

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: Justice Appropriations Committee

BILL: CS/SB 1418

INTRODUCER: Criminal Justice Committee and Senator Atwater

SUBJECT: Perjury/Felony and Missing-Person Investigation

DATE: March 31, 2006

REVISED: _____

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

I. Summary:

The bill provides that it is a first degree misdemeanor for a person to knowingly and willfully give false information to a law enforcement officer who is conducting a missing person investigation or felony criminal investigation with the intent to mislead the officer or impede the investigation.

This bill creates section 837.051 of the Florida Statutes.

II. Present Situation:

Three statutes appear to be relevant to providing false information or a false report to a law enforcement officer: s. 817.49, F.S.; s. 837.05, F.S.; and s. 843.02 F.S.

Section 817.49, F.S., provides that it is a first degree misdemeanor for a person to willfully impart, convey, or cause to be imparted or conveyed to any law enforcement officer false information or reports concerning the alleged commission of any crime under the laws of this state, knowing such information or report to be false, in that no such crime had actually been committed.

Section 837.05, F.S., provides that it is a first degree misdemeanor for a person to knowingly give false information to any law enforcement officer concerning the alleged commission of any crime, unless false information reported involves the alleged commission of a capital felony, in which case the person commits a third degree felony.

Sections 817.49 and 837.05, F.S., criminalize giving false information regarding the commission of a crime to a law enforcement officer (e.g., calling a law enforcement agency and falsely

reporting that your neighbor stole your car). However, these statutes do not appear to criminalize giving false information to a law enforcement officer when the information does not relate to the commission of a crime (e.g., lying to a law enforcement officer when he or she asks if you know the whereabouts of a family member).¹

Section 843.02, F.S., provides that it is a first degree misdemeanor for a person to resist, obstruct, or oppose any law enforcement officer, correctional officer, correctional probation officer, part-time law enforcement officer, part-time correctional officer, auxiliary law enforcement officer, auxiliary correctional officer, member of the Parole Commission, administrative aide or supervisor employed by the Parole Commission, county probation officer, parole and probation supervisor, personnel or representative of the Florida Department of Law Enforcement, or other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, without offering or doing violence to the person of the officer.

Section 843.02, F.S., has been held, in some instances, to prohibit persons from giving false information to a law enforcement officer. For example, in *Caines v. State*,² the court held that a defendant who gave a false name and address to an officer after being arrested violated s. 843.02, F.S. In contrast, the court in *Steele v. State*,³ held that a defendant who was not under arrest and who gave an officer a false name did not violate s. 843.02, F.S., because there was no evidence that the officer was engaged in a criminal investigation, or that the officer was impeded in an investigation by the misinformation.

The case of *Francis v. State*⁴ appears to suggest that a person who is not being detained or arrested or who is not the subject of a criminal investigation cannot be charged with a violation of s. 843.02, F.S., for simply providing false information to an officer.

III. Effect of Proposed Changes:

The bill provides that it is a first degree misdemeanor⁵ for a person to knowingly and willfully give false information⁶ to a law enforcement officer who is conducting a missing person investigation or felony criminal investigation with the intent to mislead the officer or impede the investigation.⁷

The bill takes effect on October 1, 2006.

¹ A violation of s. 837.05, F.S., "occurs only when someone lies to a police officer 'concerning the alleged commission of any crime.'" *Madiwale v. Savaiko*, 117 F.3d 1321, 1325-26 (11th Cir. 1997).

² 500 So.2d 728, (Fla. 2d DCA 1987).

³ 537 So.2d 711 (Fla. 5th DCA 1989).

⁴ 736 So.2d 97 (Fla. 4th DCA 1999).

⁵ The maximum term of imprisonment for a first degree misdemeanor is one-year imprisonment (in a jail, not in a state prison).

⁶ The false statements that would constitute a criminal act under the bill are unsworn statements but it appears that they would still be a form of perjury. See *Johnson v. State*, 382 So.2d 693, 695 (Fla.1980).

⁷ The offense appears to be a specific intent crime. See *Frey v. State*, 708 So.2d 918, 920 (Fla.1998).

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 bill creates a misdemeanor offense, so this will not result in any state prison bed impact, though it may have some impact on local jails.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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.
