

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1123 Effects of Crimes
SPONSOR(S): Civil Justice Subcommittee; Steinberg
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1686

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Caridad	Bond
2) Judiciary Committee			

SUMMARY ANALYSIS

Equitable distribution is the division of marital property by a court in a divorce proceeding, under statutory guidelines that provide for fair, but not necessarily equal, allocation of property between spouses. With respect to alimony, Florida law provides factors a court must consider in awarding alimony, such as the duration of the marriage.

Probate is the process for marshalling the assets of a deceased person, paying debts, and distributing property to heirs. If the deceased did not leave a valid will, the estate is "intestate," and the assets are distributed according to statute. The bill:

- Provides that a person convicted of an enumerated offense (i.e. first degree or second degree murder, manslaughter, DUI manslaughter, BUI manslaughter, aggravated assault, or a substantially similar offense under the laws of another jurisdiction) may not receive alimony if the crime was committed at any time during the marriage and the crime results in death or creates a substantial risk of death or serious injury of a family member of the other spouse.
- Provides that a spouse convicted of an attempt or conspiracy to commit murder of his or her spouse may not receive alimony from such spouse.
- Provides that a parent convicted of certain crimes against his or her minor child (i.e. abuse, abandonment, neglect, sexual abuse) loses his or her right to the intestate succession in any part of the child's estate and all right to administer the estate of the child.
- Provides that if the parent is disqualified from taking a distributive share in the decedent's estate, the decedent's estate must be distributed as though the parent had predeceased the decedent.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Equitable Distribution and Alimony

Chapter 61, F.S., governs issues relating to dissolution of marriage, such as the equitable distribution of assets and alimony. "Equitable distribution is the division of marital property by a court in a divorce proceeding, under statutory guidelines that provide for fair, but not necessarily equal, allocation of property between spouses."¹ The bill provides that if a spouse is convicted of an offense involving attempt or conspiracy to murder the other party, a court may not make an equitable distribution of property to such spouse.

Under current law, a court may grant one or a combination of four types of alimony: bridge-the-gap, rehabilitative, durational, or permanent.² Section 61.05(2), F.S., sets out factors a court must consider in awarding alimony, such as the duration of the marriage.

The bill provides a list of criminal offenses and conditions which preclude a spouse from receiving alimony. Specifically, a person convicted of first degree or second degree murder, manslaughter, DUI manslaughter, BUI manslaughter, aggravated assault, or a substantially similar offense under the laws of another jurisdiction may not receive alimony if the crime was committed at any time during the marriage and the crime results in death or creates a substantial risk of death or serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ of a family member of a divorcing party. The bill defines family member, for purposes of the section, as a spouse, child, parent, or sibling. The family member can be related to the individual by blood, marriage or adoption to qualify under the section.

The bill also provides that a spouse convicted of an attempt or conspiracy to commit murder of his or her spouse may not receive alimony from such spouse.

Intestate Succession

Chapter 732, F.S., is Florida's Probate Code. Probate is the process for marshalling the assets of a deceased person, paying debts, and distributing the remaining property to heirs. If the deceased left a valid will, the estate is "testate", and the assets are distributed according to the will. If the deceased did not leave a valid will, the estate is "intestate," and the assets are distributed according to statute. Intestate statutes are drafted to reflect the presumed intent of the deceased.

Under current law, if a decedent is survived by only a spouse, the surviving spouse is entitled to the entire intestate estate.³ If there is no surviving spouse and the decedent is survived by a descendant, the descendant is entitled to the entire estate. If there is no descendant, the estate is divided equally between the decedent's father and mother.⁴

The bill provides that a parent loses his or her right to intestate succession in any part of the child's estate and all right to administer the estate of the child, if he or she is convicted of:

- Abuse, abandonment, or neglect pursuant to s. 39.01, F.S.;
- A violation of s. 827.03, F.S. (relating to abuse); or
- Sexual abuse as defined in s. 39.01, F.S.

¹ Black's Law Dictionary (9th ed. 2009), equitable distribution.

² Section 610.8(1), F.S.

³ Section 732.102, F.S.

⁴ Section 732.103, F.S.

A parent convicted of one of the enumerated crimes loses his or her right to inherit from the child's estate and the right to administer the child's estate, unless a court determines that the parent and child had subsequently reconciled and the parent-child relationship was restored. If the parent is disqualified from taking a distributive share in the decedent's estate under this section, the decedent's estate must be distributed as though the parent had predeceased the decedent.

B. SECTION DIRECTORY:

Section 1 amends s. 61.075, F.S., relating to equitable distribution of marital assets.

Section 2 amends s. 61.08, F.S., relating to alimony.

Section 3 creates s. 732.8025, F.S., relating to parental offenses against a minor child.

Section 4 provides for an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January, 31 2012, the Civil Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- As to the alimony limitation, limited the list of individuals who qualified under the definition as a "family member" to just a spouse, child, parent, or sibling.
- Require conviction of an offense, rather than merely the commission of the offense.
- Allow for rehabilitation by providing that there will not be a bar to inheritance if the parent and child, after the offense, had subsequently reconciled and the parent-child relationship was restored.
- As to the inheritance limitation, removed references to offenses against remote relatives.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.