

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1187 Sentencing Child Abusers

SPONSOR(S): Criminal Justice Subcommittee; Perry

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1278

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Krol	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 921.187, F.S., gives judges sentencing alternatives when disposing criminal cases where an offender does not receive a state prison sentence. These alternatives must be used in a manner that will best serve the needs of society, punish criminal offenders, and provide the opportunity for rehabilitation.

The bill allows a judge to impose the following alternative sentence on an offender who violates any criminal provision of ch. 827, F.S. (relating to the abuse of children), and who does not receive a state prison sentence:

- Payment of an additional assessment in the amount of \$250 to the child protection team in the judicial circuit in which the alternative sentence is imposed.

The bill provides that if there is more than one child protection team in the judicial circuit in which the alternative sentence is imposed, the assessment shall be allocated evenly among them.

The bill may result in increased funding for local child protection teams. See "fiscal comments."

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Abuse of Children

Chapter 827, F.S., provides various criminal offenses relating to the abuse of children.¹

Child abuse is defined as:

- Intentional infliction of physical or mental injury upon a child;
- An intentional act that could reasonably be expected to result in physical or mental injury to a child; or
- Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.²

Child abuse is a third degree felony³ and occurs when a person knowingly and willfully abuses a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child.

Aggravated child abuse is a first degree felony⁴ and occurs when a person:

- Commits aggravated battery on a child;
- Willfully tortures, maliciously⁵ punishes, or willfully and unlawfully cages a child; or
- Knowingly or willfully abuses a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child.⁶

Neglect of a child occurs when:

- A caregiver⁷ fails or omits to provide a child with the care, supervision, and services necessary to maintain the child's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child; or
- A caregiver fails to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person.⁸

Neglect of a child may be based on repeated conduct or on a single incident or omission that results in, or could reasonably be expected to result in, serious physical or mental injury, or a substantial risk of death, to a child.⁹ Neglect of a child is a third degree felony when a person willfully or by culpable negligence neglects a child. However, it is a second degree felony¹⁰ when a person willfully or by culpable negligence neglects a child and in doing so causes great bodily harm, permanent disability, or permanent disfigurement to the child.

Child Protection Teams

The Department of Health Children's Medical Services Child Protection Team (CPT) Program is a medically directed, multidisciplinary statewide program designed to supplement the child protective investigation activities of local Sheriff's offices and the Department of Children and Family Services

¹ Section 827.01(2), F.S., defines "child" as "any person under the age of 18 years."

² Section 827.03(1), F.S.

³ Punishable by up to 5 years imprisonment and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

⁴ Punishable by up to 30 years imprisonment and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

⁵ For purposes of this section, "maliciously" means wrongfully, intentionally, and without legal justification or excuse. Maliciousness may be established by circumstances from which one could conclude that a reasonable parent would not have engaged in the damaging acts toward the child for any valid reason and that the primary purpose of the acts was to cause the victim unjustifiable pain or injury. Section 827.03(4), F.S.

⁶ Section 827.03(2), F.S.

⁷ Section 827.01(1), F.S., defines "caregiver" as "a parent, adult household member, or other person responsible for a child's welfare."

⁸ Section 827.03(3)(a), F.S.

⁹ Section 827.03(3)(a), F.S.

¹⁰ Punishable by up to 15 years imprisonment and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

(DCFS) in complex cases of child abuse and neglect.¹¹ Section 39.303, F.S., authorizes the Children's Medical Services (CMS) Program within the Department of Health (DOH) to develop, maintain, and coordinate CPT services through contracts with local community-based programs. Twenty-two CPTs, some with satellite offices, provide these services to all children in the state meeting criteria for referral.

A CPT provides consultation to DCFS programs and other persons regarding child abuse, abandonment, and neglect cases.¹² All child abuse and neglect cases transmitted to child protection investigation by the child abuse hotline must be simultaneously transmitted to a CPT for review.¹³ The specialized diagnostic assessment, evaluation, coordination, consultation, and other supportive services that a CPT is capable of providing include, but are not limited to, the following:

- Medical diagnosis and evaluation services, including provision or interpretation of X-rays and laboratory tests, and related services, as needed, and documentation of findings relative thereto.
- Telephone consultation services in emergencies and in other situations.
- Medical evaluation related to abuse, abandonment, or neglect, as defined by policy or rule of DOH.
- Psychological and psychiatric diagnosis and evaluation services for the child or the child's parent or parents, legal custodian or custodians, or other caregivers, or any other individual involved in a child abuse, abandonment, or neglect case, as the team may determine to be needed.
- Expert medical, psychological, and related professional testimony in court cases.
- Case staffings to develop treatment plans for children whose cases have been referred to the team.
- Case service coordination and assistance, including the location of services available from other public and private agencies in the community.
- Training services for program and other employees of DCFS, employees of DOH, and other medical professionals as is deemed appropriate to enable them to develop and maintain their professional skills and abilities in handling child abuse, abandonment, and neglect cases.
- Educational and community awareness campaigns on child abuse, abandonment, and neglect in an effort to enable citizens to prevent, identify, and treat child abuse, abandonment, and neglect in the community.
- CPT assessments that include, as appropriate, medical evaluations, medical consultations, family psychosocial interviews, specialized clinical interviews, or forensic interviews.¹⁴

Sentencing Alternatives

Section 921.187, F.S., gives judges sentencing alternatives when disposing criminal cases where an offender does not receive a state prison sentence. These alternatives must be used in a manner that will best serve the needs of society, punish criminal offenders, and provide the opportunity for rehabilitation,¹⁵ and include:

- Requiring an offender who violates ch. 893, F.S.,¹⁶ or violates any law while under the influence of a controlled substance or alcohol to participate in a substance abuse program.¹⁷
- Requiring an offender who violates any criminal provision of ch. 893, F.S., to pay an additional assessment in an amount up to the amount of any fine imposed, pursuant to ss. 938.21¹⁸ and 938.23.^{19,20}

¹¹ "Children's Medical Services: Child Protection Team" Department of Health. <http://www.doh.state.fl.us/cms/HProviderPICPT.html> (last visited January 27, 2012).

¹² Section 39.01(13), F.S.

¹³ Section 39.303(3), F.S.

¹⁴ Section 39.303(1), F.S.

¹⁵ Section 921.187(1), F.S.

¹⁶ Chapter 893, F.S., relates to drug abuse prevention and control.

¹⁷ Section 921.187(k), F.S.

¹⁸ Section 938.21, F.S., relates to alcohol and drug abuse programs.

¹⁹ Section 938.23, F.S., relates to assistance grants for alcohol and other drug abuse programs.

²⁰ Section 921.187(1)1., F.S.

- Requiring an offender who violates any provision of s. 893.13, F.S.,²¹ to pay an additional assessment in an amount of \$100, pursuant to ss. 938.25²² and 943.361, F.S.^{23,24}
- Requiring residence in a state probation and restitution center or private drug treatment program for offenders on community control or offenders who have violated conditions of probation.²⁵

Effect of the Bill

The bill allows a judge to impose the following alternative sentence on an offender who violates any criminal provision of ch. 827, F.S. (relating to child abuse), and does not receive a state prison sentence:

- Payment of an additional assessment in the amount of \$250 to the child protection team in the judicial circuit in which the alternative sentence is imposed.

The bill provides that if there is more than one child protection team in the judicial circuit in which the alternative sentence is imposed, the assessment shall be allocated evenly among them.

B. SECTION DIRECTORY:

Section 1. Amends s. 921.187, F.S., disposition and sentencing; alternatives; restitution.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "fiscal comments."

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "fiscal comments."

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "fiscal comments."

D. FISCAL COMMENTS:

The Child Protection Team (CPT) Program is funded by the Legislature through the Department of Health's (DOH) Children's Medical Services program office, which contracts with local providers for

²¹ Section 893.13, relates to various controlled substance penalties.

²² Section 938.25, F.S., relates to operating Trust Fund of the Department of Law Enforcement.

²³ Section 943.361, F.S., relates to statewide criminal analysis laboratory system; funding through fine surcharges.

²⁴ Section 921.187(l)2., F.S.

²⁵ Section 921.187(o), F.S.

team services.²⁶ Providers currently under contract with DOH include non-profit agencies, hospitals, universities, and county governments.²⁷

The bill requires offenders who violate any criminal provision of ch. 827, F.S., to pay an additional assessment of \$250 to the CPT in the judicial circuit in which the alternative sentence is imposed. The bill may have a positive fiscal impact on any of the above named entities to the extent that they are contracted as a CPT.

Persons who violate any criminal provision of ch. 827, F.S., and who are sentenced to the alternative proposed by the bill will be required to pay an additional \$250 fee.

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 January 31, 2012, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Provides that if there is more than one child protection team in the judicial circuit in which the alternative sentence is imposed, the assessment shall be allocated evenly among them.

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

²⁶ Child Protection Team Program Policy and Procedure Handbook. June 2009. http://www.cms-kids.com/providers/prevention/documents/handbook_cpt.pdf (last visited January 27, 2012).

²⁷ *Id.*