

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 400

INTRODUCER: Senator Dean

SUBJECT: False Reports to Law Enforcement Officers

DATE: February 6, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 400 increases the offense degree for knowingly giving false information to a law enforcement officer from a first degree misdemeanor to a third degree felony for a second or subsequent offense resulting in a conviction. Under current law, regardless of whether the offense is a first offense or a second or subsequent offense, the offense is a first degree misdemeanor. Under the bill, only the first offense is a first degree misdemeanor.

This bill substantially amends section 837.05, Florida Statutes.

II. Present Situation:

Recent Legislation Regarding False Information Reporting

The Senate Select Committee on Protecting Florida's Children was created on August 10, 2011, in the wake of the Casey Anthony verdict.¹ The committee was charged with examining the various policy options to further advance the protection of children and determine whether changes to current law were needed.

¹ A grand jury indicted Casey Anthony based on their determination of her alleged involvement in the death of her 2 year-old daughter, Caylee. Anthony was charged with first degree murder, aggravated child abuse, aggravated manslaughter of a child, and providing false information to a law enforcement. She pled not guilty. On July 5, 2011, a jury found Anthony not guilty of all of the charges except the four counts of providing false information to a law enforcement officer in violation of s. 893.055, F.S. Anthony received a sentence of one year in jail and a \$1,000 fine for each count. *See Senate Analysis of SB 858*, dated January 20, 2012 (available at <http://www.flsenate.gov/>). The Florida Fifth District Court of Appeal recently set aside two of Anthony's four convictions for providing false information because the court found those convictions violated double jeopardy principles. *See Anthony v. State*, 2013 WL 275533 (Fla. 5th DCA January 25, 2013).

The committee identified the relevant laws on child abuse and providing false information in missing children investigations. The committee examined ch. 827, F.S., relating to the abuse of children, s. 406.12, F.S., relating to the duty to report a death, and s. 837.055, F.S., relating to knowingly giving false information to a law enforcement officer during a missing person investigation. Particular attention was given to ss. 827.03² and 837.055, F.S.,³ and their relationship to the circumstances in the Anthony case.

After reviewing these laws and receiving testimony from child abuse officials, law enforcement officials, prosecutors, and defense attorneys, the committee recommended amending s. 837.055, F.S., to make it a third degree felony to knowingly and willfully give false information to a law enforcement officer who is conducting a missing person investigation involving a child 16 years of age or younger with the intent to mislead the officer or impede the investigation and the child who is the subject of the investigation suffers great bodily harm, permanent disability, permanent disfigurement, or death.⁴

The Legislature passed CS/HB 37,⁵ which enacted into law the changes to s. 837.055, F.S., recommended by the committee.

False Information Reporting Under Section 837.05, F.S.

Although the Legislature amended s. 837.055, F.S., the statute under which Casey Anthony was convicted of providing false information to a law enforcement officer, Anthony was initially charged (by information) by the State Attorney with providing false information to a law enforcement officer in violation of s. 837.05, F.S.⁶ This statute provides that it is a first degree misdemeanor to knowingly give false information to a law enforcement officer concerning the alleged commission of a crime.

Staff did not find any Florida appellate case relevant to application of s. 837.05, F.S., in the context of providing false information to a law enforcement officer who is conducting a missing person investigation. However, the Florida Third District Court of Appeal, in reviewing a case involving a defendant convicted for giving false statements to police at a police station during a homicide investigation, stated, in dicta, that if the defendant “is guilty of an offense involving false statements, it must be an offense provided for in Section 837.012⁷ or 837.05, Florida Statutes (1977).”⁸

² Section 827.03, F.S., punishes various acts of child abuse and neglect.

³ Section 837.055(1), F.S., which was not altered by the 2012 legislative changes to s. 837.055, F.S. (described in the text of this analysis), provides that it was a first degree misdemeanor to knowingly and willfully give false information to a law enforcement officer who is conducting a missing person investigation or a felony criminal investigation with the intent to mislead the officer or impede the investigation.

⁴ Senate Analysis of SB 858, dated January 20, 2012, *supra*.

⁵ Chapter 2012-53, LO.F.

⁶ Court documents on file with the Senate Committee on Criminal Justice.

⁷ Section 837.012(1), F.S., provides that it is a first degree misdemeanor for a person to make a false statement, which he or she does not believe to be true, under oath, not in an official proceeding, in regard to any material matter. Section 837.05, F.S., does not contain any ‘oath’ requirement.

⁸ *Schramm v. State*, 374 So.2d 1043, 1045 (Fla. 3rd DCA 1979) (footnotes omitted). The appellate court reversed Schramm’s conviction for a violation of s. 837.02, F.S. (perjury in an official proceeding).

III. Effect of Proposed Changes:

The bill amends s. 837.05, F.S., to increase the degree of the false information reporting offense in the statute (thereby also increasing the penalty) when the offense is a second or subsequent offense. This offense is currently a first degree misdemeanor.⁹ Under the bill, only the first offense is a first degree misdemeanor; the second or subsequent offense is a third degree felony.¹⁰

The effective date of the bill is October 1, 2013.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The bill does not impact municipalities and counties under the requirements of Article VII, Section 18, of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The bill does not raise public records or open meetings issues under the requirements of Article I, Section 24(a) and (b), of the Florida Constitution.

C. Trust Funds Restrictions:

The bill does not impact trust fund restrictions under the requirements of Article III, Section 19(f), of the Florida Constitution.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation had not convened at the time this analysis was

⁹ A first degree misdemeanor is punishable by up to a year in jail, a fine of up to \$1,000, or both. Sections 775.082 and 775.083, F.S.

¹⁰ A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S. The third degree felony created by the bill is not ranked in the offense severity ranking chart of the Criminal Punishment Code (s. 921.0022, F.S) and is, therefore, ranked based on its degree as a Level 1 offense (s. 921.0023, F.S.).

completed. However, a preliminary estimate from the Legislature's Office of Economic and Demographic Research (EDR) is that the bill will have an insignificant prison bed impact due to a small number of additional new commitments expected. According to information provided to the EDR by the Florida Department of Law Enforcement, in FY 2011-12, there were 171 misdemeanor convictions for a violation of s. 837.05, F.S. The EDR states that, even if 50 percent of the convictions were second or subsequent convictions, which would be third degree felonies under the proposed legislation, the EDR would expect fewer than 10 additional new commitments annually to prison.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.