

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1952

SPONSOR: Senator Diaz de la Portilla

SUBJECT: Criminal Liability for Failure to Report a Crime

DATE: April 11, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 1952 creates the “Nicholas Isaac Cordero Act” which requires individuals who know that a crime is being committed which exposes the victim to serious bodily injury to report the crime to a law enforcement officer as soon as it is reasonably practicable. An individual who fails to make such a report would be guilty of a second degree misdemeanor in violation of the new section.

The provisions of the bill do not apply to a person who is prosecuted as a principal in the first degree, as an accessory after the fact or for attempting, soliciting, or conspiring to commit an offense when the prosecuted offense has occurred in the course of the same criminal episode as the criminal offense which exposes the victim to serious bodily injury. The offense also does not apply to a person who is related by blood or marriage to the person committing the offense or the victim and does not apply to the victim of serious bodily injury.

This bill creates the following section of the Florida Statutes: 877.31.

II. Present Situation:

Under common law, failing to report a crime was called “misprision of a felony.” This common law crime does not exist in Florida. *Holland v. State*, 302 So. 2nd 806 (Fla. 2nd DCA 1974). The *Holland* court explains the origin of the crime by quoting from the University of Chicago Law Review:

“Misprision of a felony as defined by Blackstone is merely one phase of the system of communal responsibility for the apprehension of criminals which received its original impetus from William I, under pressure of the need to protect the invading Normans in hostile country...the vill or hundred in which such conduct occurred was subject to fine. ... With the appearance of specialized and paid law enforcement officers, such as constables and justices of the peace in the Seventeenth Century, there was a movement

away from strict communal responsibility, and a growing tendency to rely on professional police.” *Id.* at 809.

The *Holland* court determined that although s. 775.01, F.S., recognizes the common law of England as being “in full force in this state where there is no existing provision by statute on the subject,” courts have not hesitated to reject anachronistic common law concepts. *Id.* at 808. In holding that misprision of a felony is not part of substantive Florida law, the court stated:

“While it may be desirable, even essential, that we encourage citizens to ‘get involved’ to help reduce crime, they ought not be adjudicated criminals themselves if they don’t. The fear of such a consequence is a fear from which our traditional concepts of peace and quietude guarantee freedom. We cherish the right to mind our own business when our own best interests dictate.”

The Legislature has enacted several statutes which require a citizen to take certain steps in response to events such as involvement in a traffic crash, or make official reports of specific crimes. These are explained below.

Failure to Report Sexual Battery

Section 794.027 F.S., makes it a first degree misdemeanor for a person to observe the commission of a sexual battery and fail to report it. The statute provides as follows:

A person who observes the commission of the crime of sexual battery and who:

- (1) has reasonable grounds to believe that he or she has observed the commission of a sexual battery;
- (2) has the present ability to seek assistance for the victim or victims by immediately reporting such offense to a law enforcement officer;
- (3) Fails to seek such assistance;
- (4) Would not be exposed to any threat of physical violence for seeking such assistance;
- (5) Is not the husband, wife, parent, grandparent, child, brother, or sister of the offender or victim, by consanguinity or affinity; and
- (6) Is not the victim of such sexual battery.

is guilty of a misdemeanor in the first degree, punishable as provided in s. 775.082 or s. 775.083 F.S., by up to one year in jail and a \$1000 fine.

Failure to Report Child Abuse

Section 39.201, F.S., requires any person, including but not limited to any health care professional, school teacher or other school personnel, social worker, day care center worker or

law enforcement officer who knows or has reasonable cause to suspect that a child is abused, abandoned, or neglected to report such suspicion to the Department of Children and Family Services.

Section 39.205, F.S., provides that any person who is required to report known or suspected child abuse and who knowingly ignores the statutory reporting requirements, is guilty of a second degree misdemeanor. In *Barber v. State*, 592 So.2d 330 (Fla. 2nd DCA 1992), a foster care counselor failed to report to HRS a phone call that she had received which informed her that a child had been abused. The counselor was convicted of failure to report child abuse and the conviction was affirmed on appeal.

Traffic Offenses

Section 316.062, F.S., requires the driver of any vehicle involved in a crash resulting in death or injury to any person or damage to another's vehicle or property to give his or her name, address and driver's license information to the other party or an officer investigating the crash. If no one is able to take this information, the driver is obligated to report the crash to the nearest law enforcement agency. This section also requires the driver to render any injured person reasonable assistance, including transporting them for medical attention if requested. Violation of this section results in a noncriminal traffic infraction. (See also ss. 316.064, 316.065, F.S.)

Section 316.027(1)(a), F.S., requires the driver of any vehicle involved in a crash resulting in the injury of any person to stop and remain at the scene until his or her obligations under s. 316.062, F.S., are fulfilled. Failure to do so could result in a third degree felony conviction. Section 316.027(1)(b), F.S., requires the driver of any vehicle involved in a traffic crash resulting in the death of a person to stop and remain at the scene until his or her obligations under s. 316.062, F.S., are fulfilled or risk a second degree felony conviction.

Any person who gives information as required in chapter 316, F.S., knowing or having reason to believe the information is false, may be convicted of a second degree misdemeanor.

Accessory After the Fact

According to the Florida Standard Jury Instructions, in order to prove a defendant guilty of being an accessory after the fact, the State must prove five elements:

1. A felony was actually committed.
2. After the felony was committed, the defendant maintained, assisted or gave any other aid to the person who committed the felony.
3. At that time, the defendant knew that the felony had been committed.
4. The defendant aided the person who committed the felony with the intent that the felon avoid or escape detection, arrest, trial or punishment.

5. The defendant was not related to the person who committed the felony by blood or marriage as husband, wife, parent, grandparent, child, grandchild, brother or sister.

See also, s. 777.03, F.S.

Principal in the First Degree

The standard jury instruction relating to “principals” states:

If the defendant helped another person or persons commit or attempt to commit a crime, the defendant is a principal and must be treated as if he or she had done all the things the other person or persons did if: (1) the defendant had a conscious intent that the criminal act be done, and (2) the defendant did some act or said some word which was intended to and which did incite, cause, encourage, assist or advise the other person or persons to actually commit or attempt to commit the crime.

Fla. Standard Jury Instruction 3.01; Section 777.011, F.S.

III. Effect of Proposed Changes:

The bill would make it a second degree misdemeanor for an individual to:

1. know that a crime is being committed
2. which exposes the victim to serious bodily injury and
3. fail to report the crime to a law enforcement officer as soon as is reasonably practicable
4. unless the report could not be made without danger to the person reporting or to another person.

The bill also provides that this section may not be construed to apply to a person who is:

1. prosecuted as a principal in the first degree or an accessory after the fact to an offense;
2. prosecuted for attempting, soliciting or conspiring to commit an offense, when the prosecuted offense occurred in the course of the same criminal conduct, transaction, or episode as the criminal offense that exposed the victim to serious bodily injury.
3. related by blood or marriage to the principal or victim of an episode that exposes the victim to serious bodily injury; or
4. a victim of a serious bodily injury.

A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine.

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 new law would have no effect on the Department of Corrections because it is only categorized as a second degree misdemeanor and a conviction would not result in a prison sentence. The effect on the court system and county jails is expected to be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.