

PCSAO Legislative Committee Bill Summary

Bill No. HB 265 – Paddling Protection Act

Amd. () Sub. () Bill No. Companion Bill No.

Committee Assignment: JFL – 8/21/03

House Sponsor(s): Faber (primary), McGregor, Seitz, Gibbs, Schaffer, Seaver, Wagner, Webster

Aides: _____

Senate Sponsor(s): _____

Aides: _____

PCSAO Assigned Reviewers:

Others:

(Lead): Montrella Jackson

Date Assigned: November 17, 2003

Date Review Due: December 15, 2003 (email to Angela by 12/10/03 for Dec 15th meeting)

Date Discussed in Legislative Committee: December 15, 2003

Comments/Concerns/Recommended Changes or Direction:

Summary:

Amends O.R.C. 2744.03 (A)(6) – in circumstances not covered by O.R.C. 3313.473, the employee is immune from liability unless the employee's acts are outside the scope of employment/official responsibilities, the acts are with malicious purpose/bad faith/wanton or reckless manner or liability is expressly imposed by the Revised Code;

Creates New O.R.C. 3314.473-

(A) Establishes the following **definitions** for purposes of this statute:

(1) **Child Endangerment** means: (language taken from O.R.C. 2919.22[B] of the Child Endangering Statute)

a. the **abuse** of a child;

b. the administration of :

1) **corporal punishment:**

(ii.) which is excessive under the circumstances and

(iii.) which creates a substantial risk of serious physical harm;

or

(2) other **physical restraint** of a child:

(i.) in a cruel manner or

(ii.) for a prolonged period;

(iii.) which is excessive under the circumstances and

(iv.) which creates a substantial risk of serious physical harm;

or c. the repeated administration of **unwarranted disciplinary** measures to a child where there is a **substantial risk** that such measures, **if continued**,

will **seriously impair or retard** the child's **mental health or development**.

- (2) **Employee** means:
- a. any person (compensated/not compensated or full-time/part-time),
 - b. authorized to act and is acting with the scope of employment,
 - c. for a city, village, local, or joint vocational school district or educational service center, community school, or nonpublic school;
- (B) Creates Immunity from Civil Liability
- 1) **entity/ individual protected:** a city, exempted village, local, or joint vocational \ school district or educational service center, community school or non public school or an employee of such entity,
 - 2) **for damages to a student or other person** for injury, death, or loss to person or property that the student or other person allegedly sustains as a result of an employee's discipline of a student.
 - 3) **inapplicability-** this immunity does not apply if the discipline used by the employee results in child endangerment;
- (C) Maintains any immunity or defense that a school district or school district employee has under O.R.C. 2744, the Revised Code or under common law.

COMMENTS FOR HB 265:

O.R.C. 2744.03 (A)(6) - This section appears to state that O.R.C. 2744.03(A)(6) should not be used to determine a school district's/school employee's immunity from civil liability for circumstances covered by O.R.C. 3313.473 (i.e. child endangerment committed by a school/school employee). O.R.C. 3313.473(C) however states that the section does not eliminate, limit or reduce any other immunity or defense that a school district or school district employee may be entitled to under Chapter 2744. These sections seem inconsistent.

Proposed Amendment:

O.R.C. 3313.473(C): Except for 2744.03 (A)(6), this section does not eliminate, limit, or reduce any other immunity or defense that a school district or school district employee

O.R.C. 3313.473(A)(1) - 'The term 'child endangerment' is used rather than 'child endangering'. The child endangerment definition listed in this proposed section is modeled after the Criminal Child Endangering Statute O.R.C. 2919.22(B). However, the criminal child endangering statute includes the language, 'torture or cruelly abuse the child' and expressly states that the statute applies to children under 18 and mentally or physically handicapped children under 21 years of age.

In addition, O.R.C. 2151.031(C), the child abuse statute, would also need amending to refer to O.R.C. 3313.473 as it currently refers to O.R.C. 2919.22(B). The bill also does not include a definition for abuse.

Proposed Amendment – make the two definitions consistent; amend O.R.C. 2151.031(C) to include a referene to O.R.C. 3313.473; and amend 3313.473 to include a reference to 2151.031(C)

O.R.C. 3313.473(B) provides that the immunity does not apply if the discipline is child endangerment. This section should also include physical restraint which is not always used as a form of discipline, but to protect the child and/or as a behavior management technique(i.e. tantrums).

Proposed Amendment- The immunity provided in this section does not apply if the discipline or physical restraint used by the employee results in child endangerment.

CONCLUSION:

- 1) The bill provides restrictions on the use of corporal punishment by schools and provides a definition for child endangerment modeled after the criminal child endangering statute. The bill also provides the circumstances which schools/school employees would be immune from civil liability for discipline and physical restraint. Opponents of this bill contend that by providing this immunity more schools will utilize corporal punishment.
- 2) Schools/ School employees may currently have the ability to claim this immunity under O.R.C. 2744 as presently drafted, if the discipline/physical restraint is within the scope of the employee’s employment. In most cases, schools have policies allowing or prohibiting corporal punishment.
- 3) This new section, O.R.C. 3313.473, is probably not necessary. O.R.C. 2744.03 could be amended to include the proposed language in O.R.C. 3313.473(B) The proposed child endangering definitions are also not necessary and could simply refer to the criminal child endangering statute.

SUMMARY OF ATTORNEY GENERAL OPINION NO. 2002-019
CHILD ABUSE INVESTIGATIONS AND USE OF CORPORAL PUNISHMENT
OR REASONABLE FORCE BY SCHOOL OFFICIALS

Prior to 1993
Statutory
Amendments-

O.R.C. 3319.41(A) [now (E)] provided that a school official **may inflict reasonable corporal punishment** upon a pupil, if such punishment is reasonable and necessary in order to preserve discipline; and O.R.C. 3319.41(B) [now (G)] further provided that a school official may use such amount of **force and restraint as is reasonable and necessary to quell a disturbance**, to obtain weapons, for the purpose of self defense or for protection;

O.R.C. 3313.20 **authorized corporal punishment** unless a board of education adopted a rule prohibiting the use of corporal punishment as a means of discipline, but provided that such a rule could not prohibit the use of

reasonable and necessary force and restraint permitted by O.R.C 3319.41 (B) [now (G)];

1992 Atty. Gen. Op. No. 92-082 concluded that “ **no child abuse of a school child** occurs when: **1)** reasonable corporal punishment that is reasonable necessary to preserve discipline is inflicted in accordance with R.C. 3319.41(A) [now (E)], or **2)** reasonable and necessary force and restraint is used in accordance with O.R.C. 3319.41(B) [now (G)], and there is no violation of O.R.C. 2919.22”

After 1993

Statutory

Amendments:

Amended O.R.C. 3319.41 **prohibits the use of corporal punishment** as a means of discipline in public school, **unless there is in effect a resolution of the board of education** permitting the use of corporal punishment; the statute retains the language which **permits the use of reasonable and necessary force** and restraint which is within the scope of employment;

2002 Atty. Gen. Op. No. 2002-019 concludes that:

- 1) Prior to the amendment, the use of corporal punishment was **permitted** unless a board took action to prohibit its use. After the 1993 amendment, corporal punishment was **prohibited** unless a board took action to permit its use. The 1993 statutory amendments did not change the previous Atty. Gen. Opinion and reiterates “under current Ohio law, **no child abuse of a school child** occurs when: **1)** reasonable corporal punishment that is reasonable necessary to preserve discipline is inflicted in accordance with R.C. 3319.41(A) [now (E)], or **2)** reasonable and necessary force and restraint is used in accordance with O.R.C. 3319.41(B) [now (G)], and there is no violation of O.R.C. 2919.22”.
- 2) When a PCSA receives a report that a student struck an administrator and the administrator struck back several times, the PCSA must investigate the report the same as it would for any alleged perpetrator. The PCSA must also consider whether the school officials conduct constitute ‘reasonable and necessary force’ within the meaning of O.R.C. 3319.41(G)
- 3) When a PCSA makes a determination that a school official’s actions constituted reasonable and necessary force pursuant to O.R.C. 3319.41(G), the PCSA is precluded from making a finding of child abuse.

SCHOOL CORPORAL PUNISHMENT STATUTE

§ 3319.41 Corporal punishment as means of discipline; local task forces to study use of effective discipline.

(A)(1) Beginning September 1, 1994, and except as provided in division (C) of this section, no person employed or engaged as a teacher, principal, administrator, nonlicensed school employee, or bus driver in a public school may inflict or cause to be inflicted corporal punishment as a means of discipline upon a pupil attending such school, unless the board of education of the school district in which the school is located adopts a resolution no later than September 1, 1994, to permit corporal punishment as a means of discipline and does not adopt a resolution prohibiting corporal punishment pursuant to division (B) of this section. No board shall adopt a resolution permitting corporal punishment before receiving and studying the report of the local discipline task force appointed under division (A)(2) of this section.

(2) The board of education of each city, local, exempted village, and joint vocational school district that has not adopted a rule prohibiting corporal punishment under [section 3313.20 of the Revised Code](#) prior to the effective date of this amendment shall appoint, and any board that has adopted a rule under that section prior to the effective date of this amendment may appoint, no later than April 1, 1994, a local discipline task force to conduct a study of effective discipline measures that are appropriate for that school district. Members of the task force shall include teachers, administrators, nonlicensed school employees, school psychologists, members of the medical profession, pediatricians when available, and representatives of parents' organizations.

The task force shall hold meetings regularly. All meetings of the task force shall be open to the public and at least one of the meetings shall be for the purpose of inviting public participation. The board of education shall provide public notice of any public meeting of the task force in newspapers or other periodicals of general circulation in the school district. The task force shall report its findings and recommendations in writing to the board of education no later than July 15, 1994. The task force's written report must be available for inspection by the public at the board's offices for at least five years after being submitted to the board.

(B)(1) At any time after September 1, 1996, the board of education of any city, local, exempted village, or joint vocational school district in which corporal punishment is permitted may adopt a resolution to prohibit corporal punishment. After the adoption of a resolution prohibiting corporal punishment pursuant to division (B)(1) of this section, the board of education of any city, local, exempted village, or joint vocational school district may adopt a resolution permitting corporal punishment after complying with division (B)(3) of this section.

(2) At any time after September 1, 1998, the board of education of any city, local, exempted village, or joint vocational school district that did not adopt a resolution permitting corporal punishment as a means of discipline pursuant to division (A)(1) of this section may adopt a resolution permitting corporal punishment after complying with division (B)(3) of this section.

(3)(a) The board of education of each city, local, exempted village, and joint vocational school district that intends to adopt a resolution permitting corporal punishment as a means of discipline pursuant to division (B)(1) or (2) of this section may adopt that resolution permitting corporal punishment as a means of discipline only after receiving and studying the report of the secondary local discipline task force appointed under division (B)(3)(b) of this section.

(b) Any board of education described in division (B)(1) or (2) of this section that intends to adopt a resolution permitting corporal punishment as a means of discipline shall appoint a secondary local discipline task force to conduct a study of effective discipline measures that are appropriate for that school district. Membership on the secondary local discipline task force shall consist of the same types of persons that are required to be included as members of the local discipline task force pursuant to division (A)(2) of this section. The secondary local discipline task force shall follow the same procedures with respect to holding meetings, the provision of public notice, and the production and inspection of a written report of findings and recommendations that are applicable to the local discipline task force pursuant to division (A)(2) of this section, except that the secondary local discipline task force is not required to present its written report to the board of education on a date that is no later than July 15, 1994.

(C) The prohibition of corporal punishment by division (A) of this section or by a resolution adopted under division (B) of this section does not prohibit the use of reasonable force or restraint in accordance with division (G) of this

section.

(D) If the board of education of any city, local, exempted village, or joint vocational school district does not prohibit corporal punishment on the effective date of this amendment but at any time after that date corporal punishment will be prohibited in the district pursuant to division (A)(1) or (B) of this section, the board shall do both of the following prior to the date on which the prohibition takes effect:

(1) Adopt a disciplinary policy for the district that includes alternative disciplinary measures;

(2) Consider what in-service training, if any, school district employees might need as part of implementing the policy adopted under division (D)(1) of this section.

(E) A person employed or otherwise engaged as a teacher, principal, or administrator by a board of education permitting corporal punishment pursuant to division (A)(1) of this section or by a nonpublic school, except as otherwise provided by the governing authority of the nonpublic school, may inflict or cause to be inflicted reasonable corporal punishment upon a pupil attending the school to which the person is assigned whenever such punishment is reasonably necessary in order to preserve discipline while the student is subject to school authority.

(F) A board of education of a school district that permits the use of corporal punishment as a means of discipline pursuant to a resolution adopted by the board pursuant to division (A)(1) of this section shall permit as part of its discipline policy the parents, guardian, or custodian of a child that is attending any school within the school district to request that corporal punishment not be used as a means of discipline on that child; upon the receipt of a request of that nature, shall ensure that an alternative disciplinary measure is applied with respect to that child; and shall include a procedure for the exercise of that option in the resolution adopted pursuant to division (A)(1) of this section.

(G) Persons employed or engaged as teachers, principals, or administrators in a school, whether public or private, and nonlicensed school employees and school bus drivers may, within the scope of their employment, use and apply such amount of force and restraint as is reasonable and necessary to quell a disturbance threatening physical injury to others, to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil, for the purpose of self-defense, or for the protection of persons or property.

HISTORY: 131 v 805 (Eff 10-30-65); 133 v H 913 (Eff 7-17-70); 140 v S 385 (Eff 4-10-85); 145 v S 29 (Eff 9-14-93); 146 v S 230. Eff 10-29-96.

Legislative Committee Concerns and Recommendations:

The PCSAO Legislative Committee opposes HB 265 and condones the usage of corporal punishment. PCSAs should work with parents, teachers, etc. to teach other forms of punishment and discipline then corporal punishment.

Legislative Committee Recommendation: Support Date: December 15, 2003
 Changes recommended Do Not Support No position taken

Testimony By: _____ given on (date) _____

Testimony By: _____ given on (date) _____