

STORAGE NAME: h0333s1.cp

DATE: March 9, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: CS/HB 333

RELATING TO: Failure to Report a Crime

SPONSOR(S): Committee on Crime & Punishment and Representative Crist

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT YEAS 3 NAYS 2
 - (2) CRIMINAL JUSTICE APPROPRIATIONS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

CS/HB 333 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 likely to cause death to report the crime to a law enforcement officer within 48 hours after the offense is committed to the extent that the report can be made without danger to the person reporting or to another person. The committee substitute provides that an individual who fails to make such a report is guilty of a second degree misdemeanor.

The committee substitute provides that the provision does 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.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|-----------------------------------------|----------------------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill would make it illegal to fail to report a crime that exposes the victim to serious bodily injury. This could be viewed as affecting an individual's freedom to not get involved when a crime is being committed.

B. 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).

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.

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.

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.

C. EFFECT OF PROPOSED CHANGES:

CS/HB 333 requires a person who knows that a crime which exposes the victim to serious bodily injury is being committed to report the crime to a law enforcement officer within 48 hours, to the extent that the report can be made without danger to the person reporting or to another person. The bill provides that any person who violates this subsection commits a second degree misdemeanor.

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.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Provides that a person who knows that a crime is being committed to report the crime to a law enforcement officer within 48 hours when the crime exposes the victim to serious bodily injury. Provides that failure to report is a second degree misdemeanor.

Section 2: Provides effective date of October 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill, which creates a second degree misdemeanor offense, will not have any impact on the Department of Corrections. Further, the number of cases prosecuted under this newly created section would likely be small and therefore have very little impact on the county jail population.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

During the 1999 session, CS/HB 69 which was substantially similar to this bill was sponsored by Representative Diaz de la Portilla. The bill passed the Committee on Law Enforcement & Crime Prevention and the Committee on Crime & Punishment and died in Criminal Justice Appropriations. The bill did not have a Senate companion.

This bill would impose a duty on a person who knows that a crime is being committed to report the crime if the crime exposes the victim to a life threatening injury but does not appear to apply to reporting a crime that the person discovers after it is completed. For example, if a person discovered that a friend had previously committed a crime in which the victim had received a life-threatening injury, this bill does not appear to impose on the person an obligation to report the crime. [However, if the person aids or maintains the offender with the intent that the offender escape or arrest for the crime, they could be charged with being an accessory after the fact.]

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Representative Crist offered a strike-everything amendment at the March 8, 2000 meeting of the Committee on Crime & Punishment. The amendment changed the bill as follows:

- The amendment provided that the act may be cited as the “Nicholas Isaac Cordero Act”.
- The amendment provided that the offense does not apply to a person who was related by blood or marriage to the principal or victim of an episode that exposes the victim to serious bodily injury.
- The amendment also provided that the offense does not apply to the person who is a victim of serious bodily injury.

Representative Villalobos offered two amendments to the strike-everything amendment. The first amendment to the amendment provided that in order to commit the offense, the person must know that a crime that exposes the victim to serious bodily injury likely to cause death is being committed. The second amendment to the amendment provided that the report must be made to a law enforcement officer within 48 hours of the offense being committed instead of “as soon as reasonably practicable”. The amendment as amended was adopted and the bill as amended was made a committee substitute.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Staff Director:

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