



The bill creates s. 985.702, F.S., establishing malicious infliction of cruel or inhuman treatment on a juvenile offender by a DJJ employee as a first degree misdemeanor<sup>1</sup> If the infliction causes great bodily harm, permanent disability, or permanent disfigurement, the employee commits a second degree felony.<sup>2,3</sup>

The bill also creates reporting requirements for DJJ employees who witness the prohibited treatment. Failure to comply or complying dishonestly or inaccurately with reporting requirements are criminal acts under the bill. The penalties for failing to make an accurate report range from a first degree misdemeanor to a third degree felony.

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.

The bill has an effective date of July 1, 2013.

This bill creates section 985.702, Florida Statutes.

The bill repeals sections 985.105 and 945.75, Florida Statutes.

The bill substantially amends sections 121.0515 and 985.701, Florida Statutes.

## **II. Present Situation:**

### **Youth Custody Officers**

Section 985.105, F.S., created the youth custody officer position within the Department of Juvenile Justice (DJJ). Youth custody officers were responsible for taking a youth into custody if the officer had probable cause to believe that the youth:

- Violated the conditions of probation, home detention, conditional release, or postcommitment probation; or
- Failed to appear in court after being properly noticed.

These youth custody officers were also responsible for informing local law enforcement agencies when they took anyone into custody under this section.

Youth custody officers were required to meet the minimum qualifications for employment or appointment, become certified under ch. 943, F.S., and comply with the mandates for continued employment as provided by s. 943.135, F.S.<sup>4</sup> Additionally, s. 121.0515, F.S., designated youth

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<sup>1</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>2</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>3</sup> Repeat offender sanctions are also available under s. 775.084, F.S.

<sup>4</sup> Section 985.105(2), F.S.

custody officers as members of the “special risk class” for purposes of the Florida Retirement System.<sup>5</sup>

According to the DJJ, it eliminated these youth custody officer positions on July 1, 2010, as a way to reduce its budget.<sup>6</sup> The duties of the youth custody officers were either distributed among existing employees or are no longer performed by the DJJ.<sup>7</sup>

### **Jail and Prison Tours**

Section 945.75, F.S., requires the Department of Corrections (DOC) to develop programs under which a judge may order that a juvenile who has committed a delinquent act 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.”<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

The DJJ reports that because it complies with the Federal Juvenile Justice and Delinquency Prevention Act of 2002 (the act),<sup>11</sup> it receives between \$2 million and \$8 million in federal funding.<sup>12</sup> The act provides funds for states which comply with the protections it proscribes for juvenile offenders.<sup>13</sup> The scared straight programs may violate several provisions of the act including the prohibition on contact between juvenile and adult offenders.<sup>14</sup> The DJJ states that it could lose two-thirds of its federal funding because of these violations of the act.<sup>15</sup>

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<sup>5</sup> Section 121.0515, F.S., creates a “special risk class” of state employees for purposes of the Florida Retirement System that earn more retirement credit per year of service. This increased credit is in recognition that they may be unable to “enjoy the full career and retirement benefits enjoyed by other membership classes” as a result of the physically demanding and high risk functions required by their jobs.

<sup>6</sup> See Department of Juvenile Justice, *2013 Agency Proposal, Juvenile Justice Reform, Youth Custody Officer Analysis* (2013) (on file with the Senate Committee on Judiciary).

<sup>7</sup> *Id.*

<sup>8</sup> Virginia Department of Criminal Services, *Scared Straight Programs*, <http://www.dcjs.virginia.gov/juvenile/compliance/scaredStraight.pdf> (last visited on April 3, 2013); See also Department of Juvenile Justice, *Scared Straight Programs: Jail and Detention Tours*, [www.djj.state.fl.us/docs/research2/scared\\_straight\\_booklet\\_version](http://www.djj.state.fl.us/docs/research2/scared_straight_booklet_version) (last visited on April 3, 2013).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> 42 U.S.C. Chapters 72.

<sup>12</sup> See Department of Juvenile Justice, *2013 Agency Proposal, Juvenile Justice Reform, Jail Tour Analysis* (2013) (on file with the Senate Committee on Judiciary).

<sup>13</sup> 42 U.S.C. § 5633(a).

<sup>14</sup> 42 U.S.C. § 5633(a)(12).

<sup>15</sup> Department of Juvenile Justice, *2013 Agency Proposal, Juvenile Justice Reform, Jail Tour Analysis*, *supra* note 9.

### **Neglect of Youth Committed to the DJJ**

Section 985.02, F.S., includes, as legislative intent, the general protections of children within the juvenile justice system, including protection from abuse, neglect, and exploitation.<sup>16</sup> However, no specific statute within chapter 985, F.S., authorizes prosecution of a DJJ employee for criminal neglect of a youth in the department's custody.<sup>17</sup> 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. However, the child abuse statute is not designed to prosecute neglect cases which arise within the unique framework of the juvenile justice environment, and does not apply to youth in DJJ's custody who are 18 years of age or older.<sup>18</sup>

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

Section 985.701, F.S., makes it a second degree felony<sup>19</sup> for a DJJ employee<sup>20</sup> to engage in sexual misconduct<sup>21</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."

## **III. Effect of Proposed Changes:**

### **Youth Custody Officers**

This bill repeals s. 985.105, F.S., which created youth custody officer positions within the DJJ. This section of law is no longer needed because these positions have not been filled since 2010. Likewise, the bill deletes language in s. 121.0515, F.S., classifying these positions as special risk positions for purposes of the Florida Retirement System.

### **Jail and Prison Tours**

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

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<sup>16</sup> Section 985.02(1)(a), F.S.

<sup>17</sup> 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 and the Senate Judiciary Committee). The grand jury recommended the creation of a criminal statute prohibiting the neglect of youths in the custody of the DJJ.

<sup>18</sup> *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.

<sup>19</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>20</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>21</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.

## Neglect of Youth Committed to the DJJ

The bill creates s. 985.702, F.S., establishing malicious infliction of cruel or inhuman treatment on a juvenile offender by a DJJ employee as a first degree misdemeanor<sup>22</sup> If the infliction causes great bodily harm, permanent disability, or permanent disfigurement, the employee commits a second degree felony.<sup>23,24</sup>

The bill defines:

- “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.”<sup>25</sup>
- “Juvenile offender” as “any person of any age who is detained, or committed to the custody of, the department.”

A Public Employees Relations Commission determination that a DJJ employee violated the newly created section would constitute sufficient cause under s. 110.227(1), F.S.,<sup>26</sup> for the employee’s firing by DJJ. Any such employee also would be prohibited from working in any capacity in 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. The witness must submit the report to the witness’s supervisor or program director, who in turn must provide copies to the DJJ’s inspector general and the circuit juvenile justice manager. The DJJ’s inspector general must immediately conduct an appropriate administrative investigation. If the DJJ’s inspector general finds probable cause, he or she must notify the state attorney in the circuit in which the incident occurred.

Failure to comply with these new reporting requirements is a criminal act under the bill, resulting in the following 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.

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<sup>22</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>23</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>24</sup> Repeat offender sanctions are also available under s. 775.084, F.S.

<sup>25</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>26</sup> 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 the term “juvenile offender” as “a person of any age who is detained or supervised by, or committed to the custody of, the department.”

The bill takes effect July 1, 2013.

#### **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 felony offenses under the bill could be subjected to penalties including: imprisonment of up to one year and a fine of up to \$1,000 for a misdemeanor offense; imprisonment of up to 5 years and a fine of up to \$5,000 for a third degree felony offense; and imprisonment of up to 15 years and a fine of up to \$10,000 for the second degree felony offense.

C. Government Sector Impact:

The bill creates a new second degree felony offense, malicious infliction of cruel or inhuman treatment causing great bodily harm. The bill creates a new third degree felony offense, 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 expects 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, this bill may 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/CS by Judiciary on April 8, 2013:**

The CS makes it first degree misdemeanor when a DJJ employee, with malicious intent, inflicts cruel or inhuman treatment on a juvenile offender by neglect or otherwise without causing great bodily harm, permanent disability, or permanent disfigurement. If the employee inflicts great bodily harm or disfigurement on the juvenile offender, the employee commits a second degree felony.

The bill also creates reporting requirements for DJJ employees who witness the prohibited treatment. Failure to comply, or complying dishonestly or inaccurately with reporting requirements are criminal acts under the bill, ranging in penalties from a first degree misdemeanor to a third degree felony.

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.

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

Adds a provision repealing the statute that authorizes jail and prison tours by juveniles so that the DJJ can remain in compliance with federal law and continue receiving federal prevention funds.

**B. Amendments:**

None.