

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: CS/SB 678

INTRODUCER: Criminal Justice Committee and Senator Evers

SUBJECT: Malicious Infliction of Cruel or Inhuman Treatment on a Juvenile Offender

DATE: March 11, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.			JU	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 678 creates s. 985.702, F.S., establishing a new criminal offense relating to malicious infliction of cruel or inhuman treatment on a juvenile offender by a Department of Juvenile Justice (DJJ) employee.

Under the bill, it becomes a first degree misdemeanor for a DJJ employee, with malicious intent, to inflict on a juvenile offender cruel or inhuman treatment by neglect or otherwise without causing great bodily harm, permanent disability, or permanent disfigurement. If such harm or disfigurement is inflicted on the juvenile offender, the employee commits a third degree felony.

The bill also creates reporting requirements for DJJ employees. Failure to comply with these new reporting requirements becomes a criminal act under the bill, resulting in first degree misdemeanor or third degree felony penalties.

Finally, the bill amends the definition of “juvenile offender” in the newly created statute to include a person of any age committed to the DJJ’s custody. It also provides a definition of “juvenile offender” in the sexual misconduct statute, s. 985.701, F.S.

This bill creates section 985.702 of the Florida Statutes. The bill amends section 985.701 of the Florida Statutes.

II. Present Situation:

Neglect of Youth Committed to the DJJ

Section 985.02, F.S., provides legislative intent for the general protections of children within the juvenile justice system, including protection from abuse, neglect, and exploitation.¹ However, there is no specific statute within ch. 985, F.S., that can be used to prosecute a DJJ employee for criminal neglect of a youth in the department's custody.² As a result, prosecutors have looked to other statutes to prosecute a DJJ employee alleged to have neglected a youth. One such statute is the child abuse statute, but it 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 years of age or older.³

Sexual Misconduct by an Employee

Section 985.701, F.S., makes it a second degree felony⁴ for a DJJ employee⁵ to engage in sexual misconduct⁶ with juvenile offenders "detained or supervised by, or committed to the custody, of the department." The statute does not define the term "juvenile offender."

III. Effect of Proposed Changes:

Neglect of Youth Committed to the DJJ

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

The bill makes it a first degree misdemeanor⁷ 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

¹ Section 985.02(1)(a), F.S.

² See the Palm Beach County Grand Jury Presentment Regarding the Death of Eric Perez While in the Custody of the Florida Department of Juvenile Justice, on file with the Senate Criminal Justice Committee. The grand jury recommended the creation of a criminal statute prohibiting the neglect of youths in the custody of the DJJ.

³ *Id.* Because Eric Perez had turned 18 a few days before his death in the detention center, he did not meet the definition of a "child" in s. 827.03, F.S., relating to child abuse, and as such, prosecutors were unable to charge the Palm Beach Regional Juvenile Detention facility officers with child neglect.

⁴ 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.

⁵ 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.

⁶ 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.

⁷ 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.

great bodily harm, permanent disability, or permanent disfigurement to the juvenile offender, the employee commits a third degree felony.⁸

“Neglect of a juvenile offender” is defined under the bill 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 defines an “employee” as a “paid staff member, volunteer, or intern who works in a department program or a program operated by a provider under contract with the department.”⁹ It also defines a “juvenile offender” as “any person of any age who is detained, or committed to the custody of, the department.”

If the Public Employees Relations Commission determines that a DJJ employee violates the newly created section, such determination constitutes sufficient cause under s. 110.227, F.S.,¹⁰ for dismissal from employment with the 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 the 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.

Failure to comply with these new reporting requirements becomes a criminal act under the bill, resulting in the following criminal penalties:

- Any person who knowingly or willfully fails to file a report or prevents another person from doing so commits a first degree misdemeanor;
- Any person who knowingly or willfully submits inaccurate, incomplete, or untruthful information on a report commits a first degree misdemeanor; and
- Any person who coerces or threatens another person with the intent to alter testimony or a written report commits a third degree felony.

⁸ 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.

⁹ This is the same definition as provided in s. 985.701(1)(a)1.b., F.S., relating to sexual misconduct by an employee.

¹⁰ Section 110.227, F.S., relates to the suspension and dismissal of career service employees.

Sexual Misconduct by an Employee

The bill amends s. 985.701, F.S., relating to sexual misconduct, to define “juvenile offender” as “a person of any age who is detained or supervised by, or committed to the custody of, the department.”

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

A DJJ employee who is prosecuted for the new first degree misdemeanor or third degree felony offenses under the bill could be subjected to fines up to \$1,000 for the misdemeanor offenses, and up to \$5,000 for the third degree felony offenses.

C. Government Sector Impact:

The bill creates two new third degree felony offenses, malicious infliction of cruel or inhuman treatment causing great bodily harm, and knowingly coercing another person with the intent to alter testimony or a written report. The Criminal Justice Impact Conference met on February 27, 2013 and determined that there will be an insignificant impact on prison beds as a result of this bill.

The bill also creates several new first degree misdemeanor offenses related to malicious battery on a juvenile offender and failure to comply with reporting requirements. To the extent that DJJ employees are prosecuted for any of the new misdemeanor offenses, it could negatively impact local jails.

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.)**CS by Criminal Justice on March 11, 2013:**

- Deletes the newly created first degree misdemeanor battery offense and replaces it with malicious infliction of cruel and inhuman treatment by neglect or otherwise on a juvenile offender without causing significant injury.
- Defines “juvenile offender” to include a juvenile of any age in the custody of the DJJ for purposes of the newly created offense.
- Adds a definition of “neglect” to the newly created statute.
- Adds a definition of “juvenile offender” to the sexual misconduct statute, s. 985.701, F.S.
- Removes the provision repealing the statute that authorizes jail and prison tours by juveniles.

B. Amendments:

None.