



**Know Your Rights**

by Atty. Jay C. Howell

# Aggravated Child Abuse

For decades our courts have been grappling with the issue of clearly defining the crime of child abuse. While Florida's criminal statute called "Aggravated Child Abuse" does define the crime, the language used is so broad that it covers a significant amount of human conduct. Some of that conduct may be criminal. Some of it may not. Most of the instruction on defining these crimes comes from the decisions of our Florida appellate courts.

On a July evening in 2004 during a two-week visitation with their father, his 8-year-old and 6-year-old sons called their mother. Their mother had a domestic violence injunction against their father and refused to speak with him on the phone. The father launched into a frightening tirade against the mother and her new husband. The wife received several more calls and voice messages from the husband and her sons in which she could hear her husband's angry ranting and the boys screaming.

At some point during this tirade, the father rubbed the blunt edge of a pocket knife on his 8-year-old son's leg and then stabbed a mattress several times while saying, "this is what I'll do to (the mom's new husband) and your mom." The 8-year-old testified that this frightened him, though he did not scream or cry. His younger brother suffered from long term physical and mental health issues and was screeching loudly during the incident, as he often did when he was agitated. Neither of the boys sustained any physical injury. At the trial, the State did not present any evidence of any resulting mental injury.

The father was charged with aggravated child abuse, a crime which prohibits a person from willfully torturing, maliciously punishing, or willfully and unlawfully caging a child. The defendant was convicted and the trial court sentenced him to 30 years in prison.

On appeal, the defendant argued that the state had not presented any evidence of malicious punishment or willful torture. The appeals court, in addressing the "malicious punishment" theory, concluded that there was no evidence that the father's actions were imposed as a form of punishment

against the children. Rather, the court said, it appeared the children were drawn into his angry outburst which was aimed at the mother and the new husband.

In examining the "willful torture" theory, the court noted that the aggravated child abuse statute does not define torture. The court looked to other appellate opinions and found that while aggravated child abuse is largely determined on a case-by-case basis rather than with bright line rules, there were certain factors in the prohibited conduct that were very important. Those factors included the age of the victim, the frequency of the prohibited conduct, and other circumstances.

A dictionary defined torture as "to inflict intense pain to body or mind for purposes of punishment, or to extract a confession or information, or for sadistic pleasure." The Florida Supreme Court had previously concluded that where a 4-year-old child was given a regimen of forced exercise, severe beatings, and food deprivation for four months until the child died of starvation, that conduct was sufficient to constitute the crime of aggravated child abuse. Similarly, the evidence was sufficient where a 14-year-old boy was subjected on numerous occasions to videotaped beatings with a paddle and a baseball bat. The boy suffered bruising as a result of the repeated abuse.

In deciding this case, the

court concluded that the father's tirade about his ex-wife and her husband undoubtedly inflicted a substantial amount of fear and anxiety in the young boys. However, no physical injury was inflicted on the children, nor was there proof of any mental injury resulting from the episode. The court stated that while the conduct to which the children were exposed is unacceptable from any rational parenting prospective, the conduct simply does not involve the level of brutality or extreme pain and suffering necessary to constitute aggravated child abuse by willful torture. The father's conviction was reversed.

This decision points out the importance of the State prosecutor's role in offering evidence of mental or physical injury in child abuse cases. The court did not address whether the conduct fit the definition of misdemeanor child abuse. Had the crime been charged as a misdemeanor, the court's decision may well have been different.

This case is *Cox v. The State*, and was decided by Florida's Second District Court of Appeal on February 6, 2009.

*Jay Howell, a Jacksonville attorney, has been a State Prosecutor, a US Senate Investigator, and the founder of the National Center for Missing and Exploited Children. He represents crime victims in civil claims for damages and advocates for the legal rights of all victims.*

## Announcements

### Jacksonville Beach PD Victim/Witness Assistance/Services

The Jacksonville Beach Police Department would like to make the public aware of the following victim/witness assistance/services available:

- Counseling/Support Groups
- Court Accompaniment and Criminal Justice Support
- Information and Referral
- Victim Assistance Trust Fund
- Critical Incident Stress Debriefing
- Community Education & Training
- Sexual Assault Response Center
- Florida Victim Compensation, Office of the Attorney General
- High School Victimology Class
- Summer Youth Crime Prevention & Education Program
- Mobile Outreach Services for the Elderly and Disabled

If any of these services are needed, citizens are encouraged to call the Victim Services Center at 904-270-1580 (Beaches Office) or 904-630-6300 (downtown Jacksonville). Services are confidential and free.

Victims/Survivors of crime have specific rights as outlined in Florida State Statute, Chapter 960, Section 960.001.

### Victims Compensation Information

The Florida Attorney General's Division of Victim Services not only serves as an advocate for crime victims and victims' rights, it also administers a compensation program to ensure financial assistance for innocent victims of crime. Injured crime victims may be eligible for financial assistance for medical care, lost income, mental health services, funeral expenses and other out-of-pocket expenses directly related to the injury.

This information session is open to the general public as well as service providers. The presenters will be the Regional Victim Service Specialist Yulonda Thompson and Victims Compensation Analyst Andrea Urane. If you have any questions, concerns or issues that you would like to be addressed at this meeting, please email them prior to the session date.

**Session 1:** Thursday, May 7

**Session 2:** Thursday, May 21 (repeat of session 1)

### CONFERENCE ROOM

1300 Riverplace Blvd., Suite 405  
Jacksonville, FL 32207  
10:30am - 11:30am

**AVAILABILITY:** LIMITED FIRST 20  
(Please call or email to register)

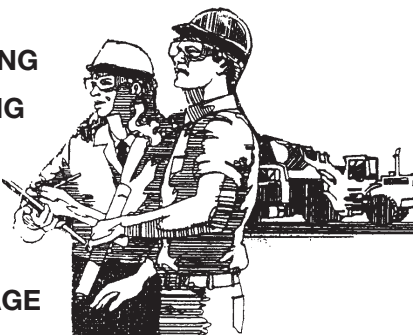
This training is appropriate for agencies/organizations who are already involved in victim response efforts, as well as agencies/organizations that want to develop a coordinated community response to victims. If you have any questions or need to register for this free training please contact the local Regional Victim Service Specialist: Yulonda Thompson at 904-348-2720 x. 211 or yulonda.thompson@myfloridalegal.com.



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