

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 678

INTRODUCER: Senator Evers

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

DATE: February 20, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Pre-meeting
2.			JU	
3.				
4.				
5.				
6.				

I. Summary:

SB 678 creates s. 985.7015, F.S., establishing a new criminal offense relating to malicious battery and 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 commit a battery on a juvenile offender. It becomes a third degree felony for a DJJ employee, with malicious intent, to inflict cruel or inhuman treatment by neglect or otherwise on a juvenile offender thereby causing great bodily harm, permanent disability, or permanent disfigurement.

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 repeals s. 945.75, F.S., authorizing tours by juveniles of state and county correctional facilities so that the DJJ can remain in compliance with the federal Juvenile Justice and Delinquency Prevention Act.

This bill creates section 985.7015 of the Florida Statutes. The bill repeals section 945.75 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

Jail Tours

Section 945.75, F.S., requires the Department of Corrections (DOC) to develop programs under which a judge may order juveniles who have committed delinquent acts to be allowed to tour state correctional facilities under the terms and conditions established by DOC. The statute requires counties to develop similar programs involving county jails. These tour programs are commonly referred to as "scared straight programs."⁴ Scared straight programs generally involve adult inmates describing the conditions associated with jail or prison incarceration to delinquent at-risk youth in a secure setting.⁵ The goal of these programs is to modify the behavior of the juveniles by shocking, scaring, and thus deterring them from engaging in further delinquent activity.⁶

The DJJ reports that because the department complies with the Federal Juvenile Justice and Delinquency Prevention Act of 2002,⁷ it receives between two and eight million dollars in federal funding.⁸ The DJJ states that it will lose two-thirds of its federal funding because the scared straight tours violate several portions of the Juvenile Justice and Delinquency Prevention Act.⁹

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 *Scared Straight Programs*, www.dcjs.virginia.gov/juvenile/compliance (last visited on February 27, 2013); *See also Scared Straight Programs: Jail and Detention Tours*, DJJ, www.djj.state.fl.us/docs/research2/scared_straight_booklet_version (last visited on February 27, 2013).

⁵ *Id.*

⁶ *Id.*

⁷ Pub. L. No 93-415 (1974).

⁸ See the 2013 Agency Proposal, Juvenile Justice Reform, by the Department of Juvenile Justice, which is on file with the Senate Criminal Justice Committee.

⁹ *Id.* The specific portions of the federal act violated are the Deinstitutionalization of Status Offenders, the Sight and Sound Separation, and the Jail Removal Acts.

III. Effect of Proposed Changes:

Neglect of Youth Committed to the DJJ

The bill creates s. 985.7015, F.S., establishing a new criminal offense relating to malicious battery and infliction of cruel or inhuman treatment on a juvenile offender by a DJJ employee.

The bill makes it a first degree misdemeanor¹⁰ for a DJJ employee, with malicious intent, to commit battery on a juvenile offender. It becomes a third degree felony for a DJJ employee, with malicious intent, to inflict cruel or inhuman treatment by neglect or otherwise on a juvenile offender thereby causing great bodily harm, permanent disability, or permanent disfigurement.¹¹

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.”¹² It also defines a “juvenile offender” as “a person younger than 18 years of age who is detained or supervised by, 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.,¹³ 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.

¹⁰ 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.

¹¹ 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.

¹² This is the same definition as provided in s. 985.701(1)(a)1.b., F.S., relating to sexual misconduct by an employee.

¹³ Section 110.227, F.S., relates to the suspension and dismissal of career service employees.

Jail Tours

The bill repeals s. 945.75, F.S., so that the DJJ can continue receiving federal funds by remaining in compliance with the federal Juvenile Justice and Delinquency Prevention Act.

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:

An amendment is recommended to clarify that the definition of a "juvenile offender" includes a juvenile of any age in the custody of the DJJ.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
