

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 353 Juvenile Justice

**SPONSOR(S):** Criminal Justice Subcommittee; Harrell and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 678

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Cox	Cunningham
2) Justice Appropriations Subcommittee	10 Y, 0 N	McAuliffe	Jones Darity
3) Judiciary Committee	18 Y, 0 N	Cox	Havlicak

### SUMMARY ANALYSIS

Section 985.02, F.S., which outlines the legislative intent for the juvenile justice system, provides that the children of the state shall be provided with protection from abuse, neglect and exploitation; as well as adequate nutrition, shelter and clothing. While uncommon, there are instances in which a Department of Juvenile Justice (DJJ) employee neglects a juvenile offender in the Department's custody, resulting in harm to the juvenile.

Currently, ch. 985, F.S., does not contain any provisions specifically addressing instances in which a DJJ employee is alleged to have neglected a youth in DJJ's custody. As a result, prosecutors have to look to statutes outside of ch. 985, F.S., to prosecute a DJJ employee alleged to have neglected a youth.

The bill creates s. 985.702, F.S., establishing a new criminal offense relating to malicious infliction of cruel or inhuman treatment by neglect.

The bill makes it a first degree misdemeanor for a DJJ employee, with malicious intent, to inflict cruel or inhuman treatment by neglect or otherwise on a juvenile offender without causing great bodily harm, permanent disability, or permanent disfigurement. If the infliction does cause great bodily harm, permanent disability, or permanent disfigurement to the juvenile offender, the employee commits a third degree felony.

The bill defines "neglect of a juvenile offender" as an employee's:

- Failure or omission to provide a juvenile offender with the proper level of care, supervision, and services necessary to maintain the juvenile offender's physical and mental health, including, but not limited to, adequate food, nutrition, clothing, shelter, supervision, medicine, and medical services; or
- Failure to make a reasonable effort to protect a juvenile offender from abuse, neglect, or exploitation by another person.

The bill also creates reporting requirements and provides criminal penalties for failing to comply with the reporting requirements.

The bill creates s. 985.702, F.S., which contains both misdemeanor and felony penalties. This could have a negative prison and jail bed impact.

The bill is effective upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Neglect of Youth Committed to the Department of Juvenile Justice**

Section 985.02, F.S., which outlines the legislative intent for the juvenile justice system, provides that the children of the state shall be provided with protection from abuse, neglect and exploitation; as well as adequate nutrition, shelter and clothing. While uncommon, there have been instances in which a Department of Juvenile Justice (DJJ) employee neglects a juvenile offender in DJJ's custody resulting in harm to the juvenile offender.<sup>1</sup>

Currently, ch. 985, F.S., does not contain any provisions specifically addressing instances where a DJJ employee is alleged to have neglected a youth in DJJ's custody. As a result, prosecutors have looked to statutes outside of ch. 985, F.S., to prosecute a DJJ employee alleged to have neglected a youth. One statute prosecutors have attempted to use for such prosecutions is s. 827.03, F.S., relating to criminal child neglect. However, the child neglect statute is not designed to prosecute neglect cases which arise within the unique framework of the juvenile justice environment, nor does it apply to youth in DJJ's custody who are 18 or older.<sup>2</sup>

#### Effect of the Bill

The bill creates s. 985.702, F.S., establishing a new criminal offense relating to malicious infliction of cruel or inhuman treatment by neglect.

The bill makes it a first degree misdemeanor<sup>3</sup> for a DJJ employee, with malicious intent, to inflict cruel or inhuman treatment by neglect or otherwise on a juvenile offender *without* causing great bodily harm, permanent disability, or permanent disfigurement. If the infliction does cause great bodily harm, permanent disability, or permanent disfigurement to the juvenile offender, the employee commits a third degree felony.<sup>4</sup>

The bill defines an "employee" as a paid staff member, volunteer, or intern who works in a DJJ program or a program operated by a provider under contract with DJJ;<sup>5</sup> and defines a "juvenile offender" as "any person of any age who is detained by, or committed to the custody of, the department." "Neglect of a juvenile offender" is defined as an employee's:

- Failure or omission to provide a juvenile offender with the proper level of care, supervision, and services necessary to maintain the juvenile offender's physical and mental health, including, but not limited to, adequate food, nutrition, clothing, shelter, supervision, medicine, and medical services; or
- Failure to make a reasonable effort to protect a juvenile offender from abuse, neglect, or exploitation by another person.

If the Public Employees Relations Commission determines that a DJJ employee violates the newly created s. 985.702, F.S., such determination constitutes sufficient cause under s. 110.227, F.S.,<sup>6</sup> for

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<sup>1</sup> *DJJ supervisor thought Eric Perez was "faking" as he dies in juvie lockup, officer testifies*, [http://blogs.browardpalmbeach.com/pulp/2012/03/djj\\_eric\\_perez\\_death\\_grand\\_jury\\_report.php](http://blogs.browardpalmbeach.com/pulp/2012/03/djj_eric_perez_death_grand_jury_report.php) (last visited on February 18, 2013); *Parents of teen who died at Palm Beach County juvenile center say they'll sue DJJ*, <http://www.palmbeachpost.com/news/news/crime-law/parents-of-teen-who-died-at-palm-beach-county-ju-1/nLhcN/> (last visited on February 18, 2013).

<sup>2</sup> Chapter 827, F.S., defines a child as "any person under the age of 18 years." While the majority of youth in DJJ's custody are under 18 years old, there are instances which DJJ has custody of a person who is 18 years old or older. For example, s. 985.0301(5)(a), F.S., states DJJ must retain jurisdiction over a child alleged to have committed a delinquent act until the child reaches 19 years old and may retain jurisdiction for an additional 365 days following the child's 19<sup>th</sup> birthday if the child is participating in transition-to-adulthood services.

<sup>3</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>4</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>5</sup> This is the same definition as provided in s. 985.701(1)(a)1.b., F.S., relating to sexual misconduct by an employee.

<sup>6</sup> Section 110.227, F.S., relates to the suspension and dismissal of career service employees.

dismissal from employment with DJJ, and prohibits the employee from being employed in any capacity in connection with the juvenile justice system.

The bill requires employees who witness the infliction of cruel or inhuman treatment against a juvenile offender to immediately report the incident to DJJ's incident hotline. The witness must also prepare an independent report specifically describing the nature of the incident, the location and time, and the persons involved. This report must be submitted to the witness's supervisor or program director, who in turn must provide copies of the report to the inspector general and the circuit juvenile justice manager. The inspector general must immediately conduct an appropriate administrative investigation and, if there is probable cause to believe that a violation occurred, notify the state attorney in the circuit in which the incident occurred.

Any person who is required to prepare a report under this section who knowingly or willfully fails to file a report, or prevents another person from filing a report commits a first degree misdemeanor. In addition, any person who knowingly or willfully:

- Submits inaccurate, incomplete, or untruthful information on a report commits a first degree misdemeanor; and
- Coerces or threatens another person with the intent to alter testimony or a written report commits a third degree felony.

### **Sexual Misconduct by an Employee**

Section 985.701, F.S., makes it a second degree felony<sup>7</sup> for a DJJ employee<sup>8</sup> to engage in sexual misconduct<sup>9</sup> with juvenile offenders "detained or supervised by, or committed to the custody, of the department." The statute does not define the term "juvenile offender."

#### Effect of the Bill

The bill amends s. 985.701, F.S., relating to sexual misconduct, to define "juvenile offender" as "any person of any age who is detained, or committed to the custody of, the department." This mirrors the definition used in s. 985.702, F.S.

#### **B. SECTION DIRECTORY:**

Section 1. Creates s. 985.702, F.S., relating to malicious infliction of cruel or inhuman treatment prohibited; reporting required; penalties.

Section 2. Amends s. 985.701, F.S., relating to sexual misconduct prohibited; reporting required; penalties.

Section 3. The bill is effective upon becoming a law.

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<sup>7</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>8</sup> Section 985.701(1)(a)1.b., F.S., defines "employee" as paid staff members, volunteers, and interns who work in a department program or a program operated by a provider under a contract.

<sup>9</sup> Section 985.701(1)(a)1.a., F.S., defines "sexual misconduct" as fondling the genital area, groin, inner thighs, buttocks, or breasts of a person; the oral, anal, or vaginal penetration by or union with the sexual organ of another; or the anal or vaginal penetration of another by any other object. The term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by an employee of the department or an employee of a provider under contract with the department.

## 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 creates a new felony offense relating to malicious infliction of cruel or inhuman treatment by neglect. The bill also creates a new felony offense related to the reporting requirements in the bill. To the extent that DJJ employees are prosecuted for either of these new felony offenses, it could have a negative prison bed impact on the Department of Corrections.

### 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 creates a new misdemeanor offense relating malicious infliction of cruel or inhuman treatment. The bill also creates new misdemeanor offenses related to the reporting requirements in the bill. To the extent that DJJ employees are prosecuted for any of these new misdemeanor offenses, it could have a negative jail bed impact on local governments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

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

#### 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 February 12, 2013, the Criminal Justice Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Creates s. 985.702, F.S., which prohibits a DJJ employee from committing malicious infliction of cruel or inhuman treatment by neglect on a juvenile offender.
- Defines the terms “employee,” “juvenile offender,” and “neglect of a juvenile offender;”
- Creates reporting requirements;
- Defines the term “juvenile offender” in s. 985.701, F.S.;
- Deletes section 2 of the original bill, which repealed s. 945.74, F.S., relating to Department of Corrections inmate training programs.

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