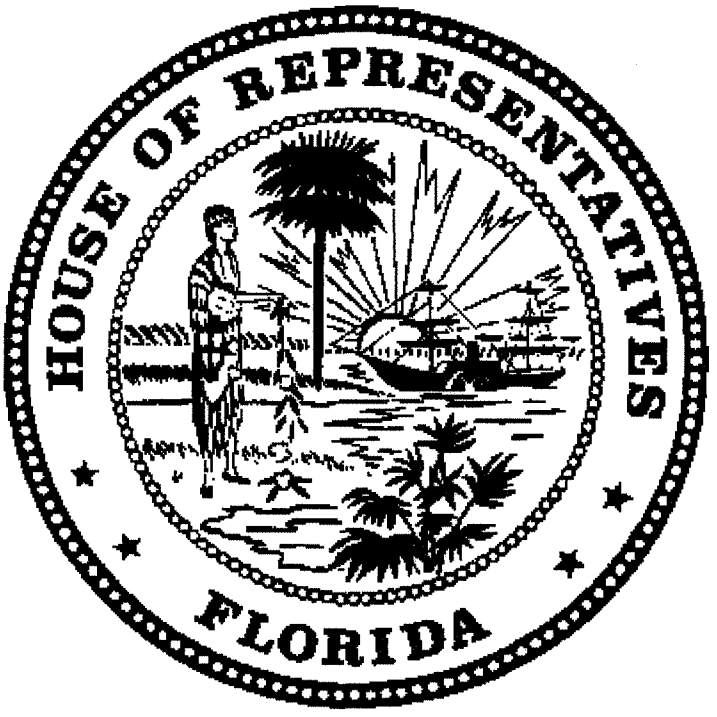

Criminal and Civil Justice Appropriations Committee

Friday, March 26, 2010
8:00 AM – 11:00 AM
102 HOB - Reed Hall

Meeting Packet

Larry Cretul
Speaker

Sandra Adams
Chair

AGENDA

Criminal & Civil Justice Appropriations Committee

March 26, 2010
8:00 a.m. –11:00 a.m.
102 HOB – Reed Hall

I. Call to order/Roll Call

II. Opening Remarks

III. Welcome/Introductions

IV. Presentation by Ambassador Henry F. Cooper

V. Consideration of the following bill(s):

CS/HB 23 Parole for Adolescent Offenders by Public Safety & Domestic Security Policy Committee by Weinstein
HB 203 Community Corrections Assistance to Counties or County Consortiums by Reed
HB 229 Rape Crisis Programs by Jenne
HB 309 Violations of Injunctions for Protection by Long
HB 445 Pretrial Detention and Release by Dorworth
HB 525 Statutes of Limitation for Sexual Battery by Dorworth
CS/HB 621 Fraudulently Taking or Using a Credit Card by Public Safety & Domestic Security Policy Committee by Brandenburg
HB 811 Faith- and Character-Based Correctional Institution Programs by Rouson
HB 813 Juvenile Justice Facilities and Programs by Garcia
HB 917 Domestic Violence by Kelly
HB 951 Public Safety by Snyder
CS/HB 1005 Corrections by Public Safety & Domestic Security Policy Committee by Holder
HB 7161 Court-Appointed Counsel in Civil Cases by Criminal & Civil Justice Policy Council by Adams

VI. Closing Remarks and Adjournment

Ambassador Cooper's Bio

Ambassador Henry Cooper- Ambassador Henry F. (Hank) Cooper is Chairman of the Board of High Frontier, a non-profit, non-partisan educational corporation, formed to examine the potential for defending America against missile attack. Founded by General Daniel O. Graham in the early 1980's, High Frontier played a key role in developing the framework for President Ronald Reagan's Strategic Defense Initiative (SDI). Under Ambassador Cooper's direction, High Frontier continues to inform the nation of the growing threat of ballistic missiles and of the need for a workable missile defense.

Ambassador Cooper has had a long and distinguished career in service to his country. He was Director of the Strategic Defense Initiative Organization (SDIO) during the Bush administration. Prior to becoming SDIO's first civilian director, he conducted a major independent review of the SDI program and related policy issues for Defense Secretary Dick Cheney, the results of which were instrumental in reversing the SDI funding cuts Congress had mandated in the preceding several years. Previously, he was President Reagan's Chief Negotiator at the Geneva Defense and Space Talks, successfully defending SDI in these negotiations with the now defunct Soviet Union.

Ambassador Cooper also led the development of President Reagan's space arms control policy while serving as Assistant Director of the Arms Control and Disarmament Agency, and as Deputy Assistant Secretary of the Air Force earlier in the Reagan Administration, he helped institute the 1981 Strategic Modernization Program. Much earlier in his career, he was Scientific Advisor at the Air Force Weapons Laboratory, now Phillips Laboratory in Albuquerque, New Mexico.

He is also Chairman of Applied Research Associates, Senior Associate of the National Institute for Public Policy, and Visiting Fellow at the Heritage Foundation. Previously in the private sector, he was Senior Vice President of Jaycor, Deputy Director of the Nuclear Weapons Effects Division at R&D Associates, member of the technical staff at Bell Laboratories, and an instructor at Clemson University.

Author of over 100 technical and policy publications, Ambassador Cooper holds a Ph.D. from New York University in mechanical engineering, and BS and MS degrees from Clemson University, also in mechanical engineering. He and his wife Bobbye, have two daughters, Laura and Cynthia, a son, Scott, and eight grandchildren.

As a respected engineer, program manager, and negotiator who understands technology and its policy ramifications, and brings both technical and political expertise to High Frontier.

Ambassador Cooper's Presentation:

Currently all testing of the Aegis BMD system is conducted in the Pacific, primarily out of Hawaii, and there are currently 18 ships in the Pacific, a few of which periodically sail to and along our west coast. All of which can support a global mission to counter ballistic missiles. This capability, along with the ground based interceptors in Alaska and California, could defend Hawaii and the west coast from ballistic missiles, including short and medium range missiles launched from ships off the coast. The Pacific test range helps provide a continuous presence that can help deter such an attack or to provide a defense should deterrence fail.

Although, there are currently 3 BMD capable ships in the Atlantic. That number will grow to 18 by 2015; there is no east coast test range to provide the same benefits to those of us who live along the eastern seaboard. However, an east coast test range could be supported by radar and other existing sensors located along the eastern seaboard, with target rockets launched, with NASA's support from Wallops Island, VA and/or Cape Canaveral, FL. Ships based in Norfolk, VA or that normally sail along the eastern seaboard could, if outfitted with BMD capability, be used to shoot down such test rockets or threat ballistic missiles that might be launched off our coasts toward a coastal city or to produce a wide area electromagnetic pulse that could have catastrophic consequences to US power, banking, and other commercial as well as military infrastructure.

Currently, only a few US ships infrequently support counterdrug operations in the Gulf of Mexico and they usually do not have an ability to shoot down ballistic missiles that might threaten those who live along the Florida-to-Texas coasts. They could be given that capability for about $55 million/ship. Such a sea-based capability might in the future be supplemented with a version of the ground-based SM-3, which to be developed for deployment abroad.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 23 Parole for Adolescent Offenders
SPONSOR(S): Weinstein and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 184

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	13 Y, 0 N, As CS	Krol	Cunningham
2)	Criminal & Civil Justice Appropriations Committee		McAuliffe	Davis
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

This bill creates the possibility of parole release for adolescent offenders. The bill creates a new inmate designation, "adolescent offender," which is defined as an offender, 15 years old or younger at the time the criminal act was committed, who was sentenced to life or to a single or cumulative term of imprisonment of 10 years or more. The bill excludes an adolescent offender from parole eligibility if he or she had a prior conviction or was adjudicated delinquent for a number of specified offenses or if he or she committed an act of violence or threatened to commit an act of violence during the commission of the offense for which they are currently incarcerated.

The bill requires the Florida Parole Commission to conduct an initial eligibility interview with the adolescent offender during the eighth year of incarceration, and every seven years thereafter. To be eligible for parole, the offender must have completed a General Educational Development (GED) program and received no disciplinary reports during the two years prior to the interview and subsequent interviews. The bill provides additional criteria for the consideration of the offender's rehabilitation status.

This bill will take effect upon becoming a law and applies with respect to offenses committed before, on, or after that date.

The Criminal Justice Impact Conference determined that this bill would have a positive, yet indeterminate prison bed impact.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Parole

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission (commission) through chs. 947, 948, and 949, F.S. An inmate who is granted parole is allowed to serve the remainder of his or her prison sentence outside of confinement according to terms and conditions established by the commission. Parolees are supervised by Correctional Probation Officers of the Department of Corrections (department). Inmates who were sentenced as adults for offenses committed prior to reaching 18 years of age are eligible for parole on the same basis as other inmates. Parole is not available for most crimes that were committed on or after October 1, 1983.[1] There is no parole eligibility for any crime committed on or after October 1, 1995. The commission reported that on June 30, 2009, there were 5,826 inmates currently eligible for parole consideration with about 450 under supervision. This includes a small percentage who committed their parole-eligible crime when they were less than 18 years of age.[2]

The commission determines the terms and conditions of parole. Statutorily, conditions of parole are not specific, except for provisions that require the offender to:

- Submit to random substance abuse testing, if the offender's conviction was for a controlled substance violation.
- Not knowingly associate with other criminal gang members or associates, if the offender's conviction was for a crime that involved criminal gang activity.
- Pay debt due and owing to the state under s. 960.17, F.S., or attorney's fees and costs due and owing to the state under s. 938.29, F.S.[3]
- Pay victim restitution.[4]

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[1] The exceptions are for capital felony murders committed prior to October 1, 1994, and capital felony sexual battery prior to October 1, 1995.

[2] Parole Commission 2010 Analysis of HB 23.

[3] Section 947.18, F.S.

[4] Section 947.181, F.S.

- Apply for services from the Agency for Persons with Disabilities, if the offender has been diagnosed as mentally retarded.[5]

Most crimes committed by juveniles[6] are dealt with through delinquency proceedings as set forth in ch. 985, F.S. However, the law provides a mechanism for juvenile offenders to be tried and handled as adults. A person who commits a crime while 13 years old or younger may only be tried as an adult if a grand jury indictment is returned.[7] A juvenile who is fourteen or older at the time of committing certain felony offenses may be tried as an adult if a grand jury indictment is returned; if juvenile court jurisdiction is waived and the case is transferred for prosecution as an adult pursuant to s. 985.556, F.S.; or if the state attorney direct files an information in adult court pursuant to s. 985.557, F.S. Section 985.56, F.S., provides that a juvenile charged with an offense punishable by death or life imprisonment may not be tried as an adult unless a grand jury indictment is returned.

Sentencing and Classification of Offenders

A court may sentence as a "youthful offender" any person:

- Who is at least 18 years of age or who has been transferred for prosecution to the criminal division of the circuit court pursuant to ch. 985, F.S.;
- Who is found guilty of or who has tendered, and the court has accepted, a plea of nolo contendere or guilty to a crime that is, under the laws of this state, a felony if such crime was committed before the defendant's 21st birthday; and
- Who has not previously been classified as a youthful offender under the provisions of the Florida Youthful Offender Act;[8] however, any person found guilty of a capital or life felony may not be sentenced as a youthful offender under the act.[9]

Separate institutions and programs exist for youthful offenders that fall into two age groups: age 14 to 18 years old and age 19 to 24 years old.[10] The department may initially assign inmates who are less than 18 years of age and who have not been assigned by the sentencing judge to a facility for youthful offenders under the provisions of chapter 958 to a facility designated for youthful offenders.[11] The department is required to screen all institutions, facilities, and programs for inmates who meet the requirements specified in s. 958.04(1)(a) and (c) whose age does not exceed 24 years and whose total length of sentence does not exceed 10 years and the department may classify those inmates as a youthful offender.[12] The department may classify any inmate 19 years of age or younger, except a capital or life felon, as a youthful offender if the department determines that the inmate's mental or physical vulnerability would substantially or materially jeopardize his or her safety in a non-youthful facility.[13]

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[5] Section 947.185, F.S.

[6] Section 985.03(6), F.S., defines juvenile as "any unmarried person under the age of 18 who has not been emancipated by order of the court and who has been found or alleged to be dependent, in need of services, or from a family in need of services; or any married or unmarried person who is charged with a violation of law occurring prior to the time that person reached the age of 18 years."

[7] See Tate v. State, 864 So.2d 44 (Fla. 4th Dist. 2003).

[8] Sections 958.011-958.15, F.S.

[9] Section 958.04(1)(c), F.S.

[10] Section 958.11(1), F.S.

[11] Section 944.1905(5)(a), F.S.

[12] Section 958.11(4), F.S.

[13] Section 958.11(6), F.S.

Parole for juveniles who received more than a 10 year adult prison sentence was one of the recommendations made by the Blueprint Commission through the Department of Juvenile Justice.[14]

Proposed Changes

CS/HB 23 creates the offender designation of adolescent offender, which is defined as an offender who was 15 years old or younger at the time of the criminal act and is sentenced to life or to a single or cumulative term of imprisonment of 10 years or more. An adolescent offender may be eligible for parole release.

The bill defines the term "current offense" as one or more crimes committed by the adolescent offender within a one-month period of time or for which sentences run concurrently.

The bill excludes an adolescent offender from parole eligibility if he or she, before the current offense, had a prior conviction or was adjudicated delinquent for a number of specified offenses:

- Murder,
- Felony battery,
- Aggravated battery,
- Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents or other specified officers,
- Assault or battery on persons 65 years of age or older,
- Kidnapping,
- Persons engaged in criminal offense, having weapons,
- Sexual battery,
- Carjacking,
- Home-invasion robbery,
- Abuse, aggravated abuse, and neglect of a child, or
- Cruelty to animals.

If the adolescent offender committed an act of violence or threatened to commit an act of violence during the commission of the current offense, they are ineligible for parole.

The bill requires the commission to conduct an initial eligibility interview during the eighth year of incarceration, and every seven years thereafter. To be eligible for parole, the offender must have completed a General Educational Development (GED) program unless waived due to a disability, and received no disciplinary reports for a period of at least two years. The bill provides additional criteria for the consideration of the offender's rehabilitation status. The commission's hearing examiner must take into serious consideration the wishes of the victim or the opinions of the victim's next of kin, and consider:

- Whether the offender was principal to the criminal offense or an accomplice, a relatively minor participant, or acted under extreme duress or domination of another person,
- Whether the offender has shown remorse for the criminal offense,
- Whether the offender's age, maturity, and psychological development at the time of the offense affected her or his behavior,
- Whether the offender, while in the custody of the department, aided inmates suffering from catastrophic or terminal medical, mental or physical conditions or has prevented risk or injury to staff, citizens, or other inmates,
- Whether the offender has successfully completed technical, vocational, educational, and self-rehabilitation programs,
- Whether the offender was a victim of sexual, physical, or emotional abuse, and
- The results of any mental health assessments or evaluation that has been performed on the offender.

[14] "Getting Smart about Juvenile Justice in Florida," January 2008.

The bill specifies that an adolescent offender must be placed in a facility that has a GED program,[15] unless the offender has already completed a GED program.

The department reports that 432 inmates currently incarcerated committed their primary offense at age 15 or younger, are serving a sentence of 10 years or more, and do not have a prior conviction or was not adjudicated delinquent for any the offenses listed that would exclude them from eligibility.[16] Of these inmates, 154 have served eight years of their sentence and would be eligible for an initial interview. Of these 154 inmates, 72 have attained GEDs. Of those 72 inmates, only 23 have had no disciplinary reports in the preceding two years.[17] It is unknown how many of the 23 committed an act of violence or threatened to commit an act of violence during the current offense, which may significantly reduce the number of inmates eligible.

The bill provides that if the offender is granted parole, he or she must participate in any available reentry program for two years. The bill defines "re-entry program" as a program that promotes effective reintegration of adolescent offenders back into communities upon release and provides one or more of the following: vocational training, placement services, transitional housing, mentoring, or drug rehabilitation. Priority shall be given to re-entry programs that are residential, highly structured, self-reliant, and therapeutic communities.

This bill will take effect upon becoming a law and will apply with respect to offenses committed before, on, or after that date.

B. SECTION DIRECTORY:

Section 1. Provides a title for this act as the "Second Chance for Children in Prison Act."

Section 2. Amends s. 947.16, F.S.; relating to eligibility for parole; initial parole interviews; powers and duties of commission.

Section 3. Provides that if an adolescent offender is eligible, he or she must receive an initial interview in their 8th or subsequent year of incarceration on the effective date of this act.

Section 4. This bill takes effect upon becoming a law and applies with respect to offenses committed before, on, or after that date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See "Fiscal Comments."

2. Expenditures:

   See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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[15] According to the Department of Corrections 2009 Analysis of HB 757, only one third of the adult facilities have GED programs.

[16] The department reports that of the 432 inmates some may have an out of state conviction or a juvenile conviction of one of the disqualifying offenses, which would reduce the base number of inmates thought to be eligible.

[17] Department of Corrections 2010 Analysis of HB 23.

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Corrections reports the annual cost to house a male youthful offender is over $23,000. The department would be responsible for reviewing eligible inmates, which, according to the department would create a slight workload impact. By their own account, of a possible pool of 432 eligible inmates, approximately 23 appear to meet the bill's requirements. The department also does not anticipate a significant number of inmates would be paroled to justify additional probation officers.

The Parole Commission reports that the workload increase from reviewing existing and future cases would be minimal and does not anticipate a need for additional staff.

On February 23, 2010, the Criminal Justice Impact Conference determined that this bill would have a positive, yet indeterminate prison bed impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides very specific language for the hearing examiner to consider regarding whether the inmate has "aided inmates suffering from catastrophic or terminal medical, mental, or physical conditions or has prevented risk or injury to staff, citizens, or other inmates." This language may be tailored to a situation applicable to an inmate who may be affected by this bill if passed. The language provided in this section applies only to the consideration of the hearing examiner but does not specify if the commission should also consider this criterion when deciding whether the offender is rehabilitated.

The bill would allow adolescent offenders to circumvent the mandatory 85% minimum sentenced served requirement as provided in s. 944.275(4)(b)3., F.S.

The bill does not provide the department an alternative if a suitable re-entry program is not available for a paroled offender.

The bill does not specify which agency will waive the GED requirement.

On November 9, 2009, the Supreme Court of the United States heard oral arguments in the cases of Sullivan v. Florida and Graham v. Florida. Both petitioners were juveniles at the time of their offenses and were sentenced to life in prison without the possibility of parole. The issue in these cases is whether sentencing juveniles who committed non-homicide offenses to life in prison without the possibility of parole is cruel and unusual punishment under the Eighth Amendment.

The bill does not define "act of violence." While this phrase is used in Florida Statutes, no definition currently exists.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 1, 2010, the Public Safety and Domestic Security Policy Committee adopted an amendment that:

- Added that if the offender committed an act of violence or threatened to commit an act of violence during the commission of the current offense, they are ineligible for parole;
- Added technical and vocational to the types of programs the offender can complete to the commission's considerations criteria;
- Added mental health assessments or evaluations performed on the offender to the commission's considerations criteria; and
- Changed the length of time between subsequent interviews from every 2 years to every 7 years.

A bill to be entitled

An act relating to parole for adolescent offenders; providing a short title; amending s. 947.16, F.S.; providing definitions; providing that an adolescent offender who was 15 years of age or younger at the time of commission of an offense and who is sentenced to life or a single or cumulative term of 10 years or more in prison is eligible for parole if the offender has been incarcerated for a minimum period, has not previously been convicted of or adjudicated delinquent for certain offenses, and did not commit an act of violence or threaten to commit an act of violence during the commission of the current offense; requiring an initial eligibility interview to determine whether the adolescent offender has been sufficiently rehabilitated for parole; providing criteria to determine sufficient rehabilitation; providing eligibility for a reinterview after a specified period for adolescent offenders denied parole; providing that the adolescent offender be incarcerated in a facility that has a GED program; providing that if the adolescent offender is granted parole, the adolescent offender must participate in any available reentry program for 2 years; defining the term "reentry program"; providing priority for certain programs; providing for eligibility for an initial eligibility interview for offenders in their eighth or subsequent year of incarceration on the effective date of the act; providing for retroactive application; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Second Chance for Children in Prison Act."

Section 2. Subsections (2) through (6) of section 947.16, Florida Statutes, are renumbered as subsections (3) through (7), respectively, and a new subsection (2) is added to that section to read:

947.16 Eligibility for parole; initial parole interviews; powers and duties of commission; adolescent offender eligibility.—

(2)(a) As used in this subsection, the term:

1. "Adolescent offender" means an offender who was 15 years of age or younger at the time the criminal act was committed and was sentenced to life or to a single or cumulative term of imprisonment of 10 years or more.

2. "Current offense" means the offense for which the adolescent offender is being considered for parole and any other crimes committed by the adolescent offender within a 1-month period of that offense, or for which sentences run concurrent to that offense.

(b) Notwithstanding the provisions of subsection (1) or of any other law to the contrary, an adolescent offender may be eligible for parole as provided in this subsection.

(c) An adolescent offender is ineligible under this subsection if she or he:

1. Before conviction of the current offense, was convicted

of or adjudicated delinquent for any violation of:

a. Section 782.04, entitled "Murder";

b. Section 784.041, entitled "Felony battery; domestic battery by strangulation";

c. Section 784.045, entitled "Aggravated battery";

d. Section 784.07, entitled "Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences";

e. Section 784.08, entitled "Assault or battery on persons 65 years of age or older; reclassification of offenses; minimum sentence";

f. Section 787.01, entitled "Kidnapping; kidnapping of child under age 13, aggravating circumstances";

g. Section 790.07, entitled "Persons engaged in criminal offense, having weapons";

h. Section 794.011, entitled "Sexual battery";

i. Section 812.133, entitled "Carjacking";

j. Section 812.135, entitled "Home-invasion robbery";

k. Section 827.03, entitled "Abuse, aggravated abuse, and neglect of a child; penalties"; or

l. Section 828.12(2), entitled "Cruelty to animals."

2. During the commission of the current offense, committed an act of violence or threatened to commit an act of violence.

(d) Before an adolescent offender may be granted parole under this subsection, she or he must have an initial eligibility interview to determine whether she or he has been

sufficiently rehabilitated while in the custody of the department to justify granting parole. The initial eligibility interview will occur in the eighth year of incarceration. In order to determine if the adolescent offender has been sufficiently rehabilitated, she or he must have successfully completed the General Educational Development (GED) program unless waived based on disability and have received no approved disciplinary reports for a period of at least 2 years immediately prior to the current eligibility interview. The hearing examiner must also take into serious consideration the wishes of the victim or the opinions of the victim's next of kin and consider:

1. Whether the adolescent offender was a principal to the criminal offense or an accomplice to the offense, a relatively minor participant in the criminal offense, or acted under extreme duress or domination of another person.

2. Whether the adolescent offender has shown remorse for the criminal offense.

3. Whether the adolescent offender's age, maturity, and psychological development at the time of the offense affected her or his behavior.

4. Whether the adolescent offender, while in the custody of the department, has aided inmates suffering from catastrophic or terminal medical, mental, or physical conditions or has prevented risk or injury to staff, citizens, or other inmates.

5. Whether the adolescent offender has successfully completed educational, technical, or vocational programs and any available self-rehabilitation programs.

6. Whether the adolescent offender was a victim of sexual, physical, or emotional abuse.

7. The results of any mental health assessment or evaluation that has been performed on the adolescent offender.

(e) An adolescent offender who is not granted parole under this subsection after an initial eligibility interview shall be eligible for a reinterview 7 years after the date of the denial of the grant of parole and every 7 years thereafter.

(f) An adolescent offender must serve her or his sentence in a facility that has a General Educational Development (GED) program unless the adolescent offender has already successfully completed a GED program.

(g) If the adolescent offender is granted parole, the adolescent offender must participate in any available reentry program for 2 years. As used in this paragraph, the term "reentry program" means a program that promotes effective reintegration of adolescent offenders back into communities upon release and provides one or more of the following: vocational training, placement services, transitional housing, mentoring, or drug rehabilitation. Priority shall be given to those reentry programs that are residential, highly structured, self-reliant, and therapeutic communities.

Section 3. An adolescent offender, as defined in s. 947.16(2)(a), Florida Statutes, as created by this act, who is in her or his eighth or subsequent year of incarceration on the effective date of this act must receive an initial eligibility interview as provided in s. 947.16(2)(d), Florida Statutes, as created by this act, if she or he is otherwise eligible.

Section 4. This act shall take effect upon becoming a law, and applies with respect to offenses committed before, on, or after that date.

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Criminal & Civil Justice Appropriations Committee

Representative(s) Weinstein offered the following:

Amendment (with title amendment)

Remove lines 121-124 and insert:

(f) Within 240 days prior to the initial eligibility interview and at each reinterview thereafter, the commission shall review the adolescent offenders in the department's custody to determine which adolescent offenders meet the criteria for parole consideration under this section but have not obtained a General Educational Development (GED) certificate. The commission shall notify the department of any such offender and the department shall enroll the adolescent offender in a GED program within a reasonable time based upon program availability. The department may remove the adolescent offender from the program if he or she:

Amendment No. 1

1. Becomes a serious management or disciplinary problem resulting from serious or repeat violations of departmental rules;

2. Refuses to participate in the program, or does not actively participate in the program for reasons other than actions by the department which would preclude participation; or

3. Requires services, such as medical or mental health treatment, that no longer allows him or her to participate in the program.

T I T L E A M E N D M E N T

Remove lines 18-20 and insert:
offenders denied parole; providing that the commission notify the department of adolescent offenders who need to be enrolled in a GED program; providing that if the adolescent offender is

HB203

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 203 Community Corrections Assistance to Counties or County Consortiums
SPONSOR(S): Reed
TIED BILLS: **IDEN./SIM. BILLS:** SB 370

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	12 Y, 0 N	Krol	Cunningham
2)	Criminal & Civil Justice Appropriations Committee		McAuliffe	Davis
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

This bill removes "military style boot camps" and adds "rehabilitative community reentry programs" to the list of programs that are specified as being eligible for community corrections funds if an appropriation is made.

This bill does not have a fiscal impact on state or local government.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 948.51, F.S., provides for community corrections assistance to counties and consortiums of counties through the distribution of funds administered by the Department of Corrections (department). It creates a framework for disbursing funds to counties for the purpose of building and operating corrections and public safety programs. The purposes of the community corrections funds are to:

- Provide community-based corrections programs within county-owned or county-contracted residential probation programs;
- Provide nonincarcerative diversionary programs, such as pretrial release programs for juvenile or adult offenders who would otherwise be housed in a county or state detention facility or a state correctional institute;
- Provide community-based drug treatment programs;
- Provide funds to enhance programs within county detention facilities; and to
- Provide funds to enhance public safety and crime prevention programs.[1]

No funds have been distributed through this funding mechanism in recent years.

In order to enter into a community corrections partnership contract with the department, a county or consortium of counties must have established a public safety coordinating council under the provisions of s. 951.26, F.S. In turn, the public safety coordinating council must develop a public safety plan that is approved by the governing board of the county or counties and by the Secretary of Corrections in order to be eligible for community corrections funds. The plan must cover at least a five-year program and include specific information about the programs to be offered, the target population for the programs, measurable goals and objectives, and projected costs and sources of funds. Section 948.51(4), F.S., lists ten types of programs, services, or facilities for which the Secretary may contract for the issuance of community corrections assistance funds to the counties if funds are appropriated by the Legislature.

Eligibility for funding is not restricted to the items on the list, which are:

- Programs providing pretrial services.
- Specialized divisions within the circuit or county court established for the purpose of hearing specific types of cases, such as drug cases or domestic violence cases.
- Work camps.
- Programs providing intensive probation supervision.

[1] Section 948.51(4)(a)1.-5., F.S.

- Military-style boot camps.
- Work-release facilities.
- Centers to which offenders report during the day.
- Restitution centers.
- Inpatient or outpatient programs for substance abuse treatment and counseling.
- Vocational and educational programs.

Funds may not be used for fixed capital outlay to construct, add to, renovate, or operate a secure juvenile detention facility; for construction, addition to, renovation, or operation of any state facility; or for state probation officer salaries.

HB 203 adds "rehabilitative community reentry programs" to the list of programs that are specified as being eligible for funding with community corrections funds. However, the term "rehabilitative community reentry programs" is not defined in the bill.

The bill also removes "military style boot camps" from the list of programs eligible for funding with community corrections funds.

B. SECTION DIRECTORY:

Section 1. Amends s. 948.51, F.S., relating to community corrections assistance to counties or county consortiums.

Section 2. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See "Fiscal Comments."

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

HB 203 does not have a fiscal impact on state or local government. Distribution of community assistance funds under s. 948.51, F.S., is subject to appropriation of funds, and the department does not currently receive funding under this section.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to community corrections assistance to counties or county consortiums; amending s. 948.51, F.S.; adding rehabilitative community reentry programs to the list of programs, services, and facilities that may be funded using community corrections funds; deleting military-style boot camps from such list; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (4) of section 948.51, Florida Statutes, is amended to read:

948.51 Community corrections assistance to counties or county consortiums.--

(4) PURPOSES OF COMMUNITY CORRECTIONS FUNDS.--

(b) Programs, services, and facilities that may be funded under this section include, but are not limited to:

1. Programs providing pretrial services.

2. Specialized divisions within the circuit or county court established for the purpose of hearing specific types of cases, such as drug cases or domestic violence cases.

3. Work camps.

4. Programs providing intensive probation supervision.

~~5. Military-style boot camps.~~

5.~~6.~~ Work-release facilities.

6.~~7.~~ Centers to which offenders report during the day.

7.~~8.~~ Restitution centers.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

8.~~9.~~ Inpatient or outpatient programs for substance abuse treatment and counseling.

9.~~10.~~ Vocational and educational programs.

10. Rehabilitative community reentry programs.

Section 2. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 229 Rape Crisis Programs
SPONSOR(S): Jenne
TIED BILLS: **IDEN./SIM. BILLS:** SB 400

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Criminal & Civil Justice Appropriations Committee		McAuliffe	Davis
2)	Public Safety & Domestic Security Policy Committee			
3)	Full Appropriations Council on Education & Economic Development			
4)				
5)				

SUMMARY ANALYSIS

Current law provides a $151 surcharge on offenders convicted of sexual battery and other offenses including many of the aggravated battery and battery offenses.

This bill provides additional offenses that would require the offender to pay the current surcharge.

This bill will have a positive fiscal impact on the Rape Crisis Program Trust Fund. Funds are used to provide services for victims of sexual assault.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

In 2003, the Florida legislature created the Sexual Battery Victims' Access to Services Act (s. 794.055, F.S.) and the Rape Crisis Program Trust Fund (s. 794.056, F.S.) in the Department of Health.

The Sexual Battery Victims' Access to Services Act acknowledges that victims of sexual assault in the state of Florida should have access to basic services including: 24-hour hotline; information and referral service; crisis intervention; advocacy and support services; therapy; medical intervention; system coordination; and community awareness. The Rape Crisis Program Trust Fund was created to accept collected surcharges and other funds designated for rape crisis services. The Department of Health contracts with the Florida Council Against Sexual Violence to distribute the trust fund monies to rape crisis centers throughout Florida. Funds are distributed to rape crisis centers based on an allocation formula that takes into account the population and rural characteristics of each county. No more than 15 percent of the funds may be used by the statewide nonprofit association for statewide initiatives and no more than five percent of the funds may be used by the Department of Health for administrative costs (s. 794.055, F.S.).

Current law provides a $151 ($1 goes to the clerks of the court) surcharge on offenders convicted of sexual battery and other offenses including many of the aggravated battery and battery offenses be deposited into the Rape Crisis Program Trust Fund.

This bill provides additional offenses that would require the offender to pay the current surcharge. These offenses include: luring or enticing a child; human trafficking and smuggling; unlawful sexual activity with certain minors; female genital mutilation; procuring a person under 18 for prostitution; selling or buying minors into sex trafficking or prostitution; forcing, compelling, or coercing another to become a prostitute; sex trafficking; deriving support from prostitution; retaining space for lewdness or prostitution and other prostitution related crimes; exposure of sexual organs; voyeurism; home invasion robbery; home invasion by false personation; abuse of elderly or disabled person; lewd or lascivious offenses upon elderly or disabled person; written threats to kill or do bodily harm; computer pornography with a minor; transmission of pornography to minor; selling or buying of minors; and registering as a sexual offender.

B. SECTION DIRECTORY:

Section 1. Amends s. 794.056, F.S., providing additional offenses which require a surcharge payment.
Section 2. Amends s. 938.085, F.S., providing additional offenses which require a surcharge payment.
Section 3. Reenacts s. 20.435, F.S., incorporating the amendments made by this act.

Section 4. Reenacts s. 794.055, F.S., incorporating the amendments made by this act.
Section 5. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill will have a positive fiscal impact on the Rape Crisis Program Trust Fund. According to the Florida Department of Law Enforcement, in 2008 there were 2,086 people convicted of the additional offenses in this bill that would require payment of the $151 surcharge ($1 goes to the courts). This would generate approximately $312,900 for the Rape Crisis Program Trust Fund to fund sexual battery victims services.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to rape crisis programs; amending ss. 794.056 and 938.085, F.S.; requiring that an additional court cost or surcharge be assessed against a defendant who pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, certain specified criminal offenses; providing for proceeds of the additional court cost or surcharge to be deposited into the Rape Crisis Program Trust Fund; reenacting s. 20.435(21)(a), F.S., relating to the Rape Crisis Program Trust Fund, to incorporate the amendments made to s. 794.056, F.S., in a reference thereto; reenacting s. 794.055(3)(b), F.S., relating to access to services for victims of sexual battery, to incorporate the amendments made to s. 938.085, F.S., in a reference thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 794.056, Florida Statutes, is amended to read:

794.056 Rape Crisis Program Trust Fund.--

(1) The Rape Crisis Program Trust Fund is created within the Department of Health for the purpose of providing funds for rape crisis centers in this state. Trust fund moneys shall be used exclusively for the purpose of providing services for victims of sexual assault. Funds credited to the trust fund consist of those funds collected as an additional court

assessment in each case in which a defendant pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, an offense defined in s. 775.21, s. 784.011, s. 784.021, s. 784.03, s. 784.041, s. 784.045, s. 784.048, s. 784.07, s. 784.08, s. 784.081, s. 784.082, s. 784.083, s. 784.085, s. 787.025, s. 787.06, s. 787.07, ~~or~~ s. 794.011, s. 794.05, s. 794.08, s. 796.03, s. 796.035, s. 796.04, s. 796.045, s. 796.05, s. 796.06, s. 796.07(2)(a)-(d) and (i), s. 800.03, s. 810.14, s. 810.145, s. 812.135, s. 817.025, s. 825.102, s. 825.1025, s. 836.10, s. 847.0135(2), s. 847.0137, s. 847.0145, or s. 943.0435. Funds credited to the trust fund also shall include revenues provided by law, moneys appropriated by the Legislature, and grants from public or private entities.

(2) The Department of Health shall establish by rule criteria consistent with the provisions of s. 794.055(3)(a) for distributing moneys from the trust fund to rape crisis centers.

Section 2. Section 938.085, Florida Statutes, is amended to read:

938.085 Additional cost to fund rape crisis centers.--In addition to any sanction imposed when a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, a violation of s. 775.21, s. 784.011, s. 784.021, s. 784.03, s. 784.041, s. 784.045, s. 784.048, s. 784.07, s. 784.08, s. 784.081, s. 784.082, s. 784.083, s. 784.085, s. 787.025, s. 787.06, s. 787.07, ~~or~~ s. 794.011, s. 794.05, s. 794.08, s. 796.03, s. 796.035, s. 796.04, s. 796.045, s. 796.05, s. 796.06, s. 796.07(2)(a)-(d) and (i), s. 800.03, s. 810.14, s. 810.145, s. 812.135, s. 817.025, s. 825.102, s. 825.1025, s.

836.10, s. 847.0135(2), s. 847.0137, s. 847.0145, or s. 943.0435, the court shall impose a surcharge of $151. Payment of the surcharge shall be a condition of probation, community control, or any other court-ordered supervision. The sum of $150 of the surcharge shall be deposited into the Rape Crisis Program Trust Fund established within the Department of Health by chapter 2003-140, Laws of Florida. The clerk of the court shall retain $1 of each surcharge that the clerk of the court collects as a service charge of the clerk's office.

Section 3. For the purpose of incorporating the amendment made by this act to section 794.056, Florida Statutes, in a reference thereto, paragraph (a) of subsection (21) of section 20.435, Florida Statutes, is reenacted to read:

20.435 Department of Health; trust funds.--The following trust funds shall be administered by the Department of Health:

(21) Rape Crisis Program Trust Fund.

(a) Funds to be credited to and uses of the trust fund shall be administered in accordance with the provisions of s. 794.056.

Section 4. For the purpose of incorporating the amendment made by this act to section 938.085, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section 794.055, Florida Statutes, is reenacted to read:

794.055 Access to services for victims of sexual battery.--

(3)

(b) Funds received under s. 938.085 shall be used to provide sexual battery recovery services to victims and their

families. Funds shall be distributed to rape crisis centers based on an allocation formula that takes into account the population and rural characteristics of each county. No more than 15 percent of the funds shall be used by the statewide nonprofit association for statewide initiatives. No more than 5 percent of the funds may be used by the department for administrative costs.

Section 5. This act shall take effect July 1, 2010.

Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED __ (Y/N)

ADOPTED AS AMENDED __ (Y/N)

ADOPTED W/O OBJECTION __ (Y/N)

FAILED TO ADOPT __ (Y/N)

WITHDRAWN __ (Y/N)

OTHER _____

Council/Committee hearing bill: Criminal & Civil Justice Appropriations Committee

Representative Jenne offered the following:

Amendment (with title amendment)

Between lines 44-45, insert:

Section 2. Section 938.08, Florida Statutes, is amended to read:

938.08 Additional cost to fund programs in domestic violence.—In addition to any sanction imposed for a violation of s. 784.011, s. 784.021, s. 784.03, s. 784.041, s. 784.045, s. 784.048, s. 784.07, s. 784.08, s. 784.081, s. 784.082, s. 784.083, s. 784.085, s. 787.06, s. 787.07, s. 794.011, s. 825.102, s. 836.10, or for any offense of domestic violence described in s. 741.28, the court shall impose a surcharge of $301 ~~$201~~. Payment of the surcharge shall be a condition of probation, community control, or any other court-ordered supervision. The sum of $185 ~~$85~~ of the surcharge shall be deposited into the Domestic Violence Trust Fund established in

Amendment No.

s. 741.01. The clerk of the court shall retain $1 of each surcharge that the clerk of the court collects as a service charge of the clerk's office. The remainder of the surcharge shall be provided to the governing board of the county and must be used only to defray the costs of incarcerating persons sentenced under s. 741.283 and provide additional training to law enforcement personnel in combating domestic violence.

T I T L E A M E N D M E N T

Remove lines 2-9 and insert:

An act relating to programs to prevent violence; amending ss. 794.056, 938.08, and 938.085, F.S.; requiring that an additional or increased court cost or surcharge be assessed against a defendant who pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, certain specified criminal offenses; providing for proceeds of the additional court cost or surcharge to be deposited into the Rape Crisis Program Trust Fund or the Domestic Violence Trust Fund; reenacting s.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 309 Violations of Injunctions for Protection
SPONSOR(S): Long
TIED BILLS: **IDEN./SIM. BILLS:** SB 194

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	12 Y, 0 N	Cunningham	Cunningham
2)	Criminal & Civil Justice Appropriations Committee		McAuliffe	Davis
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Currently, a person commits a first degree misdemeanor if the person willfully violates an injunction for protection against repeat violence, sexual violence, or dating violence by:

- Refusing to vacate the dwelling that the parties share;
- Going to the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- Committing an act of repeat violence, sexual violence, or dating violence against the petitioner;
- Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner; or
- Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party.

The bill adds the following to the above list of ways in which a person could violate an injunction for protection against repeat violence, sexual violence, or dating violence:

- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court.

The bill also adds the following to the existing list of ways in which a person could violate an injunction for protection against repeat violence, sexual violence, or dating violence:

- Going to, or being within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member.

The bill would make the list of ways in which a person could violate an injunction for protection against repeat violence, sexual violence, or dating violence identical to the list of ways a person could violate an injunction for protection against domestic violence.

The bill adds to the list of ways in which a person can violate an injunction for protection. Such violations will be first degree misdemeanors, which could impact county jails.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 784.046, F.S., relates to the issuance of injunctions for protection against repeat violence[1], dating violence[2], and sexual violence[3]. The statute specifies the following:

- Petitions for injunctions for protection must allege the incidents of repeat violence, sexual violence, or dating violence and must include the specific facts and circumstances that form the basis upon which relief is sought.
- Upon the filing of the petition, the court must set a hearing to be held at the earliest possible time. The respondent must be personally served with a copy of the petition, notice of hearing, and temporary injunction, if any, prior to the hearing.
- When it appears to the court that an immediate and present danger of violence exists, the court may grant a temporary injunction which may be granted in an ex parte hearing, pending a full hearing, and may grant such relief as the court deems proper.
- The court shall enforce, through a civil or criminal contempt proceeding, a violation of an injunction for protection.[4]
- The petitioner or the respondent may move the court to modify or dissolve an injunction at any time.[5]

---

[1] "Repeat violence" is defined as, "two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member." Section 784.046(1), F.S.

[2] "Dating violence" is defined as, "violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors: a dating relationship must have existed within the past 6 months; the nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and the frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship. The term does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context." *Id.*

[3] "Sexual violence" is defined as, "any one incident of sexual battery, as defined in chapter 794, F.S.; a lewd or lascivious act, as defined in chapter 800, F.S., committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child, as described in chapter 787, F.S.; sexual performance by a child, as described in chapter 827, F.S.; or any other forcible felony wherein a sexual act is committed or attempted; regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney." *Id.*

[4] The court may impose monetary fines for noncompliance of a violation of injunction. Criminal penalties are imposed pursuant to s. 784.047, F.S.

[5] s. 784.046, F.S.

Section 784.047, F.S., provides criminal penalties for violating a temporary or permanent injunction for protection against repeat violence, sexual violence, or dating violence. The statute specifies that a person commits a first degree misdemeanor[6] if they willfully violate an injunction for protection against repeat violence, sexual violence, or dating violence by:

- Refusing to vacate the dwelling that the parties share;
- Going to the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- Committing an act of repeat violence, sexual violence, or dating violence against the petitioner;
- Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner; or
- Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party.[7]

Effect of the Bill

The bill adds the following to the above list of ways in which a person could violate an injunction for protection against repeat violence, sexual violence, or dating violence:

- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle;
- Refusing to surrender firearms or ammunition if ordered to do so by the court.

The bill also adds the following to the existing list of ways in which a person could violate an injunction for protection against repeat violence, sexual violence, or dating violence:

- Going to, or being within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member.

It should be noted that s. 741.31, F.S., which provides penalties for violating an injunction for protection against domestic violence,[8] contains the same provisions as those added by the bill.

B. SECTION DIRECTORY:

Section 1. Amends s. 784.047, F.S., relating to penalties for violating protective injunction against violators.

Section 2. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[6] A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a $1,000 fine. *See* ss. 775.082 and 775.083, F.S.

[7] Section 784.047, F.S.

[8] Section 741.28, F.S., defines "domestic violence" as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member."

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill adds to the list of ways in which a person can violate an injunction for protection. Such violations will be first degree misdemeanors, which could impact county jails.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to violations of injunctions for protection; amending s. 784.047, F.S.; adding circumstances that violate an injunction for protection against repeat violence, sexual violence, or dating violence; providing penalties; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 784.047, Florida Statutes, is amended to read:

784.047 Penalties for violating protective injunction against violators.--A person who willfully violates an injunction for protection against repeat violence, sexual violence, or dating violence, issued pursuant to s. 784.046, or a foreign protection order accorded full faith and credit pursuant to s. 741.315 by:

(1) Refusing to vacate the dwelling that the parties share;

(2) Going to, or being within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;

(3) Committing an act of repeat violence, sexual violence, or dating violence against the petitioner;

(4) Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do

violence to the petitioner; ~~or~~

(5) Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;

(6) Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;

(7) Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle; or

(8) Refusing to surrender firearms or ammunition if ordered to do so by the court,

commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 445 Pretrial Detention and Release
SPONSOR(S): Dorworth
TIED BILLS: **IDEN./SIM. BILLS:** SB 494, SB 782

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	13 Y, 0 N	Cunningham	Cunningham
2)	Criminal & Civil Justice Appropriations Committee		McAuliffe	Davis
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The bill creates s. 907.041(5), F.S., to establish eligibility criteria that will apply to all pretrial release programs. There are currently no pretrial release program eligibility criteria in the Florida Statutes – each county develops its own. The bill specifies that a defendant is only eligible to participate in a pretrial release program if the defendant is charged with a misdemeanor or with a felony that is not a dangerous crime and:

- Has no history of failing to appear at any court proceeding;
- Is not, at the time of the arrest, subject to or on probation for another charge and is not facing charges for another crime anywhere in this state;
- Has no prior convictions involving violence;
- Satisfies any other limitation upon eligibility for release which is in addition to those above, whether established by the board of county commissioners or the court; and
- Is indigent as defined in Rule 3.111, Florida Rules of Criminal Procedure.

The bill requires the court to determine whether a defendant is eligible to participate in a pretrial release program and requires pretrial release programs to certify in writing that the defendant satisfies each of the above requirements. The bill also requires pretrial release programs to notify every defendant released to the program of the times and places at which the defendant is required to appear before the court.

The bill also specifies that if a defendant seeks to post a surety bond, the defendant must do so without any interaction with, or restriction by, a pretrial release program.

The bill prohibits pretrial release programs from charging defendants any fee or charge other than those authorized by state law.

The bill may have a significant fiscal impact on local government. See "Fiscal Comments."

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Pretrial Release

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges.[1] Pretrial release is a constitutional right for most people arrested for a crime.[2] The primary consideration in deciding whether to grant a defendant pretrial release is whether the person presents a threat to the community, whether the person is a flight risk, or whether the person threatens the integrity of the judicial process.[3]

Types of Pretrial Release

Generally, pretrial release can be granted in one of the following three ways:[4]

Release on Own Recognizance

Release on own recognizance allows defendants to be released from jail based on their promise to return for mandatory court appearances.[5] Defendants released on recognizance are not required to post a bond and are not supervised.

Bond

Posting bond is a monetary requirement to ensure that defendants appear in court when required. A defendant whom the court approves for this release must post a cash bond to the court or arrange for a surety bond through a private bondsman. Defendants typically pay a nonrefundable fee to the bondsman of 10% of the bond required by the court for release. If the defendant does not appear, the bondsman is responsible for paying the entire amount. As such, bondsmen have a vested interest in ensuring that their clients attend their court dates and do not abscond. Bondsmen are not required to supervise a defendant.

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[1] Report No. 10-08, *"Pretrial Release Programs' Compliance with New Reporting Requirements is Mixed,"* Office of Program Policy Analysis & Government Accountability, January 2010.

[2] Article I, Section 14, *Florida Constitution*, provides that unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions.

[3] *Id. See also*, s. 907.041(1), F.S.

[4] Report No. 10-08, *"Pretrial Release Programs' Compliance with New Reporting Requirements is Mixed,"* Office of Program Policy Analysis & Government Accountability, January 2010.

[5] Some defendants can also be released at the time of arrest with a notice to appear in court.

Pretrial Release Programs

Pretrial release programs[6] actively supervise approved defendants. The programs do so through phone contacts, visits, and/or electronic monitoring until the defendant's case is disposed or until the defendant's supervision is revoked. Defendants generally are released into a pretrial release program without paying a bond. Defendants may be assigned to the program by a judge or selected for participation by the program. There are no pretrial release program eligibility criteria in the Florida Statutes – each county develops its own criteria for determining who is eligible for its pretrial release program.

Prior to a defendant being released to a pretrial release program, the program must certify to the court that it has investigated or otherwise verified:

- The circumstances of the accused's family, employment, financial resources, character, mental condition, and length of residence in the community;
- The accused's record of convictions, of appearances at court proceedings, of flight to avoid prosecution, or of failure to appear at court proceedings; and
- Other facts necessary to assist the court in its determination of the indigency of the accused and whether the accused should be released under the supervision of the program.[7]

According to a January 2010, report by the Office of Program Policy Analysis and Government Accountability (OPPAGA), Florida has 28 pretrial release programs, which are administered on a county basis by sheriffs, jails, or county government divisions. Pretrial release programs are primarily funded by the county and by fees charged to defendants who participate in the program.[8]

Presumption in Favor of Non-Monetary Release

The Legislature has established a presumption in favor of pretrial release on *nonmonetary conditions*. Section 907.041(3)(a), F.S., provides the following:

> It is the intent of the Legislature to create a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime as defined in subsection (4).[9] Such person shall be released on monetary conditions if it is determined that such monetary conditions are necessary to assure the presence of the person at trial or at other proceedings, to protect the community from risk of physical harm to persons, to assure the presence of the accused at trial, or to assure the integrity of the judicial process.

Effectiveness of the Three Types of Pretrial Release

As noted above, the primary consideration in deciding whether to grant a defendant pretrial release is whether the person presents a threat to the community, whether the person is a flight risk, or whether

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[6] Section 907.043(2)(b), F.S., defines the term "pretrial release program" as an entity, public or private, that conducts investigations of pretrial detainees, makes pretrial release recommendations to a court, and electronically monitors and supervises pretrial defendants. The term does not apply to any program in the Florida Department of Corrections. *See s.* 907.043(2)(b), F.S.

[7] s. 907.041(3)(b), F.S.

[8] Osceola county's pretrial release program is permitted to charge participating defendants a $2.70 fee per day for electronic monitoring, a $4.90 fee per day for GPS, a $4.75 fee for an alcohol monitoring device, a $30.80 fee for a drug test, and a $13.20 fee for an alcohol test. *See* "Osceola County Corrections Department Proposed Legislation Impact Analysis" for House Bill 445.

[9] Section 907.041(4), F.S., defines the term "dangerous crime" to include arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking or aggravated stalking; act of domestic violence; home invasion robbery; act of terrorism; manufacturing any substances in violation of ch. 893; and attempting or conspiring to commit any of the aforementioned crimes.

the person threatens the integrity of the judicial process. In their January 2010 report, OPPAGA reviewed Miami-Dade county's 2008 data and reported that failure to appear rates were comparable for each of the different types of pretrial release, with defendants in pretrial release programs being slightly more likely to fail to appear than those released on bond or released on their own recognizance.[10] OPPAGA also found that Florida's pretrial release programs were following nationally recognized best practices for supervising defendants and reporting information to the courts.[11]

Effect of the Bill

As noted above, there are currently no pretrial release program eligibility criteria in the Florida Statutes. Instead, each county develops its own criteria for determining who is eligible for its pretrial release program. The bill creates s. 907.041(5), F.S., to establish pretrial release program eligibility criteria that will apply to each county's pretrial release programs. The bill specifies that a defendant is only eligible to participate in a pretrial release program if the defendant is charged with a misdemeanor or with a felony that is not a dangerous crime and:

- Has no history of failing to appear at any court proceeding;
- Is not, at the time of the arrest, subject to or on probation for another charge and is not facing charges for another crime anywhere in this state;
- Has no prior convictions involving violence;
- Satisfies any other limitation upon eligibility for release which is in addition to those above, whether established by the board of county commissioners or the court; and
- Is indigent as defined in Rule 3.111, Florida Rules of Criminal Procedure.[12]

The bill requires the court to determine whether a defendant is eligible to participate in a pretrial release program and requires pretrial release programs to certify in writing to the court that the defendant satisfies each of the above requirements before a determination is made concerning the defendant's eligibility for placement in the program. Judges would still be permitted to release defendants on their own recognizance.

The bill requires pretrial release programs to notify every defendant released to the program of the times and places at which the defendant is required to appear before the court.

The bill also specifies that if a defendant seeks to post a surety bond, the defendant must do so without any interaction with, or restriction by, a pretrial release program.

The bill prohibits pretrial release programs from charging defendants any fee or charge other than those authorized by state law. Florida Statutes do not currently contain any provisions authorizing pretrial release programs to charge defendants any fees nor does the bill authorize any. As such, the pretrial release programs will no longer be able to charge defendants who participate in the program any fees.

The bill specifies that all pretrial release programs established by ordinance of the county commission, by administrative order of the court, or by any other means, enacted or established to facilitate the release of defendants from pretrial custody, are subject to the above provisions.

B. SECTION DIRECTORY:

Section 1. Amends s. 907.041, F.S., relating to pretrial detention and release.

Section 2. Provides an effective date of July 1, 2010.

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[10] Report No. 10-08.

[11] *Id.*

[12] Rule 3.111, Fla. R. Crim. Proc., define the term "Indigent" as a person who is unable to pay for the services of an attorney, including costs of investigation, without substantial hardship to the person or the person's family; "partially indigent" shall mean a person unable to pay more than a portion of the fee charged by an attorney, including costs of investigation, without substantial hardship to the person or the person's family.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   This bill may have a significant negative fiscal impact on local government. See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The bill will result in a reduction in the number of defendants eligible for pretrial release programs. Defendants who are unable to participate in pretrial release programs will instead have to post bail to gain pretrial release (or be released on their own recognizance). It is likely that some of these defendants will use the services of a bail bondsman to obtain the bail amount. As a result, bail bondsmen are likely to see an increase in revenues.

D. FISCAL COMMENTS:

Fiscal Analysis – Defendants Ineligible for Pretrial Release Programs Who Would Remain in Jail Until Disposition[13]

Defendants who will no longer be eligible to participate in pretrial release programs will likely go to jail. A portion of these defendants will not have the funds to post a bond and will remain in jail until the disposition of their case. Below is a fiscal analysis based upon information supplied by the counties.

Osceola County
Pretrial Release Program Budget = $584,245

Almost 64% of pre-trial clients (6,029) would be ineligible per year based on the bill's requirements
- These clients would remain in jail until disposition or would remain in jail until bonded out

Average case takes 45 days to get resolved
Jail per diem = $73.18

If 5% of the 6,029 clients remain in jail until disposition, the jail would need an additional 302 beds
- If an additional 302 clients remained in jail for 45 days at $73.18 per day = **$994,516**

If 15% of the 6,029 clients remain in jail until disposition, the jail would need an additional 905 beds
- If an additional 905 clients remained in jail for 45 days at $73.18 per day = **$2,980,255**

If 25% of the 6,029 clients remain in jail until disposition, the jail would need an additional 1,508 beds
- If an additional 1,508 clients remained in jail for 45 days at $73.18 per day = **$4,965,995**

If 50% of the 6,029 clients remain in jail until disposition, the jail would need an additional 3,015 beds
- If an additional 3,015 clients remained in jail for 45 days at $73.18 per day = **$9,928,697**

[13] Staff used information provided by the counties to create the following fiscal analysis.

These figures do not include the cost of *constructing* any new jail beds
- the Osceola County Jail is currently operating 23% over capacity (has a capacity of 873 beds and currently houses 1,072 inmates)
- Osceola County Corrections Department reports that a new correctional facility will need to be constructed in order to increase the operational capacity of the jail

Monroe County
Almost 50% of pre-trial clients (432) would be ineligible based on the bill's requirements
- These clients would remain in jail until disposition or would remain in jail until bonded out

Jail per diem = $82.00
Assume an average case takes 2 months to get resolved

If 5% of the 432 clients remain in jail until disposition, the jail would need an additional 22 beds
- If an additional 22 clients remained in jail for 60 days at $82.00 per day = **$108,240**

If 15% of the 432 clients remain in jail until disposition, the jail would need an additional 65 beds
- If an additional 65 clients remained in jail for 60 days at $82.00 per day = **$319,800**

If 25% of the 432 clients remain in jail until disposition, the jail would need an additional 108 beds
- If an additional 108 clients remained in jail for 60 days at $82.00 per day = **$531,360**

If 50% of the 432 clients remain in jail until disposition, the jail would need an additional 216 beds
- If an additional 216 clients remained in jail for 60 days at $82.00 per day = **$1,062,720**

Palm Beach County
Pretrial Release Program Budget = $1,500,676

Approximately 67% of pre-trial clients (3,408) would be ineligible based on the bill's requirements
- These clients would remain in jail until disposition or would remain in jail until bonded out

Jail per diem = $125.00
Assume an average case takes 2 months to get resolved

If 5% of the 3,408 clients remain in jail until disposition, the jail would need an additional 171 beds
- If an additional 171 clients remained in jail for 60 days at $125.00 per day = **$1,282,500**

If 15% of the 3,408 clients remain in jail until disposition, the jail would need an additional 512 beds
- If an additional 512 clients remained in jail for 60 days at $125.00 per day = **$3,840,000**

If 25% of the 3,408 clients remain in jail until disposition, the jail would need an additional 852 beds
- If an additional 852 clients remained in jail for 60 days at $125.00 per day = **$6,390,000**

If 50% of the 3,408 clients remain in jail until disposition, the jail would need an additional 1,704 beds
- If an additional 1,704 clients remained in jail for 60 days at $125.00 per day = **$12,780,000**

St. Lucie County
Pretrial Release Program Budget = $1,146,978

Approximately 75% of pre-trial clients (291) would be ineligible based on the bill's requirements
- These clients would remain in jail until disposition or would remain in jail until bonded out

Jail per diem = $60.00
Assume an average case takes 2 months to get resolved

If 5% of the 291 clients remain in jail until disposition, the jail would need an additional 15 beds
- If an additional 15 clients remained in jail for 60 days at $60.00 per day = **$54,000**

If 15% of the 291 clients remain in jail until disposition, the jail would need an additional 44 beds
- If an additional 44 clients remained in jail for 60 days at $60.00 per day = **$158,400**

If 25% of the 291 clients remain in jail until disposition, the jail would need an additional 73 beds
- If an additional 73 clients remained in jail for 60 days at $60.00 per day = **$262,800**

If 50% of the 291 clients remain in jail until disposition, the jail would need an additional 146 beds
- If an additional 146 clients remained in jail for 60 days at $60.00 per day = **$525,600**

Sarasota County
Pretrial Release Program Budget = $1,406,259

Approximately 2,112 pre-trial clients would no longer be eligible based on the bill's requirements
- These clients would remain in jail until disposition or would remain in jail until bonded out

Jail per diem = $75.00
An average case takes 28 days to get resolved

If 5% of the 2,112 clients remain in jail until disposition, the jail would need an additional 106 beds
- If an additional 106 clients remained in jail for 28 days at $75.00 per day = **$222,600**

If 15% of the 2,112 clients remain in jail until disposition, the jail would need an additional 317 beds
- If an additional 317 clients remained in jail for 28 days at $75.00 per day = **$665,700**

If 25% of the 2,112 clients remain in jail until disposition, the jail would need an additional 528 beds
- If an additional 528 clients remained in jail for 28 days at $75.00 per day = **$1,108,800**

If 50% of the 2,112 clients remain in jail until disposition, the jail would need an additional 1,056 beds
- If an additional 1,056 clients remained in jail for 28 days at $75.00 per day = **$2,217,600**

Miami – Dade
Pretrial Release Program Budget = $4,826,119

Approximately 55% of pre-trial clients (7,282) would be ineligible based on the bill's requirements
- These clients would remain in jail until disposition or would remain in jail until bonded out

Jail per diem = $134.27
An average case takes 21 days to get resolved

If 5% of the 7,282 clients remain in jail until disposition, the jail would need an additional 365 beds
- If an additional 365 clients remained in jail for 21 days at $134.27 per day = **$1,029,180**

If 15% of the 7,282 clients remain in jail until disposition, the jail would need an additional 1,093 beds
- If an additional 1,093 clients remained in jail for 21 days at $134.27 per day = **$3,081,889**

If 25% of the 7,282 clients remain in jail until disposition, the jail would need an additional 1,821 beds
- If an additional 1,821 clients remained in jail for 21 days at $134.27 per day = **$5,134,619**

If 50% of the 7,282 clients remain in jail until disposition, the jail would need an additional 3,641 beds
- If an additional 3,641 clients remained in jail for 21 days at $134.27 per day = **$10,266,418**

* These figures do not include the cost of *constructing* new jail beds.

* Unless otherwise provided by a county, staff assumed that the average time a defendant would spend in jail awaiting disposition of his or her case was 60 days.

Fiscal Analysis – Defendants ineligible for Pretrial Release Programs who would bond out of jail
Defendants who will no longer be eligible to participate in pretrial release programs will likely go to jail. A portion of these defendants will pay a bond to get out of jail. Some defendants may be able to immediately pay their bond. However, it may take other defendants a longer amount of time to gather enough funds to pay their bond. There is no clear estimate on how long it would take defendants who are not eligible to participate in pretrial release programs to pay a bond. However, defendants who are not eligible to participate in pretrial release programs and who spend additional time in jail while gathering bond funds will increase a jail's population.

Fiscal Analysis – Funding
The bill prohibits pretrial release programs from charging defendants any fee or charge other than those authorized by state law. Florida Statutes do not currently contain any provisions authorizing pretrial release programs to charge defendants any fees nor does the bill authorize any. As such, the pretrial release programs will not be able to charge defendants who participate in the program any fees.

Fiscal Analysis – Indigent Defendants

Under the bill, only indigent inmates can participate in pretrial release programs - non-indigent defendants are prohibited from participating in the programs. Pursuant to Rule 3.111, Fla. R. Crim., Proc., a person is indigent if they are unable to pay for the services of an attorney, including costs of investigation, without substantial hardship to the person or the person's family. Defendants who are not indigent may or may not have the financial means to post a bond.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The mandates provision appears to apply because the bill may require counties or municipalities to spend funds or take an action requiring the expenditure of funds. However, if the legislature determines that the bill fulfills an important state interest, an exception to the mandates provision exists because the bill applies to all persons similarly situated, including the state.

2. Other:
   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires that one's financial status be a factor in determining whether a person is eligible to participate in pretrial release programs. However, the primary consideration in deciding whether to grant a defendant pretrial release is whether the person presents a threat to the community, whether the person is a flight risk, or whether the person threatens the integrity of the judicial process.

As noted above, pretrial release programs actively supervise participating defendants. The programs do so through phone contacts, drug and alcohol testing services, visits, and/or electronic monitoring until the defendant's case is disposed or until the defendant's supervision is revoked. Bail bondsmen are generally not required to supervise defendants.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to pretrial detention and release; amending s. 907.041, F.S.; requiring all pretrial release programs established by an ordinance of a county commission, by an administrative order of a court, or by any other means to facilitate the release of defendants from pretrial custody to conform to the policies and restrictions established in the act; requiring that the defendant meet certain specified criteria in order to be eligible for pretrial release; requiring that the pretrial release program certify in writing that the defendant satisfies each requirement for eligibility; requiring the court to determine whether a defendant is eligible to participate in the pretrial release program after reviewing certain reports; requiring that the pretrial release program notify each defendant of the time and place of each required court appearance; providing that the act does not prohibit a court from releasing a defendant on the defendant's own recognizance; prohibiting the assessment of any fee or charge against a released defendant other than those authorized by state law; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) is added to section 907.041, Florida Statutes, to read:

907.041 Pretrial detention and release.—

(5) PRETRIAL RELEASE PROGRAMS.—

(a) A pretrial release program established by ordinance of the county commission, by administrative order of the court, or by any other means, enacted or established to facilitate the release of defendants from pretrial custody, is subject to the policies and restrictions established in this subsection.

(b) A defendant is eligible to participate in a pretrial release program only if the defendant is charged with a misdemeanor or is charged with a felony that is not a dangerous crime, as defined in subsection (4), and:

1. Has no history of failing to appear at any court proceeding;

2. Is not, at the time of the arrest, subject to or on probation for another charge and is not facing charges for another crime anywhere in this state;

3. Has no prior convictions involving violence. For purposes of this subsection with respect to any prior conviction, if adjudication was withheld by the sentencing court, the withheld adjudication is deemed a conviction;

4. Satisfies any other limitation upon eligibility for release which is in addition to those in this subsection, whether established by the board of county commissioners or the court; and

5. Is indigent as defined in Rule 3.111, Florida Rules of Criminal Procedure.

(c) The pretrial release program must certify in writing to the court that the defendant satisfies each requirement of eligibility which is set forth in paragraph (b) before a

determination is made concerning the defendant's eligibility for placement in the pretrial release program.

(d) If a defendant seeks to post a surety bond pursuant to a bond schedule established by the administrative order, he or she must do so without any interaction with, or restriction by, the pretrial release program.

(e) The court shall determine whether the defendant is eligible to participate in the pretrial release program after the pretrial release program evaluates the defendant's eligibility and reports its findings to the court.

(f) The pretrial release program shall notify every defendant released under this subsection of the times and places at which he or she is required to appear before the court.

(g) This subsection does not prohibit a court from releasing a defendant on the defendant's own recognizance.

(h) A defendant who is released pursuant to a pretrial release program may not be assessed any fee or charge other than those authorized by state law.

Section 2. This act shall take effect July 1, 2010.

Amendment No. 1

COUNCIL/COMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Criminal & Civil Justice Appropriations Committee

Representative Dorworth offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (5) is added to section 907.041, Florida Statutes, to read:

907.041 Pretrial detention and release.-

(5)(a) PRETRIAL RELEASE PROGRAMS.-A pretrial release program established by ordinance of the county commission or by administrative order of the court or by any other means, enacted or established to facilitate the release of defendants from pretrial custody is subject to the policies and restrictions established in this subsection which supersedes and preempts all local ordinances, orders or practices.

(b) A defendant is eligible to participate in a pretrial release program only by order of a court if the defendant:

Amendment No. 1

1. Is not charged with a capital, life or first degree felony offense;

2. Has not willfully failed to appear at any court proceeding;

3. Is not, at the time of the arrest, subject to or on probation for another charge and is not facing charges for another crime anywhere in this state;

4. Has no prior convictions involving violence;

5. Satisfies any other limitation upon eligibility for release which is in addition to those in this subsection, whether established by the board of county commissioners or the court; and

6. Is indigent as defined in Rule 3.111, Florida Rules of Criminal Procedure and s. 27.52.

(c) The pretrial release program must certify in writing to the court that the defendant satisfies each requirement of eligibility which is set forth in paragraph (b) before a determination is made concerning the defendant's eligibility for placement in the pretrial release program.

(d) If a defendant seeks to post a surety bond pursuant to a bond schedule established by the administrative order, he or she must do so without any interaction with, or restriction by, the pretrial release program.

(e) The court shall determine whether the defendant is eligible to participate in the pretrial release program after the pretrial release program evaluates the defendant's eligibility and certifies its findings to the court.

(f) The pretrial release program shall notify every defendant released under this subsection of the times and places at which he or she is required to appear before the court.

(g) This subsection does not prohibit a court from releasing a defendant on the defendant's own recognizance.

(h) This subsection does not prohibit a court from imposing any reasonable conditions of release including but not limited to, electronic monitoring, drug testing, substance abuse treatment, and domestic violence counseling. A court may order the defendant pay for any services ordered as a condition of release.

(i) A pretrial release program may not charge a defendant who is participating in the program any fees other than those authorized by state law. However, a pretrial release program may charge a defendant fees for electronic monitoring, drug testing, substance abuse treatment, and other services that have been ordered by the court as a condition of release prior to trial.

(j) A court may order a defendant who does not meet the eligibility criteria set forth in paragraph (b) to participate in a pretrial release program if the defendant is eligible under state law to participate in a drug court program, mental health court program, or a prison diversion program established pursuant to s. 921.00241.

Section 2. Subsection (3) of section 907.043, Florida Statutes, is amended to read

907.043 Pretrial release; citizens' right to know.—

Amendment No. 1

(3)(a) Each pretrial release program must prepare a register displaying information that is relevant to the defendants released through such a program. A copy of the register must be located at the office of the clerk of the circuit court in the county where the program is located and must be readily accessible to the public.

(b) The register must be updated monthly ~~weekly~~ and display accurate data regarding the following information:

1. The name, location, and funding source of the pretrial release program.

2. The number of defendants assessed and interviewed for pretrial release.

3. The number of indigent defendants assessed and interviewed for pretrial release.

4. The names and number of defendants accepted into the pretrial release program.

5. The names and number of indigent defendants accepted into the pretrial release program.

6. The charges filed against and the case numbers of defendants accepted into the pretrial release program.

7. The nature of any prior criminal conviction of a defendant accepted into the pretrial release program.

8. The court appearances required of defendants accepted into the pretrial release program.

9. The date of each defendant's failure to appear for a scheduled court appearance.

Amendment No. 1

10. The number of warrants, if any, which have been issued for a defendant's arrest for failing to appear at a scheduled court appearance.

11. The number and type of program noncompliance infractions committed by a defendant in the pretrial release program and whether the pretrial release program recommended that the court revoke the defendant's release.

Section 3. This act shall take effect October 1, 2010.

T I T L E A M E N D M E N T

Remove the entire title and insert:

A bill to be entitled

An act relating to pretrial detention and release; amending s. 907.041, F.S.; requiring all pretrial release programs established by an ordinance of county commission, by an administrative order of a court, or by any other means to facilitate the release of defendants from pretrial custody to conform to the policies and restrictions established in the act preempting local ordinances; requiring that the defendant meet certain specified criteria in order to be eligible for pretrial release; requiring that the pretrial release program certify in writing that the defendant satisfies each requirement for eligibility; requiring the court to determine whether a defendant is eligible to participate in the pretrial release program after reviewing certain reports; requiring that the pretrial release

program notify each defendant of the time and place of each required court appearance; providing that the act does not prohibit a court from releasing a defendant on the defendant's own recognizance; providing that the act does not prohibit a court from imposing any other reasonable condition of release; prohibiting a pretrial release program from charging a defendant any administrative fees; providing that a pretrial release program may charge a defendant fees for services that have been ordered by the court; providing that a defendant may participate in pretrial release programs if the defendant qualifies for drug court, mental health court, or other similar programs; amending s. 907.043, F.S.; providing that pretrial release program registers be updated monthly rather than weekly; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 525 Statutes of Limitation for Sexual Battery
SPONSOR(S): Dorworth and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 870

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	12 Y, 0 N	Padgett	Cunningham
2)	Criminal & Civil Justice Appropriations Committee		Darity	Davis
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Section 775.15, F.S., sets forth time limitations for commencing criminal prosecutions, or "statute of limitations." Under current law, there is no statute of limitations for most sexual battery crimes where the victim is a minor. Only two sexual battery offenses where the victim is a minor have an applicable statute of limitations under current law.

Section 95.11, F.S., sets forth time limitations for commencing civil actions in Florida. The time limitations range from 20 years to 30 days. A civil claim for a violation of Chapter 794 must commence within four years from the date when the cause of action accrues.

The bill amends s. 95.11, F.S., and s. 775.15, F.S., to provide that there is no time limitation for a civil cause of action or a criminal prosecution for a violation of s. 794.011, F.S., when the victim was under the age of 16 at the time of the offense. The bill applies to all actions except those which would have been time barred on or before July 1, 2010.

The fiscal impact associated with workload on the courts or additional filing fee revenue from bringing these actions was indeterminate, but likely minimal. The Criminal Justice Impact Conference met March 17, 2010, and determined this bill will have an insignificant impact on state prison beds.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Criminal Prosecution

Section 775.15, F.S., sets forth time limitations for commencing criminal prosecutions, or "statute of limitations."

Section 775.15(3), F.S., provides that time for prosecution of a criminal case starts to run on the day after the offense is committed. An offense is deemed to have been committed either when every element of the offense has occurred, or, if the legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's duplicity therein is terminated.[1]

Section 775.15, F.S., controls the time limitations for initiating a criminal prosecution for any felony offense in the following manner:

- For a capital felony, a life felony, or a felony resulting in death, there is no time limitation;
- For a first degree felony, there is a four-year limitation; and
- For any other felony, there is a three-year limitation.

Generally, the controlling criminal statute of limitations is the version that is in effect when a crime is committed.[2] The legislature can extend the limitations period without violating the constitutional prohibition against ex post facto laws if it does so before prosecution is barred by the old statute and clearly indicates that the new statute is to apply to cases pending when it becomes effective.[3] If the pre-existing statute of limitations had already expired prior to passage of the new statute of limitations, the retroactive application of the new statute of limitations would violate the ex post facto provisions of both the Unites States Constitution (Art. I, ss. 9, 10) and the Florida Constitution (Art. I, s. 10.).[4]

Section 794.011, F.S., prohibits sexual battery. "Sexual battery" is defined to mean oral, anal, or vaginal penetration or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide

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[1] Section 775.15, F.S.
[2] *See Andrews v. State,* 392 So.2d 270,271 (Fla. 2d DCA 1980).
[3] *Id.*
[4] *See United States v. Richardson,* 512 F.2d 105, 106 (3rd Cir. 1975); *Reino v. State,* 352 So.2d 853 (Fla. 1977).

, medical purpose.[5] The felony degree for the offense of sexual battery varies depending on the age of the defendant and the age of the victim. There is no time limit for commencing a criminal prosecution for the life felonies in Chapter 794, F.S. A criminal prosecution for a first degree felony in Chapter 794, F.S., must commence within four years. A criminal prosecution for the second and third degree felonies in Chapter 794, F.S., must commence within three years.

Under current law, there is no statute of limitations for most sexual battery crimes where the victim is a minor. Only two sexual battery offenses where the victim is a minor have an applicable statute of limitations under current law. As to these two offenses, the applicable statute of limitations does not commence until the earlier of the date that the minor reaches 18 years of age or the crime is reported to law enforcement.[6] Those two offenses are as follows:

- Section 794.011(5), F.S., provides that a person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree.[7] There is no statute of limitations for this crime if the sexual battery was reported to law enforcement within 72 hours after the commission of the crime[8] or if there were multiple perpetrators.[9] Otherwise, the statute of limitations is 3 years. Because the statute of limitations must commence on or before the victim's 18th birthday, the limitations period would not extend beyond the victim's 21st birthday.

- Section 794.011(8), F.S., provides that without regard to the willingness or consent of the victim, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who solicits that person to engage in any act which would constitute sexual battery commits a felony of the third degree.[10] The statute of limitations is 3 years. Because the statute of limitations must commence on or before the victim's 18th birthday, the limitations period would not extend beyond the victim's 21st birthday.

In addition to the time periods stated above, for offenses committed between July 1, 2004 and June 30, 2006, an offender may be prosecuted within 1 year after the date on which the identity of the offender is established, or should have been established by the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused.[11]

For offenses that are not barred from prosecution on or after July 1, 2006, an offender may be prosecuted at any time after the date on which the identity of the offender is established, or should have been established by the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused.[12]

Civil Action

Section 95.11, F.S., sets forth time limitations for commencing civil actions in Florida. The time limitations range from 20 years to 30 days.

Section 95.031, F.S., provides that time for commencing civil actions starts to run from the time the cause of action accrues. A cause of action accrues when the last element constituting the cause of action occurs.[13] Time limitations may be tolled under certain circumstances.[14]

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[5] Section 794.011(1)(h), F.S.
[6] Section 775.15(13)(a), F.S.
[7] Section 794.011(5), F.S.
[8] Section 775.15(14), F.S.
[9] If there were multiple perpetrators, this crime is reclassified as a first degree felony, s. 794.023(2)(a), F.S., and accordingly there would be no statute of limitations.
[10] Section 794.011(8)(a), F.S.
[11] Section 775.15(15), F.S.
[12] Section 775.15(16), F.S.
[13] Section 95.031(1), F.S.

A civil claim for a violation of Chapter 794, F.S., must commence within four years from the date when the cause of action accrues.[15]

Proposed Changes

Criminal Prosecution

The bill amends s. 775.15, F.S., to provide there is no time limitation for the criminal prosecution of a violation of s. 794.011, F.S., when the victim was under the age of 16 at the time of the offense. The bill applies to all offenses except those offense barred by prosecution on or before July 1, 2010.

Civil Action

The bill amends s. 95.11, F.S., to provide that there is no time limitation for a civil cause of action of a violation of s. 794.011, F.S., when the victim was under the age of 16 at the time of the offense. The bill applies to all actions except those which would have been time barred on or before July 1, 2010.

B. SECTION DIRECTORY:

Section 1: Amends s. 95.11, F.S., relating to limitations other than for the recovery of real property.

Section 2: Amends s. 775.15, F.S., relating to time limitations; general time limitations; exceptions.

Section 3: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate. See fiscal comments.

2. Expenditures:

   Indeterminate. See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference met March 17, 2010, and determined this bill will have an insignificant impact on state prison beds.

[14] Section 95.051, F.S.
[15] Section 95.11(3)(o), F.S.

The State Courts reported that both the potential workload and additional filing fee revenues are indeterminate, but the fiscal impact is likely to be minimal.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to statutes of limitation for sexual battery; amending ss. 95.11 and 775.15, F.S.; eliminating statutes of limitations to the institution of criminal or civil actions relating to sexual battery of a child if the victim is under 16 years of age at the time of the offense; providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (9) is added to section 95.11, Florida Statutes, to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(9) SEXUAL BATTERY OFFENSES ON VICTIMS UNDER AGE 16.—An action related to an act constituting a violation of s. 794.011 involving a victim who was under the age of 16 at the time of the act may be commenced at any time. This subsection applies to any such action other than one which would have been time barred on or before July 1, 2010.

Section 2. Paragraph (c) is added to subsection (13) of section 775.15, Florida Statutes, to read:

775.15 Time limitations; general time limitations; exceptions.—

(13)

(c) If the offense is a violation of s. 794.011 and the victim was under 16 years of age at the time the offense was committed, a prosecution of the offense may be commenced at any time. This paragraph applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before July 1, 2010.

Section 3. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 621 Possession of Stolen Credit Cards
SPONSOR(S): Brandenburg
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	10 Y, 0 N, As CS	Padgett	Cunningham
2)	Criminal & Civil Justice Appropriations Committee		McAuliffe	Davis
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Currently, mere possession of a stolen credit card is not, per se, illegal. Section 817.60, F.S., contains several offenses relating to the unauthorized possession of a credit card, however all current offenses under this section require either proof of intent to use, sell, or transfer a stolen credit card; or require a fraudulent intent in obtaining the credit card.

The bill amends s. 817.60(1), F.S., to provide a person commits a third degree felony if a person takes a credit card from the person, possession, custody, or control of another without the cardholder's consent; a person possesses, receives, or retains custody of a credit card with the knowledge it has been stolen; or who receives the credit card with the intent to use, sell, or transfer the card to a person other than the issuer.

The bill provides that proof of possession of a credit card that has been recently stolen or possession of a credit card in the name of a person other than that of the possessor gives rise to the inference that the person in possession of the credit card knew or should have known the credit card was stolen.

The Criminal Justice Impact Conference met March 17, 2010, and determined this bill will have an insignificant impact on state prison beds.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 817.60, F.S., provides criminal penalties punishable as a first degree misdemeanor[1] for several offenses relating to credit cards[2] including:

- Taking[3] a credit card from the person, possession, custody, or control of another without the cardholder's consent, or with knowledge the card has been so taken, receiving the credit card with the intent to use it, to sell it, or to transfer it to another person other than the issuer or the cardholder;
- Receiving a credit card that is known to have been lost, mislaid, or delivered by mistake as to the identity or address of the cardholder, and retaining the card with the intent to use, sell, or transfer the card to another person other than the issuer or the cardholder;
- Selling or buying a credit card from a person other than the issuer;
- Obtaining a credit card as security for debt with intent to defraud; or
- Signing the credit card of another.[4]

Section 817.60, F.S., provides criminal penalties punishable as a third degree felony[5] for several offenses relating to credit cards including:

- Receiving two or more credit cards within a 12 month period issued in the names of different cardholders, which the person had reason to know were taken or retained under circumstances that constitute credit card theft;
- Possessing two or more counterfeit credit cards;
- Making a device or instrument that purports to be a credit card of a named issuer but which the issuer did not authorize; or
- Falsely embossing a credit card without authorization of the issuer.[6]

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[1] A first degree misdemeanor is punishable by up to one year in county jail and a maximum $1,000 fine. Sections 775.082, 775.083, F.S.

[2] "Credit card" is defined to mean any instrument or device, whether known as a credit card, credit plate, bank service card, banking card, check guarantee card, electronic benefits transfer (EBT) card, or debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value on credit or for use in an automated banking device to obtain any of the services offered through the device." Section 817.58(4), F.S.

[3] Taking a credit card without consent includes obtaining the card by statutory larceny, common-law larceny by trespassory taking, common-law larceny by trick, or embezzlement or obtaining property through false pretense, false promise, or extortion. Section 817.60(1), F.S.

[4] Section 817.60(1)-(4), F.S.

[5] A third degree felony is punishable by up to five years imprisonment and a maximum $5,000 fine. Sections 775.082, 775.083, 775.084, F.S.

It is possible that possession of a stolen credit card could be prosecuted as theft under s. 812.014, F.S. Section 812.014(1), F.S., provides a person commits theft if the person knowingly obtains the property of another with the intent to, either temporarily or permanently:

- deprive the other person of a right to the property or benefit from the property; or
- appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.[7]

The penalties for a violation of s. 812.014, F.S., are generally tied to value of the stolen goods.[8] The actual value of a credit card would likely be determined to be the value of the plastic used to make the credit card, which would be a negligible amount. The value of the stolen goods would likely be under $300 and prosecuted as a second degree misdemeanor[9].[10]

It is possible that possession of a stolen credit card could be prosecuted as the offense of dealing in stolen property.[11] Section 812.019(1), F.S., provides that a person commits a second degree felony[12] if the person traffics[13] in or endeavors to traffic in property that he or she knew or should have known was stolen.

Section 812.022, F.S., provides evidence of theft or dealing in stolen property which may be used to create an inference that a person knew, or should have known that the property was stolen.[14] Examples include: possession of recently stolen property, unless satisfactorily explained; the purchase or sale of stolen property at a price substantially below fair market value, unless satisfactorily explained; and the purchase or sale of stolen property by a dealer in property, out of the regular course of business or without the usual indicia of ownership, unless satisfactorily explained.[15]

Proposed Changes

The bill amends s. 817.60(1), F.S., to provide a person commits a third degree felony if a person takes a credit card from the person, possession, custody, or control of another without the cardholder's consent; a person possesses, receives, or retains custody of a credit card with the knowledge it has been stolen; or who receives the credit card with the intent to use, sell, or transfer the card to a person other than the issuer.

The bill provides that proof of possession of a credit card that has been recently stolen or possession of a credit card in the name of a person other than that of the possessor gives rise to the inference that the person in possession of the credit card knew or should have known the credit card was stolen.

B. SECTION DIRECTORY:

Section 1: Amends s. 817.60, F.S., relating to theft; obtaining credit card through fraudulent means.

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[6] Section 817.60(5), s. 817.60(6), F.S.

[7] Section 812.014(1), F.S.

[8] Section 812.014, F.S. If the value of the stolen property is $100,000 or greater, the offense is punishable as a first degree felony; if the value of the stolen property is between $20,000 and $100,000, the offense is a second degree felony; if the value of the stolen property is between $300 and $5,000, the offense is a third degree felony; if the value of the stolen goods is valued at between $100 and $300, the offense is a first degree misdemeanor; if the value of the stolen goods is valued at less than $100, the offense is a second degree misdemeanor. Some property is listed specifically in s. 812.014, F.S. Theft of this specified property may be punished at a greater degree of punishment regardless of the value of the stolen items.

[9] A second degree misdemeanor is punishable by up to 60 days in county jail and a maximum $500 fine. Sections 775.082, 775.083, F.S.

[10] Section 812.014(3)(a), F.S.

[11] Section 812.019(1), F.S.

[12] A second degree felony is punishable by up to 15 years imprisonment and a maximum $10,000 fine. Sections 775.082, 775.083, 775.084, F.S.

[13] "Traffic" is defined to mean to sell, transfer, distribute, dispense, or otherwise dispose of property, or to buy, receive possess, obtain control of, or use property with intent to sell, transfer, distribute, dispense, or otherwise dispose of such property. Section 812.012(8), F.S.

[14] Section 812.022, F.S.

[15] Id.

Section 2: Provides an effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Criminal Justice Impact Conference met March 17, 2010, and determined this bill will have an insignificant impact on state prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 2, 2010, the Public Safety & Domestic Security Policy Committee adopted a strike-all amendment to the bill.

A bill to be entitled

An act relating to fraudulently taking or using a credit card; amending s. 817.60, F.S.; providing that a person who takes a credit card from the possession, custody, or control of another without the cardholder's consent, who possesses, receives, or retains custody of the credit card with the knowledge that it has been taken, or who receives the credit card with the intent to use it, to sell it, or to transfer it to a person other than the issuer or the cardholder commits a felony of the third degree rather than a misdemeanor of the first degree; providing increased criminal penalties; providing for an inference that the person in possession of a credit card knew or should have known that the credit card had been stolen in certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 817.60, Florida Statutes, is amended to read:

817.60 Theft; obtaining credit card through fraudulent means.—

(1) THEFT BY TAKING OR RETAINING POSSESSION OF CARD TAKEN.—A person who takes a credit card from the person, possession, custody, or control of another without the cardholder's consent; ~~or~~ who possesses, receives, or retains custody of the credit card~~,~~ with knowledge that it has been so taken; or who~~,~~ receives the credit card with intent to use it,

to sell it, or to transfer it to a person other than the issuer or the cardholder commits ~~is guilty of~~ credit card theft and is subject to the penalties set forth in s. 817.67(2)~~(1)~~. Taking a credit card without consent includes obtaining it by conduct defined or known as statutory larceny, common-law larceny by trespassory taking, common-law larceny by trick or embezzlement or obtaining property by false pretense, false promise or extortion. Proof of possession of a credit card that has been recently stolen or possession of a credit card in the name of a person other than that of the possessor, unless satisfactorily explained, gives rise to an inference that the person in possession of the credit card knew or should have known that the credit card had been stolen.

Section 2. This act shall take effect July 1, 2010.

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED __ (Y/N)

ADOPTED AS AMENDED __ (Y/N)

ADOPTED W/O OBJECTION __ (Y/N)

FAILED TO ADOPT __ (Y/N)

WITHDRAWN __ (Y/N)

OTHER _____

Council/Committee hearing bill: Criminal & Civil Justice Appropriations Committee

Representative Brandenburg offered the following:

Amendment (with directory and title amendments)

Between lines 41 and 42, insert:

(8) RETAILER EXCEPTION.—A retailer who in good faith takes, accepts, retains, or processes a stolen credit card without knowledge that the card is stolen does not commit a violation of this section.

D I R E C T O R Y A M E N D M E N T

Remove line 20 and insert:

Statutes, is amended, and subsection (8) is added to that section, to read:

T I T L E A M E N D M E N T

Amendment No.

Remove line 15 and insert:

certain circumstances; providing that a retailer who in good faith takes, accepts, retains, or processes a stolen credit card without knowledge that the card is stolen does not commit a violation; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 811 Faith- and Character-Based Correctional Institution Programs
SPONSOR(S): Rouson
TIED BILLS: **IDEN./SIM. BILLS:** SB 2260

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	14 Y, 0 N	Krol	Cunningham
2)	Criminal & Civil Justice Appropriations Committee		McAuliffe	Davis
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

HB 811 rewords the "faith based programs for inmates" section of statute to add secular language.

This bill removes:

- Requirements that the Department of Corrections should establish and operate six new faith based programs,
- Provisions that require 80% of the inmates participating in faith based program to be within 36 months of release,
- Program priority assignments given to inmates who have shown an indication for substance abuse,
- Provisions related to funding of faith based programming,
- Requirements to assign chaplains and clerical positions to faith based programs and community correctional centers.

This bill does not appear to have a fiscal impact on state or local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Faith and Character Based Initiative

Section 944.803, F.S., enacted in 1997, required the Department of Corrections (department) to have six faith-based programs. The faith- and character-based (FCB) initiative within the department is currently found within 11 different facilities across the state. There are two ways the faith- and character-based program operates within the department, through the use of:

- Faith and Character Based Institutions[1] and
- Faith Based/Self Improvement Dormitories.[2]

FCB programs are run entirely through a volunteer staff with no state funds spent on the initiative and allow inmates to participate in both religious and secular programming. Inmates participating in FCB programs have the opportunity to take classes on different topics such as writing, marriage and parenting, money management, interview and job skills, computer literacy, personal faith, and other various religious and secular topics.[3]

FCB institutions have no statutory requirements on program length or criteria regarding inmates' sentences. Unless an inmate commits a serious infraction, he or she can be housed in a FCB institution until the completion of his or her sentence or permanently if sentenced to life. Participation in the FCB program is voluntary and inmates are not required to have any religious beliefs to be eligible for either program. However, priority is given to inmates who have shown an indication for substance abuse. Department procedures further require that inmates must:

- Have received no disciplinary reports that resulted in disciplinary confinement during the previous ninety (90) days;
- Be in general population housing status; not in work-release, reception or transit status;
- Fit the parameters of the institutional profile; and
- Volunteer to be placed in the program.

[1] There are currently four FCB Institutions – Glades C.I., Lawtey C.I., Wakulla C.I., and Hillsborough C.I. (female).

[2] FCB dormitories are currently located at Everglades C.I., Polk C.I., Tomoka C.I., Union C.I., Gulf C.I., Lancaster C.I. (youthful offender), and Lowell C.I. (female). Inmates can only spend one year in a FCB dormitory.

[3] Department of Corrections 2010 Analysis of HB 1005.

Inmates can be removed from the FCB program for:

- The purposes of population management,
- Inmate conduct that may subject the inmate to disciplinary confinement or loss of gain time,
- Physical or mental health concerns, or
- Security or safety concerns.[4]

Current law requires that 80% of the inmates assigned to a FCB dormitory be within 36 months of their release date.[5] However, the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) recommended that the Legislature amend the dormitory requirements found in s. 944.803, F.S., to allow the department to place more than 20% of inmates with more than 36 months left on their sentence in FCB dormitories.[6]

Section 944.803, F.S., requires the department to assign a chaplain and a full-time clerical support person to each dormitory to implement and monitor the FCB program and to strengthen volunteer participation and support. The department is also required to assign chaplains to community correctional centers[7] who must strengthen volunteer participation by recruiting volunteers in the community to assist inmates in transition.

Currently the state-wide waiting list is at 880 inmates for the faith-based dormitories, 780 inmates for the self-improvement dormitories, and 9,241 inmates for the faith- and character-based institutions.[8]

Effect of Proposed Changes
HB 811 rewords the "faith based programs for inmates" section of statute to add secular language. "Faith and character-based" replaces "faith based" throughout s. 944.803, F.S. "Secular" is also added to that volunteers from secular institutions may also volunteer in the department's faith and character-based programs.

This bill removes the outdated requirement that the Department of Corrections establish and operate six new programs.

The bill deletes provisions that require 80% of inmates participating in the program to be within 36 months of their release.

The bill removes faith and character-based program priority assignments given to inmates who have shown an indication for substance abuse.

The bill deletes provisions related to funding of faith and character-based programming.

The bill removes requirements to assign chaplains and clerical positions to FCB programs and community correctional centers.

B. SECTION DIRECTORY:

Section 1. Amends 944.803, F.S., relating to faith based programs for inmates.

Section 2. Provides the bill an effective date, upon becoming a law.

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[4] Section 944.803(3), F.S.,
[5] Section 944.803(3), F.S.
[6] *Id.*
[7] Authorized pursuant to s. 945.091(1)(b), F.S.
[8] Department of Corrections Faith- and Character-Based Initiative, October 2009 Update, http://www.dc.state.fl.us/oth/faith/stats.html (Last visited March 4, 2010).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The department reports that this will not have a fiscal impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to faith- and character-based correctional institution programs; amending s. 944.803, F.S.; revising legislative findings; providing requirements for faith- and character-based programs; deleting provisions relating to funding; revising requirements for participation; deleting provisions relating to assignment of chaplains; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 944.803, Florida Statutes, is amended to read:

944.803 Faith- and character-based ~~Faith-based~~ programs ~~for inmates~~.—

(1) The Legislature finds and declares that faith- and character-based ~~faith-based~~ programs offered in state and private correctional institutions and facilities have the potential to facilitate inmate institutional adjustment, help inmates assume personal responsibility, and reduce recidivism.

(2) It is the intent of the Legislature that the department ~~of Corrections~~ and the private vendors operating private correctional facilities ~~shall~~ continuously:

(a) Measure recidivism rates for inmates who have participated in faith- and character-based ~~religious~~ programs.~~;~~

(b) Increase the number of volunteers who minister to inmates from various faith-based and secular institutions in the community.~~;~~

(c) Develop community linkages with secular institutions as well as churches, synagogues, mosques, and other faith-based institutions to assist inmates in their release back into the community.~~; and~~

~~(d) Fund through the use of annual appropriations, in department facilities, and through inmate welfare trust funds pursuant to s. 945.215, in private facilities, an adequate number of chaplains and support staff to operate faith-based programs in correctional institutions.~~

(3)(a) ~~The department must have at least six new programs fully operational. These six programs shall be similar to and in addition to the current faith-based pilot program. The six new programs shall be a joint effort with the department and faith-based service groups within the community.~~ The department shall ensure that an inmate's faith orientation, or lack thereof, will not be considered in determining admission to a faith- and character-based ~~faith-based~~ program and that the program does not attempt to convert an inmate toward a particular faith or religious preference.

(b) The programs shall operate 24 hours a day within the existing correctional facilities and~~. The programs~~ must emphasize the importance of personal responsibility, meaningful work, education, substance abuse treatment, and peer support.

(c) Participation in a ~~the faith-based dormitory~~ program shall be voluntary. ~~However, at least 80 percent of the inmates participating in this program must be within 36 months of release.~~ Assignment to a program ~~these programs~~ shall be based on evaluation and the length of time the inmate is projected to

be assigned to that particular institution. ~~In evaluating an inmate for this program, priority shall be given to inmates who have shown an indication for substance abuse. A right to substance abuse program services is not stated, intended, or otherwise implied by this subsection.~~ The department may not remove an inmate once assigned to a ~~the~~ program except for the purposes of population management, for inmate conduct that may subject the inmate to disciplinary confinement or loss of gain-time, for physical or mental health concerns, or for security or safety concerns. ~~To support the programming component, the department shall assign a chaplain and a full-time clerical support person dedicated to each dormitory to implement and monitor the program and to strengthen volunteer participation and support.~~

~~(4) The Department of Corrections shall assign chaplains to community correctional centers authorized pursuant to s. 945.091(1)(b). These chaplains shall strengthen volunteer participation by recruiting volunteers in the community to assist inmates in transition, and, if requested by the inmate, placement in a mentoring program or at a contracted substance abuse transition housing program. When placing an inmate in a contracted program, the chaplain shall work with the institutional transition assistance specialist in an effort to successfully place the released inmate.~~

(4)~~(5)~~ The department shall ensure that any faith component of any program authorized in this chapter is offered on a voluntary basis and, an offender's faith orientation, or lack thereof, will not be considered in determining admission to

such a ~~faith-based~~ program and that the program does not attempt to convert an offender toward a particular faith or religious preference.

(5) ~~(6)~~ The department shall ensure that state funds are not expended for the purpose of furthering religious indoctrination, but rather, that state funds are expended for purposes of furthering the secular goals of criminal rehabilitation, the successful reintegration of offenders into the community, and the reduction of recidivism.

Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 813 Juvenile Justice Facilities and Programs
SPONSOR(S): Garcia
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	12 Y, 0 N	Cunningham	Cunningham
2)	Health Care Services Policy Committee	12 Y, 0 N	Schoonover	Schoolfield
3)	Criminal & Civil Justice Appropriations Committee		Darity 4party	Davis 6d6
4)	Criminal & Civil Justice Policy Council			
5)				

SUMMARY ANALYSIS

HB 813 amends chapter 985, F.S., to improve the quality and delivery of service in the juvenile justice system.

There is currently no definition of the term "ordinary medical care" in ch. 985, F.S. The bill amends s. 985.03, F.S., to define "ordinary medical care" as follows:

> "Ordinary medical care" means medical procedures that are administered or performed on a routine basis and include, but are not limited to, inoculations, physical examinations, remedial treatment for minor illnesses and injuries, preventative services, medical management, chronic disease detection and treatment, and other medical procedures that are administered or performed on a routine basis and do not involve hospitalization, surgery, use of general anesthesia, or the provision of psychotropic medications for which a separate court order, power of attorney, or informed consent as provided by law is required.

The bill also amends s. 985.64, F.S., to require The Department of Juvenile Justice to adopt rules for ordinary medical care, mental health services, substance abuse treatment services, and developmental disabilities services and to coordinate its rulemaking effort with the Department of Children and Families and the Agency for Persons with Disabilities.

This bill does not appear to have a fiscal impact on state or local governments.

The bill becomes effective on July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Various sections within Chapter 985, F.S., which relates to juvenile justice, imply or specifically state that the Department of Juvenile Justice (DJJ) is responsible for providing health services to the youth it serves. For example, s. 985.039(1)(b), F.S., provides that when a child is placed in detention or on committed status, DJJ has temporary legal custody of such child and must provide ordinary medical, dental, psychiatric, and psychological care.[1] There is currently no definition of the term "ordinary medical care" in ch. 985, F.S.

Section 985.601(9)(b)7., F.S., requires DJJ to adopt rules governing medical attention, health, and comfort items in detention facilities; however, there is no such requirement in the rules for providing medical attention in other DJJ facilities or programs. DJJ reports that because they are only authorized to develop rules governing medical care in *detention* facilities, the provision of care in other areas of the continuum of care is governed by policies that are subject to challenge.

Effect of the Bill

The bill amends s. 985.03, F.S., to define "ordinary medical care" as follows:

> "Ordinary medical care" means medical procedures that are administered or performed on a routine basis and include, but are not limited to, inoculations, physical examinations, remedial treatment for minor illnesses and injuries, preventative services, medical management, chronic disease detection and treatment, and other medical procedures that are administered or performed on a routine basis and do not involve hospitalization, surgery, use of general anesthesia, or the provision of psychotropic medications for which a separate court order, power of attorney, or informed consent as provided by law is required.

The bill also amends s. 985.64, F.S., to require DJJ to adopt rules to ensure the effective provision of health services to youth in facilities or programs operated or contracted by DJJ. The bill specifies that such rules must address delivery of ordinary medical care, mental health services, substance abuse

[1] *See* s. 985.03(31), F.S. *See also*, Section 985.441(1)(b) F.S., which authorizes a court to commit a child to DJJ and requires DJJ to provide treatment to the child; and ss. 985.18 and 985.185, F.S., which indicate that DJJ is responsible for the provision of medical care.

treatment services, and developmental disabilities services. Additionally, the bill requires DJJ to coordinate its rulemaking effort with the Department of Children and Families and the Agency for Persons with Disabilities to ensure there is no encroachment on either agency's substantive jurisdiction. The effect of these changes will ensure quality care for all youth involved with DJJ, including foster care children.

B. SECTION DIRECTORY:

Section 1. Amends s. 985.03, F.S., relating to definitions.

Section 2. Amends s. 985.64, F.S., relating to rulemaking.

Section 3. Amends s. 985.721, F.S., relating to escapes from secure detention or residential commitment facility.

Section 4. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides DJJ rule-making authority to govern the procedure for ordinary medical care, mental health, substance abuse, and developmental disability services in DJJ facilities and programs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to juvenile justice facilities and programs; amending s. 985.03, F.S.; defining the term "ordinary medical care"; amending s. 985.64, F.S.; requiring that the Department of Juvenile Justice adopt rules to ensure the effective delivery of services to youth in facilities or programs operated or contracted by the department; requiring the department to coordinate its rule-adoption process with the Department of Children and Family Services and the Agency for Persons with Disabilities to ensure that the department's rules do not encroach upon the substantive jurisdiction of those agencies; amending s. 985.721, F.S.; conforming a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (39) through (57) of section 985.03, Florida Statutes, are renumbered as subsections (40) through (58), respectively, and a new subsection (39) is added to that section to read:

985.03 Definitions.—As used in this chapter, the term:

(39) "Ordinary medical care" means medical procedures that are administered or performed on a routine basis and include, but are not limited to, inoculations, physical examinations, remedial treatment for minor illnesses and injuries, preventive services, medication management, chronic disease detection and treatment, and other medical procedures that are administered or

performed on a routine basis and do not involve hospitalization, surgery, use of general anesthesia, or the provision of psychotropic medications for which a separate court order, power of attorney, or informed consent as provided by law is required.

Section 2. Section 985.64, Florida Statutes, is amended to read:

985.64 Rulemaking.—

(1) The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter. Such rules may not conflict with the Florida Rules of Juvenile Procedure. All rules and policies must conform to accepted standards of care and treatment.

(2) The department shall adopt rules to ensure the effective provision of health services to youth in facilities or programs operated or contracted by the department. The rules must address the delivery of the following:

(a) Ordinary medical care.

(b) Mental health services.

(c) Substance abuse treatment services.

(d) Services to youth with developmental disabilities.

The department shall coordinate its rulemaking with the Department of Children and Family Services and the Agency for Persons with Disabilities to ensure that the rules adopted under this section do not encroach upon the substantive jurisdiction of those agencies. The department shall include the above-mentioned entities in the rulemaking process, as appropriate.

Section 3. Section 985.721, Florida Statutes, is amended

to read:

985.721 Escapes from secure detention or residential commitment facility.—An escape from:

(1) Any secure detention facility maintained for the temporary detention of children, pending adjudication, disposition, or placement;

(2) Any residential commitment facility described in s. 985.03(45)~~(44)~~, maintained for the custody, treatment, punishment, or rehabilitation of children found to have committed delinquent acts or violations of law; or

(3) Lawful transportation to or from any such secure detention facility or residential commitment facility,

constitutes escape within the intent and meaning of s. 944.40 and is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 917 Domestic Violence
SPONSOR(S): Kelly
TIED BILLS: **IDEN./SIM. BILLS:** SB 1040

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Criminal & Civil Justice Appropriations Committee		McAuliffe	Davis
2)	Criminal & Civil Justice Policy Council			
3)	Full Appropriations Council on Education & Economic Development			
4)				
5)				

SUMMARY ANALYSIS

Current law provides a $201 surcharge on offenders convicted of sexual battery and other offenses including many of the aggravated battery and domestic violence offenses. $85 of this fee is deposited into the Domestic Violence Trust Fund. This bill increases that surcharge to $301, and the amount deposited into the trust fund to $185.

This bill will have a positive fiscal impact on the Domestic Violence Trust Fund where funds are used by the Department of Children and Family Services to fund domestic violence centers.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 741.01, F.S., establishes the Domestic Violence Trust Fund within the Executive Office of the Governor for the purpose of collecting and disbursing funds generated from certain fees and surcharges. Those funds are directed to the Department of Children and Family Services (department) for the specific purpose of funding domestic violence centers.

The department certifies and monitors domestic violence centers across the state of Florida. There are currently 42 certified domestic violence centers which provide crisis intervention and support services to adult victims of domestic violence and their children. The department also provides oversight of state and federal funding for domestic violence services. Section 39.903 (7), F.S., requires the department to contract with a statewide association (Florida Coalition Against Domestic Violence) to implement, administer, and evaluate all services provided by the domestic violence centers.

Current law (s. 938.08, F.S.) provides a $201 surcharge on offenders convicted of sexual battery and other offenses including many of the aggravated battery and domestic violence offenses. Of this fee, $85 is deposited into the Domestic Violence Trust Fund to fund domestic violence centers; the clerk of the court retains $1; and the remainder of the surcharge is provided to the governing board of counties to defray the costs of incarcerating persons sentenced for domestic violence crimes and to provide additional training to law enforcement personnel in combating domestic violence.

This bill increases the surcharge to $301, and provides that the entire $100 increase be deposited into the Domestic Violence Trust Fund.

B. SECTION DIRECTORY:

Section 1. Amends s. 938.08, F.S., increasing a surcharge payment.
Section 2. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill will have a positive fiscal impact on the Domestic Violence Trust Fund. According to the Florida Department of Law Enforcement, in 2008 there were 20,888 people convicted of the offenses assessed the surcharge under s. 938.08, F.S. According to these numbers, the $100 increase for the Domestic Violence Trust Fund in this bill would generate approximately $2,088,800 for domestic violence centers.

This will not affect the advance of this surcharge which is currently provided to the governing board of the county.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to domestic violence; amending s. 938.08, F.S.; increasing a surcharge assessed for violations of specified criminal offenses; providing for deposit of the additional funds into the Domestic Violence Trust Fund; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 938.08, Florida Statutes, is amended to read:

938.08 Additional cost to fund programs in domestic violence.—In addition to any sanction imposed for a violation of s. 784.011, s. 784.021, s. 784.03, s. 784.041, s. 784.045, s. 784.048, s. 784.07, s. 784.08, s. 784.081, s. 784.082, s. 784.083, s. 784.085, s. 794.011, or for any offense of domestic violence described in s. 741.28, the court shall impose a surcharge of $301 ~~$201~~. Payment of the surcharge shall be a condition of probation, community control, or any other court-ordered supervision. The sum of $185 ~~$85~~ of the surcharge shall be deposited into the Domestic Violence Trust Fund established in s. 741.01. The clerk of the court shall retain $1 of each surcharge that the clerk of the court collects as a service charge of the clerk's office. The remainder of the surcharge shall be provided to the governing board of the county and must be used only to defray the costs of incarcerating persons sentenced under s. 741.283 and provide additional training to law enforcement personnel in combating domestic violence.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Section 2. This act shall take effect July 1, 2010.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 951 Public Safety
SPONSOR(S): Snyder and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1974

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	13 Y, 0 N	Cunningham	Cunningham
2)	Criminal & Civil Justice Appropriations Committee		McAuliffe	Davis
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

House Bill 951 is the Florida Department of Law Enforcement's 2010 Legislative Package and contains the following:

- Revisions to the process for removing mental health records from FDLE's mental competency database for purposes of firearms purchases. These revisions align the statutes with federal law requirements.

- Provisions requiring FDLE to retain fingerprints submitted as part of the job application process upon official written request from an agency executive director or secretary or his or her designee, from specified qualified entities, or as otherwise required by law. The bill also requires FDLE to store the additional fingerprints that it retains and to search all incoming Florida arrest fingerprint cards against the fingerprints retained in the Automated Fingerprint Identification System/Applicant Fingerprint Retention and Notification Program.

- Provisions requiring the Criminal Justice Standards and Training Commission to adopt rules requiring all law enforcement officers to demonstrate proficiency in firearms and to specify in the rules how often officers must demonstrate firearm proficiency and what the consequences will be if an officer fails to demonstrate firearm proficiency.

- Updates to the Basic Recruit Training Program exemption statutes to require employing agencies and criminal justice selection centers to verify that a person has completed the appropriate basic recruit training program and has served as an officer for the required amount of time without breaks in service.

- Provisions removing correctional probation officers from the list of persons who must pass a basic skills exam in order to be admitted to a basic recruit training program.

- Authorization for the Florida Criminal Justice Executive Institute's policy board to authorize fees to be collected for delivering criminal justice executive training. The bill requires such fees to be deposited in the Criminal Justice Standards and Training Trust Fund and used solely for the payment of necessary and proper expenses incurred by FDLE for criminal justice executive training.

This bill appears that it could have a positive fiscal impact on FDLE because the provisions in the bill for removing mental health records from FDLE's mental competency database align the statutes with federal of law, making Florida eligible for certain federal grants.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background – Firearm Background Checks

FDLE's Firearm Purchase Program

In accordance with the Brady Handgun Violence Prevention Act[1], Florida law requires federal firearms licensees[2] (FFLs) to request background checks on individuals attempting to purchase a firearm.[3] In Florida, FFLs contact the Florida Department of Law Enforcement's (FDLE) Firearms Purchase Program (FPP) which conducts firearm background checks by electronically accessing the National Instant Criminal Background Check System (NICS).

Created in 1989, the FPP operates 7 days a week, 363 days a year and is designed to provide FFLs immediate responses to background check inquiries.[4] Pursuant to s. 790.065, F.S., FFLs must contact the FPP using a toll-free number to request a criminal history check on potential purchasers prior to selling or transferring a firearm. Upon receiving such request, the FPP immediately reviews the potential purchaser's criminal history record to determine whether the transfer of a firearm would violate state or federal law, and provides a response to the FFL.

Prohibitions on Selling Firearms to the Mentally Ill

Florida law prohibits licensed importers, manufacturers, and dealers from selling or delivering firearms to those who have been "adjudicated mentally defective" or who have been "committed to a mental institution" by a court.[5] Florida defines "adjudicated mentally defective" as:

> A determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs.

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[1] Pub. L. No. 103-159, 107 Stat. 1536 (1993) (codified at 18 U.S.C. §§ 921-925A).

[2] 18 U.S.C. 923 sets forth the requirements necessary to obtain a federal firearms license. The Federal Firearms Licensing Center, a branch within the Bureau of Alcohol, Tobacco, Firearms and Explosives, is responsible for licensing firearms manufacturers, importers, collectors, and dealers, and implementing related legislation.

[3] "Firearm" is defined in s. 790.001(6), F.S., as "any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term 'firearm' does not include an antique firearm unless the antique firearm is used in the commission of a crime."

[4] s. 790.065, F.S.

[5] s. 790.065(2)(a), F.S.

> The phrase includes a judicial finding of incapacity under s. 744.331(6)(a), an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial..[6]

The term "committed to a mental institution" is defined as:

> Involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in s. 394.467, F.S., involuntary outpatient placement as defined in s. 394.4655, involuntary assessment and stabilization under s. 397.6818, F.S., and involuntary substance abuse treatment under s. 397.6957, F.S., but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution.[7]

FDLE's Mental Competency Database

In 2006, Florida enacted House Bill 151, which required FDLE to compile and maintain an automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions.[8] Codified in s. 790.065(2)(a), F.S., the bill also required clerks of court to submit such records to FDLE, and authorized FDLE to disclose the collected data to federal governmental agencies and other states for use exclusively in determining the lawfulness of a firearm sale or transfer.[9]

In an effort to comply with the above statutory requirements, FDLE created the Mental Competency (MECOM) database. As noted above, clerks of court are required to submit[10] court records of adjudications of mental defectiveness and commitments to mental institutions to FDLE within one month of the adjudication or commitment.[11] These records are then uploaded into the MECOM database,[12] and are accessed by the FPP as part of the screening of potential firearm purchasers.

Removing Mental Health Records from the MECOM Database

Current Process for Removing Mental Health Records from the MECOM Database

Section 790.065(2)(a)c., F.S., establishes when FDLE may delete mental health records from its MECOM database. For persons who have been adjudicated an incapacitated person under s. 774.331, F.S., FDLE must delete such person's mental health records from the MECOM database if:

- The person requests such deletion;
- The person has been restored to capacity by court order; and
- 5 years have passed since the person's court ordered restoration to capacity.

For persons who were committed to a mental institution under ch. 394, F.S., FDLE must delete such person's mental health records from the MECOM database if:

- The person requests such deletion; and
- The person produces a certificate from a licensed psychiatrist that the person has not suffered from disability for at least 5 years prior to the date of the request.

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[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] Currently, clerks submit such records either by directly inputting them into the MECOM database, or by faxing or mailing the records to FDLE for input into the database.
[11] As of July, 2007, Florida clerks have entered 4,283 records into the MECOM database.
[12] FDLE also uploads the records into the NICS.

The NICS Improvement Act

The NICS Improvement Amendments Act of 2007[13] (Act) became law on January 8, 2008. The Act authorizes the establishment of state programs that allow individuals to seek relief from a mental health firearm disability. Section 105 of the Act sets forth requirements of the relief from disabilities program required for states to be eligible for grant funding.

The following minimum criteria must be satisfied for a state to establish a qualifying mental health relief from firearms disabilities program under the NICS Improvement Act:

1. State Law: The relief program has been established by State statute, or administrative regulation or order pursuant to state law.

2. Application: The relief program allows a person who has been formally adjudicated as a mental defective[14] or committed involuntarily to a mental institution[15] to apply or petition for relief from federal firearms prohibitions (disabilities) imposed under 18 U.S.C. §§ 922(d)(4) and (g)(4).

3. Lawful Authority: A state court, board, commission or other lawful authority (per state law) considers the applicant's petition for relief. The lawful authority may only consider applications for relief due to mental health adjudications or commitments that occurred in the applicant state.

4. Due Process: The petition for relief is considered by the lawful authority in accordance with principles of due process, as follows:

    a. The applicant has the opportunity to submit his or her own evidence to the lawful authority considering the relief application.
    b. An independent decision maker--someone other than the individual who gathered the evidence for the lawful authority acting on the application--reviews the evidence.
    c. A record of the matter is created and maintained for review.

5. Proper Record: In determining whether to grant relief, the lawful authority receives evidence concerning and considers the:

    a. Circumstances regarding the firearms disabilities imposed by 18 U.S.C. §922(g)(4);
    b. Applicant's record, which must include at a minimum, the applicant's mental health and criminal history records; and
    c. Applicant's reputation, developed, at a minimum, through character witness statements, testimony, or other character evidence.

6. Proper Findings: In granting relief, the lawful authority issues findings that:

    a. The applicant will not be likely to act in a manner dangerous to public safety; and
    b. Granting the relief will not be contrary to the public interest.

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[13] Pub.L. 110-180.

[14] Federal regulations at 27 C.F.R. § 478.11 define the term "adjudicated as a mental defective" as: A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) Is a danger to himself or others; or (2) Lacks the mental capacity to contract or manage his own affairs. The term shall include (1) A finding of insanity by a court in a criminal case; and (2) Those persons found incompetent to stand trial or found not guilty by reason of lack oif mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.

[15] Federal regulations at 27 C.F.R. § 478.11 define the term "committed to a mental institution" as: A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

7. De Novo Judicial Review of a Denial: The State provides for de novo judicial review of relief application denials that includes the following principles:

   a. If relief is denied, the applicant may petition the State court of appropriate jurisdiction to review the denial, including the record of the denying court, board, commission or other lawful authority.
   b. Judicial review is de novo in that the reviewing court may, but is not required to, give deference to the decision of the lawful authority that denied the application for relief.
   c. The reviewing court has discretion to receive additional evidence necessary to conduct an adequate review.

8. Required Updates to State and Federal Records: Pursuant to Section 102(c) of the NICS Improvement Act, the State, on being made aware that the basis under which the record was made available does not apply or no longer applies:

   a. Updates, corrects, modifies, or removes the record from any database that the Federal or State government maintains and makes available to the NICS, consistent with the rules pertaining to the database; and
   b. Notifies the Attorney General that such basis no longer applies so that the record system in which the record is maintained is kept up to date.

9. Recommended Procedure: It is recommended (not required) that the State have a written procedure (e.g., state law, regulation, or administrative order) to address the update requirements.

Grant funds are available to states only if state processes meet the above-described federal standards. The U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), is responsible for certifying that a state mental health relief from firearms disabilities program has met the criteria set forth in the NICS Improvement Act. On October 1, 2009, ATF notified FDLE that Florida's current relief program does not meet the criteria set forth in federal law. Due to the denial of certification, Florida was not eligible to receive $528,960 in available grant funds for 2009. FDLE reports that this grant funding would have been used to:

- Hire a vendor to develop a plan, methodology and staffing to research and provide missing final disposition data from selected Clerks of Court.
- Hire a consultant to develop a warrant exchange interface between the Escambia County Sheriff's Office and Clerk of Court; a warrant exchange interface will also be developed for Hillsborough County and servers will be purchased to process warrant information for these two counties.
- Hire a consultant to program the Mental Competency (MECOM) database to accept relief of firearm disability information.[16]

Failure to conform to NICS criteria also jeopardizes future grant funding. Total amounts appropriated in the act for 2010 and 2011 grants are $250,000,000 for increasing the number of court dispositions in the criminal history repository and another $125,000,000 is available to the state court system.

Effect of the Bill

The bill removes the above-described language from s. 790.065(2)(a)c., F.S., and replaces it with language that establishes more specific procedures that must be followed when a person wants to have their mental health records removed from FDLE's MECOM database. Specifically, the bill:

- Provides that a person who has been adjudicated mentally defective or committed to a mental institution may petition the court that made the adjudication or commitment for relief from the firearm disabilities imposed by such adjudication or commitment.

[16] *See* FDLE's 2010 analysis of House Bill 951.

- Requires that a copy of the petition be served on the state attorney for the county in which the person was adjudicated or committed.

- Specifies that the state attorney may object to the relief sought by the petition.

- Specifies that the petitioner may choose whether the hearing on the petition is open or closed.

- Authorizes the petitioner to present evidence and subpoena witnesses to appear at the hearing on the petition and to confront and cross-examine witnesses called by the state attorney.

- Requires that a record of the hearing be made by a certified court reporter or by court-approved electronic means.

- Requires the court to make written findings of fact and conclusions of law and issue a final order.

- Requires the court to grant the relief requested in the petition if the court finds that the petitioner will not be likely to act in a manner that is dangerous to public safety and that granting the relief would not be contrary to the public internet. The court must make this finding based on the evidence presented with respect to the petitioner's reputation; the petitioner's mental health record, and if applicable, criminal history record; the circumstances surrounding the firearm disability; and any other evidence in the record.

- Specifies that if the final order denies relief, the petitioner may not petition again for relief until 1 year after the date of the final order.

- Authorizes the petitioner to seek judicial review of a final order denying relief in the district court of appeal having jurisdiction over the court that issued the order and specifies that such review will be conducted de novo.

- Provides that relief from firearm disability has no effect on the loss of civil rights, including firearm rights, for any reason other than the particular adjudication of mental defectiveness or commitment to a mental institution from which relief is granted.

- Requires FDLE to remove a person's mental health record from the MECOM database upon receipt of a final order of relief from firearm disabilities.

The bill will bring Florida into alignment with the requirements of the NICS Improvement Act and will restore the state's eligibility for federal grant funding.

Fingerprint Retention

Chapter 435, F.S., enacted in 1995, sets forth the procedures that must be used whenever a background screening[17] for employment is required by law. There are currently two levels of background screenings – Level I and Level II. Level I background screenings search the state databases using a person's *name* – these screenings do not require a person to submit fingerprints. Level II background screenings search state and national databases and do require a person to submit fingerprints. FDLE is the entity responsible for conducting background screenings.

Section 943.05(2)(g), F.S, requires FDLE to retain fingerprints submitted as part of the Level II screening process, but only as authorized by law. Currently, Florida law only authorizes FDLE to retain the fingerprints of the following:

[17] A background screening is a criminal history record check to determine if a person has been arrested and/or convicted of a crime.

- Eligible nonprofit scholarship-funding organizations;[18]
- The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation for the purpose of screening applicants for a slot machine occupational license;
- Professional guardians, and employees of professional guardians who have a fiduciary responsibility to a ward; [19]
- Part-time, full-time, or auxiliary law enforcement officers, correctional officers, and correctional probation officers;[20]
- The Department of Juvenile Justice for purposes of screening persons employed by the department, or employed by a provider under contract with the department;
- Employees and contracted personnel with direct student contact of a private school participating in a scholarship program;
- Instructional and non-instructional personnel who are hired or contracted to fill positions that require direct contact with students in any district school system or university lab school; Instructional and non-instructional personnel who are hired or contracted to fill positions in any charter school and members of the governing board of any charter school; Instructional and non-instructional personnel who are hired or contracted to fill positions that require direct contact with students in an alternative school that operates under contract with a district school system; and student teachers, persons participating in a field experience pursuant to s. 1004.04(6) or s. 1004.85, and persons participating in a short-term experience as a teacher assistant pursuant to s. 1004.04(10) in any district school system, lab school, or charter school;
- Non-instructional school district employees or contractual personnel who are permitted access on school grounds when students are present, who have direct contact with students or who have access to or control of school funds;
- Persons who seek instructional personnel certification pursuant to ch. 1012, F.S.;[21] and
- Seaports.[22]

FDLE enters fingerprints of the above-described individuals in the Automated Fingerprint Identification System (AFIS) and retains them in the Applicant Fingerprint Retention and Notification Program (AFRNP).[23] All incoming Florida arrest fingerprint cards are searched against the fingerprints entered and retained in AFIS/AFRNP.[24] When the subject of retained fingerprints is identified with fingerprints of an incoming Florida arrest, FDLE notifies the licensing or employing agency of the arrest.[25] Agencies that have their records retained must pay FDLE an annual fee[26] and agree to inform FDLE of any change in an employee's employment status.[27]

Currently, the Federal Bureau of Investigation (FBI), which conducts *national* criminal history background checks, does not retain applicant fingerprints submitted by states. Thus, the AFRNP can only conduct searches against incoming *Florida* arrest fingerprints – not arrests made in other states or by the federal government. However, FDLE reports that the FBI is developing a retained fingerprint and arrest notification system, which should be available in 2013.[28]

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[18] Section 220.187, F.S., defines the term "eligible nonprofit scholarship-funding organization" as a charitable organization that is exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code; is a Florida entity formed under ch. 607, F.S., ch. 608, F.S., or ch. 617, F.S., and whose principal office is located in the state; and complies with the provisions of s. 220.187(6), F.S.

[19] Section 744.102, F.S., defines the term "professional guardian" as "any guardian who has at any time rendered services to three or more wards as their guardian. A person serving as a guardian for two or more relatives as defined in s. 744.309(2), F.S., is not considered a professional guardian. A public guardian shall be considered a professional guardian for purposes of regulation, education, and registration." The term "ward" is defined as "a person for whom a guardian has been appointed."

[20] These terms are defined in s. 943.10, F.S.

[21] *See* ss. 220.187(6)(b), 551.107(7)(c), 744.3135(4)(b), 943.13(5), 985.644(5)(b), 1002.421(3)(a), 1012.32(3), 1012.465, and 1012.56, F.S.

[22] *See* s. 311.12(7)(d), F.S.

[23] *See* s. 943.05, F.S., Rule 11C-6.010, F.A.C., and FDLE publication "Criminal History Record Checks / Background Checks Fact Sheet," January 22, 2010. Only digital fingerprints can be entered into AFIS and retained in the AFRNP database.

[24] *See* s. 943.05(2)(h), F.S.

[25] *Id.*

[26] The annual fee is currently $6. *See* Rule 11C-6.010, F.A.C.

[27] S. 943.05(2)(h), F.S.

[28] *See* FDLE's 2010 analysis of House Bill 951.

Effect of the Bill
The bill amends s. 943.05(2)(g), F.S., to require FDLE to retain the applicant fingerprints of additional entities. Specifically, the bill requires FDLE to retain applicant fingerprints upon official written request from an agency executive director or secretary or his or her designee, or from qualified entities[29] participating in the volunteer and employee criminal history screening system under s. 943.0542, F.S., or as otherwise required by law. The bill requires FDLE to store the additional fingerprints that it retains in AFIS/AFRNP and to search all incoming Florida arrest fingerprint cards against the fingerprints retained in AFIS/AFRNP.

The bill also provides that upon notification that a federal fingerprint retention program is in effect, FDLE shall, when a state and national criminal history record check and retention of fingerprints are authorized by law, retain such fingerprints and advise the FBI to retain such fingerprints for searching against arrest fingerprint submissions received at the national level. The bill specifies that this requirement only applies if FDLE is funded and equipped to participate in a federal fingerprint program.

Criminal Justice Standards and Training Commission – Firearm Proficiency Rules
The Criminal Justice Standards and Training Commission (Commission), housed within FDLE, has a number of responsibilities relating to the training, certification, and discipline of full-time, part-time, and auxiliary law enforcement officers, correctional officers, and correctional probation officers.

Currently, s. 943.12(16), F.S., requires the Commission to promulgate rules for the certification and discipline of officers[30] who engage in those specialized areas found to present a high risk of harm to the officer or the public at large and which would in turn increase the potential liability of an employing agency. In March 2006, the Commission formally adopted bi-annual firearms qualification requirements for all certified law enforcement officers. During the rule promulgation process for rules effective September 28, 2009, the Joint Administrative Procedures Committee agreed that while the Commission has general statutory authority to promulgate a rule, the Commission should seek specific authority to promulgate a rule relating to the bi-annual firearms qualification requirement.[31]

Effect of the Bill
The bill amends s. 943.12(16), F.S., to require the Commission to promulgate rules for the certification, *maintenance*, and discipline of officers engaged in the above-described specialized areas. The bill also requires the Commission to adopt rules requiring all law enforcement officers to demonstrate proficiency in firearms and to specify in the rules how often officers must demonstrate firearm proficiency and what the consequences will be if an officer fails to demonstrate firearm proficiency.

Basic Recruit Training Program - Exemptions
Criminal Justice Selection Centers
Section 943.256, F.S., authorizes the creation of criminal justice selection centers. Selection centers provide standardized evaluation of pre-service candidates and inservice officers for all units of the local criminal justice system in a region, thereby establishing a pool of qualified candidates for criminal justice agencies. The statute requires each selection center to be under the direction and control of a postsecondary public school or a criminal justice agency within the selection center's region.

Exemptions from Completing a Basic Recruit Training Program
In Florida, the Commission is responsible for establishing uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement, correctional, and correctional probation officers.[32] With few exceptions, every prospective law enforcement officer (LEO),

[29] Section 943.0542, F.S., defines the term "qualified entity" as "a business or organization, whether public, private, operated for profit, operated not for profit, or voluntary, which provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services."
[30] Section 943.10, F.S., defines the term "officer" as "any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, or correctional probation officer."
[31] *See* FDLE's 2010 analysis of House Bill 951.
[32] http://www.fdle.state.fl.us/cjst/commission/index.html

correctional officer (CO), and correctional probation officer (CPO) must successfully complete a Commission-developed Basic Recruit Training Program in order to receive their certification.

Section 943.13(9), F.S., provides that those that do not have to complete a Basic Recruit Training Program are those who:

- Have completed a comparable basic recruit training program for the applicable criminal justice discipline in another state or for the Federal Government; and
- Have served as a full-time sworn officer in another state or for the Federal Government for at least 1 year provided there is no more than an eight-year break in employment, as measured from the separation date of the most recent qualifying employment to the time a complete application is submitted for an exemption under this section.

Additionally, s. 943.1395(3), F.S., provides that a certified officer who has separated from employment and who is not reemployed within four years after the date of separation must meet the requirements of s. 943.13, F.S., but does not have to complete a Basic Recruit Training Program. Officers who are not reemployed within eight years after separation must meet the requirements of s. 943.13, F.S., *and* complete a Basic Recruit Training Program.

Currently, s. 943.131(2), F.S., specifies that if a person is seeking an exemption from completing a Basic Recruit Training Program, the person's employing agency must verify that the person meets the above-described exemption criteria. The statute also requires the person's employing agency to submit documentation about the person's criminal justice experience to the Commission. Those who the Commission finds to be exempt from having to complete a Basic Recruit Training Program must still demonstrate proficiency in high-liability areas and pass the state officer certification exam within one year after receiving an exemption. If these requirements are not met within one year, the person must complete a Basic Recruit Training Program.[33]

Effect of the Bill
The bill amends s. 943.131(2), F.S., to require employing agencies *and criminal justice selection centers* to:

- Verify that a person:
  - Has completed a comparable basic recruit training program for the applicable criminal justice discipline in another state or for the Federal Government *or a previous Florida basic recruit training program*; and
  - Has served as a full-time sworn officer in another state or for the Federal Government for at least 1 year provided there is no more than an eight-year break in employment, *or was a previously certified Florida officer provided there is no more than an eight-year break in employment.*[34]

- Submit documentation about a person's criminal justice experience to the Commission.

Additionally, the bill specifies that if a person who is exempt from having to complete a Basic Recruit Training Program does not demonstrate proficiency in high-liability areas or pass the state officer certification exam within one year after receiving an exemption, the person must seek an additional exemption. Such persons will no longer be required to complete a Basic Recruit Training Program.

The bill also amends s. 943.1395(3), F.S., to provide that a certified officer who has separated from employment and who is not reemployed within four years after the date of separation must meet the requirements of s. 943.131(2), F.S., (i.e., demonstrate proficiency in high-liability areas and pass the state officer certification exam within one year after receiving an exemption). Such officers who do not meet the requirements of s. 943.131(2), F.S., must complete a Basic Recruit Training Program.

[33] S. 943.131(2), F.S.
[34] *See* s. 943.13(9), F.S.

Basic Recruit Training Programs – Correctional Probation Officers
Section 943.17, F.S., requires the Commission to design, implement, maintain, evaluate, and revise entry requirements and job-related curricula and performance standards for basic recruit, advanced, and career development training programs and courses. Paragraph (1)(g) of the statute specifies that the Commission must assure that entrance into the basic recruit training program for law enforcement, correctional, and correctional probation officers be limited to those who have passed a basic skills examination and assessment instrument, based on a job task analysis in each discipline and adopted by the Commission.

Unlike law enforcement officers and correctional officers, correctional probation officers are required by the Department of Corrections to possess a bachelor's degree from an accredited college or university in order to be certified. Attaining a four-year degree is more demanding than passing the basic skills exam required by s. 943.17(1)(g), F.S. FDLE reports that the skill level required to obtain a bachelor's degree is much higher than the skill level tested by the basic skills exam.[35] Thus, the requirement for a correctional probation officer to pass a basic skills exam is redundant.

Effect of the Bill
The bill amends s. 943.17(1)(g), F.S., to remove correctional probation officers from the list of persons who must pass a basic skills exam in order to be admitted to a basic recruit training program. The Commission will only be required to ensure that law enforcement and correctional officers have passed a basic skills test prior to entering into a basic recruit training program.

Florida Criminal Justice Executive Institute
Section 943.1755, F.S., creates the Florida Criminal Justice Executive Institute (Institute) whose purpose is to provide quality training for criminal justice executives and to improve relationships between law enforcement agencies and the diverse populations they serve. The Institute is established within FDLE, affiliated with the State University System, and directed by a policy board comprised of the following members:

- The Executive Director of FDLE;
- The Secretary of Corrections;
- The Commissioner of Education or his or her designee;
- The Secretary of Juvenile Justice;
- Three chiefs of municipal police departments nominated by the Florida Police Chiefs Association;
- Three sheriffs nominated by the Florida Sheriffs Association;
- A county jail administrator nominated by the Florida Sheriffs Association and the Florida Association of Counties; and
- A representative nominated by the State Law Enforcement Chiefs Association;

Section 943.1755(4), F.S., requires the Institute's policy board to establish administrative procedures and operational guidelines necessary to ensure that criminal justice executive training needs are identified and met through the delivery of quality instruction.

FDLE reports that prior to July 1, 1995, tuition fees for criminal justice executive training were deposited in (and expenditures made from) the Florida Law Enforcement Academy Trust Fund. This trust fund was terminated in 1994,[36] and fund balances were moved to the Operating Trust Fund. Since 1995, criminal justice executive training tuition fees for certain courses have been deposited in the Operating Trust Fund while tuition fees for other courses have been deposited in the Criminal Justice Standards and Training Trust Fund.[37] However, it should be noted that no specific statutory authority exists providing for the collection of these tuition fees.

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[35] *See* FDLE's 2010 analysis of House Bill 951.
[36] Ch. 94-265, L.O.F.
[37] *See* FDLE's 2010 analysis of House Bill 951.

Effect of the Bill
The bill amends s. 943.1755(4), F.S., to provide that the Institute's policy board may authorize fees to be collected for delivering criminal justice executive training. The bill requires such fees to be deposited in the Criminal Justice Standards and Training Trust Fund and used solely for the payment of necessary and proper expenses incurred by FDLE for criminal justice executive training. FDLE reports this the bill does not create any new sources of fees.[38]

Crime Laboratories
Section 943.32, F.S., establishes a statewide criminal analysis laboratory system composed of the following:

- The state-operated laboratories under the jurisdiction of FDLE in Ft. Myers, Jacksonville, Pensacola, Orlando, Tallahassee, Tampa, and such other areas of the state as may be necessary;
- The existing locally funded laboratories in Broward, Indian River, Miami-Dade, Monroe, Palm Beach, and Pinellas Counties, specifically designated in s. 943.35, F.S., to be eligible for state matching funds; and
- Such other laboratories as render criminal analysis laboratory services to criminal justice agencies in the state.

At the request of Monroe County, the Key West crime lab became part of the state crime lab system in 1994. In a June 1998 report, the Office of Program Policy Analysis and Accountability recommended that the now state-run Key West crime lab be eliminated due to costs associated with its operation. The Key West crime lab was closed on July 1, 2001. Consequently, the reference to Monroe County's locally funded laboratory in s. 943.32, F.S., is obsolete.

The bill amends s. 943.32, F.S., to remove the obsolete reference to Monroe County.

B. SECTION DIRECTORY:

Section 1. Amends s. 790.065, F.S., relating to sale and delivery of firearms.

Section 2. Amends s. 943.05, F.S., relating to Criminal Justice Information Program; duties; crime reports.

Section 3. Amends s. 943.12, F.S., relating to powers, duties, and functions of the commission.

Section 4. Amends s. 943.131, F.S., relating to temporary employment or appointment; minimum basic recruit training exemption.

Section 5. Amends s. 943.1395, F.S., relating to certification for employment or appointment; concurrent certification; reemployment or reappointment; inactive status; revocation; suspension; investigation.

Section 6. Amends s. 943.17, F.S., relating to basic recruit, advanced, and career development training programs; participation; cost; evaluation.

Section 7. Amends s. 943.1755, F.S., relating to Florida Criminal Justice Executive Institute.

Section 8. Amends s. 943.32, F.S., relating to statewide criminal analysis laboratory system.

Section 9. This bill takes effect July 1, 2010.

[38] *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill may have a positive fiscal impact on FDLE because the provisions in the bill for removing mental health records from FDLE's mental competency database align the statutes with federal law, making Florida eligible for certain federal grants. The U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, is responsible for certifying that a state mental health relief from firearms disabilities program has met the criteria set forth in the NICS Improvement Act. On October 1, 2009, ATF notified FDLE that Florida's current relief program does not meet the criteria set forth in federal law. Due to the denial of certification, Florida was not eligible to receive $528,960 in available grant funds for 2009.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill amends s. 943.12(16), F.S., to require the Commission to promulgate rules for the certification, maintenance, and discipline of officer engaged in the above-described specialized areas. The bill also requires the Commission to adopt rules requiring all law enforcement officers to demonstrate proficiency in firearms and to specify in the rules how often officers must demonstrate firearm proficiency and what the consequences will be if an officer fails to demonstrate firearm proficiency.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public safety; amending s. 790.065, F.S.; requiring certain reports to be submitted in an automated format; deleting provisions relating to automatic deletion of mental health records under specified conditions from the Department of Law Enforcement's database of such records kept for purposes of sale and delivery of firearms and substituting a procedure for petition to obtain judicial relief from firearm disabilities and, upon obtaining such relief, the removal of the individual mental health records from the department's database; amending s. 943.05, F.S.; revising who may request retention of fingerprints submitted to the Department of Law Enforcement; authorizing retention of fingerprints in certain circumstances; amending s. 943.12, F.S.; requiring the Criminal Justice Standards and Training Commission to adopt rules relating to the maintenance of officers who engage in those specialized areas found to present a high risk of harm to the officer or the public at large; requiring the commission to adopt rules requiring the demonstration of proficiency in firearms for all law enforcement officers; amending s. 943.131, F.S.; revising provisions relating to exemptions from completing a commission-approved basic recruit training program; amending s. 943.1395, F.S.; revising provisions relating to qualifications for certified law enforcement officers separated from employment for more than a certain period of time; amending s. 943.17, F.S.;

deleting a requirement that correctional probation officers pass a specified basic skills examination and assessment instrument before entrance into the basic recruit training program; amending s. 943.1755, F.S.; authorizing fees for criminal justice executive training from the Florida Criminal Justice Executive Institute; providing for the deposit and use of such fees; amending s. 943.32, F.S.; deleting state funding eligibility for a locally funded crime laboratory in Monroe County; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (2) of section 790.065, Florida Statutes, is amended to read:

790.065 Sale and delivery of firearms.—

(2) Upon receipt of a request for a criminal history record check, the Department of Law Enforcement shall, during the licensee's call or by return call, forthwith:

(a) Review any records available to determine if the potential buyer or transferee:

1. Has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23;

2. Has been convicted of a misdemeanor crime of domestic violence, and therefore is prohibited from purchasing a firearm;

3. Has had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or

any other conditions set by the court have been fulfilled or expunction has occurred; or

4. Has been adjudicated mentally defective or has been committed to a mental institution by a court and as a result is prohibited by federal law from purchasing a firearm.

a. As used in this subparagraph, "adjudicated mentally defective" means a determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. The phrase includes a judicial finding of incapacity under s. 744.331(6)(a), an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial.

b. As used in this subparagraph, "committed to a mental institution" means involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in s. 394.467, involuntary outpatient placement as defined in s. 394.4655, involuntary assessment and stabilization under s. 397.6818, and involuntary substance abuse treatment under s. 397.6957, but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution.

c. In order to check for these conditions, the department shall compile and maintain an automated database of persons who

are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions. Clerks of court shall submit these records to the department within 1 month after the rendition of the adjudication or commitment. Reports shall ~~may~~ be submitted in an automated format. The reports must, at a minimum, include the name, along with any known alias or former name, the sex, and the date of birth of the subject. ~~The department shall delete any mental health record from the database upon request of an individual when 5 years have elapsed since the individual's restoration to capacity by court order after being adjudicated an incapacitated person under s. 744.331, or similar laws of any other state; or, in the case of an individual who was previously committed to a mental institution under chapter 394, or similar laws of any other state, when the individual produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of request for removal of the record. When the department has received a subsequent record of an adjudication of mental defectiveness or commitment to a mental institution for such individual, the 5-year timeframe shall be calculated from the most recent adjudication of incapacitation or commitment.~~

d. A person who has been adjudicated mentally defective or committed to a mental institution, as those terms are defined in this paragraph, may petition the circuit court that made the adjudication or commitment for relief from the firearm disabilities imposed by such adjudication or commitment. A copy of the petition shall be served on the state attorney for the

county in which the person was adjudicated or committed. The state attorney may object to and present evidence relevant to the relief sought by the petition. The hearing on the petition may be open or closed as the petitioner may choose. The petitioner may present evidence and subpoena witnesses to appear at the hearing on the petition. The petitioner may confront and cross-examine witnesses called by the state attorney. A record of the hearing shall be made by a certified court reporter or by court-approved electronic means. The court shall make written findings of fact and conclusions of law on the issues before it and issue a final order. The court shall grant the relief requested in the petition if the court finds, based on the evidence presented with respect to the petitioner's reputation, the petitioner's mental health record and, if applicable, criminal history record, the circumstances surrounding the firearm disability, and any other evidence in the record, that the petitioner will not be likely to act in a manner that is dangerous to public safety and that granting the relief would not be contrary to the public interest. If the final order denies relief, the petitioner may not petition again for relief from firearm disabilities until 1 year after the date of the final order. The petitioner may seek judicial review of a final order denying relief in the district court of appeal having jurisdiction over the court that issued the order. The review shall be conducted de novo. Relief from a firearm disability granted under this sub-subparagraph has no effect on the loss of civil rights, including firearm rights, for any reason other than the particular adjudication of mental defectiveness or

commitment to a mental institution from which relief is granted.

e. Upon receipt of proper notice of relief from firearm disabilities granted under sub-subparagraph d., the department shall delete any mental health record of the person granted relief from the automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions.

f.~~d.~~ The department is authorized to disclose the collected data to agencies of the Federal Government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer. The department is also authorized to disclose any collected data to the Department of Agriculture and Consumer Services for purposes of determining eligibility for issuance of a concealed weapons or concealed firearms license and for determining whether a basis exists for revoking or suspending a previously issued license pursuant to s. 790.06(10). When a potential buyer or transferee appeals a nonapproval based on these records, the clerks of court and mental institutions shall, upon request by the department, provide information to help determine whether the potential buyer or transferee is the same person as the subject of the record. Photographs and any other data that could confirm or negate identity must be made available to the department for such purposes, notwithstanding any other provision of state law to the contrary. Any such information that is made confidential or exempt from disclosure by law shall retain such confidential or exempt status when transferred to the department.

Section 2. Paragraphs (g) and (h) of subsection (2) of section 943.05, Florida Statutes, are amended, and subsection (4) is added to that section, to read:

943.05 Criminal Justice Information Program; duties; crime reports.—

(2) The program shall:

(g) Upon official written request from the agency executive director or secretary or from his or her designee, or from qualified entities participating in the volunteer and employee criminal history screening system under s. 943.0542, or as otherwise required ~~As authorized~~ by law, retain fingerprints submitted by criminal and noncriminal justice agencies to the department for a criminal history background screening in a manner provided by rule and enter the fingerprints in the statewide automated fingerprint identification system authorized by paragraph (b). Such fingerprints shall thereafter be available for all purposes and uses authorized for arrest fingerprint cards entered into the statewide automated fingerprint identification system pursuant to s. 943.051.

(h)1. For each agency or qualified entity that officially requests retention of fingerprints or for which retention is otherwise required ~~As authorized~~ by law, search all arrest fingerprint submissions ~~cards~~ received under s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system under paragraph (g). Any arrest record that is identified with the retained fingerprints of a person subject to background screening as provided in paragraph (g) shall be reported to the appropriate agency or qualified entity.

2. To ~~Agencies may~~ participate in this search process, agencies or qualified entities must notify each person fingerprinted that his or her fingerprints will be retained, pay ~~by payment of~~ an annual fee to the department, and inform ~~by informing~~ the department of any change in the affiliation, employment, or contractual status or place of affiliation, employment, or contracting of each person ~~the persons~~ whose fingerprints are retained under paragraph (g). The department shall adopt a rule setting the amount of the annual fee to be imposed upon each participating agency or qualified entity for performing these searches and establishing the procedures for the retention of fingerprints and the dissemination of search results. The fee may be borne by the agency, qualified entity, or person subject to fingerprint retention or as otherwise provided by law. ~~Fees may be waived or reduced by the executive director for good cause shown.~~ Consistent with the recognition of criminal justice agencies expressed in s. 943.053(3), these services will be provided to criminal justice agencies for criminal justice purposes free of charge.

(4) Upon notification that a federal fingerprint retention program is in effect, and provided that the department is funded and equipped to participate in such a program, the department shall, when a state and national criminal history record check and retention of submitted prints are authorized or required by law, retain the fingerprints as provided in paragraphs (2)(g) and (h) and advise the Federal Bureau of Investigation to retain the fingerprints at the national level for searching against arrest fingerprint submissions received at the national level.

Section 3. Subsection (16) of section 943.12, Florida Statutes, is amended to read:

943.12 Powers, duties, and functions of the commission.—The commission shall:

(16) Adopt ~~Promulgate~~ rules for the certification, maintenance, and discipline of officers who engage in those specialized areas found to present a high risk of harm to the officer or the public at large and which would in turn increase the potential liability of an employing agency. The commission shall adopt rules requiring the demonstration of proficiency in firearms for all law enforcement officers. The commission shall by rule include the frequency of demonstration of proficiency with firearms and the consequences for officers failing to demonstrate proficiency with firearms.

Section 4. Subsection (2) of section 943.131, Florida Statutes, is amended to read:

943.131 Temporary employment or appointment; minimum basic recruit training exemption.—

(2) If an applicant seeks an exemption from completing a commission-approved basic recruit training program, the employing agency or criminal justice selection center must verify that the applicant has successfully completed a comparable basic recruit training program for the discipline in which the applicant is seeking certification in another state or for the Federal Government or a previous Florida basic recruit training program. Further, the employing agency or criminal justice selection center must verify that the applicant has served as a full-time sworn officer in another state or for the

Federal Government for at least 1 year provided there is no more than an 8-year break in employment or was a previously certified Florida officer provided there is no more than an 8-year break in employment, as measured from the separation date of the most recent qualifying employment to the time a complete application is submitted for an exemption under this section. When the employing agency or criminal justice selection center obtains written documentation regarding the applicant's criminal justice experience, the documentation must be submitted to the commission. The commission shall adopt rules that establish criteria and procedures to determine if the applicant is exempt from completing the commission-approved basic recruit training program and, upon making a determination, shall notify the employing agency or criminal justice selection center. An applicant who is exempt from completing the commission-approved basic recruit training program must demonstrate proficiency in the high-liability areas, as defined by commission rule, and must complete the requirements of s. 943.13(10) within 1 year after receiving an exemption. If the proficiencies and requirements of s. 943.13(10) are not met within the 1 year, the applicant must seek an additional exemption pursuant to the requirements of this subsection ~~complete a commission-approved basic recruit training program, as required by the commission by rule~~. Except as provided in subsection (1), before the employing agency may employ or appoint the applicant as an officer, the applicant must meet the minimum qualifications described in s. 943.13(1)-(8), and must fulfill the requirements of s. 943.13(10).

Section 5. Subsection (3) of section 943.1395, Florida Statutes, is amended to read:

943.1395 Certification for employment or appointment; concurrent certification; reemployment or reappointment; inactive status; revocation; suspension; investigation.—

(3) Any certified officer who has separated from employment or appointment and who is not reemployed or reappointed by an employing agency within 4 years after the date of separation must meet the minimum qualifications described in s. 943.13, except for the requirement found in s. 943.13(9). Further, such officer must complete any training required by the commission by rule in compliance with s. 943.131(2). Any such officer who fails to comply with the requirements provided in s. 943.131(2) ~~is not reemployed or reappointed by an employing agency within 8 years after the date of separation~~ must meet the minimum qualifications described in s. 943.13, to include the requirement of s. 943.13(9).

Section 6. Paragraph (g) of subsection (1) of section 943.17, Florida Statutes, is amended to read:

943.17 Basic recruit, advanced, and career development training programs; participation; cost; evaluation.—The commission shall, by rule, design, implement, maintain, evaluate, and revise entry requirements and job-related curricula and performance standards for basic recruit, advanced, and career development training programs and courses. The rules shall include, but are not limited to, a methodology to assess relevance of the subject matter to the job, student performance, and instructor competency.

(1) The commission shall:

(g) Assure that entrance into the basic recruit training program for law enforcement and~~,~~ correctional~~, and correctional probation~~ officers be limited to those who have passed a basic skills examination and assessment instrument, based on a job task analysis in each discipline and adopted by the commission.

Section 7. Subsection (4) of section 943.1755, Florida Statutes, is amended to read:

943.1755 Florida Criminal Justice Executive Institute.—

(4) The policy board shall establish administrative procedures and operational guidelines necessary to ensure that criminal justice executive training needs are identified and met through the delivery of quality instruction. The policy board may authorize fees to be collected for delivering criminal justice executive training. Fees for criminal justice executive training collected pursuant to this subsection shall be deposited in the Criminal Justice Standards and Training Trust Fund and used solely for payment of necessary and proper expenses incurred by the department for criminal justice executive training.

Section 8. Subsection (2) of section 943.32, Florida Statutes, is amended to read:

943.32 Statewide criminal analysis laboratory system.—There is established a statewide criminal analysis laboratory system to be composed of:

(2) The existing locally funded laboratories in Broward, Indian River, Miami-Dade, ~~Monroe,~~ Palm Beach, and Pinellas Counties, specifically designated in s. 943.35 to be eligible

for state matching funds; and

Section 9. This act shall take effect July 1, 2010.

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Criminal and Civil Justice Appropriations

Representative(s) Snyder offered the following:

Amendment (with title amendment)

Remove lines 315-328

T I T L E A M E N D M E N T

Remove lines 32-35 and insert:

recruit training program; amending

Amendment No. 2

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Criminal & Civil Justice Appropriations Committee

Representative(s) Snyder offered the following:

Amendment (with title amendment)

Remove lines 169-224 and insert:

Section 2. Paragraphs (g) and (h) of subsection (2) of section 943.05, Florida Statutes, are amended, and subsection (4) is added to that section, to read:

943.05 Criminal Justice Information Program; duties; crime reports.—

(2) The program shall:

(g) Upon official written request, and subject to the department having sufficient funds and equipment to participate in such a request, from the agency executive director or secretary, or from his or her designee, or from qualified entities participating in the volunteer and employee criminal history screening system under s. 943.0542, or as otherwise required ~~As authorized~~ by law, retain fingerprints submitted by

criminal and noncriminal justice agencies to the department for a criminal history background screening in a manner provided by rule and enter the fingerprints in the statewide automated fingerprint identification system authorized by paragraph (b). Such fingerprints shall thereafter be available for all purposes and uses authorized for arrest fingerprint submissions ~~cards~~ entered into the statewide automated fingerprint identification system pursuant to s. 943.051.

(h)~~1.~~ For each agency or qualified entity that officially requests retention of fingerprints or for which retention is otherwise required ~~As authorized~~ by law, search all arrest fingerprint submissions ~~cards~~ received under s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system under paragraph (g).

1. Any arrest record that is identified with the retained fingerprints of a person subject to background screening as provided in paragraph (g) shall be reported to the appropriate agency or qualified entity.

2. To ~~Agencies may~~ participate in this search process, agencies or qualified entities must notify each person fingerprinted that his or her fingerprints will be retained, pay ~~by payment of~~ an annual fee to the department, and inform ~~by informing~~ the department of any change in the affiliation, employment, or contractual status ~~or place of affiliation, employment, or contracting~~ of each person ~~the persons~~ whose fingerprints are retained under paragraph (g) when such change removes or eliminates the agency or qualified entity's basis or need for receiving reports of any arrest of that person, so that

the agency or qualified entity will not be obligated to pay the upcoming annual fee for the retention and searching of that person's fingerprints to the department. The department shall adopt a rule setting the amount of the annual fee to be imposed upon each participating agency or qualified entity for performing these searches and establishing the procedures for the retention of fingerprints and the dissemination of search results. The fee may be borne by the agency, qualified entity, or person subject to fingerprint retention or as otherwise provided by law. ~~Fees may be waived or reduced by the executive director for good cause shown.~~ Consistent with the recognition of criminal justice agencies expressed in s. 943.053(3), these services will be provided to criminal justice agencies for criminal justice purposes free of charge.

3. Agencies that participate in the fingerprint retention and search process may adopt rules pursuant to ss. 120.536(1) and 120.54 to require employers to keep the agency informed of any change in the affiliation, employment, or contractual status of each person whose fingerprints are retained under paragraph (g) when such change removes or eliminates the agency's basis or need for receiving reports of any arrest of that person, so that the agency will not be obligated to pay the upcoming annual fee for the retention and searching of that person's fingerprints to the department.

(4) Upon notification that a federal fingerprint retention program is in effect, and subject to the department being funded and equipped to participate in such a program, the department shall, when state and national criminal history records checks

and retention of submitted prints are authorized or required by law, retain the fingerprints as provided in paragraphs (2)(g) and (h) and advise the Federal Bureau of Investigation to retain the fingerprints at the national level for searching against arrest fingerprint submissions received at the national level.

Section 3. Subsections (6) and (11) of section 943.053, Florida Statutes, are amended to read:

943.053 Dissemination of criminal justice information; fees.—

(6) Notwithstanding any other provision of law, the department shall provide to the ~~Florida~~ Department of Revenue ~~Child Support Enforcement~~ access to Florida criminal history records which are not exempt from disclosure under chapter 119, and to such information as may be lawfully available from other states via the National Law Enforcement Telecommunications System, for the purpose of locating subjects who owe or potentially owe support, as defined in s. 409.2554, or to whom such obligation is owed pursuant to Title IV-D of the Social Security Act. Such information may be provided to child support enforcement authorities in other states for these specific purposes.

(11) A criminal justice agency that is authorized under federal rules or law to conduct a criminal history background check on an agency employee who is not certified by the Criminal Justice Standards and Training Commission under s. 943.12 may submit to the department the fingerprints of the noncertified employee to obtain state and national criminal history information. ~~Effective January 15, 2007,~~ The fingerprints

submitted shall be retained and entered in the statewide automated fingerprint identification system authorized by s. 943.05 and shall be available for all purposes and uses authorized for arrest fingerprint submissions ~~cards~~ entered in the statewide automated fingerprint identification system pursuant to s. 943.051. The department shall search all arrest fingerprint submissions ~~cards~~ received pursuant to s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system pursuant to this section. In addition to all purposes and uses authorized for arrest fingerprint submissions ~~cards~~ for which submitted fingerprints may be used, any arrest record that is identified with the retained employee fingerprints must be reported to the submitting employing agency.

T I T L E A M E N D M E N T

Remove lines 13-15 and insert:

provisions relating to the Criminal Justice Information Program under the Department of Law Enforcement; authorizing agencies to request the retention of certain fingerprints by the department; providing for rulemaking to require employers to keep the agencies informed of any change in the affiliation, employment, or contractual status of each person whose fingerprints are retained in certain circumstances; providing departmental duties upon notification that a federal fingerprint retention program

Amendment No.

is in effect; amending s. 943.053, F.S.; removing obsolete references relating to the dissemination of criminal justice information; amending s. 943.12,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1005 Criminal Justice
SPONSOR(S): Holder
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	13 Y, 0 N, As CS	Krol	Cunningham
2)	Criminal & Civil Justice Appropriations Committee		McAuliffe	Davis
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

CS/HB 1005 changes several statutes related to the Department of Corrections (department):

- Removes references to "criminal quarantine community control," a type of community supervision that has never been used since it was created in 1993;
- Creates a new third degree felony offense for lewd or lascivious exhibition by an inmate in the presence of a correctional employee;
- Updates statutory language regarding the department's current practice of electronically sending the Florida Parole Commission the names of inmates and offenders who are eligible for the restoration of civil rights;
- Adds private correctional facility employees to those who can be charged with sexual misconduct against an inmate;
- Authorizes the department to electronically send specific information to sheriffs and chiefs of police if the department is releasing inmates convicted of certain offenses into their counties or municipalities;
- Updates the elderly offender statutes to reflect that the department has more than one geriatric facility;
- Revises the Correctional Mental Health Act regarding custody and treatment of mentally ill inmates, and specifically authorizing the department to transport mentally ill inmates to placement hearings while incarcerated and to a receiving facility upon release;
- Authorizes inmates who meet certain criteria to work on public work squads and to enter onto private property to collect donations and to assist federal, state, local, and private agencies before, during, and after emergencies and disasters;
- Requires offenders on community supervision to live without violating any law and to submit to a digital photograph; and
- Authorizes Public Safety Coordinating Councils to develop a five-year comprehensive local reentry plan that is designed to assist offenders released from incarceration in successfully reentering the community.

On February 23, 2010, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the department.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Criminal Quarantine Community Control (Sections 1, 2, 3, 5, 17, 20, 21)
Section 948.001, F.S., defines "criminal quarantine community control" as "intensive supervision, by officers with restricted caseloads, with a condition of 24-hour-per-day electronic monitoring, and a condition of confinement to a designated residence during designated hours." This type of supervision was established[1] in 1993 as a sentencing disposition for offenders sentenced for criminal transmission of HIV.[2] Section 775.0877, F.S., establishes the crime of criminal transmission of HIV, which is currently a third degree felony punishable by a term of criminal quarantine community control.

The department reports that since the statutes were enacted in 1993, no one has been sentenced to criminal quarantine community control for any offense. Those convicted of criminal transmission of HIV have historically been sentenced to regular probation.[3] Thus, this type of supervision has never existed operationally.

Effect of the Bill
The bill removes references to criminal quarantine community control throughout Florida Statutes. Additionally, the bill specifies that criminal transmission of HIV is a third degree felony punishable as provided in s. 775.082, s. 775.083, and s. 775.084.24, F.S.[4]

Lewd or Lascivious Exhibition in Correctional Facilities (Section 4)
An inmate who intentionally performs lewd acts in the presence of a correctional facility employee is subject to significant punishment under department disciplinary rules - 60 days in disciplinary confinement and the loss of 90 days of gain time.[5] Depending on the facts of the case, the behavior may also be a criminal act that could subject the inmate to further prosecution. However, if the employee is not touched by the inmate the offense is a misdemeanor and is not normally prosecuted. The department indicates that in recent years it has been sued several times by female employees alleging sexual harassment because the department failed to exercise reasonable care to prevent the inmate's lewd behavior. Some of these lawsuits have been successful, resulting in judgments totaling

[1] L.O.F. 93-227.
[2] Section 775.0877(3), F.S., provides, in part, that an offender commits criminal transmission of HIV if the offender has undergone HIV testing pursuant to s. 775.0877(1), F.S., has received a positive test result, and commits a second or subsequent offense enumerated in s. 775.0877(1)(a)-(n), F.S.
[3] Department of Corrections 2010 Analysis of HB 1005.
[4] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine.
[5] See Rule 33-601.314, Florida Administrative Code (Rules of Prohibited Conduct and Penalties for Infractions).

$1.6 million to date. The department asserts that the punishment that it can give for the lewd behavior is not adequate to deter the conduct.[6]

Effect of the Bill
The bill creates s. 800.09, F.S., entitled, "Lewd or lascivious exhibition in the presence of a facility employee."

The bill provides that it is unlawful for any person, while being detained in a facility, in the presence of a facility employee, or a person who he or she knows or reasonably should know is an employee of the facility, to intentionally:

- Masturbate,
- Expose his or her genitals in a lewd or lascivious manner, or
- Commit any other sexual act, including but not limited to sadomasochistic abuse, sexual bestiality or the simulation of any act involving sexual activity.

The bill provides definitions for "employee" as any person employed by or performing contractual services for a public or private entity operating a facility or any person employed by or performing contractual services for the corporation operating the prison industry enhancement programs or the correctional work programs under part II of ch. 946, F.S. The term also includes any person who is a parole examiner with the Florida Parole Commission. The bill also defines "facility" as a state correctional institution defined in s. 944.02, F.S.,[7] or a private correctional facility as defined in s. 944.710, F.S.[8]

Civil Rights Restoration Process (Sections 6 and 7)
Currently, s. 940.061, F.S., requires the department to do the following:

- Inform and educate inmates and offenders on community supervision about restoration of civil rights; and
- Assist inmates in completing the restoration of civil rights application.[9]

The department is also required, prior to the discharge of an offender from supervision, to obtain from the Governor the application and other necessary forms for restoring civil rights, to assist the offender in completing the forms, and to ensure that the application and other forms are forwarded to the Governor.[10] This statute was enacted in 1974 and has not been revised since 1979.

In years past, the restoration of civil rights process required persons to fill out and submit paper applications to the Florida Parole Commission, an agent of the Clemency Board. However, the restoration of civil rights process has undergone changes and is now fully automated. In 2001, the Clemency Board eliminated the requirement for inmates to file an application and instead a computer-generated list of felons eligible for restoration is sent directly to the commission by the department.

Since 2001, the department reports that it has electronically submitted the names of inmates released from incarceration and offenders who have completed supervision to the Clemency Administration Office in the Florida Parole Commission. These lists are submitted on a monthly basis and serve as electronic restoration of civil rights applications.[11]

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[6] Department of Corrections 2010 Analysis of HB 1005. The department's analysis also notes that the $1.6 million in judgments does not include any attorney fees awarded by the court.
[7] Section 944.02(8), F.S., defines "state correctional institution" as any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the department.
[8] Section 944.710 (3), F.S., defines "private correctional facility" as any facility, which is not operated by the department, for the incarceration of adults or juveniles who have been sentenced by a court and committed to the custody of the department.
[9] Section 940.061, F.S., was enacted in 1996.
[10] Section 944.293, F.S., was enacted in 1974 and has not been revised since 1979.
[11] Department of Corrections 2010 Analysis of HB 1005.

Due to these current practices, ss. 940.061 and 944.293, F.S., no longer accurately describe the department's process for assisting inmates and offenders with restoration of civil rights.

Effect of the Bill
The bill amends s. 940.061, F.S., to delete the requirement that the department assist inmates and offenders with the completion of the restoration of civil rights application. The bill codifies current practice by adding language requiring the department to send the Florida Parole Commission a monthly electronic list containing the names of inmates released from incarceration and offenders who have been terminated from supervision who may be eligible for restoration of civil rights. The bill also repeals s. 944.293, F.S., as it is obsolete.

Sexual Misconduct in Private Prisons (Section 8)
Presently any employee of the department who engages in sexual misconduct[12] with an inmate or an offender supervised by the department in the community, without committing the crime of sexual battery, commits a felony of the third degree.[13]

Because ch. 944, F.S., defines "department" as the "Department of Corrections," the section relating to sexual misconduct only applies to employees of the Department of Corrections. The statute does not appear to apply to employees of a private correctional facility.[14] As such, it is not a crime for a private correctional facility employee to engage in sexual misconduct with an inmate housed at a private correctional facility.

There are currently six private correctional facilities in Florida. The department's Office of Inspector General has investigated instances of sexual misconduct that have occurred at private correctional facilities. However, state attorney's offices have advised that the current law is not sufficient to prosecute employees of private correctional facilities because the statute is limited to department employees.[15]

Effect of the Bill
The bill amends s. 944.35, F.S., to make it a third degree felony for an employee of a private correctional facility to engage in sexual misconduct with an inmate or an offender supervised by the department in the community.

Electronic Release Notification (Section 9)
Currently, s. 944.605(3), F.S., provides that the department must release specific information to the sheriff or the chief of police in the county or municipality which the inmate plans to reside if the inmate is to be released after having served one or more sentences for a conviction of:

- Robbery,
- Sexual battery,
- Home-invasion robbery, or
- Carjacking.

The department must also release this information if the inmate to be released has a prior conviction for:

- Robbery,
- Sexual battery,
- Home-invasion robbery, or
- Carjacking, or

[12] Section 944.35(3)(b), F.S., defines the term "sexual misconduct" as 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, but does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of the employee's duty.
[13] Section 944.35(3)(b), F.S.
[14] Section 944.710, F.S., defines the term "private correctional facility" as any facility, which is not operated by the department, for the incarceration of adults or juveniles who have been sentenced by a court and committed to the custody of the department.
[15] Department of Corrections 2010 Analysis of HB 1005.

- A similar offense, in this state or in another jurisdiction, and if such prior conviction information is contained in department records.

The information regarding the inmate, must include, but not be limited to:

- Name;
- Social security number;
- Date of birth;
- Race;
- Sex;
- Height;
- Weight;
- Hair and eye color;
- Tattoos or other identifying marks;
- Fingerprints; and
- A digitized photograph.

The department must release the information within six months prior to the discharge of the inmate from the custody of the department.

Section 944.605, F.S., does not currently authorize the department to provide the above-listed information in an electronic format.

Effect of the Bill
The bill authorizes the department to electronically submit the above-listed information to the sheriff or chief of police.

Elderly Facilities (Sections 10 and 11)
Florida considers an inmate who is 50 years old or older to be "aging or elderly."[16] The age when an inmate is considered to be elderly is far lower than in the general population because of generally poorer health. This may be due to life experiences before and during incarceration that contribute to lower life expectancy.[17]

Section 944.804, F.S., the Elderly Offenders' Correctional Facilities Program of 2000, reflected the Legislature's concern that the population of elderly inmates was increasing then and would continue to increase. Because on average it costs approximately three times more to incarcerate an elderly offender as it does to incarcerate a younger inmate, the statute required exploration of alternatives to the current approaches to housing, programming, and treating the medical needs of elderly offenders.[18] In 2000 there were no specific geriatric facilities when the law was passed, but the new statute specifically required the department to establish River Junction Correctional Institution (RJCI) as a geriatric facility and to establish rules for which offenders are eligible to be housed there.

The elderly population has continued to increase since RJCI was opened as a geriatric facility. The department reports that from fiscal year 00-01 through fiscal year 07-08, the elderly inmate population rose from 5,872 to 14,143 inmates.[19]

Due to the continuing increase since s. 944.804, F.S., was enacted, the department has designated other institutions and dorms within institutions to house elderly and aging inmates. River Junction Work Camp, the successor to RJCI, still has the largest concentration of elderly inmates with 292 of its 340 inmates (86% of the population) classified as elderly. However, in three other institutions more than half of the inmate population is elderly.[20]

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[16] Chapter 33-601.217, Florida Administrative Code.
[17] State of Florida Correctional Medical Authority 2008-2009 Annual Report, p. 51
[18] Section 944.804(1), F.S.
[19] Department of Corrections 2010 Analysis of HB 1005.
[20] State of Florida Correctional Medical Authority 2008-2009 Annual Report, p. 56.

Section 944.8041, F.S, requires the department and the Correctional Medical Authority to each submit an annual report on the status and treatment of elderly offenders in the state-administered and private state correctional systems, as well as specific information on RJCI. The report must also include an examination of promising geriatric policies, practices, and programs currently implemented in other correctional systems within the United States.

Effect of the Bill
The bill amends ss. 944.804 and 944.8041, F.S., to remove specific references to RJCI, and to instead require the department to establish and operate geriatric facilities or geriatric dorms.

Corrections Mental Health Act (Sections 12, 13, 14, and 15)
Chapter 394, Part I, F.S., is the Florida Mental Health Act also known as "The Baker Act," which sets forth the procedures to be followed when a person is involuntarily civilly committed due to mental health reasons. Similarly, ss. 945.40 through 945.49, F.S., known as the Corrections Mental Health Act, establishes procedures that must be followed when an inmate is involuntarily placed into a hospital setting for the purpose of mental health treatment.

Inmates who require intensive psychiatric inpatient care and treatment are housed at correctional mental health institutes (CMHI) at specified prisons. In order to admit an inmate into a CMHI, the correctional institution's warden must file a petition in the circuit court for the county where the inmate is imprisoned. The court holds a placement hearing to determine whether the inmate meets the statutory criteria for involuntary placement in the hospital setting. If so, the inmate is ordered to be housed in one of the correctional institutions designated as a CMHI for six months.[21] If an inmate's condition improves, he or she is released from the CMHI. If after six months the inmate still requires CMHI level care, the department may file a petition for continuing admission with the Division of Administrative Hearings.

Section 945.41(4), F.S., provides that a youthful offender cannot be placed at Florida State Prison or Union Correctional Institution for mental health treatment. In general, the department prefers that specific institutions are not enumerated in statute in order to allow flexibility in an institution's mission. For example, Union Correctional Institution used to only house high security inmates, it now has a significant portion of its beds dedicated for elderly inmates, and houses Transitional Care Units (TCU) and Crisis Stabilization Units (CSU).

Sections 945.42(5) and (6), F.S., are the definitions of "in immediate need of care and treatment" and "in need of care and treatment" for purposes of admission or emergency placement of an inmate in a mental health treatment facility. The definitions include basically the same criteria, with the difference being the degree of urgency. The criteria include:

- The inmate refuses to care for himself or herself and is likely to continue to do so, posing a threat of substantial harm to his or her well-being, or there is a threat that the inmate will inflict serious bodily harm on himself or herself or another person;
- The inmate has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement, or is unable to determine for himself or herself whether placement is necessary; and
- All available less restrictive treatment alternatives that would offer an opportunity for improvement of the inmate's condition have been clinically determined to be inappropriate.

Section 945.46, F.S., provides for involuntary placement proceedings under the Baker Act for a mentally ill inmate who is in need of continued treatment after release from the department's custody. Currently, the Baker Act requires counties to designate a law enforcement agency within the county to transport individuals to the nearest receiving facility for involuntary examination.[22] There is no statutory authority for the department to transport an inmate who has been involuntarily civilly committed and who is being released to a receiving facility.

[21] Section 945.43(2)(e), F.S.
[22] Section 394.462(1)(a), F.S.

Effect of the Bill
The bill removes provisions that would prohibit the department from placing youthful offenders at the Florida State Prison or the Union Correctional Institution for mental health treatment.

The bill amends the definitions of "in immediate need of care and treatment" and "in need of care and treatment" in s. 945.42, F.S. The definitions currently require that an inmate who meets the criteria for involuntary placement must refuse voluntary placement after being given "sufficient and conscientious explanation and disclosure of the purpose of placement" or that the inmate is unable to determine for himself or herself whether placement is necessary. The amendment removes the refusal of voluntary placement requirement in both definitions.

The bill amends s. 945.43, F.S., to require that a petition for placement in a mental health treatment facility be filed in the county in which the inmate is located. The bill specifies that the attorney who is representing the inmate shall have reasonable access to the inmate and records that are relevant to the representation of the inmate. The bill also allows for the department to transport the inmate to the hearing if the hearing is not held at the facility and the inmate is unable to participate through electronic means.

The bill amends s. 945.46, F.S., to authorize the department to transport inmates who are being released from the department's custody to a receiving or treatment facility for involuntary exam or placement. The bill specifies that transport will be made to a facility specified by DCF. If DCF does not specify a facility, the transport must be made to the nearest receiving facility.

Inmate Work Squads (Section 16)
Section 946.40, F.S., authorizes the department to enter into agreements with state agencies, political subdivisions, and non-profit corporations to provide the services of inmates. The department must determine that the work is not detrimental to the welfare of the inmates or in the state's interest in the inmate's rehabilitation.[23] A person who has been convicted of sexual battery under s. 794.011, F.S., is not eligible for a work program under this section.

Effect of the Bill
The bill creates s. 946.42, F.S., to allow inmates who meet the criteria to work on public work squads to enter onto private property to:

- Accept and collect donations for the use and benefit of the department.
- Assist federal, state, local, and private agencies before, during, and after emergencies and disasters.

The bill provides the following definitions:

- "Disaster" is defined as "any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of state of emergency by a county, the Governor, or the President of the United States."
- "Donations" is defined as "gifts of tangible personal property" and includes "equipment, fixtures, construction materials, food items, and other tangible personal property of both a consumable and nonconsumable nature."
- "Emergency" is defined as "any occurrence or threat of an occurrence, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property."

Terms and Conditions of Probation (Section 18 and 19)
Offenders on probation and community control must comply with the statutory terms and conditions set forth in s. 948.03, F.S. These terms and conditions require probationers and community controlees to:

- Report to the probation and parole supervisors as directed.
- Permit such supervisors to visit him or her at his or her home or elsewhere.
- Work faithfully at suitable employment insofar as may be possible.
- Remain within a specified place.

[23] Section 946.40(1), F.S.

- Make reparation or restitution.
- Make payment of the debt due and owing to a county or municipal detention facility for medical care, treatment, hospitalization, or transportation received by the felony probationer while in that detention facility.
- Support his or her legal dependents to the best of his or her ability.
- Pay any monies owed to the crime victim's compensation trust fund.
- Pay the application fee and costs of the public defender.
- Not associate with persons engaged in criminal activities.
- Submit to random testing as directed by the correctional probation officer or the professional staff of the treatment center where he or she is receiving treatment to determine the presence or use of alcohol or controlled substances.
- Not possess, carry, or own any firearm unless authorized by the court and consented to by the probation officer.
- Not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician.
- Not knowingly visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.
- Submit to the drawing of blood or other biological specimens, and reimburse the appropriate agency for the costs of drawing and transmitting the blood or other biological specimens to the Department of Law Enforcement.

The "Order of Probation" form in Florida Rules of Criminal Procedure[24] specifically provides many of the provisions found in s. 948.03, F.S. It also adds the condition that an offender should "live without violating any law."

Currently, only sex offenders are required by law to submit to photographs as a condition of probation.[25] The department currently takes such photographs and places them on the public website. Because the requirement to submit to a photograph is not specifically authorized by statute, the department reports that it cannot mandate that an offender do so.[26]

Effect of the Bill
The bill amends the condition of supervision relating to firearms to prohibit offenders from possessing, carrying, or owning any firearm. The bill also prohibits the offender from possessing, carrying, or owning any weapon without first procuring the consent of the correctional probation officer. This change is substantially similar to the Florida Rules of Criminal Procedure.[27]

The bill also adds the following conditions of supervision to s. 948.03, F.S.:
- "Live without violating any law. A conviction in a court of law shall not be necessary for such a violation of law to constitute a violation of probation, community control, or any other form of court-ordered supervision."[28]
- "Submit to the taking of a digitized photograph by the department as part of the offender's records. This photograph may be displayed on the department's public website while the offender is on a form of court-ordered supervision, with the exception of offenders on pretrial intervention supervision, or who would otherwise be exempt from public records due to provisions in s. 119.07, F.S."

Public Safety Coordinating Councils (Section 22)
Section 951.26, F.S., requires each county to establish a public safety coordinating council (PSCC).[29] The purpose of the PSCC is to assess the population status of all detention or correctional facilities

[24] See Rule 3.986(e), Florida Rules of Criminal Procedure.
[25] Sections 775.21(6) and 943.0435(2)(b)2., F.S.
[26] Department of Corrections 2010 Analysis of HB 1005.
[27] Rule 3.986, Florida Rules of Criminal Procedure.
[28] This condition mirrors a condition of probation found in the Florida Rules of Criminal Procedure. See Rule 3.986(e).
[29] Section 951.26, F.S., also authorizes a board of county commissioners to join with a consortium of one or more other counties to establish a PSCC for the member counties.

owned or contracted by the county and to formulate recommendations to ensure that the capacities of such facilities are not exceeded. The recommendations must include assessment of the availability of pretrial intervention, probation, work release, and substance abuse programs; gain-time and bail bond schedules; and the confinement status of inmates. PSCCs are also authorized to develop a local public safety plan for future construction needs that covers at least 5 years. If the county or consortium of counties receives community corrections funds under s. 948.51, F.S., the PSCC must develop a public safety plan that meets that section's requirements.

Effect of the Bill
The bill authorizes the PSCC to develop a 5-year comprehensive local reentry plan designed to assist offenders released from incarceration in successfully reentering the community. The bill requires the PSCC to develop the plan in coordination with public safety officials and local community organizations who can provide offenders with reentry services, such as assistance with housing, healthcare, education, substance abuse treatment, and employment.

B. SECTION DIRECTORY:

Section 1. Amends s. 384.34, F.S., relating to penalties.

Section 2. Amends s. 775.0877, F.S., relating to criminal transmission of HIV; procedures; penalties.

Section 3. Amends s. 796.08, F.S., relating to screening for HIV and sexually transmissible diseases; providing penalties.

Section 4. Creates s. 800.09, F.S., relating to lewd or lascivious exhibition in the presence of a facility employee.

Section 5. Amends s. 921.187, F.S., relating to disposition and sentencing; alternatives; restitution.

Section 6. Amends s. 940.061, F.S., relating to informing persons about executive clemency and restoration of civil rights.

Section 7. Repeals s. 944.293, F.S., relating to initiation of restoration of civil rights.

Section 8. Amends s. 944.35, F.S., relating to authorized use of force; malicious battery and sexual misconduct prohibited; reporting required; penalties.

Section 9. Amends s. 944.605, F.S., relating to inmate release; notification.

Section 10. Amends s. 944.804, F.S., relating to elderly offenders correctional facilities program of 2000.

Section 11. Amends s. 944.8041, F.S., relating to elderly offenders; annual review.

Section 12. Amends s. 945.41, F.S., relating to legislative intent of ss. 945.40-945.49.

Section 13. Amends s. 945.42, F.S., relating to definitions; ss. 945.40-945.49.

Section 14. Amends s. 945.43, F.S., relating to admission of inmate to mental health treatment facility.

Section 15. Amends s. 945.46, F.S., relating to initiation of involuntary placement proceedings with respect to a mentally ill inmate scheduled for release.

Section 16. Creates s. 946.42, F.S., relating to use of inmates on private property.

Section 17. Repeals s. 948.001, F.S., relating to definitions.

Section 18. Amends s. 948.03, F.S., relating to terms and conditions of probation.

Section 19. Amends s. 948.09, F.S., relating to payment for cost of supervision and rehabilitation.

Section 20. Amends s. 948.101, F.S., relating to terms and conditions of community control and criminal quarantine community control.

Section 21. Amends s. 948.11, F.S., relating to electronic monitoring devices.

Section 22. Amends s. 951.26, F.S., relating to public safety coordinating councils.

Section 23. This bill takes effect July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See "Fiscal Comments."

2. Expenditures:

   See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See "Fiscal Comments."

2. Expenditures:

   See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

In general, the provisions of the bill appear revenue neutral.

Additionally, the Criminal Justice Impact Conference met on February 23, 2010, and determined that the felony provisions in this bill would have an insignificant prison bed impact on the department.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 9, 2010, the Public Safety & Domestic Security Policy Committee adopted a strike-all amendment to the bill. The strike-all amendment:

- Revises the new felony offense of lewd and lascivious exhibition in the presence of a facility employee to:
    - Delete a clause that would have made it a felony to harass, annoy, threaten, or alarm a facility employee;
    - Protect any person who is within the statute's definition of "employee," not just those who are employees of the facility; and
    - Provide that the sexual acts by the inmate do not involve actual physical or sexual contact with the victim. Acts that involve physical or sexual contact with the victim can be charged under other statutes.
- Removes sections of the bill that would have modified and clarified statutory provisions relating to the department's involvement with the competency to stand trial process for inmates who are charged with new crimes.
- Revises the newly-created statute that authorizes the department to allow inmates who meet the criteria for a public works squad to clarify that the inmates may perform public works on private property.
- Modifies the terms of probation statute's prohibition on firearms and other weapons to more accurately reflect the language found in the Florida Rules of Criminal Procedure.
- Removes sections of the bill that would have revised statutes relating to youthful offenders.

The bill was reported favorably as a Committee Substitute. This analysis reflects the committee substitute.

A bill to be entitled

An act relating to corrections; amending s. 384.34, F.S.; revising criminal penalties pertaining to sexually transmissible diseases; amending s. 775.0877, F.S.; removing a provision authorizing a court to require an offender convicted of criminal transmission of HIV to serve a term of criminal quarantine community control; amending s. 796.08, F.S., relating to criminal transmission of HIV; conforming a cross-reference; creating s. 800.09, F.S.; defining terms; providing that a person who is detained in a state or private correctional facility may not commit lewd or lascivious exhibition in the presence of an employee who the detainee knows or reasonably should know is an employee; providing criminal penalties; amending s. 921.187, F.S.; removing a reference to criminal quarantine community control to conform to changes made by the act; amending s. 940.061, F.S.; requiring that the Department of Corrections send to the Parole Commission by electronic means a monthly list of the names of inmates released from incarceration and offenders terminated from supervision who may be eligible for restoration of civil rights; repealing s. 944.293, F.S., relating to initiation of the restoration of an inmate's civil rights; amending s. 944.35, F.S.; including employees of private correctional facilities within a statute prohibiting employees from committing certain sexual misconduct with inmates; providing criminal penalties;; amending s. 944.605, F.S.; authorizing the

Department of Corrections to electronically submit certain information to the sheriff of the county in which the inmate plans to reside and to the chief of police of the municipality where the inmate plans to reside; amending ss. 944.804 and 944.8041, F.S.; requiring the department to establish and operate certain geriatric facilities or dorms at prison institutions; removing provisions requiring the operation of a specified facility; amending s. 945.41, F.S.; deleting a prohibition against the placement of youthful offenders at certain institutions for mental health treatment; amending s. 945.42, F.S.; deleting references to an inmate's refusal of voluntary placement for purposes of determining the inmate's need for care and treatment; amending s. 945.43, F.S.; clarifying that an inmate is placed in, rather than admitted to, a mental health treatment facility; requiring that a petition for placement be filed in the county in which an inmate is located; authorizing the department to transport the inmate to the location of the hearing on such a placement under certain circumstances; amending s. 945.46, F.S.; providing procedures for the transport of inmates who are mentally ill and who are scheduled to be released from confinement; creating s. 946.42, F.S.; authorizing the department to use inmate labor on private property under certain circumstances; defining terms; repealing s. 948.001(3), F.S., relating to the definition of the term "criminal quarantine community control," to conform to changes made by the act; amending s. 948.03,

F.S.; providing additional conditions of probation to be applied to a defendant; deleting certain requirements for possession of a weapon other than a firearm; requiring that a digitized photograph of an offender be part of the offender's record; authorizing the department to display such photographs on its website for a specified period; providing exceptions; amending s. 948.09, F.S.; conforming a cross-reference; amending ss. 948.101 and 948.11, F.S.; deleting provisions related to criminal quarantine community control; amending s. 951.26, F.S.; authorizing each local public safety coordinating council to develop a comprehensive local reentry plan for offenders reentering the community; providing plan requirements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) of section 384.34, Florida Statutes, is amended to read:

384.34 Penalties.—

(5) Any person who violates ~~the provisions of~~ s. 384.24(2) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 ~~ss. 775.082, 775.083, 775.084, and 775.0877(7)~~. Any person who commits multiple violations of ~~the provisions of~~ s. 384.24(2) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 ~~ss. 775.082, 775.083, 775.084, and 775.0877(7)~~.

Section 2. Section 775.0877, Florida Statutes, is amended to read:

775.0877 Criminal transmission of HIV; procedures; penalties.—

(1) In any case in which a person has been convicted of or has pled nolo contendere or guilty to, regardless of whether adjudication is withheld, any of the following offenses, or the attempt thereof, which offense or attempted offense involves the transmission of body fluids from one person to another:

(a) Section 794.011, relating to sexual battery;~~,~~

(b) Section 826.04, relating to incest;~~,~~

(c) Section 800.04(1), (2), and (3), relating to lewd, lascivious, or indecent assault or act upon any person less than 16 years of age;~~,~~

(d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d), relating to assault;~~,~~

(e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b), relating to aggravated assault;~~,~~

(f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c), relating to battery;~~,~~

(g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a), relating to aggravated battery;~~,~~

(h) Section 827.03(1), relating to child abuse;~~,~~

(i) Section 827.03(2), relating to aggravated child abuse;~~,~~

(j) Section 825.102(1), relating to abuse of an elderly person or disabled adult;~~,~~

(k) Section 825.102(2), relating to aggravated abuse of an

elderly person or disabled adult;~~,~~

(l) Section 827.071, relating to sexual performance by person less than 18 years of age;~~,~~

(m) Sections 796.03, 796.07, and 796.08, relating to prostitution;~~,~~ or

(n) Section 381.0041(11)(b), relating to donation of blood, plasma, organs, skin, or other human tissue,

the court shall order the offender to undergo HIV testing, to be performed under the direction of the Department of Health in accordance with s. 381.004, unless the offender has undergone HIV testing voluntarily or pursuant to procedures established in s. 381.004(3)(h)6. or s. 951.27, or any other applicable law or rule providing for HIV testing of criminal offenders or inmates, subsequent to her or his arrest for an offense enumerated in paragraphs (a)-(n) for which she or he was convicted or to which she or he pled nolo contendere or guilty. The results of an HIV test performed on an offender pursuant to this subsection are not admissible in any criminal proceeding arising out of the alleged offense.

(2) The results of the HIV test must be disclosed under the direction of the Department of Health, to the offender who has been convicted of or pled nolo contendere or guilty to an offense specified in subsection (1), the public health agency of the county in which the conviction occurred and, if different, the county of residence of the offender, and, upon request pursuant to s. 960.003, to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the

victim is a minor.

(3) An offender who has undergone HIV testing pursuant to subsection (1), and to whom positive test results have been disclosed pursuant to subsection (2), who commits a second or subsequent offense enumerated in paragraphs (1)(a)-(n), commits criminal transmission of HIV, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 ~~subsection (7)~~. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime enumerated in paragraphs (1)(a)-(n).

(4) An offender may challenge the positive results of an HIV test performed pursuant to this section and may introduce results of a backup test performed at her or his own expense.

(5) Nothing in this section requires that an HIV infection have occurred in order for an offender to have committed criminal transmission of HIV.

(6) For an alleged violation of any offense enumerated in paragraphs (1)(a)-(n) for which the consent of the victim may be raised as a defense in a criminal prosecution, it is an affirmative defense to a charge of violating this section that the person exposed knew that the offender was infected with HIV, knew that the action being taken could result in transmission of the HIV infection, and consented to the action voluntarily with that knowledge.

~~(7) In addition to any other penalty provided by law for an offense enumerated in paragraphs (1)(a)-(n), the court may require an offender convicted of criminal transmission of HIV to serve a term of criminal quarantine community control, as~~

~~described in s. 948.001.~~

Section 3. Subsection (5) of section 796.08, Florida Statutes, is amended to read:

796.08 Screening for HIV and sexually transmissible diseases; providing penalties.—

(5) A person who:

(a) Commits or offers to commit prostitution; or

(b) Procures another for prostitution by engaging in sexual activity in a manner likely to transmit the human immunodeficiency virus,

and who, prior to the commission of such crime, had tested positive for human immunodeficiency virus and knew or had been informed that he or she had tested positive for human immunodeficiency virus and could possibly communicate such disease to another person through sexual activity commits criminal transmission of HIV, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084~~, or s. 775.0877(7)~~. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime of prostitution or procurement of prostitution.

Section 4. Section 800.09, Florida Statutes, is created to read:

800.09 Lewd or lascivious exhibition in the presence of a facility employee.—

(1) As used in this section, the term:

(a) "Employee" means any person employed by or performing contractual services for a public or private entity operating a

facility or any person employed by or performing contractual services for the corporation operating the prison industry enhancement programs or the correctional work programs under part II of chapter 946. The term also includes any person who is a parole examiner with the Parole Commission.

(b) "Facility" means a state correctional institution as defined in s. 944.02 or a private correctional facility as defined in s. 944.710.

(2)(a) A person who is detained in a facility may not, in the presence of a person he or she knows or reasonably should know is an employee:

1. Intentionally masturbate;

2. Intentionally expose his or her genitals in a lewd or lascivious manner; or

3. Intentionally commit any other sexual act, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity.

(b) A person who violates paragraph (a) commits lewd or lascivious exhibition in the presence of a facility employee, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 5. Subsections (2) and (3) of section 921.187, Florida Statutes, are amended to read:

921.187 Disposition and sentencing; alternatives; restitution.—

~~(2) In addition to any other penalty provided by law for an offense enumerated in s. 775.0877(1)(a)-(n), if the offender is convicted of criminal transmission of HIV pursuant to s.~~

~~775.0877, the court may sentence the offender to criminal quarantine community control as described in s. 948.001.~~

(2)~~(3)~~ The court shall require an offender to make restitution under s. 775.089~~,~~ unless the court finds clear and compelling reasons not to order such restitution. If the court does not order restitution, or orders restitution of only a portion of the damages, as provided in s. 775.089, the court shall state the reasons on the record in detail. An order requiring an offender to make restitution to a victim under s. 775.089 does not remove or diminish the requirement that the court order payment to the Crimes Compensation Trust Fund under chapter 960.

Section 6. Section 940.061, Florida Statutes, is amended to read:

940.061 Informing persons about executive clemency and restoration of civil rights.—The Department of Corrections shall inform and educate inmates and offenders on community supervision about the restoration of civil rights. Each month the Department of Corrections shall send to the Parole Commission by electronic means a list of the names of inmates who have been released from incarceration and offenders who have been terminated from supervision who may be eligible ~~and assist eligible inmates and offenders on community supervision with the completion of the application~~ for ~~the~~ restoration of civil rights.

Section 7. Section 944.293, Florida Statutes, is repealed.

Section 8. Paragraph (b) of subsection (3) of section 944.35, Florida Statutes, is amended to read:

944.35 Authorized use of force; malicious battery and sexual misconduct prohibited; reporting required; penalties.—

(3)

(b)1. As used in this paragraph, the term "sexual misconduct" means 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, but does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of the employee's duty.

2. Any employee of the department or a private correctional facility as defined in s. 944.710 who engages in sexual misconduct with an inmate or an offender supervised by the department in the community, without committing the crime of sexual battery, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. The consent of the inmate or offender supervised by the department in the community to any act of sexual misconduct may not be raised as a defense to a prosecution under this paragraph.

4. This paragraph does not apply to any employee of the department or any employee of a private correctional facility who is legally married to an inmate or an offender supervised by the department in the community, nor does it apply to any employee who has no knowledge, and would have no reason to believe, that the person with whom the employee has engaged in sexual misconduct is an inmate or an offender under community supervision of the department.

Section 9. Subsection (3) of section 944.605, Florida Statutes, is amended to read:

944.605 Inmate release; notification.—

(3)(a) If an inmate is to be released after having served one or more sentences for a conviction of robbery, sexual battery, home-invasion robbery, or carjacking, or an inmate to be released has a prior conviction for robbery, sexual battery, home-invasion robbery, or carjacking or similar offense, in this state or in another jurisdiction, and if such prior conviction information is contained in department records, the department shall release to the sheriff of the county in which the inmate plans to reside, and, if the inmate plans to reside within a municipality, to the chief of police of that municipality, the following information, which must include, but need not be limited to:

1.~~(a)~~ Name.~~;~~

2.~~(b)~~ Social security number.~~;~~

3.~~(c)~~ Date of birth.~~;~~

4.~~(d)~~ Race.~~;~~

5.~~(e)~~ Sex.~~;~~

6.~~(f)~~ Height.~~;~~

7.~~(g)~~ Weight.~~;~~

8.~~(h)~~ Hair and eye color.~~;~~

9.~~(i)~~ Tattoos or other identifying marks.~~;~~

10.~~(j)~~ Fingerprints.~~; and~~

11.~~(k)~~ A digitized photograph as provided in subsection (2).

The department shall release the information specified in this paragraph ~~subsection~~ within 6 months prior to the discharge of the inmate from the custody of the department.

(b) The department may electronically submit the information listed in paragraph (a) to the sheriff of the county in which the inmate plans to reside, and, if the inmate plans to reside within a municipality, to the chief of police of that municipality.

Section 10. Section 944.804, Florida Statutes, is amended to read:

944.804 Elderly offenders correctional facilities program of 2000.—

(1) The Legislature finds that the number and percentage of elderly offenders in the Florida prison system are ~~is~~ increasing and will continue to increase for the foreseeable future. The current cost to incarcerate elderly offenders is approximately three times the cost of incarceration of younger inmates. Alternatives to the current approaches to housing, programming, and treating the medical needs of elderly offenders, which may reduce the overall costs associated with this segment of the prison population, must be explored and implemented.

(2) The department shall establish and operate ~~a~~ geriatric facilities or geriatric dorms within a facility ~~at the site known as River Junction Correctional Institution, which shall be an institution specifically~~ for generally healthy elderly offenders who can perform general work appropriate for their physical and mental condition. ~~Prior to reopening the facility,~~

~~the department shall make modifications to the facility which will ensure its compliance with the Americans with Disabilities Act and decrease the likelihood of falls, accidental injury, and other conditions known to be particularly hazardous to the elderly.~~

(a) In order to decrease long-term medical costs to the state, a preventive fitness/wellness program and diet specifically designed to maintain the mental and physical health of elderly offenders shall be developed and implemented. In developing the program, the department shall give consideration to preventive medical care for the elderly which shall include, but not be limited to, maintenance of bone density, all aspects of cardiovascular health, lung capacity, mental alertness, and orientation. Existing policies and procedures shall be reexamined and altered to encourage offenders to adopt a more healthy lifestyle and maximize their level of functioning. The program components shall be modified as data and experience are received <u>that</u> ~~which~~ measure the relative success of the program components previously implemented.

(b) Consideration must be given to redirecting resources as a method of offsetting increased medical costs. Elderly offenders are not likely to reenter society as a part of the workforce, and programming resources would be better spent in activities to keep the elderly offenders healthy, alert, and oriented. Limited or restricted programming or activities for elderly offenders will increase the daily cost of institutional and health care, and programming opportunities adequate to reduce the cost of care will be provided. Programming shall

include, but not be limited to, recreation, education, and counseling that ~~which~~ is needs-specific to elderly offenders. Institutional staff shall be specifically trained to effectively supervise elderly offenders and to detect physical or mental changes that ~~which~~ warrant medical attention before more serious problems develop.

(3) The department shall adopt rules that specify which elderly offenders shall be eligible to be housed at the geriatric correctional facilities or dorms ~~River Junction Correctional Institution~~.

(4) While developing the criteria for eligibility, the department shall use the information in existing offender databases to determine the number of offenders who would be eligible. The Legislature directs the department to consider a broad range of elderly offenders for the department's geriatric facilities or dorms ~~River Junction Correctional Institution~~ who have good disciplinary records and a medical grade that will permit them to perform meaningful work activities, including participation in an appropriate correctional work program (PRIDE) facility, if available.

(5) The department shall also submit a study based on existing offenders that ~~which~~ projects the number of existing offenders who will qualify under the rules. An appendix to the study shall identify the specific offenders who qualify.

Section 11. Section 944.8041, Florida Statutes, is amended to read:

944.8041 Elderly offenders; annual review.—For the purpose of providing information to the Legislature on elderly offenders

within the correctional system, the department and the Correctional Medical Authority shall each submit annually a report on the status and treatment of elderly offenders in the state-administered and private state correctional systems and~~,~~ ~~as well as such information on~~ the department's geriatric facilities and dorms ~~River Junction Correctional Institution~~. In order to adequately prepare the reports, the department and the Department of Management Services shall grant access to the Correctional Medical Authority that ~~which~~ includes access to the facilities, offenders, and any information the agencies require to complete their reports. The review shall also include an examination of promising geriatric policies, practices, and programs currently implemented in other correctional systems within the United States. The reports, with specific findings and recommendations for implementation, shall be submitted to the President of the Senate and the Speaker of the House of Representatives on or before December 31 of each year.

Section 12. Subsections (4) and (5) of section 945.41, Florida Statutes, are amended to read:

945.41 Legislative intent of ss. 945.40-945.49.—It is the intent of the Legislature that mentally ill inmates in the custody of the Department of Corrections receive evaluation and appropriate treatment for their mental illness through a continuum of services. It is further the intent of the Legislature that:

(4) Any inmate sentenced as a youthful offender, or designated as a youthful offender by the department under ~~pursuant to~~ chapter 958, who is transferred pursuant to this act

to a mental health treatment facility be separated from other inmates, if necessary, as determined by the warden of the treatment facility. ~~In no case shall any youthful offender be placed at the Florida State Prison or the Union Correctional Institution for mental health treatment.~~

(5) The department may designate ~~a~~ mental health treatment facilities ~~facility~~ for adult, youthful, and female offenders or may contract with other appropriate entities, persons, or agencies for such services.

Section 13. Subsections (5) and (6) of section 945.42, Florida Statutes, are amended to read:

945.42 Definitions; ss. 945.40-945.49.—As used in ss. 945.40-945.49, the following terms shall have the meanings ascribed to them, unless the context shall clearly indicate otherwise:

(5) "In immediate need of care and treatment" means that an inmate is apparently mentally ill and is not able to be appropriately cared for in the institution where he or she is confined and that, but for being isolated in a more restrictive and secure housing environment, because of the apparent mental illness:

(a)1. The inmate is demonstrating a refusal to care for himself or herself and without immediate treatment intervention is likely to continue to refuse to care for himself or herself, and such refusal poses an immediate, real, and present threat of substantial harm to his or her well-being; or

2. There is an immediate, real, and present threat that the inmate will inflict serious bodily harm on himself or

herself or another person, as evidenced by recent behavior involving causing, attempting, or threatening such harm;

(b) ~~1. The inmate has refused voluntary placement for treatment at a mental health treatment facility after sufficient and conscientious explanation and disclosure of the purpose of placement; or~~

~~2.~~ The inmate is unable to determine for himself or herself whether placement is necessary; and

(c) All available less restrictive treatment alternatives that would offer an opportunity for improvement of the inmate's condition have been clinically determined to be inappropriate.

(6) "In need of care and treatment" means that an inmate has a mental illness for which inpatient services in a mental health treatment facility are necessary and that, but for being isolated in a more restrictive and secure housing environment, because of the mental illness:

(a) 1. The inmate is demonstrating a refusal to care for himself or herself and without treatment is likely to continue to refuse to care for himself or herself, and such refusal poses a real and present threat of substantial harm to his or her well-being; or

2. There is a substantial likelihood that in the near future the inmate will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm;

(b) ~~1. The inmate has refused voluntary placement for treatment at a mental health treatment facility after sufficient and conscientious explanation and disclosure of the purpose of~~

~~placement; or~~

~~2.~~ The inmate is unable to determine for himself or herself whether placement is necessary; and

(c) All available less restrictive treatment alternatives that would offer an opportunity for improvement of the inmate's condition have been clinically determined to be inappropriate.

Section 14. Section 945.43, Florida Statutes, is amended to read:

945.43 Placement ~~Admission~~ of inmate in a ~~to~~ mental health treatment facility.—

(1) CRITERIA.—An inmate may be placed in ~~admitted to~~ a mental health treatment facility if he or she is mentally ill and is in need of care and treatment, as defined in s. 945.42.

(2) PROCEDURE FOR PLACEMENT IN A MENTAL HEALTH TREATMENT FACILITY.—

(a) An inmate may be placed in ~~admitted to~~ a mental health treatment facility after notice and hearing, upon the recommendation of the warden of the facility where the inmate is confined. The recommendation shall be entered on a petition and must be supported by the expert opinion of a psychiatrist and the second opinion of a psychiatrist or psychological professional. The petition shall be filed with the court in the county where the inmate is located.

(b) A copy of the petition shall be served on the inmate, accompanied by a written notice that the inmate may apply immediately to the court to have an attorney appointed if the inmate cannot afford one.

(c) The petition for placement shall ~~may~~ be filed in the

county in which the inmate is located. The hearing shall be held in the same county, and one of the inmate's physicians at the facility where the inmate is located shall appear as a witness at the hearing.

(d) An attorney representing the inmate shall have access to the inmate and any records, including medical or mental health records, that ~~which~~ are relevant to the representation of the inmate.

(e) If the court finds that the inmate is mentally ill and in need of care and treatment, as defined in s. 945.42, the court shall order that he or she be placed in a mental health treatment facility or, if the inmate is at a mental health treatment facility, that he or she be retained there. The court shall authorize the mental health treatment facility to retain the inmate for up to 6 months. If, at the end of that time, continued placement is necessary, the warden shall apply to the Division of Administrative Hearings in accordance with s. 945.45 for an order authorizing continued placement.

(3) PROCEDURE FOR HEARING ON PLACEMENT OF AN INMATE IN A MENTAL HEALTH TREATMENT FACILITY.—

(a) The court shall serve notice on the warden of the facility where the inmate is confined and the allegedly mentally ill inmate. The notice must specify the date, time, and place of the hearing; the basis for the allegation of mental illness; and the names of the examining experts. The hearing shall be held within 5 days, and the court may appoint a general or special magistrate to preside. The court may waive the presence of the inmate at the hearing if the ~~such~~ waiver is consistent with the

best interests of the inmate and the inmate's counsel does not object. The department may transport the inmate to the location of the hearing if the hearing is not conducted at the facility or by electronic means. The hearing may be as informal as is consistent with orderly procedure. One of the experts whose opinion supported the petition for placement shall be present at the hearing for information purposes.

(b) If, at the hearing, the court finds that the inmate is mentally ill and in need of care and treatment, as defined in s. 945.42, the court shall order that he or she be placed in a mental health treatment facility. The court shall provide a copy of its order authorizing placement and all supporting documentation relating to the inmate's condition to the warden of the treatment facility. If the court finds that the inmate is not mentally ill, it shall dismiss the petition for placement.

(4) REFUSAL OF PLACEMENT.—The warden of an institution in which a mental health treatment facility is located may refuse to place any inmate in that treatment facility who is not accompanied by adequate court orders and documentation, as required in ss. 945.40-945.49.

Section 15. Section 945.46, Florida Statutes, is amended to read:

945.46 Initiation of involuntary placement proceedings with respect to a mentally ill inmate scheduled for release.—

(1) If an inmate who is receiving mental health treatment in the department is scheduled for release through expiration of sentence or any other means, but continues to be mentally ill and in need of care and treatment, as defined in s. 945.42, the

warden is authorized to initiate procedures for involuntary placement pursuant to s. 394.467, 60 days prior to such release.

(2) In addition, the warden may initiate procedures for involuntary examination pursuant to s. 394.463 for any inmate who has a mental illness and meets the criteria of s. 394.463(1).

(3) The department may transport an individual who is being released from its custody to a receiving or treatment facility for involuntary examination or placement. Such transport shall be made to a facility that is specified by the Department of Children and Family Services as able to meet the specific needs of the individual. If the Department of Children and Family Services does not specify a facility, transport may be made to the nearest receiving facility.

Section 16. Section 946.42, Florida Statutes, is created to read:

946.42 Use of inmates on private property.—

(1) The department may allow inmates who meet the criteria provided in s. 946.40 to enter onto private property to perform public works or for the following purposes:

(a) To accept and collect donations for the use and benefit of the department.

(b) To assist federal, state, local, and private agencies before, during, and after emergencies or disasters.

(2) As used in this section, the term:

(a) "Disaster" means any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by

a county, the Governor, or the President of the United States.

(b) "Donations" means gifts of tangible personal property and includes equipment, fixtures, construction materials, food items, and other tangible personal property of a consumable or nonconsumable nature.

(c) "Emergency" means any occurrence or threat of an occurrence, whether natural, technological, or manmade, in war or in peace, that results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

Section 17. Subsection (3) of section 948.001, Florida Statutes, is repealed.

Section 18. Subsection (1) of section 948.03, Florida Statutes, is amended to read:

948.03 Terms and conditions of probation.—

(1) The court shall determine the terms and conditions of probation. Conditions specified in this section do not require oral pronouncement at the time of sentencing and may be considered standard conditions of probation. These conditions may include among them the following, that the probationer or offender in community control shall:

(a) Report to the probation and parole supervisors as directed.

(b) Permit such supervisors to visit him or her at his or her home or elsewhere.

(c) Work faithfully at suitable employment insofar as may be possible.

(d) Remain within a specified place.

(e) Live without violating any law. A conviction in a court of law is not necessary for such a violation of law to constitute a violation of probation, community control, or any other form of court-ordered supervision.

(f) ~~(e)~~ Make reparation or restitution to the aggrieved party for the damage or loss caused by his or her offense in an amount to be determined by the court. The court shall make such reparation or restitution a condition of probation, unless it determines that clear and compelling reasons exist to the contrary. If the court does not order restitution, or orders restitution of only a portion of the damages, as provided in s. 775.089, it shall state on the record in detail the reasons therefor.

(g) ~~(f)~~ Effective July 1, 1994, and applicable for offenses committed on or after that date, make payment of the debt due and owing to a county or municipal detention facility under s. 951.032 for medical care, treatment, hospitalization, or transportation received by the felony probationer while in that detention facility. The court, in determining whether to order such repayment and the amount of the ~~such~~ repayment, shall consider the amount of the debt, whether there was any fault of the institution for the medical expenses incurred, the financial resources of the felony probationer, the present and potential future financial needs and earning ability of the probationer, and dependents, and other appropriate factors.

(h) ~~(g)~~ Support his or her legal dependents to the best of his or her ability.

(i) ~~(h)~~ Make payment of the debt due and owing to the state

under s. 960.17, subject to modification based on change of circumstances.

(j) ~~(i)~~ Pay any application fee assessed under s. 27.52(1)(b) and attorney's fees and costs assessed under s. 938.29, subject to modification based on change of circumstances.

(k) ~~(j)~~ Not associate with persons engaged in criminal activities.

(l) ~~(k)~~1. Submit to random testing as directed by the correctional probation officer or the professional staff of the treatment center where he or she is receiving treatment to determine the presence or use of alcohol or controlled substances.

2. If the offense was a controlled substance violation and the period of probation immediately follows a period of incarceration in the state correction system, the conditions shall include a requirement that the offender submit to random substance abuse testing intermittently throughout the term of supervision, upon the direction of the correctional probation officer as defined in s. 943.10(3).

(m) ~~(l)~~ Be prohibited from possessing, carrying, or owning any:

1. Firearm ~~unless authorized by the court and consented to by the probation officer~~.

2. Weapon without first procuring the consent of the correctional probation officer.

(n) ~~(m)~~ Be prohibited from using intoxicants to excess or possessing any drugs or narcotics unless prescribed by a

physician. The probationer or community controllee shall not knowingly visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.

(o) ~~(n)~~ Submit to the drawing of blood or other biological specimens as prescribed in ss. 943.325 and 948.014, and reimburse the appropriate agency for the costs of drawing and transmitting the blood or other biological specimens to the Department of Law Enforcement.

(p) Submit to the taking of a digitized photograph by the department as a part of the offender's records. This photograph may be displayed on the department's public website while the offender is under court-ordered supervision. However, this paragraph does not apply to an offender who is on pretrial intervention supervision or an offender whose identity is exempt from disclosure due to an exemption from the requirements of s. 119.07.

Section 19. Subsection (7) of section 948.09, Florida Statutes, is amended to read:

948.09 Payment for cost of supervision and rehabilitation.—

(7) The department shall establish a payment plan for all costs ordered by the courts for collection by the department and a priority order for payments, except that victim restitution payments authorized under s. 948.03(1) (f) ~~(c)~~ take precedence over all other court-ordered payments. The department is not required to disburse cumulative amounts of less than $10 to individual payees established on this payment plan.

Section 20. Section 948.101, Florida Statutes, is amended

to read:

948.101 Terms and conditions of community control ~~and criminal quarantine community control~~.—

(1) The court shall determine the terms and conditions of community control. Conditions specified in this subsection do not require oral pronouncement at the time of sentencing and may be considered standard conditions of community control.

~~(a)~~ The court shall require intensive supervision and surveillance for an offender placed into community control, which may include, but is not limited to:

(a)~~1.~~ Specified contact with the parole and probation officer.

(b)~~2.~~ Confinement to an agreed-upon residence during hours away from employment and public service activities.

(c)~~3.~~ Mandatory public service.

(d)~~4.~~ Supervision by the Department of Corrections by means of an electronic monitoring device or system.

(e)~~5.~~ The standard conditions of probation set forth in s. 948.03.

~~(b) For an offender placed on criminal quarantine community control, the court shall require:~~

~~1. Electronic monitoring 24 hours per day.~~

~~2. Confinement to a designated residence during designated hours.~~

(2) The enumeration of specific kinds of terms and conditions does not prevent the court from adding ~~thereto~~ any other terms or conditions that the court considers proper. However, the sentencing court may only impose a condition of

supervision allowing an offender convicted of s. 794.011, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145 to reside in another state if the order stipulates that it is contingent upon the approval of the receiving state interstate compact authority. The court may rescind or modify at any time the terms and conditions theretofore imposed by it upon the offender in community control. However, if the court withholds adjudication of guilt or imposes a period of incarceration as a condition of community control, the period may not exceed 364 days, and incarceration shall be restricted to a county facility, a probation and restitution center under the jurisdiction of the Department of Corrections, a probation program drug punishment phase I secure residential treatment institution, or a community residential facility owned or operated by any entity providing such services.

~~(3) The court may place a defendant who is being sentenced for criminal transmission of HIV in violation of s. 775.0877 on criminal quarantine community control. The Department of Corrections shall develop and administer a criminal quarantine community control program emphasizing intensive supervision with 24-hour-per-day electronic monitoring. Criminal quarantine community control status must include surveillance and may include other measures normally associated with community control, except that specific conditions necessary to monitor this population may be ordered.~~

Section 21. Subsection (1) of section 948.11, Florida Statutes, is amended to read:

948.11 Electronic monitoring devices.—

(1)~~(a)~~ The Department of Corrections may, at its discretion, electronically monitor an offender sentenced to community control.

~~(b) The Department of Corrections shall electronically monitor an offender sentenced to criminal quarantine community control 24 hours per day.~~

Section 22. Subsection (4) of section 951.26, Florida Statutes, is renumbered as subsection (5), and a new subsection (4) is added to that section to read:

951.26 Public safety coordinating councils.—

(4) The council may also develop a comprehensive local reentry plan that is designed to assist offenders released from incarceration to successfully reenter the community. The plan should cover at least a 5-year period. In developing the plan, the council shall coordinate with public safety officials and local community organizations who can provide offenders with reentry services, such as assistance with housing, health care, education, substance abuse treatment, and employment.

Section 23. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7161 PCB CCJP 10-06 Conflict Counsel
SPONSOR(S): Criminal & Civil Justice Policy Council and Adams
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Criminal & Civil Justice Policy Council	14 Y, 0 N	Mato	Havlicak
1)	Criminal & Civil Justice Appropriations Committee		Darity	Davis
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The Office of Criminal Conflict and Civil Regional Counsel (OCCCRC) was created in 2007 to represent indigent defendants when the public defender is unable to provide representation due to a conflict of interest, and to represent indigent parents involved in civil dependency or termination of parental rights proceedings.

The bill makes it mandatory for the parents in child dependency cases to pay a $50 application fee for deposit in the Indigent Civil Defense Trust Fund.

The bill amends the statute relating to the compensation of appointed counsel to allow the OCCCRC to seek reasonable compensation for fees and costs at the end of a civil child dependency case.

The bill should have a positive fiscal impact on the Indigent Civil Defense Trust Fund due to making the existing $50 application fee mandatory, as well as allowing compensation for fees and costs, and increased collection efforts by the clerks.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background / Current Situation:

Chapter 2007-62, Laws of Florida created five Offices of Criminal Conflict and Civil Regional Counsel ("OCCCRC") with the primary responsibility of handling criminal conflict cases from the twenty Public Defender Offices. The five regional offices share the same geographic boundaries as the five District Courts of Appeal, and began operations on October 1, 2007.

Section 27.511(5), F.S. provides that when the Office of Public Defender, representing two or more defendants, determines that it has a conflict of interest and the court grants its motion to withdraw, such indigent defendant will then be assigned to the OCCCRC for representation. These appointments constitute the bulk of the OCCCRC's workload. However, part of the OCCCRC's workload also includes representing indigent parents in civil child dependent cases under chapter 39. In both civil and criminal cases, if the regional counsel withdraws from the case for any reason, then an attorney from the circuit's registry of available private counsel is appointed.

Section 57.082, F.S., created a process whereby an indigent person may acquire court-appointed counsel in certain civil cases under chapter 39.[1] The applicant must demonstrate an inability to pay based on information the applicant provides the clerk of court in a Supreme Court-approved form.[2] The process includes a $50 application fee to be paid by the applicant requesting indigent status in chapter 39 cases. The fee is to be paid upon filing the application with the clerk or within seven days after submitting the application.[3] The application fee under this statute is to be collected by the clerk and remitted monthly to the Department of Revenue for deposit into the Indigent Civil Defense Trust Fund. A person found to be indigent may not be refused counsel. While the $50 application fee is already in the statute, not all courts currently enforce it and not all indigent persons are paying the fee as required.

Section 39.0134, F.S., allows an appointed attorney in a dependency proceeding or a termination of parental rights proceeding under chapter 39 to receive compensation in accordance with s. 27.5304,

[1] Examples of a chapter 39 legal proceeding include: a dependency proceeding or a termination of parental rights proceeding.
[2] Section 57.082(1), F.S.
[3] Section 57.082(1)(d), F.S.

F.S. Additionally, the state may acquire and enforce a lien upon court-ordered payment of attorney's fees and costs pursuant to s. 984.08, F.S.[4]

Effect of the bill:

The bill amends s. 57.082, F.S., to clarify what qualifies as a chapter 39 proceeding in which case a party may qualify for court-appointed counsel. It adds "a proceeding, at shelter or during the adjudicatory process, during the judicial review process, upon the filing of a termination of parental rights petition, or upon the filing or any appeal, or if an appointed attorney is requested in a re-opened proceeding."

The bill makes it mandatory for the court to impose the existing $50 application fee and if the fee has not been paid within the seven days, requires the court to enter an order requiring payment and that the clerk shall collect pursuant to s. 28.246, F.S. Similarly, the bill amends s. 57.082(5), F.S., to require the court to order the application fee upon appointing counsel to the indigent party.

The bill amends s. 39.0134, F.S., to make a parent who qualifies and receives the services of OCCCRC or any other court-appointed attorney under a child dependency case, liable for payment of the assessed application fee under s. 57.082, F.S., along with reasonable attorney's fees and costs as determined by the court. If reasonable attorney's fees are assessed, payment of the fees or costs may be made part of any case plan in the dependency proceeding at the court's discretion. The bill provides that no case plan will remain open for the sole purpose of payment of attorney's fees. However, at the court's discretion, a lien upon court-ordered payment of attorney's fees and costs may be ordered in accordance with s. 938.29(2), F.S.

The bill also requires the clerk of court to transfer monthly all attorney's fees and costs collected under s. 39.0134, F.S. to the Department of Revenue for deposit in the Indigent Civil Defense Trust Fund.

B. SECTION DIRECTORY:

Section 1 – amends s. 57.082, F.S., relating to determination of civil indigent status.
Section 2 – amends s. 39.0134, F.S., relating to appointed counsel; compensation.
Section 3 – provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate. See Fiscal Comments.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

[4] Section 984.08, F.S., provides: "The court may appoint an attorney to represent a parent or legal guardian under this chapter only upon a finding that the parent or legal guardian is indigent pursuant to s. 57.082. If an attorney is appointed, the parent or legal guardian shall be enrolled in a payment plan pursuant to s. 28.246."

2. Expenditures:

   To the extent the clerks pursue and enforce collections, their offices could experience an insignificant increase in workload.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

   None.

D. FISCAL COMMENTS:

   Because the $50 fee has not been enforced in all courts and not all indigent persons are paying the fee, the collections have been extremely low. The Justice Administrative Commission reports that $2,900 was collected in the 2008-09 fiscal year and to date, $1,300 has been collected this current fiscal year.

   It is anticipated that the provisions of the bill that require the court to order and the clerk to collect the payment of the application fee along with reasonable attorney's fees and costs as determined by the court, will increase the revenue going into the Indigent Civil Defense Trust Fund. Based on the number of indigent defendants represented in the current year, and if all defendants paid the $50 mandatory fee, $250,000 would be collected and deposited into the Indigent Civil Defense Trust Fund.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure to funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 16, 2010, the Criminal & Civil Justice Policy Council adopted an amendment that allowed for collection of court-ordered payment of attorney's fees and costs in accordance with s. 938.29(2), F.S. instead of s. 984.08, F.S.

A bill to be entitled

An act relating to court-appointed counsel in civil cases; amending s. 57.082, F.S.; clarifying proceedings in which a party may qualify for court-appointed counsel; revising provisions relating to the payment of an application fee by a person eligible for court-appointed counsel; amending s. 39.0134, F.S.; revising a cross-reference relating to enforcement of liens for court-ordered payment of attorney's fees and costs; specifying circumstances under which a parent receiving assistance of appointed counsel shall be liable for payment of an application fee and attorney's fees and costs; providing for payment of such fees and costs; providing for deposit and disposition of fee proceeds; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (d) of subsection (1) and subsection (5) of section 57.082, Florida Statutes, are amended to read:

57.082 Determination of civil indigent status.—

(1) APPLICATION TO THE CLERK.—A person seeking appointment of an attorney in a civil case eligible for court-appointed counsel, or seeking relief from payment of filing fees and prepayment of costs under s. 57.081, based upon an inability to pay must apply to the clerk of the court for a determination of civil indigent status using an application form developed by the Florida Clerks of Court Operations Corporation with final approval by the Supreme Court.

(d) A person who seeks appointment of an attorney in a ~~case under~~ chapter 39 proceeding, at shelter or during the adjudicatory process, during the judicial review process, upon the filing of a termination of parental rights petition, or upon the filing of any appeal, or if an appointed attorney is requested in a reopened proceeding, ~~at the trial or appellate level,~~ for which an indigent person is eligible for court-appointed representation, shall pay a $50 application fee to the clerk for each application filed. The applicant shall pay the fee within 7 days after submitting the application. If the fee is not paid within 7 days, the court shall enter an order requiring payment and the clerk shall pursue collection under s. 28.246. The clerk shall transfer monthly all application fees collected under this paragraph to the Department of Revenue for deposit into the Indigent Civil Defense Trust Fund, to be used as appropriated by the Legislature. The clerk may retain 10 percent of application fees collected monthly for administrative costs prior to remitting the remainder to the Department of Revenue. A person found to be indigent may not be refused counsel. If the person cannot pay the application fee, the clerk shall enroll the person in a payment plan pursuant to s. 28.246.

(5) APPOINTMENT OF COUNSEL.—In appointing counsel after a determination that a person is indigent under this section, the court shall order that any applicable application fee be paid by each person requesting appointment of counsel and first appoint the office of criminal conflict and civil regional counsel, as provided in s. 27.511, unless specific provision is made in law for the appointment of the public defender in the particular

civil proceeding.

Section 2. Section 39.0134, Florida Statutes, is amended to read:

39.0134 Appointed counsel; compensation.—If counsel is entitled to receive compensation for representation pursuant to a court appointment in a dependency proceeding or a termination of parental rights proceeding pursuant to this chapter, compensation shall be paid in accordance with s. 27.5304. The state may acquire and enforce a lien upon court-ordered payment of attorney's fees and costs in accordance with s. 938.29(2) ~~984.08~~.

(1) A parent whose child is dependent, whether or not adjudication was withheld, or whose parental rights are terminated, and who has received the assistance of the office of criminal conflict and civil regional counsel or any other court-appointed counsel or has received due process services after being found indigent for costs under s. 57.082 shall be liable for payment of the assessed application fee under s. 57.082, together with reasonable attorney's fees and costs as determined by the court.

(2) If reasonable attorney's fees or costs are assessed, payment of the fees or costs may be made part of any case plan in dependency proceedings at the court's discretion; however, no case plan may remain open for the sole issue of payment of attorney's fees or costs. At the court's discretion, a lien upon court-ordered payment of attorney's fees and costs may be ordered by the court in accordance with s. 938.29(2).

(3) The clerk of the court shall transfer all attorney's

fees and costs collected under this section monthly to the Department of Revenue for deposit in the Indigent Civil Defense Trust Fund, subject to legislative appropriations and consistent with s. 27.5111.

Section 3. This act shall take effect July 1, 2010.

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Criminal & Civil Justice Appropriations Committee
Representative(s) Adams offered the following:

Amendment (with title amendment)

Between lines 17 and 18, insert:

Section 1. Paragraph (b) of subsection (2) of section 938.29, Florida Statutes, is amended to read:

938.29 Legal assistance; lien for payment of attorney's fees or costs.—

(2)

(b) A judgment showing the name and residence of the defendant-recipient or parent shall be recorded in the public record, without cost, by the clerk of the circuit court in the county where the defendant-recipient or parent resides and in each county in which such defendant-recipient or parent then owns or later acquires any property. Such judgments shall be enforced on behalf of the state by the clerk of the circuit court of the county in which assistance was rendered. The lien

Amendment No. 1

against a parent shall remain in force notwithstanding the child becoming emancipated or the child reaching the age of majority.

T I T L E A M E N D M E N T

Remove line 2 and insert:

An act relating to court-appointed counsel; amending s. 938.29, F.S.; specifying that a lien for the cost of court-appointed counsel against a parent for services provided to a child does not expire upon the emancipation of the child or upon the child reaching the age of majority;