department is required to refer to law enforcement instances of criminal conduct. “Criminal conduct” is defined as including instances when a child is known or suspected to be the victim of child abuse, as defined in s. 827.03, F.S.⁴ The department currently uses the definitions of abuse and harm in ch. 39, F.S., to formulate policies and procedures used to conduct child abuse investigations involving alleged excessive corporal discipline.

“Criminal Conduct” Definition under s. 39.301, F.S. (Initiation of Protective Investigations)

Section 39.301, F.S., pertains to initiation of a protective investigation. Section 39.301(2)(b), F.S., defines the term “criminal conduct” to mean:

- A child is known or suspected to be the victim of child abuse, as defined in s. 827.03, or of neglect of a child, as defined in s. 827.03.
- 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, as defined in s. 827.03.
- A child is known or suspected to be the victim of sexual battery, as defined in s. 827.071, or of sexual abuse, as defined in s. 39.01.
- A child is known or suspected to be the victim of institutional child abuse or neglect, as defined in s. 39.01, and as provided for in s. 39.302(1).

Criminal Child Abuse Statutes

Section 827.03(1), F.S., defines the criminal offense of child abuse as:

- (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.

This offense is a third degree felony.

¹ Section 39.201(4), F.S.

² Section 39.201(1), F.S.

³ Section 39.201(5), F.S.

⁴ Section 39.301(2)(a), F.S.

Chapter 827, F.S., contains no mention of “excessive corporal discipline,” nor any guidance as to the types of injuries suffered as a result of excessive corporal discipline which are subject to prosecution.

Relevant Case Law

In *Raford v. State*,⁵ 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” as back to at least the year 1893, quoting from *Marshall v. Reams*.⁶ 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.”⁷

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 Court in *Raford*: “[i]t is apparent that there is a serious risk of ‘going too far’ every time physical punishment is administered.”⁸ In *Raford*, the Court concluded that the difficult task of establishing the delicate balance between the fundamental rights of parents to raise and discipline their children and the need to protect children from abuse is a legislative function.⁹ In deciding this specific case, the 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.”¹⁰ In several places in the opinion, the Court recognizes 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.

Generally speaking, the appellate courts have respected the determination of the trial courts, based on the facts of particular cases, in deciding whether the affirmative defense of parental privilege should prevail when a parent or parent-substitute is charged with criminal child abuse under s. 827.03, F.S.¹¹

III. Effect of Proposed Changes:

This bill 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,” a term which is defined in the bill. The definition of this term incorporates acts that are specified as “harm” to a child’s health or welfare in the definition of that term found in s. 39.01(30), F.S. Section 39.01, F.S., is the definitions section for ch. 39, F.S., which pertains

⁵ 828 So.2d 1012, 1020-1021 (Fla.2002) (citations omitted).

⁶ 32 Fla. 499, 14 So. 95 (1893)

⁷ *Id.* at 97.

⁸ *Raford*, 828 So.2d at 1021, quoting *Herbert v. State*, 256 So.2d 709, 712 (Fla. 4th DCA 1988).

⁹ *Id.* at 1021

¹⁰ *Id.* at 1014.

¹¹ See e.g., *Wright v. State*, 835 So.2d 1264 (Fla. 1st DCA 2003) (affirming appellant’s conviction for child abuse as the result of appellant disciplining a one-year-old child, notwithstanding his assertion of the parental privilege).

to child protection and activities and proceedings relating to such protection (child abuse reporting, protective investigations, shelter hearings, changes of custody, termination of parental rights, guardian ad litem, etc.). The incorporation in s. 837.032, F.S., of these specified acts makes this statute and the definition section of the child protection chapter more consistent in their definition of what constitutes excessive corporal discipline.

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(30)(a)4., F.S., but is included in the introductory sentence of s. 39.01(30)(a), F.S.

The bill does not include the factors listed in s. 39.01(30)(a)4., F.S., to be used in evaluating the significance of an injury to a child resulting from disciplinary action. These factors include the age of the child, any prior history of injuries to the child, the location of the injury on the body of the child, the multiplicity of the injury, and the type of trauma inflicted.

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, F.S. (Initiation of protective investigations), to include the offense of “inappropriate or excessively harsh corporal discipline” in that definition.

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 takes effect on October 1, 2006.

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 Impact Conference has estimated that the bill will have an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill harmonizes the criminal and civil child abuse statutes, which may improve cooperation and communication between law enforcement agencies and executive agencies dealing with this issue.

The bill will not affect 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.”¹² A parent may continue to 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.”¹³

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

¹² See footnote 7.

¹³ See footnote 10.

VIII. Summary of Amendments:

None.

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