

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 37 Offenses by Caregivers of Minor Children

SPONSOR(S): Diaz; Plakon and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 84; SB 86; SB 146

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Krol	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Currently, Florida law does not make it a crime to fail to report a missing child or to fail to report the death of a child.

The bill creates s. 827.10, F.S., to make it a third degree felony for any caregiver of a child 12 years or younger to willfully or by culpable negligence fail to make contact or otherwise verify the whereabouts and safety of the child for a period of 48 hours and to immediately report the child missing to law enforcement after the 48-hour period expires without contact. The penalty is increased to a second degree felony if the child suffers great bodily harm, permanent disability, or permanent disfigurement while missing.

The bill creates s. 827.11, F.S., to make it a second degree felony for any caregiver of a minor child to fail to report:

- The child's death to a law enforcement agency within 2 hours; or
- The location of the child's corpse to a law enforcement agency within 2 hours.

Section 837.055, F.S., currently makes it 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.

The bill increases the penalty to a second degree felony if the person who knowingly and willfully gives false information is a caregiver and the missing person investigation or felony criminal investigation involves a minor in his or her care.

On December 14, 2011, the Criminal Justice Impact Conference determined that the bill will have an insignificant prison bed impact on the Department of Corrections.

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Failure to Report a Missing Child

Currently, New Jersey is the only state in the country that has enacted a statute that makes it a crime to fail to report a missing child.¹ However, legislation regarding the failure to report a missing child has been filed in the U.S. Congress and in 14 states.²

Effect of the Bill

The bill creates s. 827.10, F.S., which makes it a third degree felony for a caregiver to willfully or by culpable negligence fail to:

- Make contact or otherwise verify the whereabouts and safety of a child in his or her care who is 12 years of age or younger for a period of 48 hours, and
- Immediately report the child as missing to law enforcement after this 48-hour period expires without contact.

The penalty is enhanced to a second degree felony if the child suffers great bodily harm, permanent disability, or permanent disfigurement while missing.

Failure to Report a Child's Death

Currently, New Jersey is the only state in the country that has enacted a statute that makes it a crime to fail to report the death of a child.³ However, legislation regarding the failure to report the death of a child has been filed in the U.S. Congress and in 11 states.⁴

While Florida has no law criminalizing the failure to report the death of a child, s. 406.12, F.S., provides that it is the duty of any person⁵ aware of a death occurring under specified circumstances, to report the death and circumstances to the district medical examiner.

Section 406.11(1)(a)1.-12., F.S., lists the specified circumstances as when a person in the state dies:

- Of criminal violence;
- By accident;
- By suicide;
- Suddenly, when in apparent good health;
- Unattended by a practicing physician or other recognized practitioner;
- In any prison or penal institution;
- In police custody;
- In any suspicious or unusual circumstance;
- By criminal abortion;
- By poison;
- By disease constituting a threat to public health; or
- By disease, injury, or toxic agent resulting from employment.

It is a first degree misdemeanor⁶ for any person to:

- Knowingly fail or refuse to report such death and circumstances,

¹ P.L. 2011, c. 174. Approved by the governor on January 5, 2012.

² "Filed Caylee Legislation." November 28, 2011. <http://www.ncsl.org/issues-research/civil-and-criminal-justice/filed-quotcaylees-law-quot-legislation.aspx> (last visited January 18, 2012).

³ *Supra*, P.L. 2011, c. 174.

⁴ *Supra*, "Filed Caylee Legislation."

⁵ The person must be located in the district where the death occurs. "District" includes all municipalities and unincorporated and federal areas. Section 406.12, F.S.

⁶ Punishable by up to 1 year imprisonment and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

- Refuse to make available prior medical or other information pertinent to the death investigation, or
- Without an order from the office of the district medical examiner, willfully touch, remove, or disturb the body, clothing, or any article upon or near the body, with the intent to alter the evidence or circumstances surrounding the death.⁷

Effect of the Bill

The bill creates s. 827.11, F.S., to provide that it is a second degree felony if a caregiver of a minor child fails to report:

- The child's death to a law enforcement agency within 2 hours after learning about the child's death; or
- The location of the child's corpse to a law enforcement agency within 2 hours after learning the location of the corpse, if the child's death appears to have been one described in s. 406.11(1)(a), F.S., other than a death:
 - In a prison or penal institution,
 - In police custody, or
 - By criminal abortion.

Providing False Information to Law Enforcement during an Investigation

Section 837.055, F.S., provides it is 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.

Effect of the Bill

The bill increases the penalty to a second degree felony if the person who knowingly and willfully gives false information is a caregiver and the missing person investigation or felony criminal investigation involves a minor in his or her care.

B. SECTION DIRECTORY:

Section 1. Cites this act as "Caylee's Law."

Section 2. Creates s. 827.10, F.S., relating to missing child; duty to report.

Section 3. Creates s. 827.11, F.S., relating to death of a child or location of a child's corpse; reporting requirements.

Section 4. Amends s. 837.055, F.S., relating to false information to law enforcement during investigation.

Section 5. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

On December 14, 2011, the Criminal Justice Impact Conference determined that the bill will have an insignificant prison bed impact on the Department of Corrections.⁸

⁷ Section 406.12, F.S.

⁸ "2012 Session Bills and Links to Backup Materials." Office of Economic & Demographic Research. http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC_12.xls (last visited on January 18, 2012).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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