



**PUBLIC SAFETY
&
DOMESTIC SECURITY
POLICY COMMITTEE**

**MONDAY, MARCH 22, 2010
3:15 P.M. – 5:00 P.M.
404 HOB**

MEETING PACKET

Larry Cretul
Speaker

Kevin C. Ambler
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Public Safety & Domestic Security Policy Committee

Start Date and Time: Monday, March 22, 2010 03:15 pm

End Date and Time: Monday, March 22, 2010 05:00 pm

Location: 404 HOB

Duration: 1.75 hrs

Consideration of the following bill(s):

CS/HB 301 Locksmith Services by Agriculture & Natural Resources Policy Committee, Anderson

CS/HB 485 Pub. Rec./Public Defenders/Regional Counsel by Governmental Affairs Policy Committee, Drake

HB 787 Child Abduction Prevention by Rouson

HB 1029 Motor Vehicle Crashes by Troutman

CS/HB 1189 Mental Health And Substance Abuse Treatment by Health Care Services Policy Committee, Snyder

HB 1301 Violations of County Ordinances by Rader

HB 1335 Offense of Sexting by Abruzzo

HB 1359 Detention by Licensed Security Officers by Murzin

HB 1455 Misrepresentation of Military Status by Sachs

HB 1493 Career Offenders by Cruz

HB 1587 Inmate Reentry by Bogdanoff

NOTICE FINALIZED on 03/18/2010 16:15 by Thompson.Sonja



The Florida House of Representatives

Criminal & Civil Justice Policy Council

Committee on Public Safety & Domestic Security Policy

Larry Cretul
Speaker

Kevin C. Ambler
Chair

AGENDA

Monday, March 22, 2010
3:15 P.M. – 5:00 PM
(404 HOB)

- I. Opening remarks by Chair Ambler**
- II. Roll call by CAA**

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- CS/HB 1189 Mental Health And Substance Abuse Treatment by Health Care Services Policy Committee, Snyder
- HB 1301 Violations of County Ordinances by Rader
- HB 1335 Offense of Sexting by Abruzzo
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- HB 1493 Career Offenders by Cruz
- HB 1587 Inmate Reentry by Bogdano

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 301 Locksmith Services
SPONSOR(S): Agriculture and Natural Resources Policy Committee, Anderson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 658

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Agriculture & Natural Resources Policy Committee	11 Y, 1 N, As CS	Thompson	Reese
2)	Public Safety & Domestic Security Policy Committee		Billmeier <i>LMB</i>	Cunningham <i>JM</i>
3)	Full Appropriations Council on Education & Economic Development			
4)	General Government Policy Council			
5)				

SUMMARY ANALYSIS

HB 301 creates Part XII, Locksmith Services, within Ch. 559, F.S., and provides the popular name, the "Florida Locksmith Services Act." The bill provides for statewide regulation of the locksmith services industry, and requires locksmith services businesses and locksmith referral services to be licensed by the Department of Agriculture and Consumer Services (DACS) and be responsible for maintaining proper records, training, and supervision of employees. The bill requires licensing to be biennial and for businesses to maintain a minimum of \$100,000 in liability insurance, among other requirements.

Under the bill, applicants for a license are required to identify each employee providing locksmith services as well as each officer, director, owner and partner and submit fingerprints from these individuals to the DACS to forward to the Florida Department of Law Enforcement and the Federal Bureau of Investigation for a background check. A copy of the background check must be retained in the individual's personnel file. Other provisions include basic training requirements for employees in areas such as industry ethics and the Americans with Disabilities Act, as well as compliance with advertising requirements.

Further, the bill provides for criminal, administrative, and civil penalties. The bill creates several criminal violations and provides for private rights of action in civil cases.

The bill is projected by the DACS to be self-funding with initial funds being drawn from the DACS General Inspection Trust Fund. The bill caps licensure fees at \$800 for businesses employing one to five locksmiths and \$1600 for those employing six or more. In its fiscal analysis, the DACS estimates initial fees of \$600 (\$300 per year) will be necessary to cover the costs of implementing the bill.

The bill has an effective date of 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

At present, there is no statewide regulation of the locksmith services industry. Miami-Dade County is the only county presently regulating locksmiths.¹

According to the Associated Locksmiths of America, “[a] professional trained locksmith/security professional may do some or all of the following: install locks, deadbolts and other mechanical or electronic locking devices to safeguard homes, businesses, vehicles and other property. Locksmiths also may modify or repair such devices, rekey locks, make duplicate keys or cards, generate or program new keys/cards for locks whose keys/cards have been lost and respond to emergency calls to unlock vehicles, homes and businesses that have been locked accidentally, or whose locks have malfunctioned. Some locksmiths install and service electronic alarm and surveillance systems. Many locksmiths specify, design, provide, install and service a wide range of electronic access control systems and closed circuit television (CCTV) systems. Because of the integration of electronic security systems with computers and networks, some locksmiths maintain security hardware and software for computer systems.”

Proposed Changes

The bill creates Part XII “Locksmith Services” within Chapter 559, F.S., and provides the popular name, the “Florida Locksmith Services Act.” The bill creates a statewide regulatory scheme for the locksmith industry and requires licensing of locksmith service providers by the Department of Agriculture and Consumer Services (DACS). The bill prohibits a person from performing locksmith services for compensation unless the person obtains a license from the DACS. The bill does not license individual locksmiths; only locksmith businesses and locksmith referral services will be licensed.

The bill preempts all local regulation of the locksmith industry beginning July 1, 2011. The bill provides certain exceptions to the licensing requirement (e.g. emergency personnel, sales representatives, hardware stores, landlords, building trades personnel, wrecker operators, and automobile clubs).

APPLICATION REQUIREMENTS

¹ Ch. 8A, Article XVII, Miami-Dade County 'Locksmith Ordinance'
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DATE: 3/18/2010

The bill directs the DACS to collect contact information for all applicants including the business' physical address, the names of employee locksmiths, the applicant's Florida agent for service of process, and other contact information. Also, the bill defines information collection and background check requirements for the business' owner (e.g. officers and directors of a corporation; general partners for a partnership).

The bill requires the applicant to submit information regarding all locksmith employees. This required information includes affidavits regarding the employee's criminal record, as well as fingerprints. The Florida Department of Law Enforcement (FDLE) is directed to process the fingerprints for a background check by the FDLE as well as the Federal Bureau of Investigation. All required information must be submitted to the DACS within ten days of the hiring of a new locksmith employee. The FDLE is required to submit a monthly invoice to the DACS for fingerprint processing and criminal records checks, and the DACS is to pay the invoice from the fees collected. The FDLE is required to retain the fingerprints in the statewide automated fingerprint identification system pursuant to s. 943.051, F.S.

The bill provides that a license must be issued for each locksmith services business or locksmith referral service and that such licenses are non-transferrable and non-assignable.

The bill permits the DACS to deny a license to any locksmith services business if the applicant or any of its directors, partners, or others have:

- Failed to meet the requirements set forth in the bill;
- Failed to comply with civil or administrative penalties (including fines);
- Received any civil, criminal, or administrative adjudication in any jurisdiction;
- Pending criminal, administrative, or enforcement proceedings in any jurisdiction; or
- Had a judgment entered against them pursuant to the Florida Deceptive and Unfair Trade Practices Act.

The bill provides that if a person who was disqualified under the fingerprinting and background screening provisions can demonstrate to the DACS by clear and convincing evidence that he or she should not be disqualified, the DACS is authorized to grant an exemption for:

- Any felony committed more than 3 years before the date of disqualification;
- Any misdemeanor; or
- Any misdemeanor or noncriminal offense that was a felony when it was committed.

The bill provides for reciprocity with other states, provided that such state's licensure programs collect the same information required by this legislation.

FEES

The bill caps licensure fees at \$800 for businesses employing one to five locksmiths and \$1600 for those employing six or more. The renewal cost for licensure is the same and requires a verification of no changes in criminal background checks. The bill requires the license to be renewed biennially. The renewal application requires submission of the proof of insurance, verification of no changes in criminal history, the annual license fees, and criminal history background checks for all new employees. The DACS is permitted to stagger initial registrations to ensure a similar amount in each year and set fees at a lower rate.

EMPLOYEE RECORDS AND BACKGROUND CHECKS

The bill prohibits the employment of locksmith employees convicted of a felony within the past ten years or convicted of a crime involving fraud or dishonesty (e.g. trespass, theft, larceny, dealing in stolen goods, embezzlement) within the past ten years. This bill requires the FDLE to furnish the DACS any arrest and conviction records in its possession for any individual applying for or holding a locksmith service business license. If the DACS does not receive the required criminal background information before the expiration of time permitted by Chapter 120, F.S., to issue a determination on

the license application, the time period may be extended until the DACS receives the required information.

Employees are required to complete training in courses in "industry ethics," the Americans with Disabilities Act, the Florida Fire Prevention Code, and the Life Safety Code. Every two years, a locksmith must complete at least sixteen hours of training, and an automotive-only locksmith must complete at least eight hours of industry-related training including, but not limited to, training in industry ethics. The bill further requires employers to maintain a photograph, a background check, and certificate of completion of the required ethics and training courses for each locksmith employee and issue photo identification cards to each employee. The photo identification card is required to list the employee's name, the business' name, the locksmith license number, and contain the word "locksmith." Employees are required to carry the card on their person at all times when performing locksmith services. Additionally, the card shall specify whether the employee is a Locksmith, Automotive-Only Locksmith, or Apprentice Locksmith.

INSURANCE REQUIREMENT

The bill requires each locksmith services business to obtain and maintain insurance coverage and to provide proof of insurance as part of the licensing process. The bill requires liability insurance with coverage of at least \$100,000 per incident for loss or damages resulting from the negligence of the locksmith business or employees. The DACS is authorized to suspend the business' license for failure to maintain the required insurance. The insurance policy must be issued by an insurance company or carrier licensed to transact business in this state pursuant to the Florida Insurance Code.

DISPLAY OF LICENSE

The bill requires a locksmith services business to display a copy of the license issued by the DACS at the place of business in a manner easily readable by the general public. In the alternative, for mobile locksmith services, a copy of the license must be maintained in each service vehicle for presentation to any person of the general public, any law enforcement officer, or any state or local official upon request. The bill requires all advertisements, service vehicles, and forms to include the license number and the name of the business.

Further, any person applying for a local business tax receipt to engage in business as a locksmith services business must exhibit a valid license certificate from the DACS before the tax receipt may be issued or renewed.

CUSTOMER'S RIGHTS

The bill requires locksmiths to accept at least two out of three of the following categories of payment:

- Cash, cashier's check, money order, or traveler's check;
- Valid personal check with appropriate identifiable information; or
- Valid credit card, which shall include, but not be limited to Visa or MasterCard.

Additionally, the bill requires that the locksmith services business must clearly and conspicuously disclose in the work order, invoice, or sales receipt, the forms of payment that the locksmith will accept. Additionally, a copy of each work order, invoice, or sales receipt must be retained for two years and must include the name of the person performing the service.

The bill prohibits and makes unlawful any requirement that a person waive his or her rights provided in this bill as a precondition to the performance of the locksmith services.

ADVISORY COUNCIL

The bill creates an advisory council consisting of nine members and appointed by the Commissioner of Agriculture. The bill specifies that five members must be individuals employed by separate, licensed locksmith services businesses who do not provide automotive-only locksmith services; two members

must be employed by separate, licensed locksmith services businesses that provide automotive-only locksmith services; one member must be an electrical contractor certified under Chapter 489, F.S.; and one member must be a consumer who is not connected with the locksmith industry.

VIOLETIONS

The bill declares that any violation of the provisions of this legislation constitutes a deceptive and unfair trade practice under Part II of Chapter 501, F.S., the Florida Deceptive and Unfair Trade Practices Act and administrative rules adopted pursuant to that act.

The bill directs any moneys recovered by the DACS as a penalty for violations to be deposited in the DACS General Inspection Trust Fund.

The bill prohibits the following acts and provides that a person found guilty of such acts is guilty of a first-degree misdemeanor²:

- Performing or offering to perform locksmith services without having or acting under a valid DACS license.
- Advertising or representing himself or herself as a locksmith services business without having a valid DACS license.
- Operating a locksmith referral service without having a valid DACS license.
- Fraudulently misusing any consumer's credit card.
- Failing or refusing, after notice, to provide any law enforcement officer or the DACS with any document or record or disclose any information required to be produced or disclosed.
- Employing or contracting with any person disqualified under s. 559.946, F.S., to perform locksmith services on behalf of the licensee.
- Submitting to the DACS the fingerprints of a person other than the person for whom fingerprints must be submitted pursuant to s. 559.946 or failing to submit replacement fingerprints for a locksmith or apprentice locksmith whose original fingerprint submissions are returned to the DACS as unclassifiable by the screening agency.
- Using a mailing address, registration facility, drop box, or answering service in the promotion, advertisement, solicitation, or sale of locksmith services, unless the street address of the licensed business location is clearly disclosed during any telephone solicitation and is prominently and conspicuously disclosed in all advertisements and on the work orders, invoices, and sales receipts.
- Operating as a locksmith services business at a business location other than the location that appears on the license issued by the DACS.
- Making a false statement in response to a request or investigation by the DACS, the Department of Legal Affairs, a law enforcement officer, or a state attorney.
- Making a material false statement in an application, document, or record required to be submitted or kept under this part.
- Committing any other act of fraud or misrepresentation or failing to disclose a material fact.
- Disclosing or permitting the disclosure of any consumer information without the consumer's written approval, except as authorized by this part.
- Defacing or removing a sign indicating the closure of the business by the DACS without written authorization.

ADMINISTRATIVE PENALTIES

The bill requires the DACS to process consumer complaints as defined by current law.³ The bill requires a locksmith services business to allow DACS personnel to enter its place of business to ascertain whether the license certificate is current. If the business refuses entry, the DACS is authorized to seek injunctive relief in circuit court to compel compliance.

² ss. 775.082, 775.083, F.S.

³ Sections 570.07 and 570.544, F.S.

If the DACS finds that a business is in violation of the provisions of this bill or rules adopted pursuant to this legislation, the DACS may:

- Issue a notice of noncompliance under s. 120.695, F.S.;
- Impose an administrative fine not to exceed \$10,000 for each act or omission;
- Direct that the locksmith services business cease and desist specified activities;
- Refuse to issue a license or revoke or suspend a license;
- Place the license on probation for a period of time, subject to the conditions specified by the DACS.

The bill provides that administrative proceedings, which could result in the entry of an order imposing any of the penalties expressed in the bill, are governed by Chapter 120 F.S. The DACS is permitted to assess the sanctioned party for the cost of conducting administrative proceedings when issuing a final order imposing an administrative fine or suspending, revoking, or denying initial issuance or renewal of a license.

The bill also requires the DACS to post a prominent "Closed by Order of the Department" sign on any locksmith services business that has had its license suspended or revoked. The DACS must also post the sign if the business has been judicially or administratively determined to be operating without a license.

CIVIL PENALTIES & REMEDIES

The bill permits a customer injured by a violation of this bill to bring an action in the appropriate court for relief. Additionally, the prevailing party may collect damages as well as court costs and reasonable attorney's fees. A customer may also bring an action for injunctive relief in circuit court.

Further, the DACS is authorized to institute a civil action to recover any penalties or damages authorized by this bill and for injunctive relief to compel compliance with the provisions of this legislation. The DACS is permitted to seek a civil penalty of up to \$10,000 for each violation. Additionally, the DACS may seek restitution for and on behalf of any customer injured by a violation.

The bill provides that any agreement that purports to waive, limit, restrict, or avoid any of the duties, obligations, or prescriptions of the locksmith services business, as provided by this bill, is void.

B. SECTION DIRECTORY:

Section 1. Creates Part XII, the "Florida Locksmith Services Act" within Chapter 559, F.S.

Section 2. Provides that the bill shall take effect on July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: General Inspection Trust Fund (GITF)	<u>FY 10-11</u>	<u>FY 11-12</u>	<u>FY 12-13</u>
A. Recurring (2,400 Registrants estimated)	\$1,080,000	\$720,000	\$720,000
<u>1st Year</u>			
1,200 Registrants @ \$600 biennial(*)			
1,200 Registrants @ \$300 annual(*)			
<u>Subsequent Years</u>			
1,200 Registrants @ \$600 biennial			
 2,400 Initial Fingerprint Background Checks	 \$108,600	 \$5,430	 \$5,430
@ \$45.25 (5% of 2,400 or 120 estimated in later yrs)			
 B. Non-Recurring	 \$0	 \$0	 \$0

TOTAL REVENUE \$1,188,600 \$725,430 \$725,430

(*) \$600 is an estimate of the amount needed to cover the costs to implement this bill (\$300 per year for two years, per business), based on the estimated number of locksmith businesses statewide.

(*) Fees will be set by rule and are based upon estimated costs to the DACS. In an effort to keep fees at the lowest level possible and reduce the workload during the first year, 50% of registrants will register for one year and 50% will register for two years. The second year the 50% that registered for one year will then register for two years. This will effectively stagger biennial revenues so that annualized expenses will be covered.

2. Expenditures:	<u>FY 10-11</u>	<u>FY 11-12</u>	<u>FY 12-13</u>
A. Recurring (GITF)			
a. Salaries (9 Positions)			
4- 0442 Regulatory Consultant – pay grade 20	218,324	222,690	227,144
4- 8318 Investigation Specialist II – pay grade 20	218,324	222,690	227,144
1- 0108 Administrative Secretary – pay grade 12	<u>41,257</u>	<u>42,082</u>	<u>42,924</u>
TOTAL SALARIES	477,905	487,462	497,212
b. Expenses			
8- Professional Expense Package (Professional)	52,064	52,064	52,064
1- Professional Expense Package (Support Staff)	5,124	5,124	5,124
Operating cost of (4) Motor Vehicles	12,000	12,000	12,000
Travel – Council Meetings	<u>10,000</u>	<u>10,000</u>	<u>10,000</u>
TOTAL EXPENSES	79,188	79,188	79,188
c. Special Categories			
FDLE Fingerprint (5% of 2,400) 120 @ \$45.25 (5% of initial registrants estimated in subsequent years)	5,430	5,430	5,430
9- Human Resources Allocation	<u>3,591</u>	<u>3,591</u>	<u>3,591</u>
TOTAL SPECIAL CATEGORIES	9,021	9,021	9,021
c. AGMIC Budget Entity			
(GITF-Contracted Services category) 9 PCs Maintenance	1,080	1,080	1,080
9-Additional Siemens System Maintenance	1,755	1,755	1,755
9-Additional Computer System Maintenance	<u>3,038</u>	<u>3,038</u>	<u>3,038</u>
TOTAL AGMIC COSTS	5,873	5,873	5,873
TOTAL RECURRING COSTS	571,987	581,544	591,294
B. Non-Recurring (GITF)			
a. Expenses (GITF)			
8-Professional Packages @ 3,877	31,016		
1-Professional Package @ 3,579	3,579		

b. Special Categories (GITF)			
Acquisition of (4) Motor Vehicles @ 21,625	86,500		
Background Checks (initial background checks) (95% of 2,400) 2,280 @ \$45.25	103,170		
Contracted Services – 1000 hours @ \$85.00 (Programming for online use of “E-Commerce for license renewals and other features)	85,000		
Siemens – Reprogramming & additional card in Telephone system	9,000		
		<u>FY 10-11</u>	<u>FY 11-12</u>
AGMIC Budget Entity– software application & DOCS Integration (GITF-Contracted Services category)	<u>10,000</u>		<u>FY 12-13</u>
TOTAL NON-RECURRING	328,265		
C. Non-Operating Costs (GITF)			
Administrative/Indirect costs (13%)	62,128	63,370	64,638
General Revenue Service Charge (8%)	<u>95,088</u>	<u>58,034</u>	<u>58,034</u>
TOTAL NON-OPERATING COSTS	157,216	121,404	122,672
GRAND TOTAL OF COSTS (GITF)	\$1,057,468	\$702,948	\$713,966

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

According to the DACS, the fiscal impact on local governments should be slight, depending on whether there was previous local regulation of locksmiths.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Act creates a new regulatory structure for an existing industry. According to DACS, impacts on the private sector are unknown other than the increase in costs represented by the new licensing fee and costs of fingerprinting and criminal background checks.

D. FISCAL COMMENTS:

DACS estimates that 2,400 businesses will be subject to licensing based on answers provided by the Associated Locksmiths of America (ALOA) on the Sunrise Questionnaire.⁴

DACS indicates the need for nine new employees to implement the provisions of this bill and an intention to stagger the hiring of these employees. Some first year savings might be realized if the DACS staggered the hiring of the new employees as needed.

⁴ Sunrise Questionnaire For Groups Seeking New Regulation. On file with the Insurance, Business, and Financial Affairs Policy Committee.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require 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 rulemaking authority to the DACS. It requires the DACS to adopt rules relating to the following requirements for licensing locksmith services businesses:

- Requirements and processes for background checks and fingerprint checks for locksmith employees,
- Establishment of forms to implement the bill,
- Establishment of necessary fees based upon the costs to administer the bill,
- Development of a schedule to maintain an updated fee for the FBI background checks,
- Development of methods to obtain and renew photographs for photo identification of locksmiths,
- Adoption of rules relating to the use and display of licenses and license numbers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Application Requirements

The bill provides that a license must be issued for each locksmith services business or locksmith referral service and that such licenses are non-transferrable and non-assignable. As read, the plain language of this section is unclear and could be misinterpreted as requiring a license to be issued to each individual location of the same business, as the definition of "locksmith services business" in the bill is defined as "any person, who, for compensation, provides [...] locksmith services [...] or who operates a locksmith services business or referral service in this state."

Preemption

This bill will preempt local regulation of locksmith services on July 1, 2011. This bill takes effect on July 1, 2010. Thus, locksmiths will be required to comply with both state and local regulation for a period of one year.

Violations

There are a number of potential issues with the violations that carry criminal penalties in this bill. In general, many of the bill's violation provisions are duplicative of present law, provide for a penalty less severe than currently provided by law, or may be broader than intended.

The bill provides a list of violations, s. 559.954, F.S., and specific criminal penalties for those violations, s. 559.958, F.S.

(1)(a) Perform or offer to perform locksmith services without having or acting under a valid license issued by the department under this part.

This provision could be interpreted such that a person who offers, as a good deed, to help open a car door could be charged with a violation of this part.

(2)(a) Fraudulently misuse any customer's credit card.

Fraudulent misuse of a customer's credit card is already covered under current law.⁵ Under the provisions of this bill, fraudulent misuse of a customer's credit card is a first-degree misdemeanor. Under current law, fraudulent misuse is a first-degree misdemeanor only if the fraudulently charged amount is less than \$300 in a six month period. If the amount is more than \$300 or certain other conditions are met, fraudulent misuse of a customer's credit card is a third-degree felony.⁶ Thus, this bill may lessen the penalty currently provided by law in some instances.

(2)(c) Fail or refuse, after notice, to provide any law enforcement officer or the department with any document or record or disclose any information required to be produced or disclosed.

This provision may be overbroad. In general, "a statute is overbroad [...] when the legislature sets a net large enough to catch all possible offenders and leaves it to the courts to step inside and determine who is being lawfully detained and who should be set free."⁷

At present, this provision can be read to require a person to disclose anything that a law enforcement officer or the department chooses to require to be disclosed (whether relevant to this act or not). It would be more clear and effective if the phrase "by this part" was inserted at the end of the sentence.

Training Requirements

The bill requires locksmiths and locksmith apprentices to complete training requirements but does not detail what types of training will comply with the requirements.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 3, 2010, the Agriculture and Natural Resources Policy Committee adopted one amendment to the bill. The amendment removes the language prohibiting people from owning or possessing certain locksmith tools.

⁵ s. 817.62, F.S.

⁶ s. 817.67, F.S.

⁷ 73 Am. Jur. 2d Statutes § 243.

CS/HB 301

2010

1 A bill to be entitled

2 An act relating to locksmith services; creating part XII
3 of ch. 559, F.S.; providing a short title; providing
4 findings and purpose; providing definitions; providing
5 exemptions from the application of the part; requiring the
6 licensure of locksmith services businesses and locksmith
7 referral services by the Department of Agriculture and
8 Consumer Services; specifying licensure and application
9 requirements; requiring license fees; authorizing the
10 waiver or reduction of fees under certain circumstances;
11 providing for expiration of licenses; requiring
12 fingerprinting and background screening for criminal
13 records checks of the owner and certain other persons
14 affiliated with a locksmith services business; specifying
15 background screening requirements; disqualifying certain
16 persons from performing locksmith services based upon
17 background screening; requiring the Department of Law
18 Enforcement to retain the fingerprints and search arrest
19 records against the fingerprints; requiring fees for
20 background screening; requiring the Department of Law
21 Enforcement to provide certain records to the Department
22 of Agriculture and Consumer Services upon request;
23 authorizing licensure by endorsement under certain
24 circumstances; providing license renewal requirements and
25 procedures; providing for the denial, suspension,
26 revocation, or refusal to renew a license under certain
27 circumstances; requiring a locksmith services business to
28 maintain liability insurance; prohibiting the performance

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

hb0301-01-c1

29 of locksmith services except by certain persons;
 30 authorizing locksmiths, automotive-only locksmiths, and
 31 apprentice locksmiths to perform locksmith services under
 32 certain circumstances; establishing qualifications and
 33 training requirements for locksmiths, automotive-only
 34 locksmiths, and apprentice locksmiths; requiring locksmith
 35 services businesses to keep certain records and issue
 36 photo identification cards to locksmiths, automotive-only
 37 locksmiths, and locksmith apprentices; requiring display
 38 of photo identification cards and licenses; requiring a
 39 locksmith services business to display its license,
 40 license number, and other information in all advertising;
 41 requiring a locksmith services business to accept certain
 42 methods of payment and keep certain business records;
 43 authorizing the review of records by the department;
 44 specifying certain prohibited acts relating to the
 45 operation of a locksmith services business; providing
 46 civil penalties and remedies; providing administrative
 47 remedies and penalties; providing that a violation of the
 48 act is a deceptive and unfair trade practice; providing
 49 criminal penalties; requiring the department to adopt
 50 rules; providing for the deposit and use of certain funds;
 51 preempting to the state the regulation of locksmith
 52 services, locksmiths, and locksmith services businesses;
 53 prohibiting the issuance or renewal of local business tax
 54 receipts to locksmith services businesses except under
 55 certain circumstances; creating the Florida Locksmith
 56 Services Advisory Council within the department; providing

57 membership and terms; providing operating procedures and
 58 duties; requiring the department to provide administrative
 59 and staff support; providing an effective date.

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

62
 63 Section 1. Part XII of chapter 559, Florida Statutes,
 64 consisting of sections 559.941, 559.942, 559.943, 559.944,
 65 559.945, 559.946, 559.947, 559.948, 559.949, 559.95, 559.951,
 66 559.952, 559.953, 559.954, 559.955, 559.956, 559.957, 559.958,
 67 559.959, 559.96, and 559.961, is created to read:

68 PART XII

69 LOCKSMITH SERVICES

70 559.941 Short title.—This part may be cited as the
 71 "Florida Locksmith Services Act."

72 559.942 Findings and purpose.—The Legislature finds that:

73 (1) Locksmiths operate in the public trust to service,
 74 secure, and protect persons and property.

75 (2) Locksmiths must be trained in regulations and laws
 76 applicable to their profession, including, but not limited to,
 77 the federal Americans with Disabilities Act, the Florida
 78 Building Code, the Florida Fire Prevention Code, and the Life
 79 Safety Code, and must be trained in the proper installation and
 80 maintenance of security devices, motor vehicle locks, keys, and
 81 built-in security systems.

82 (3) The purpose of this part is to provide for the
 83 licensing and regulation of locksmith services businesses in
 84 this state which are necessary to protect the public from the

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85 misuse of locksmithing knowledge, supplies, manuals, and
 86 equipment that threaten public safety and security.

87 559.943 Definitions.—As used in this part, the term:

88 (1) "Advertise" means to advise, announce, give notice of,
 89 publish, or call attention to by use of oral, written, or
 90 graphic statement made in a newspaper or other publication or on
 91 radio or television; made in any other electronic medium;
 92 contained in any notice, handbill, sign, including signage on
 93 any vehicle, flyer, catalog, or letter; or printed on or
 94 contained in any tag or label attached to or accompanying any
 95 good.

96 (2) "Apprentice locksmith" means a natural person who
 97 performs locksmith services on behalf of a locksmith services
 98 business under the direct and continuous supervision of a
 99 locksmith.

100 (3) "Automotive-only locksmith" means a locksmith who
 101 performs only those locksmith services relating to motor
 102 vehicles as described in paragraphs (11)(e)-(g) on behalf of a
 103 locksmith services business.

104 (4) "Business location" means a physical location where a
 105 licensee operates a locksmith services business or, if the
 106 licensee is a mobile locksmith services business, the physical
 107 location where the licensee's records are kept.

108 (5) "Department" means the Department of Agriculture and
 109 Consumer Services.

110 (6) "Key duplication machine" means a device capable of
 111 copying or reproducing keys.

112 (7) "Licensee" means a locksmith services business

113 | licensed under this part.

114 | (8) "Lock" means a mechanical, electromechanical,
 115 | electronic, or electromagnetic device or system, including, but
 116 | not limited to, any peripheral hardware such as, a closed-
 117 | circuit television system, wireless or infrared transmitter,
 118 | card reader, keypad, or biometric scanner, that is designed to
 119 | control access to and egress from a door, gate, safe, vault,
 120 | safe-deposit box, motor vehicle, or other enclosure or that is
 121 | designed to control the use of such an enclosure.

122 | (9) "Locksmith" means a natural person who performs any
 123 | locksmith services on behalf of a locksmith services business.
 124 | The term includes an automotive-only locksmith but does not
 125 | include a person whose activities are limited to making
 126 | duplicate keys.

127 | (10) "Locksmith referral service" means the advertisement
 128 | of locksmith services in this state by a person who does not
 129 | perform the locksmith services but who subcontracts with, or
 130 | refers the customer to, another locksmith services business for
 131 | the performance of the locksmith services.

132 | (11) "Locksmith services" means:

133 | (a) Selling, installing, servicing, repairing, repinning,
 134 | recombinating, and adjusting locks, safes, vaults, or safe-
 135 | deposit boxes.

136 | (b) Originating, duplicating, and copying keys.

137 | (c) Opening, bypassing, and neutralizing locks, safes,
 138 | vaults, or safe-deposit boxes.

139 | (d) Creating, documenting, selling, installing, managing,
 140 | and servicing master key systems.

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141 (e) Unlocking, bypassing, or neutralizing motor vehicle
 142 locks by means other than intended by the manufacturer.

143 (f) Originating keys for motor vehicles that includes, if
 144 necessary, the programming, reprogramming, or bypassing of any
 145 security, transponder, or immobilizer systems or subsequent
 146 technology built in by the manufacturer.

147 (g) Keying, rekeying, or recombining motor vehicle
 148 locks.

149
 150 The term does not include contracting as defined in s. 489.505
 151 for which a registration or certification is required under part
 152 II of chapter 489.

153 (12) "Locksmith services business" means a person who
 154 performs or offers to perform locksmith services for
 155 compensation, advertises or represents himself or herself as a
 156 locksmith services business, or operates a locksmith referral
 157 service in this state.

158 (13) "Master key system" means a system of locks in which
 159 a lock is keyed so that it can be operated by its own individual
 160 key as well as by a key that operates other locks in the system
 161 that are also keyed to their own individual keys.

162 (14) "Mobile locksmith services business" means a
 163 locksmith services business that operates exclusively from one
 164 or more vehicles and not from a specific physical location.

165 (15) "Motor vehicle" has the same meaning as in s.
 166 559.903(5).

167 559.944 Application of part; exemptions.—This part does
 168 not apply to:

169 (1) A law enforcement officer, firefighter or voluntary
 170 firefighter, emergency medical technician or paramedic, or other
 171 government employee or agent who, in his or her official line of
 172 duty, performs locksmith services in an emergency situation in
 173 which the life of a person, livestock, or an animal generally
 174 regarded as a pet is endangered.

175 (2) A sales representative who provides a bona fide sales
 176 demonstration of products to locksmiths.

177 (3) An in-store employee of a hardware store, do-it-
 178 yourself home products store, or other retail store who rekeys
 179 locks being purchased in the store.

180 (4) An electrical or alarm system contractor registered or
 181 certified under chapter 489 who is acting within the scope of
 182 his or her practice.

183 (5) A person who lawfully acquires and uses a key
 184 duplication machine or key blanks to duplicate keys.

185 (6) A property owner or agent of a property owner who
 186 maintains a file of key cutting data for a master key system on
 187 the property.

188 (7) An employee of a financial institution as defined in
 189 s. 655.005 who provides safe, safe-deposit box, or vault
 190 services at the financial institution.

191 (8) A motor vehicle dealer as defined in s. 320.27, a
 192 motor vehicle repair shop as defined in s. 559.903, or a lock
 193 manufacturer or agent of a lock manufacturer who services,
 194 installs, repairs, or rebuilds motor vehicle locks or originates
 195 and duplicates motor vehicle keys.

196 (9) Building trades personnel who:

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197 (a) Install locks or locking devices on a construction
 198 project that requires a building permit; or

199 (b) Install locks or locking devices for home repair or
 200 improvement, if the locks are designed for installation by the
 201 customer and such home repair or improvement is part of a larger
 202 repair or replacement project.

203 (10) A wrecker operator as defined in s. 1.01(15) who
 204 possesses or uses the car-opening tools which are necessary to
 205 unlock vehicles, if the wrecker operator does not advertise
 206 locksmith services or otherwise advertise himself or herself as
 207 a locksmith.

208 (11) An automobile club as defined in s. 627.8405(1) when
 209 towing a motor vehicle for a club member or assisting a club
 210 member to enter a locked motor vehicle.

211 (12) A hardware store, do-it-yourself home product store,
 212 or other retail store that sells locks and safes which are
 213 designed for use and installation by the customer without
 214 professional assistance.

215 559.945 Locksmith services business; licensure.-

216 (1) A person may not perform or offer to perform locksmith
 217 services for compensation, advertise or represent himself or
 218 herself as a locksmith services business, or operate a locksmith
 219 referral service in this state unless the person is licensed
 220 under this part. However, a locksmith or apprentice locksmith
 221 performing locksmith services on behalf of a licensee is not
 222 required to obtain a separate license. An application for
 223 licensure must be submitted to the department in the format
 224 prescribed by the department and must include, at a minimum, the

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225 following:

226 (a) The full legal name and mailing address of the
 227 applicant.

228 (b) Each name under which the applicant does business in
 229 this state and, if the applicant is doing business under a
 230 fictitious name, the date on which the applicant registered the
 231 fictitious name with the Department of State.

232 (c) The mailing address, street address, and telephone
 233 number of the applicant's principal business location and, if
 234 the applicant performs locksmith services or operates a
 235 locksmith referral service at more than one business location,
 236 the mailing address, street address, and telephone number of
 237 each additional business location.

238 (d) If the applicant is not a natural person, a statement
 239 of:

240 1. The applicant's type of business entity, such as a
 241 corporation, partnership, or other limited liability
 242 corporation.

243 2. The applicant's federal employer identification number.

244 3. Whether the applicant is a foreign or domestic business
 245 entity, the state and date of incorporation, the charter number,
 246 and the date that the applicant first registered with the
 247 Department of State to do business in the state.

248 (e) Each corporate, fictitious, or other business or trade
 249 name under which any owner of the locksmith services business
 250 operated, was known, or did business as a locksmith services
 251 business within 5 years before the date of the application.

252 (f) The full name, address, and telephone number of:

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253 1. Each locksmith, automotive-only locksmith, and
 254 apprentice locksmith who performs locksmith services on behalf
 255 of the applicant.

256 2. Each officer and director of the corporation, their
 257 official positions, and corporate offices, if the applicant is a
 258 corporation.

259 3. Each general partner, if the applicant is a
 260 partnership.

261 4. Each managing member, if the applicant is a limited
 262 liability corporation.

263 5. The owner of the applicant, if the applicant is a
 264 proprietorship.

265 6. The applicant's registered agent for service of process
 266 in this state.

267 (g) The number of locksmiths that the applicant currently
 268 employs or intends to employ.

269 (2) Each application must be accompanied by:

270 (a) Payment of a nonrefundable biennial license fee,
 271 calculated as follows:

272 1. If the applicant employs one to five locksmiths, an
 273 amount not to exceed \$800.

274 2. If the applicant employs six or more locksmiths, an
 275 amount not to exceed \$1,600.

276 3. If the applicant operates a locksmith referral service
 277 but does not employ any locksmiths, an amount not to exceed
 278 \$800.

279
 280 If the department determines that the biennial license fees

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281 established under this subsection for an initial or renewal
 282 application impose a significant financial hardship upon the
 283 applicant, the department may waive or reduce the fees to the
 284 amount necessary to alleviate the hardship.

285 (b) Proof of liability insurance coverage as required in
 286 s. 559.95.

287 (c) For each person listed in paragraph (1)(f), a set of
 288 fingerprints submitted in the manner prescribed by the
 289 department, an affidavit of the person's criminal history, if
 290 any, and payment of any fees or costs required under s. 559.946
 291 for background screening.

292 (3)(a) The department shall issue a license to each
 293 applicant in the format prescribed by the department in
 294 accordance with s. 120.60. The license must show at least the
 295 name, the street address of each business location listed in the
 296 application pursuant to paragraph (1)(c), and the license number
 297 of the locksmith services business. If the applicant is a mobile
 298 locksmith services business, the license must show the residence
 299 address of the owner, if different than the street address of
 300 the business location where the applicant's records are kept.

301 (b) A license issued under this part may not be
 302 transferred or assigned and is valid only for the licensee and
 303 the business locations for which it is issued.

304 (c) A locksmith services business license is valid for 2
 305 years from the date of issuance. To provide for the biennial
 306 renewal of licenses under s. 559.948, the department may adopt
 307 rules to stagger the license expiration dates over a 2-year
 308 period.

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309 (4) (a) A licensee must notify the department in writing at
 310 least 30 days before changing a locksmith services business
 311 location. The department shall issue to the licensee an amended
 312 license that shows the new business location.

313 (b) Within 10 days after a person listed in paragraph
 314 (1) (f) begins his or her duties with a licensee, the licensee
 315 must submit a set of the person's fingerprints in the manner
 316 prescribed by the department, an affidavit of the person's
 317 criminal history, if any, and payment of any fees or costs
 318 required under s. 559.946 for background screening.

319 559.946 Locksmith services businesses; fingerprinting and
 320 background screening; disqualification.-

321 (1) (a) Each person listed in s. 559.945(1) (f) must be
 322 fingerprinted and undergo background screening for criminal
 323 justice information as defined in s. 943.045. The department
 324 shall submit each set of fingerprints to the Department of Law
 325 Enforcement for statewide criminal records checks, and the
 326 Department of Law Enforcement shall forward the fingerprints to
 327 the Federal Bureau of Investigation for federal criminal records
 328 checks. The cost of the fingerprint processing and criminal
 329 records checks shall be borne by the locksmith services business
 330 or the person required to be fingerprinted and shall be paid to
 331 the department. The Department of Law Enforcement shall submit a
 332 monthly invoice to the department for the fingerprint processing
 333 and criminal records checks performed during the month, and the
 334 department shall pay the invoice from the fees collected. The
 335 results of the criminal records checks shall be returned to the
 336 department, and the department shall screen the results to

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337 determine whether the person is disqualified under subsection
 338 (2).

339 (b) If a legible set of fingerprints, as determined by the
 340 Department of Law Enforcement or the Federal Bureau of
 341 Investigation, cannot be obtained after two attempts, the
 342 department shall determine whether the person is disqualified
 343 based upon criminal records checks under the person's name
 344 conducted by the Department of Law Enforcement and the Federal
 345 Bureau of Investigation.

346 (2) (a) A person required to undergo background screening
 347 pursuant to this section must not have been convicted or
 348 incarcerated as a result of having been convicted of a crime
 349 involving trespass, burglary, theft, larceny, dealing in stolen
 350 property, receiving stolen property, embezzlement, obtaining
 351 property by false pretenses, possession of altered property, or
 352 any other fraudulent or dishonest dealing within the previous 10
 353 years.

354 (b) The department may grant a person disqualified under
 355 paragraph (a) an exemption from disqualification for:

356 1. Any felony committed more than 3 years before the date
 357 of disqualification.

358 2. Any misdemeanor.

359 3. Any misdemeanor or noncriminal offense that was a
 360 felony when it was committed.

361 (c) In order for the department to grant an exemption, the
 362 disqualified person must demonstrate by clear and convincing
 363 evidence that he or she should not be disqualified. A
 364 disqualified person seeking an exemption has the burden of

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365 setting forth sufficient evidence of rehabilitation, including,
 366 but not limited to, the circumstances surrounding the criminal
 367 incident for which an exemption is sought, the time period that
 368 has elapsed since the incident, the nature of the harm caused to
 369 the victim, and the history of the disqualified person since the
 370 incident, or any other evidence or circumstances indicating that
 371 the disqualified person will not present a danger to the public
 372 if an exemption is granted.

373 (3) (a) All fingerprints submitted to the Department of Law
 374 Enforcement as required by this section shall be retained by the
 375 Department of Law Enforcement in a manner provided by rule and
 376 entered in the statewide automated fingerprint identification
 377 system authorized by s. 943.05(2) (b). The fingerprints shall
 378 thereafter be available for all purposes and uses authorized for
 379 arrest fingerprints entered in the statewide automated
 380 fingerprint identification system pursuant to s. 943.051.

381 (b) The Department of Law Enforcement shall search all
 382 arrest fingerprints received under s. 943.051 against the
 383 fingerprints retained in the statewide automated fingerprint
 384 identification system under paragraph (a). Any arrest record
 385 that is identified with the retained fingerprints of a person
 386 subject to background screening under this section shall be
 387 reported to the department. Each locksmith services business
 388 must participate in the search process by notifying the
 389 department of any change in a person's status as a person listed
 390 s. 559.945(1) (f) if, as a result of the change, the person's
 391 fingerprints are no longer required to be retained under
 392 paragraph (a).

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393 (c) Each licensee shall pay to the department a fee for
 394 the cost of retaining the fingerprints and performing the
 395 ongoing searches of arrest records under paragraph (b). The
 396 Department of Law Enforcement shall submit an invoice to the
 397 department for the fingerprints retained and searches performed,
 398 and the department shall pay the invoice from the fees
 399 collected. The Department of Law Enforcement shall adopt rules
 400 establishing the amount of the fee and procedures for retaining
 401 the fingerprints, performing the searches, and disseminating the
 402 search results. The department shall notify the Department of
 403 Law Enforcement of any change in a person's status as a person
 404 listed s. 559.945(1)(f) if, as a result of the change, the
 405 person's fingerprints are no longer required to be retained
 406 under paragraph (a).

407 (4) Before expiration of the time limit in s. 120.60 for
 408 approving an application, if the department does not receive
 409 criminal justice information for any person listed in s.
 410 559.945(1)(f), or receives criminal justice information that
 411 includes a crime that may disqualify the person but does not
 412 include a final disposition of the crime, the time limit in s.
 413 120.60 for approving the application is extended until the
 414 department receives final disposition of the crime or proof of
 415 restoration of civil rights.

416 (5) The Department of Law Enforcement shall provide the
 417 department, upon request, with any criminal justice information
 418 in its possession of a person who is:

419 (a) A licensee or applicant for a license under this part;
 420 or

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421 (b) Employed by a licensee or applicant for a license
 422 under this part.

423 559.947 Licensure by endorsement.-

424 (1) A person may be licensed as a locksmith services
 425 business in this state upon applying to the department,
 426 remitting the nonrefundable biennial license fee calculated as
 427 required in s. 559.945(2)(a), and demonstrating to the
 428 department that the applicant:

429 (a) Meets the qualifications for licensure in s. 559.945;
 430 or

431 (b) Holds a valid locksmith services business license, or
 432 the equivalent thereof, issued by another state, territory, or
 433 possession of the United States, the District of Columbia, or
 434 the Commonwealth of Puerto Rico with which the department has
 435 established reciprocity.

436 (2) The department may establish reciprocity with other
 437 states, territories, or possessions of the United States, the
 438 District of Columbia, or the Commonwealth of Puerto Rico and may
 439 adopt criteria for establishing reciprocity, subject to the
 440 following:

441 (a) The licensing requirements of the other state,
 442 territory, or possession must substantially meet or exceed the
 443 requirements of s. 559.945.

444 (b) The other state, territory, or possession must issue a
 445 license, or the equivalent thereof, to a locksmith services
 446 business that is licensed in this state and seeks to do business
 447 in the other state, territory, or possession.

448 559.948 License renewal.-Each locksmith services business

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449 license must be renewed biennially on or before the license's
 450 expiration date. To apply for renewal of a license, the licensee
 451 must submit each of the following to the department:

452 (1) A renewal application in the format prescribed by the
 453 department that includes the information required for initial
 454 licensure in s. 559.945(1).

455 (2) Payment of the nonrefundable biennial license fee,
 456 calculated as required in s. 559.945(2) (a).

457 (3) Proof of liability insurance coverage as required in
 458 s. 559.95.

459 (4) For each person listed in s. 559.945(1) (f), an updated
 460 affidavit of the person's criminal history, if any.

461 (5) For each person listed in s. 559.945(1) (f) who has not
 462 undergone background screening, a set of fingerprints submitted
 463 in the manner prescribed by the department, an affidavit of the
 464 person's criminal history, if any, and payment of any fees or
 465 costs required under s. 559.946.

466 559.949 Denial, suspension, revocation, or refusal to
 467 renew license.—The department may deny, suspend, revoke, or
 468 refuse to renew the license of a locksmith services business
 469 based upon a determination that the locksmith services business
 470 or any person listed in s. 559.945(1) (f):

471 (1) Failed to meet the requirements for licensure as
 472 provided in this part;

473 (2) Is disqualified based upon background screening
 474 pursuant to s. 559.946(2);

475 (3) Failed to satisfy a civil penalty, administrative
 476 fine, or other penalty arising out of an administrative or

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477 enforcement action brought by any governmental agency;

478 (4) Received any civil, criminal, or administrative
 479 adjudication in any jurisdiction; or

480 (5) Has had a judgment entered against the business or
 481 person in any action brought under the Florida Deceptive and
 482 Unfair Trade Practices Act in part II of chapter 501.

483 559.95 Liability insurance.—

484 (1) A locksmith services business must maintain current
 485 and valid liability insurance coverage of at least \$100,000 per
 486 incident for loss or damages resulting from the negligence of
 487 the locksmith services business or any of its locksmiths,
 488 apprentice locksmiths, employees, or agents.

489 (2) The insurance coverage must be issued by an insurance
 490 company or carrier licensed to transact business in this state
 491 under the Florida Insurance Code. The department shall require a
 492 locksmith services business to present a policy or certificate
 493 of insurance of the required coverage before issuance or renewal
 494 of a license. The department shall be named as a
 495 certificateholder in the policy or certificate and must be
 496 notified at least 30 days before any changes in insurance
 497 coverage.

498 (3) If a locksmith services business does not maintain the
 499 required insurance coverage, the department may immediately
 500 suspend the business's license or eligibility for licensure and
 501 the business shall immediately cease operating as a locksmith
 502 services business. In addition, notwithstanding the availability
 503 of administrative relief under chapter 120, the department may
 504 seek an immediate injunction in the circuit court of the county

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505 in which the business is located that prohibits the locksmith
 506 services business from operating until the business complies
 507 with this section and imposes a civil penalty not to exceed
 508 \$10,000 and reasonable court costs.

509 559.951 Locksmiths; apprentice locksmiths; photo
 510 identification cards; display of license and license number.-

511 (1) A person may not perform locksmith services on behalf
 512 of a locksmith services business unless the person is the
 513 licensee or one of the following:

514 (a) Locksmith.-Except as provided in paragraph (b) for an
 515 automotive-only locksmith, a locksmith must be 18 years of age
 516 or older and complete 16 hours of training, including training
 517 in industry ethics, the federal Americans with Disabilities Act,
 518 the Florida Building Code, the Florida Fire Prevention Code, and
 519 the Life Safety Code.

520 (b) Automotive-only locksmith.-An automotive-only
 521 locksmith must be 18 years of age or older and complete a
 522 training course in industry ethics.

523 (c) Apprentice locksmith.-An apprentice locksmith must be
 524 15 years of age or older and complete a minimum of 16 hours of
 525 training, including training in industry ethics, the federal
 526 Americans with Disabilities Act, the Florida Building Code, the
 527 Florida Fire Prevention Code, and the Life Safety Code. An
 528 apprentice locksmith may perform locksmith services only under
 529 the direct and continuous supervision of a locksmith or
 530 automotive-only locksmith. An apprentice locksmith may not
 531 perform or contract to perform locksmith services without the
 532 express approval of his or her supervising locksmith. The

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533 supervising locksmith is responsible for any violation of this
 534 part committed by the apprentice locksmith.

535 (2) (a) Except as provided in paragraph (b) for an
 536 automotive-only locksmith, every 2 years, a locksmith must
 537 complete at least 16 hours of training, including training on
 538 the federal Americans with Disabilities Act, the Florida
 539 Building Code, the Florida Fire Prevention Code, and the Life
 540 Safety Code.

541 (b) Every 2 years, an automotive-only locksmith must
 542 complete at least 8 hours of industry-related training. The
 543 training must include, but is not limited to, training in
 544 industry ethics.

545 (3) Each locksmith services business must maintain a
 546 personnel record of each locksmith, automotive-only locksmith,
 547 and apprentice locksmith who performs locksmith services on
 548 behalf of the licensee. The personnel record must include:

549 (a) Two copies of a photograph taken of the locksmith,
 550 automotive-only locksmith, or apprentice locksmith within 10
 551 days after the date that he or she begins to perform locksmith
 552 services on behalf of the licensee. One copy shall be used for
 553 the locksmith's or apprentice's photo identification card. The
 554 second copy shall be retained in his or her personnel record.
 555 Both copies of the photograph shall be replaced with a current
 556 photograph at least once every 2 calendar years.

557 (b) An affidavit of the locksmith's, automotive-only
 558 locksmith's, or apprentice locksmith's criminal history, if any,
 559 and the results of the background screening conducted pursuant
 560 to s. 559.946.

561 (c) Documentation provided by the locksmith services
 562 business that demonstrates completion of the training required
 563 in subsections (1) and (2).

564 (4) Each locksmith services business shall issue a photo
 565 identification card to each locksmith, automotive-only
 566 locksmith, and apprentice locksmith performing locksmith
 567 services on behalf of the licensee. A photo identification card
 568 must contain the name and photograph of the locksmith or
 569 apprentice, the name of the locksmith services business, and the
 570 license number. The photo identification card must also include:

571 (a) For a locksmith, the word "Locksmith."

572 (b) For an automotive-only locksmith, the phrase
 573 "Automotive-Only Locksmith."

574 (c) For an apprentice locksmith, the word "Apprentice."
 575

576 Each locksmith, automotive-only locksmith, and apprentice
 577 locksmith must display the photo identification card on his or
 578 her person at all times while performing locksmith services.

579 (5) A locksmith services business must display a copy of
 580 its locksmith services business license at each business
 581 location in a manner easily readable by the general public. A
 582 mobile locksmith services business shall keep a copy of the
 583 license in each service vehicle for immediate presentation to
 584 any law enforcement officer, state or local official, or member
 585 of the general public upon request.

586 (6) Each advertisement or other form of advertising, each
 587 service vehicle, and each work order, invoice, sales receipt, or
 588 other business form of a licensee must include the license

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589 number and name of the locksmith services business as they
 590 appear on the license issued by the department.

591 559.952 Acceptable forms of payment; locksmith services
 592 business records.-

593 (1) A locksmith services business shall accept at least
 594 two of the following methods of payment:

595 (a) Cash, cashier's check, money order, or traveler's
 596 check;

597 (b) Valid personal check, showing upon its face the name
 598 and address of the person or an authorized representative for
 599 whom the locksmith services were performed; or

600 (c) Valid credit card, which includes, but is not limited
 601 to, Visa or MasterCard.

602 (2) A locksmith services business shall clearly and
 603 conspicuously disclose to the person requesting locksmith
 604 services in a work order, invoice, or sales receipt the methods
 605 of payment that the locksmith services business accepts.

606 (3) (a) A locksmith services business must retain a copy of
 607 each work order, invoice, and sales receipt for at least 2
 608 years.

609 (b) Each work order, invoice, and sales receipt must
 610 include the name of the person performing the service.

611 (c) A copy of each work order, invoice, and sales receipt
 612 must be readily available for inspection at any time during
 613 normal business hours by the department.

614 559.953 Prohibited acts.-

615 (1) A person may not:

616 (a) Perform or offer to perform locksmith services without

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617 having or acting under a valid license issued by the department
 618 under this part.

619 (b) Advertise or represent himself or herself as a
 620 locksmith services business without having a valid license
 621 issued by the department under this part.

622 (c) Operate a locksmith referral service without having a
 623 valid license issued by the department under this part.

624 (2) A licensee, or a locksmith, apprentice locksmith, or
 625 other person acting on behalf of a licensee, may not:

626 (a) Fraudulently misuse any consumer's credit card.

627 (b) Require a consumer to waive his or her rights provided
 628 in this part as a precondition to the performance of locksmith
 629 services.

630 (c) Fail or refuse, after notice, to provide any law
 631 enforcement officer or the department with any document or
 632 record or disclose any information required to be produced or
 633 disclosed.

634 (d) Employ or contract with any person disqualified under
 635 s. 559.946 to perform locksmith services on behalf of the
 636 licensee.

637 (e) Submit to the department the fingerprints of a person
 638 other than the person for whom fingerprints must be submitted
 639 pursuant to s. 559.946 or fail to submit replacement
 640 fingerprints for a locksmith or apprentice locksmith whose
 641 original fingerprint submissions are returned to the department
 642 as unclassifiable by the screening agency.

643 (f) Use a mailing address, registration facility, drop
 644 box, or answering service in the promotion, advertisement,

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645 solicitation, or sale of locksmith services, unless the street
646 address of the licensed business location is clearly disclosed
647 during any telephone solicitation and is prominently and
648 conspicuously disclosed in all advertisements and on the work
649 orders, invoices, and sales receipts.

650 (g) Operate as a locksmith services business at a business
651 location other than the location that appears on the license
652 issued by the department.

653 (h) Make a false statement in response to a request or
654 investigation by the department, the Department of Legal
655 Affairs, a law enforcement officer, or a state attorney.

656 (i) Make a material false statement in an application,
657 document, or record required to be submitted or kept under this
658 part.

659 (j) Commit any other act of fraud or misrepresentation or
660 fail to disclose a material fact.

661 (k) Disclose or permit the disclosure of any consumer
662 information without the consumer's written approval, except as
663 authorized by this part.

664 (l) Violate this part or any rule adopted or order issued
665 under this part.

666 559.954 Civil penalties; remedies.-

667 (1) A consumer injured by a violation of this part may
668 bring an action in the appropriate court for relief. The court
669 shall award reasonable costs and attorney's fees to the
670 prevailing party. The consumer may also bring an action for
671 injunctive relief in the circuit court.

672 (2) (a) The department may bring an action in a court of

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673 competent jurisdiction to recover any penalties or damages
 674 authorized in this part and for injunctive relief to enforce
 675 this part.

676 (b) The department may seek a civil penalty of up to
 677 \$10,000 for each violation of this part.

678 (c) The department may seek restitution for and on behalf
 679 of any consumer injured by a violation of this part.

680 (3) An agreement or representation that waives, limits,
 681 restricts, or avoids any duty, obligation, or requirement of a
 682 locksmith services business, as provided in this part, is void.

683 (4) A remedy provided in this part is in addition to any
 684 other remedy otherwise available for the same conduct.

685 559.955 Administrative remedies; penalties.—

686 (1) The department shall process a consumer complaint
 687 against a locksmith services business in the manner described in
 688 ss. 570.07 and 570.544.

689 (2) A locksmith services business shall allow department
 690 personnel to enter its business locations for purposes of
 691 determining whether the license is current. If department
 692 personnel are refused entry or access to the premises, the
 693 department may seek injunctive relief in circuit court to
 694 enforce this subsection.

695 (3) If the department determines that a locksmith services
 696 business has violated, or is operating in violation of, this
 697 part or any rules adopted or orders issued under this part, the
 698 department may enter an order doing one or more of the
 699 following:

700 (a) Issuing a notice of noncompliance under s. 120.695.

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701 (b) Imposing an administrative fine not to exceed \$10,000
 702 for each act or omission.

703 (c) Directing that the locksmith services business cease
 704 and desist specified activities.

705 (d) Refusing to issue or renew, suspending, or revoking a
 706 license.

707 (e) Placing the licensee on probation for a specified
 708 period, subject to conditions specified by the department.

709 (4) Administrative proceedings that may result in an order
 710 imposing any of the penalties specified in subsection (3) are
 711 governed by chapter 120.

712 (5) In a final order imposing an administrative fine or
 713 refusing to issue or renew, suspending, or revoking a license,
 714 the department may assess against the sanctioned party the cost
 715 of conducting the administrative proceedings, unless the
 716 department determines that the offense was inadvertent or done
 717 in a good faith belief that the act or omission did not violate
 718 a state law or rule. An assessment is limited to the reasonable
 719 hourly rate of the hearing officer and the actual cost of
 720 recording or transcribing the proceedings.

721 (6)(a) The department shall prominently post a "Closed by
 722 Order of the Department" sign on a locksmith services business
 723 whose license is suspended or revoked. The department shall also
 724 post a sign on a locksmith services business that is judicially
 725 or administratively determined to be operating without a
 726 license.

727 (b) A person who defaces or removes the sign without
 728 written authorization from the department, or a locksmith

729 | services business that opens for operation without a license or
 730 | opens for operation as a locksmith services business while its
 731 | license is suspended or revoked, commits a misdemeanor of the
 732 | second degree, punishable as provided in s. 775.082 or s.
 733 | 775.083.

734 | (c) A criminal penalty imposed under this subsection shall
 735 | be in addition to any administrative sanction imposed by the
 736 | department under subsection (3).

737 | 559.956 Deceptive and unfair trade practices.—A person who
 738 | violates any provision of this part commits an unfair or
 739 | deceptive trade practice and is subject to the penalties and
 740 | remedies provided in part II of chapter 501.

741 | 559.957 Criminal penalties.—A person who violates s.
 742 | 559.953 commits a misdemeanor of the first degree, punishable as
 743 | provided in s. 775.082 or s. 775.083.

744 | 559.958 Rulemaking authority.—The department shall adopt
 745 | rules pursuant to ss. 120.536(1) and 120.54 to administer this
 746 | part. The rules shall include, but are not limited to, the
 747 | following:

748 | (1) Requirements and procedures for the licensure of
 749 | locksmith services businesses.

750 | (2) Requirements and procedures for the fingerprinting and
 751 | background screening of persons listed in s. 559.945(1)(f) for
 752 | criminal justice information.

753 | (3) Forms required to implement this part, including
 754 | license applications, renewal applications, fingerprint
 755 | submissions, affidavits of criminal history, and photo
 756 | identification cards.

757 (4) Establishment of application, license, renewal, and
 758 other reasonable and necessary fees based upon the department's
 759 estimate of the costs of administering this part.

760 (5) Establishment and periodic update of a background
 761 screening fee schedule to incorporate fee changes by the Federal
 762 Bureau of Investigation, the Department of Law Enforcement, and
 763 other entities involved in conducting the background screenings.

764 (6) Methods of obtaining and renewing photographs for
 765 photo identification.

766 (7) Use and display of licenses and license numbers.

767 559.959 Deposit and use of revenues from fees, civil
 768 penalties, and fines.—Any fees, civil penalties, administrative
 769 fees, or other funds collected by the department pursuant to
 770 this part shall be deposited in the General Inspection Trust
 771 Fund and used to administer this part.

772 559.96 Preemption; local business tax receipts.—

773 (1) Effective July 1, 2011, this part preempts any local
 774 act, law, ordinance, or regulation of a county or municipality
 775 that relates to locksmith services, locksmiths, or locksmith
 776 services businesses.

777 (2) A county or municipality may not issue or renew a
 778 local business tax receipt for a locksmith services business
 779 unless the person applying for or renewing the local business
 780 tax receipt exhibits a valid license issued by the department.

781 559.961 Florida Locksmith Services Advisory Council.—The
 782 Florida Locksmith Services Advisory Council is created within
 783 the department to advise and assist the department in carrying
 784 out this part.

785 (1) The council shall be composed of nine members
 786 appointed by the Commissioner of Agriculture, as follows:

787 (a) Six industry members must be owners or employees of
 788 locksmith services businesses licensed under this part, as
 789 follows:

790 1. Five members must be locksmiths who are owners or
 791 employees of separate, licensed locksmith services businesses
 792 who do not perform automotive-only locksmith services.

793 2. One member must be an automotive-only locksmith who is
 794 an owner or employee of a licensed locksmith services business.

795 (b) One member must be an electrical contractor certified
 796 under part II of chapter 489.

797 (c) One member must have private investigative, private
 798 security, motor vehicle recovery, or law enforcement experience
 799 or expertise.

800 (d) One member must be a consumer who is not affiliated
 801 with any locksmith services business.

802

803 Each member must be a resident of the state. Each member, except
 804 the consumer member, must have at least 3 years of experience
 805 and be currently engaged in the profession. Initial industry
 806 members must be owners or employees of locksmith services
 807 businesses but, notwithstanding paragraph (a), the locksmith
 808 services businesses of the initial members are not required to
 809 be licensed.

810 (2) Members shall be appointed for 4-year terms and must
 811 be geographically representative of the state. A member whose
 812 term expires shall continue to serve until his or her successor

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813 is appointed. A vacancy occurring before the expiration of a
 814 member's term shall be filled by the commissioner for the
 815 remainder of the term.

816 (3) (a) The council shall annually elect a chair and a vice
 817 chair from among its appointed members.

818 (b) The council shall meet at the call of the chair, upon
 819 the request of a majority of its membership, or upon the request
 820 of the Commissioner of Agriculture.

821 (c) In conducting its meetings, the council shall use
 822 accepted rules of procedure. The department shall keep a
 823 complete record of each meeting, which must show the names of
 824 the members present and actions taken. The department shall keep
 825 the records of the council.

826 (4) Members of the council shall serve without
 827 compensation but are entitled to per diem and travel expenses as
 828 provided in s. 112.061.

829 (5) The department shall provide administrative and staff
 830 support for the council.

831 (6) The council may review any rules adopted by the
 832 department pursuant to this part and may advise the department
 833 on matters relating to advancements in industry standards,
 834 practices, and other issues that require technical expertise and
 835 consultation or that promote consumer protection in the
 836 locksmith services industry.

837 Section 2. This act shall take effect 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:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Public Record Exemptions for Identification and Location Information

Current law provides several public record exemptions for identification and location information of certain public employees and their spouses and children.³ Examples of protected information include home addresses, telephone numbers, and photographs of law enforcement personnel, firefighters, investigators for the Department of Children and Family Services, state attorneys, and code

¹ Article I, s. 24(c) of the State Constitution.

² Section 119.15, F.S.

³ See s. 119.071(4)(d), F.S.

enforcement officers. Similar information concerning the spouses and children of such employees also is protected.

Public Defenders and Criminal Conflict and Civil Regional Counsel

Public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel are appointed by the courts to represent defendants in criminal cases. Criminal conflict and civil regional counsel also represent clients in matters before the courts involving alleged child abuse, alleged child neglect, and potential termination of parental rights.

Clients of public defenders and criminal conflict and civil regional counsel have a great deal at stake in the outcome of their legal matters, which can lead to violent outbursts. According to the Office of the Public Defender, such outbursts have included battery and threats of physical harm.

Effect of Bill

The bill creates a public record exemption for identification and location information of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel. The following information is exempt⁴ from public records requirements:

- Home addresses, telephone numbers, and photographs of such defenders or counsel;
- Home addresses, telephone numbers, and places of employment of the spouses and children of such defenders or counsel; and
- Names and locations of schools and day care facilities attended by the children of such defenders or counsel.

Such defenders or counsel also may protect identification and location information held by any other agency⁵ if he or she provides written notification to that custodial agency that he or she is a public defender or criminal conflict and civil regional counsel who receives an exemption under the Public Records Act.⁶

The bill provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.⁷

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to create a public record exemption for identification and location information of public defenders and criminal conflict and civil regional counsel, and their spouses and children.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2010.

⁴ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

⁵ Section 119.011(2), F.S., defines "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

⁶ Chapter 119, F.S., is referred to as the Public Records Act.

⁷ Section 24(c), Art. I of the State Constitution.

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:

None.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on agencies, because staff responsible for complying with public records requests could require training related to creation of the public record exemption. In addition, those agencies could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 10, 2010, the Governmental Affairs Policy Committee reported HB 485 favorably as a committee substitute. The committee substitute removed from the bill the public record exemption for the names, social security numbers, and photographs of spouses and children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel. The exemption for social security numbers was duplicative of a general protection provided in the Public Records Act. In addition, it was found that employers of such defenders and counsel do not collect photographs of the spouses and children of their employees. Finally, the public record exemption for the names of spouses and children was removed because such protection is not afforded other employees such as judges and state attorneys.

1 A bill to be entitled
 2 An act relating to public records; amending s. 119.071,
 3 F.S.; creating an exemption from public records
 4 requirements for personal identifying and location
 5 information of current and former public defenders and
 6 criminal conflict and civil regional counsel and the
 7 spouses and children of such defenders or counsel;
 8 providing for future legislative review and repeal of the
 9 exemption; providing a statement of public necessity;
 10 providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Paragraph (d) of subsection (4) of section
 15 119.071, Florida Statutes, is amended to read:

16 119.071 General exemptions from inspection or copying of
 17 public records.—

18 (4) AGENCY PERSONNEL INFORMATION.—

19 (d)1.a. The home addresses, telephone numbers, social
 20 security numbers, and photographs of active or former law
 21 enforcement personnel, including correctional and correctional
 22 probation officers, personnel of the Department of Children and
 23 Family Services whose duties include the investigation of abuse,
 24 neglect, exploitation, fraud, theft, or other criminal
 25 activities, personnel of the Department of Health whose duties
 26 are to support the investigation of child abuse or neglect, and
 27 personnel of the Department of Revenue or local governments
 28 whose responsibilities include revenue collection and

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29 enforcement or child support enforcement; the home addresses,
30 telephone numbers, social security numbers, photographs, and
31 places of employment of the spouses and children of such
32 personnel; and the names and locations of schools and day care
33 facilities attended by the children of such personnel are exempt
34 from s. 119.07(1).

35 b. The home addresses, telephone numbers, and photographs
36 of firefighters certified in compliance with s. 633.35; the home
37 addresses, telephone numbers, photographs, and places of
38 employment of the spouses and children of such firefighters; and
39 the names and locations of schools and day care facilities
40 attended by the children of such firefighters are exempt from s.
41 119.07(1).

42 c. The home addresses and telephone numbers of justices of
43 the Supreme Court, district court of appeal judges, circuit
44 court judges, and county court judges; the home addresses,
45 telephone numbers, and places of employment of the spouses and
46 children of justices and judges; and the names and locations of
47 schools and day care facilities attended by the children of
48 justices and judges are exempt from s. 119.07(1).

49 d. The home addresses, telephone numbers, social security
50 numbers, and photographs of current or former state attorneys,
51 assistant state attorneys, statewide prosecutors, or assistant
52 statewide prosecutors; the home addresses, telephone numbers,
53 social security numbers, photographs, and places of employment
54 of the spouses and children of current or former state
55 attorneys, assistant state attorneys, statewide prosecutors, or
56 assistant statewide prosecutors; and the names and locations of

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57 | schools and day care facilities attended by the children of
58 | current or former state attorneys, assistant state attorneys,
59 | statewide prosecutors, or assistant statewide prosecutors are
60 | exempt from s. 119.07(1) and s. 24(a), Art. I of the State
61 | Constitution.

62 | e. The home addresses and telephone numbers of general
63 | magistrates, special magistrates, judges of compensation claims,
64 | administrative law judges of the Division of Administrative
65 | Hearings, and child support enforcement hearing officers; the
66 | home addresses, telephone numbers, and places of employment of
67 | the spouses and children of general magistrates, special
68 | magistrates, judges of compensation claims, administrative law
69 | judges of the Division of Administrative Hearings, and child
70 | support enforcement hearing officers; and the names and
71 | locations of schools and day care facilities attended by the
72 | children of general magistrates, special magistrates, judges of
73 | compensation claims, administrative law judges of the Division
74 | of Administrative Hearings, and child support enforcement
75 | hearing officers are exempt from s. 119.07(1) and s. 24(a), Art.
76 | I of the State Constitution if the general magistrate, special
77 | magistrate, judge of compensation claims, administrative law
78 | judge of the Division of Administrative Hearings, or child
79 | support hearing officer provides a written statement that the
80 | general magistrate, special magistrate, judge of compensation
81 | claims, administrative law judge of the Division of
82 | Administrative Hearings, or child support hearing officer has
83 | made reasonable efforts to protect such information from being
84 | accessible through other means available to the public. This

85 sub-subparagraph is subject to the Open Government Sunset Review
86 Act in accordance with s. 119.15, and shall stand repealed on
87 October 2, 2013, unless reviewed and saved from repeal through
88 reenactment by the Legislature.

89 f. The home addresses, telephone numbers, and photographs
90 of current or former human resource, labor relations, or
91 employee relations directors, assistant directors, managers, or
92 assistant managers of any local government agency or water
93 management district whose duties include hiring and firing
94 employees, labor contract negotiation, administration, or other
95 personnel-related duties; the names, home addresses, telephone
96 numbers, and places of employment of the spouses and children of
97 such personnel; and the names and locations of schools and day
98 care facilities attended by the children of such personnel are
99 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
100 Constitution.

101 g. The home addresses, telephone numbers, and photographs
102 of current or former code enforcement officers; the names, home
103 addresses, telephone numbers, and places of employment of the
104 spouses and children of such personnel; and the names and
105 locations of schools and day care facilities attended by the
106 children of such personnel are exempt from s. 119.07(1) and s.
107 24(a), Art. I of the State Constitution.

108 h. The home addresses, telephone numbers, places of
109 employment, and photographs of current or former guardians ad
110 litem, as defined in s. 39.820, and the names, home addresses,
111 telephone numbers, and places of employment of the spouses and
112 children of such persons, are exempt from s. 119.07(1) and s.

113 24(a), Art. I of the State Constitution, if the guardian ad
 114 litem provides a written statement that the guardian ad litem
 115 has made reasonable efforts to protect such information from
 116 being accessible through other means available to the public.
 117 This sub-subparagraph is subject to the Open Government Sunset
 118 Review Act in accordance with s. 119.15 and shall stand repealed
 119 on October 2, 2010, unless reviewed and saved from repeal
 120 through reenactment by the Legislature.

121 i. The home addresses, telephone numbers, and photographs
 122 of current or former juvenile probation officers, juvenile
 123 probation supervisors, detention superintendents, assistant
 124 detention superintendents, senior juvenile detention officers,
 125 juvenile detention officer supervisors, juvenile detention
 126 officers, house parents I and II, house parent supervisors,
 127 group treatment leaders, group treatment leader supervisors,
 128 rehabilitation therapists, and social services counselors of the
 129 Department of Juvenile Justice; the names, home addresses,
 130 telephone numbers, and places of employment of spouses and
 131 children of such personnel; and the names and locations of
 132 schools and day care facilities attended by the children of such
 133 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 134 the State Constitution. This sub-subparagraph is subject to the
 135 Open Government Sunset Review Act in accordance with s. 119.15
 136 and shall stand repealed on October 2, 2011, unless reviewed and
 137 saved from repeal through reenactment by the Legislature.

138 j. The home addresses, telephone numbers, and photographs
 139 of current or former public defenders, assistant public
 140 defenders, criminal conflict and civil regional counsel, and

141 assistant criminal conflict and civil regional counsel; the home
142 addresses, telephone numbers, and places of employment of the
143 spouses and children of such defenders or counsel; and the names
144 and locations of schools and day care facilities attended by the
145 children of such defenders or counsel are exempt from s.
146 119.07(1) and s. 24(a), Art. I of the State Constitution. This
147 sub-subparagraph is subject to the Open Government Sunset Review
148 Act in accordance with s. 119.15 and shall stand repealed on
149 October 2, 2015, unless reviewed and saved from repeal through
150 reenactment by the Legislature.

151 2. An agency that is the custodian of the information
152 specified in subparagraph 1. and that is not the employer of the
153 officer, employee, justice, judge, or other person specified in
154 subparagraph 1. shall maintain the exempt status of that
155 information only if the officer, employee, justice, judge, other
156 person, or employing agency of the designated employee submits a
157 written request for maintenance of the exemption to the
158 custodial agency.

159 Section 2. The Legislature finds that it is a public
160 necessity to exempt from disclosure under the public records
161 laws of the state personal identifying and location information
162 of current and former public defenders, assistant public
163 defenders, criminal conflict and civil regional counsel, and
164 assistant criminal conflict and civil regional counsel, and the
165 spouses and children of such defenders or counsel. In the course
166 of representing defendants in criminal prosecutions, these
167 attorneys routinely interact with individuals who have criminal
168 records or who are currently engaged in or suspected of criminal

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169 activity. These attorneys also interact with the victims of
170 crimes. In addition, criminal conflict and civil regional
171 counsel and their assistants also provide representation in
172 sensitive civil matters, such as those in which a person's
173 parental rights may be terminated based on allegations of
174 perpetrating abuse and neglect against a child. By providing
175 legal representation in criminal and civil matters, these
176 attorneys provide a valuable service. However, parties to such
177 criminal and civil matters may become disgruntled by the
178 proceedings or the outcome of a case, which can result in the
179 attorneys and their families becoming targets for acts of
180 violence. Disclosure of the information protected under the
181 public records exemption created by this act would jeopardize
182 the safety of these attorneys and their families. Therefore, it
183 is the finding of the Legislature that it is a public necessity
184 to exempt from disclosure under the public records laws of this
185 state the home addresses, telephone numbers, and photographs of
186 current or former public defenders, assistant public defenders,
187 criminal conflict and civil regional counsel, and assistant
188 criminal conflict and civil regional counsel, the home
189 addresses, telephone numbers, and places of employment of the
190 spouses and children of such defenders or counsel, and the names
191 and locations of schools and day care facilities attended by the
192 children of such defenders or counsel.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 787 Child Abduction Prevention

SPONSOR(S): Rouson and others

TIED BILLS: IDEN./SIM. BILLS: SB 1862

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee		Krol TK	Cunningham <i>SK</i>
2)	Policy Council			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The bill amends s. 61.45, F.S., by adding additional risk factors for a judge to consider when deciding whether or not a child is at risk of parental abduction. The bill also clearly outlines and makes additions to preventative measures that a judge may order if the judge finds credible evidence that a child is at risk of abduction. Finally, the bill provides that violation of the parenting plan may subject the party to civil or criminal penalties or a federal or state warrant under federal or state law.

The bill provides an effective date of July 1, 2010.

The bill does not appear to have a fiscal 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:

Child Abduction

Approximately 49 percent of child abductions are committed by a parent or relative.¹ When a child is abducted, it is often extremely difficult, time-consuming, and expensive to recover the child.² If the child has been taken overseas, the situation becomes worse and the child may be almost impossible to locate or recover.³

Uniform Child Abduction Prevention Act

The Uniform Child Abduction Prevention Act (UCAPA) was promulgated by the National Conference of Commissioners on Uniform States Laws (NCCUSL) in 2006.⁴ The NCCUSL recommends laws for adoption by states in areas where it believes the laws should be uniform. The UCAPA's stated purpose is to provide a mechanism for a court to impose child abduction prevention measures at any time, both before and after the court has entered a custody decree, thereby deterring and preventing domestic and international abduction.⁵ The abduction can be committed by a parent, persons acting on behalf of a parent, or others.

The UCAPA was created to complement and strengthen existing law, such as the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)⁶, the federal Parental Kidnapping Prevention Act (PKPA), and with regard to international child abduction, the Hague Convention on the Civil Aspects of

¹ Karen A. Bilich, Parenting, *Child Abduction Facts*, <http://www.parents.com/kids/safety/stranger-safety/child-abduction-facts/>, (Last accessed March 17, 2010).

² Merle Weiner, *Uniform Child Abduction Prevention Act: Understanding the Basics*, Summer 2009, <http://www.haguedv.org/articles/Weiner%20&%20Mitchell%20UCAPA%20Synergy%202009.pdf>, (Last accessed March 17, 2010).

³ *Ibid.*

⁴ Illinois General Assembly, *Uniform Child Abduction Prevention Act (UCAPA)*, <http://www.ilga.gov/commission/lru/56.Abduction.pdf>, (Last accessed March 17, 2010).

⁵ Child abduction is defined as "wrongful removal" or "wrongful retention" of an unemancipated minor. State of New Jersey Law Revision Commission, *Final Report Relating to Uniform Child Abduction Prevention Act*, www.lawrev.state.nj.us/ucapa/ucapaFR122208.doc, (Last accessed March 17, 2010).

⁶ *Op. cit.*, Illinois General Assembly. The UCCJEA is the law in 48 states. In 2002, Florida enacted the Uniform Child Custody Jurisdiction and Enforcement Act to replace the outdated Uniform Child Custody Jurisdiction Act. See ss. 61.501-61.542, F.S.

International Child Abduction (Hague Convention.)⁷ The UCAPA is “premised on the general principle that preventing abduction is in a child’s best interests.”⁸

Thus, the UCAPA, “provides states with a valuable tool for deterring both domestic and international child abductions by parents and people acting on behalf of the parents.”⁹ The UCAPA will become the law of a state only if the state enacts it.¹⁰ During its initial legislative year (2007), seven states enacted the UCAPA into law.¹¹

Child Abduction Prevention in Florida

Section 61.45, F.S., provides that when imposing a parenting plan, the court will consider a variety of factors in determining whether there is a risk that the plan will be violated. The court may also impose bond if they believe there is a risk that the plan will be violated. In a proceeding in which the court enters a parenting plan, if competent substantial evidence is presented that there is a risk one party may violate the court’s parenting plan by removing the child from the state or country or concealing the whereabouts of the child, the court may impose the following preventative measures:

- Order that a parent may not remove the child from this state without the notarized written permission of both parents or further court order;
- Order that a parent may not remove the child from this country without the notarized written permission of both parents or further court order;
- Order that a parent may not take the child to a country that has not ratified or acceded to the Hague Convention unless the other parent agrees in writing that the child may be taken to the country;
- Require a parent to surrender the passport of the child; or
- Require a party to post bond or other security.

If the court enters a parenting plan that includes a provision that the party not remove the child from the country without notarized written permission of both parents or take the child to a country that has not ratified or acceded to the Hague Convention, a certified copy of the order should be sent by the parent who requested the restriction to the Passport Services Office of the U.S. Department of State requesting that the office not issue a passport to the child without the parents’ signature or further court order.

In assessing the need for a bond or other security, the court may consider any reasonable factor bearing upon the risk that a party may violate a parenting plan by removing a child from this state or country or by concealing the whereabouts of a child, including but not limited to whether:

- A court has previously found that a party previously removed a child from Florida or another state in violation of a parenting plan, or whether a court had found that a party has threatened to take a child out of Florida or another state in violation of a parenting plan;
- The party has strong family and community ties to Florida or to other states or countries, including whether the party or child is a citizen of another country;
- The party has strong financial reasons to remain in Florida or to relocate to another state or country;
- The party has engaged in activities that suggest plans to leave Florida, such as quitting employment; sale of a residence or termination of a lease on a residence, without efforts to acquire an alternative residence in the state; closing bank accounts or otherwise liquidating assets; or applying for a passport;

⁷ 81 countries have ratified the Hague Convention. *The Hague Convention on the Civil Aspects of International Child Abduction*, http://hcch.evison.nl/index_en.php?act=conventions.status&cid=24#nonmem, (Last accessed March 17, 2010).

⁸ *Ibid.*

⁹ The National Conference of Commissioners on Uniform State Laws, *Summary: Uniform Child Abduction Prevention Act*, http://www.nccusl.org/Update/uniformact_summaries/uniformacts-s-ucapa.asp, (Last accessed March 17, 2010).

¹⁰ *Op. cit.*, Weiner.

¹¹ *Op. cit.*, Illinois General Assembly. The seven states include: Colorado; Kansas; Louisiana; Nebraska; Nevada; South Dakota; and Utah.

- Either party has had a history of domestic violence as either a victim or perpetrator, child abuse or child neglect evidenced by criminal history, including but not limited to, arrest, an injunction for protection against domestic violence issued after notice and hearing, medical records, affidavits, or any other relevant information; or
- The party has a criminal record.

Section 61.45, F.S., also makes provisions for the determination and forfeiture of the bond or security. It provides an exception to the bond requirements for a parent determined by the court to be a victim or potential victim of domestic violence. The statute also provides for allocation of the bond proceeds upon entry of a forfeiture order.

Effect of Proposed Changes

HB 787 renames s. 61.45, F.S., to the "Child Abduction Prevention Act."

New Preventative Measures

Currently, preventative measures may be ordered by a judge if one of the parties presents competent substantial evidence there is a risk of abduction or if both parties agree there is a risk of abduction. This bill would also permit a judge to order preventative measure upon the motion of another individual or entity having a right under the law of Florida. Additionally, the bill would allow the court to order preventative measures, if the court finds evidence that establishes credible risk of removal of the child.

In addition to the existing preventative measure for a parent to surrender the child's passport, the court may also require that:

- The petitioner place the child's name in the Children's Passport Issuance Alert Program of the U.S. Department of State;¹²
- The respondent surrender to the court or the petitioner's attorney any United States or foreign passport issued in the child's name, including a passport issued in the name of both the parent and child; and
- The respondent may not apply on behalf of the child for a new or replacement passport or visa.

As noted above, the court may require the party to post bond or other security in an amount sufficient to serve as a financial deterrent to abduction. The bill specifies that the bond may be used to pay for the reasonable expenses of recovery of the child, including reasonable attorney's fees and costs, if the child is abducted.

In addition to the existing preventative measure for a court to order a party not to remove the child from the state or country without notarized written permission, a court may order:

- An imposition of travel restrictions that require that a party traveling with the child outside a designated geographic area provide the other party with the travel itinerary of the child; a list of physical addresses and telephone numbers at which the child can be reached at specified times; and copies of all travel documents;
- A prohibition of the respondent from, directly or indirectly:
 - Removing the child from the state or country or specified region without written consent;
 - Removing or retaining a child in violation of a child custody determination;
 - Removing the child from school, child care or similar facility; or

¹² The Children's Passport Issuance Alert Program of the U.S. Department of State allows a parent to register his or her U.S. citizen children under the age of 18 in the Department of State's Passport Lookout System. The parent or parents receive an alert from the Department of State if an application is submitted for a child that is registered in the program. The passport lookout system gives all U.S. passport agencies as well as U.S. embassies and consulates abroad an alert on a child's name if a parent or guardian registers an objection to passport issuance for his or her child. U.S. Passport Service Guide, *The Children's Passport Issuance Alert Program*, available at: http://travel.state.gov/family/abduction/resources/resources_554.html. (Last accessed March 17, 2010).

- Approaching the child at any location other than a site designated for supervised visitation.
- A requirement that a party register the order in another state as a prerequisite to allowing the child to travel to that state;
- As a prerequisite to exercising custody or visitation, a court may order a requirement that the respondent provide the following:
 - Authenticated court order detailing passport and travel restrictions for the child to the Office of Children's Issues within the Bureau of Consular Affairs of the U.S. Department of State and relevant foreign consulate or embassy;
 - Proof to the court that the respondent has provided the information as noted above;
 - An acknowledgement to the court in a record from the relevant foreign consulate or embassy that no passport application has been made or issued on behalf of the child;
 - Proof to the petitioner and court of registration with the U.S. embassy or other U.S. diplomatic presence in the destination country and with the destination country's central authority for the Hague Convention, if that convention is in effect between this country and the destination country, unless one of the parties objects;
 - A written waiver under the Privacy Act, 5 U.S.C. s. 552(a), as amended, with respect to any document, application, or other information pertaining to the child or party authorizing its disclosure to the court and petitioner;
 - A written waiver with respect to any document application, or other information pertaining to the child or respondent in records held by the U.S. Bureau of Citizenship and Immigration Services authorizing its disclosure to the court and the petitioner;
 - Upon the court's request, a requirement that the party obtain an order from the relevant foreign country, containing terms identical to the child custody determination issued in this country; or
 - Upon the court's request, a requirement that the child be entered into the Prevent Departure Program of the U.S. Department of State¹³ or a similar federal program designed to prevent unauthorized departure into foreign country.
- The court may impose conditions on the exercise of custody or visitation that limit visitation or require that visitation with the child by the respondent be supervised until the court finds that supervision is no longer necessary and orders the respondent to pay the costs of supervision.

New Risk Factors

The bill imposes additional risk factors that a party has engaged in activities that suggest that he or she may violate the parenting plan by abducting the child. The new factors include whether:

- The party has engaged in activities that suggest plans to leave Florida such as applying for a passport or visa or obtaining travel documents for the respondent; a family member, or the child;
- The party has sought to obtain the child's birth certificate or school medical records;
- The party is likely to take the child to a country that:
 - Is not a party to the Hague Convention and does not provide for the extradition of an abducting parent or for the return of an abducted child;
 - Is a party to the Hague Convention, but:
 - The Hague Convention is not in force between this country and that country;
 - Is noncompliant or demonstrating patterns of noncompliance according to the most recent compliance report issued by the U.S. Department of State; or
 - Lacks legal mechanisms for immediately and effectively enforcing a return order under the Hague Convention;
 - Poses a risk that the child's physical or emotional health or safety would be endangered in the country because of specific circumstances relating to the child or because of human rights violations committed against children;
 - Has laws or practices that would:

¹³ The Department of Homeland Security's Prevent Departure Program prevents non-U.S. citizens from leaving the U.S. The program only applies to aliens. It is not available to stop U.S. citizens or dual U.S./foreign citizens from leaving the country. Office of Juvenile Justice and Delinquency Prevention. *A Family Resource Guide on International Parental Kidnapping*. <http://www.ncjrs.gov/pdffiles1/ojdp/215476.pdf>. (Last accessed March 17, 2010).

- Enable the respondent, without due cause, to prevent the petitioner from contacting the child;
- Restrict the petitioner from freely traveling to or exiting from the country because of the petitioner's gender, nationality, marital status, or religion; or
- Restrict the child's ability legally to leave the country after the child reaches the age of majority because of a child's gender, nationality, or religion;
- Is included by the U.S. Department of State on a current list of state sponsors of terrorism
- Does not have an official U.S. diplomatic presence in the country; or
- Is engaged in active military action or war, including a civil war, to which the child may be exposed
- The party is undergoing a change in immigration or citizenship status that would adversely affect the respondent's ability to remain in this country legally;
- The party has had an application for U.S. citizenship denied;
- The party has forged or presented misleading or false evidence on government forms or supporting documents to obtain or attempt to obtain a passport, a visa, or travel documents, a social security card, a driver's license, or other government-issued identification card or has made a misrepresentation to the U.S. government;
- The party has used multiple names to attempt to mislead or defraud;
- The party is a delusional paranoiac;
- The party is severely sociopathic; or
- The party is engaged in any other conduct the court considers relevant to the risk of abduction.

A violation of the court-ordered parenting plan may subject the party committing the violation to civil or criminal penalties or a federal or state warrant under federal or state laws, including the International Parental Kidnapping Crime Act,¹⁴ and may subject the violating parent to apprehension by a law enforcement officer.

The bill provides an effective date of July 1, 2010.

B. SECTION DIRECTORY:

Section 1. Names the act as the "Child Abduction Prevention Act."

Section 2. Amends s. 61.45, F.S., relating to court-ordered parenting plan; risk of violation; bond.

Section 3. 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:

¹⁴ The International Parental Kidnapping Crime Act (IPKCA) of 1993 provides that a criminal arrest warrant can be issued for a parent who takes a juvenile under 16 outside of the U.S. without the other custodial parent's permission. Federal Bureau of Investigation, *Crimes Against Children*, <http://www.fbi.gov/hq/cid/cac/family.htm>, (Last accessed March 17, 2010).

None.

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill provides that law enforcement officers may be required to take a child into custody in certain situations, which could cause an increase in workload. However, to the extent that this bill could prevent the abduction of a child, courts and law enforcement officers are likely to see a reduction in litigation and enforcement costs respectively.

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:

Several states have considered adopting the UCAPA, but declined to do so. One of the reasons some states did not adopt the UCAPA is that they believe that the measures to prevent abduction took away certain fundamental liberties, such as the right to travel.¹⁵ Another reason was that some of the factors that the court may consider to determine whether a credible risk of abduction of a child exists do not in and of themselves display evidence of such a risk and may be used by a parent as a control mechanism.¹⁶ Examples include obtaining a child's school records or birth certificate, a parent changing jobs, or the purchase of airline tickets. These actions may evidence parental responsibility or change of circumstances, rather than evidence a possible abduction.¹⁷ Some states have rectified some of the problems by modifying the UCAPA to apply only to international child abductions and allow for the consideration of risk factors in their totality rather than individually.¹⁸

The terms "delusional paranoid" and "severely sociopathic" are very specific diagnoses. A more general consideration of the party's "mental health" as it may relate to abduction risk factors could be an improvement by not being overly specific by requiring actual diagnoses.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

¹⁵ *Op. cit.*, State of New Jersey Law Revision Commission.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.* Louisiana is one state that has adopted a version of UCAPA that applies exclusively to international adoptions.

1 A bill to be entitled

2 An act relating to child abduction prevention; providing a
 3 short title; amending s. 61.45, F.S.; authorizing
 4 additional persons to move to have certain restrictions
 5 placed in parenting plans upon showing of a risk that one
 6 party may violate the court's parenting plan by removing a
 7 child from this state or country or by concealing the
 8 child's whereabouts; authorizing courts to impose certain
 9 restrictions in parenting plans upon a specified finding;
 10 authorizing a court to impose certain restrictions in
 11 addition to or in lieu of a requirement that a child's
 12 passport be surrendered; authorizing a court to impose
 13 specified restrictions upon entry of an order to prevent
 14 removal of a child from this state or country; providing
 15 additional factors that may be considered in assessing the
 16 risk that a party may violate a parenting plan by removing
 17 a child from this state or country or by concealing the
 18 child's whereabouts; providing that violations may subject
 19 a violator to specified penalties or other consequences;
 20 providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. This act may be cited as the "Child Abduction
 25 Prevention Act."

26 Section 2. Section 61.45, Florida Statutes, is amended to
 27 read:

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28 61.45 Court-ordered parenting plan; risk of violation;
 29 bond.—

30 (1) In any proceeding in which the court enters a
 31 parenting plan, including a time-sharing schedule, including in
 32 a modification proceeding, upon the presentation of competent
 33 substantial evidence that there is a risk that one party may
 34 violate the court's parenting plan by removing a child from this
 35 state or country or by concealing the whereabouts of a child, ~~or~~
 36 upon stipulation of the parties, upon the motion of another
 37 individual or entity having a right under the law of this state,
 38 or if the court finds evidence that establishes credible risk of
 39 removal of the child, the court may:

40 (a) Order that a parent may not remove the child from this
 41 state without the notarized written permission of both parents
 42 or further court order;

43 (b) Order that a parent may not remove the child from this
 44 country without the notarized written permission of both parents
 45 or further court order;

46 (c) Order that a parent may not take the child to a
 47 country that has not ratified or acceded to the Hague Convention
 48 on the Civil Aspects of International Child Abduction unless the
 49 other parent agrees in writing that the child may be taken to
 50 the country;

51 (d) Require a parent to surrender the passport of the
 52 child or require that:

53 1. The petitioner place the child's name in the Children's
 54 Passport Issuance Alert Program of the United States Department
 55 of State;

56 2. The respondent surrender to the court or the
 57 petitioner's attorney any United States or foreign passport
 58 issued in the child's name, including a passport issued in the
 59 name of both the parent and the child; and

60 3. The respondent not apply on behalf of the child for a
 61 new or replacement passport or visa; or

62 (e) Require that party to post bond or other security in
 63 an amount sufficient to serve as a financial deterrent to
 64 abduction, the proceeds of which may be used to pay for the
 65 reasonable expenses of recovery of the child, including
 66 reasonable attorney's fees and costs, if the child is abducted.

67 (2) If the court enters a parenting plan, including a
 68 time-sharing schedule, including in a modification proceeding,
 69 that includes a provision entered under paragraph (1)(b) or
 70 paragraph (1)(c), a certified copy of the order should be sent
 71 by the parent who requested the restriction to the Passport
 72 Services Office of the United States Department of State
 73 requesting that they not issue a passport to the child without
 74 their signature or further court order.

75 (3) If the court enters an order under paragraph (1)(a) or
 76 paragraph (1)(b) to prevent the removal of the child from this
 77 state or country, the order may include one or more of the
 78 following:

79 (a) An imposition of travel restrictions that require that
 80 a party traveling with the child outside a designated geographic
 81 area provide the other party with the following:

82 1. The travel itinerary of the child.

83 2. A list of physical addresses and telephone numbers at
 84 which the child can be reached at specified times.

85 3. Copies of all travel documents.

86 (b) A prohibition of the respondent directly or
 87 indirectly:

88 1. Removing the child from this state or country or
 89 another specified geographic area without permission of the
 90 court or the petitioner's written consent;

91 2. Removing or retaining the child in violation of a child
 92 custody determination;

93 3. Removing the child from school or a child care or
 94 similar facility; or

95 4. Approaching the child at any location other than a site
 96 designated for supervised visitation.

97 (c) A requirement that a party register the order in
 98 another state as a prerequisite to allowing the child to travel
 99 to that state.

100 (d) As a prerequisite to exercising custody or visitation,
 101 a requirement that the respondent provide the following:

102 1. An authenticated copy of the order detailing passport
 103 and travel restrictions for the child to the Office of
 104 Children's Issues within the Bureau of Consular Affairs of the
 105 United States Department of State and the relevant foreign
 106 consulate or embassy.

107 2. Proof to the court that the respondent has provided the
 108 information in subparagraph 1.

109 3. An acknowledgment to the court in a record from the
 110 relevant foreign consulate or embassy that no passport

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111 application has been made, or passport issued, on behalf of the
112 child.

113 4. Proof to the petitioner and court of registration with
114 the United States embassy or other United States diplomatic
115 presence in the destination country and with the destination
116 country's central authority for the Hague Convention on the
117 Civil Aspects of International Child Abduction, if that
118 convention is in effect between this country and the destination
119 country, unless one of the parties objects.

120 5. A written waiver under the Privacy Act, 5 U.S.C. s.
121 552a, as amended, with respect to any document, application, or
122 other information pertaining to the child or the respondent
123 authorizing its disclosure to the court and the petitioner.

124 6. A written waiver with respect to any document,
125 application, or other information pertaining to the child or the
126 respondent in records held by the United States Bureau of
127 Citizenship and Immigration Services authorizing its disclosure
128 to the court and the petitioner.

129 7. Upon the court's request, a requirement that the
130 respondent obtain an order from the relevant foreign country
131 containing terms identical to the child custody determination
132 issued in this country.

133 8. Upon the court's request, a requirement that the
134 respondent be entered in the Prevent Departure Program of the
135 United States Department of State or a similar federal program
136 designed to prevent unauthorized departures to foreign
137 countries.

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138 (e) The court may impose conditions on the exercise of
 139 custody or visitation that limit visitation or require that
 140 visitation with the child by the respondent be supervised until
 141 the court finds that supervision is no longer necessary and
 142 orders the respondent to pay the costs of supervision.

143 ~~(4)(3)~~ In assessing the need for a bond or other security,
 144 the court may consider any reasonable factor bearing upon the
 145 risk that a party may violate a parenting plan by removing a
 146 child from this state or country or by concealing the
 147 whereabouts of a child, including but not limited to whether:

148 (a) A court has previously found that a party previously
 149 removed a child from Florida or another state in violation of a
 150 parenting plan, or whether a court had found that a party has
 151 threatened to take a child out of Florida or another state in
 152 violation of a parenting plan;

153 (b) The party has strong family and community ties to
 154 Florida or to other states or countries, including whether the
 155 party or child is a citizen of another country;

156 (c) The party has strong financial reasons to remain in
 157 Florida or to relocate to another state or country;

158 (d) The party has engaged in activities that suggest plans
 159 to leave Florida, such as quitting employment; sale of a
 160 residence or termination of a lease on a residence, without
 161 efforts to acquire an alternative residence in the state;
 162 closing bank accounts or otherwise liquidating assets; ~~or~~
 163 applying for a passport or visa or obtaining travel documents
 164 for the respondent, a family member, or the child;

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165 (e) The party has sought to obtain the child's birth
 166 certificate or school or medical records;

167 ~~(f)(e)~~ Either party has had a history of domestic violence
 168 as either a victim or perpetrator, child abuse or child neglect
 169 evidenced by criminal history, including but not limited to,
 170 arrest, an injunction for protection against domestic violence
 171 issued after notice and hearing under s. 741.30, medical
 172 records, affidavits, or any other relevant information; ~~or~~

173 ~~(g)(f)~~ The party has a criminal record; ~~or~~

174 (h) The party is likely to take the child to a country
 175 that:

176 1. Is not a party to the Hague Convention on the Civil
 177 Aspects of International Child Abduction and does not provide
 178 for the extradition of an abducting parent or for the return of
 179 an abducted child;

180 2. Is a party to the Hague Convention on the Civil Aspects
 181 of International Child Abduction, but:

182 a. The Hague Convention on the Civil Aspects of
 183 International Child Abduction is not in force between this
 184 country and that country;

185 b. Is noncompliant or demonstrating patterns of
 186 noncompliance according to the most recent compliance report
 187 issued by the United States Department of State; or

188 c. Lacks legal mechanisms for immediately and effectively
 189 enforcing a return order under the Hague Convention on the Civil
 190 Aspects of International Child Abduction;

191 3. Poses a risk that the child's physical or emotional
 192 health or safety would be endangered in the country because of

193 specific circumstances relating to the child or because of human
 194 rights violations committed against children;

195 4. Has laws or practices that would:

196 a. Enable the respondent, without due cause, to prevent
 197 the petitioner from contacting the child;

198 b. Restrict the petitioner from freely traveling to or
 199 exiting from the country because of the petitioner's gender,
 200 nationality, marital status, or religion; or

201 c. Restrict the child's ability legally to leave the
 202 country after the child reaches the age of majority because of a
 203 child's gender, nationality, or religion;

204 5. Is included by the United States Department of State on
 205 a current list of state sponsors of terrorism;

206 6. Does not have an official United States diplomatic
 207 presence in the country; or

208 7. Is engaged in active military action or war, including
 209 a civil war, to which the child may be exposed;

210 (i) The party is undergoing a change in immigration or
 211 citizenship status that would adversely affect the respondent's
 212 ability to remain in this country legally;

213 (j) The party has had an application for United States
 214 citizenship denied;

215 (k) The party has forged or presented misleading or false
 216 evidence on government forms or supporting documents to obtain
 217 or attempt to obtain a passport, a visa, travel documents, a
 218 social security card, a driver's license, or other government-
 219 issued identification card or has made a misrepresentation to
 220 the United States government;

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221 (1) The party has used multiple names to attempt to
 222 mislead or defraud;

223 (m) The party is a delusional paranoiac;

224 (n) The party is severely sociopathic; or

225 (o) The party has engaged in any other conduct the court
 226 considers relevant to the risk of abduction.

227 ~~(5)-(4)~~ The court must consider the party's financial
 228 resources prior to setting the bond amount under this section.
 229 Under no circumstances may the court set a bond that is
 230 unreasonable.

231 ~~(6)-(5)~~ Any deficiency of bond or security shall not
 232 absolve the violating party of responsibility to pay the full
 233 amount of damages determined by the court.

234 ~~(7)-(6)~~(a) Upon a material violation of any parenting plan
 235 by removing a child from this state or ~~this~~ country or by
 236 concealing the whereabouts of a child, the court may order the
 237 bond or other security forfeited in whole or in part.

238 (b) This section, including the requirement to post a bond
 239 or other security, does not apply to a parent who, in a
 240 proceeding to order or modify a parenting plan or time-sharing
 241 schedule, is determined by the court to be a victim of an act of
 242 domestic violence or provides the court with reasonable cause to
 243 believe that he or she is about to become the victim of an act
 244 of domestic violence, as defined in s. 741.28. An injunction for
 245 protection against domestic violence issued pursuant to s.
 246 741.30 for a parent as the petitioner which is in effect at the
 247 time of the court proceeding shall be one means of demonstrating
 248 sufficient evidence that the parent is a victim of domestic

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249 violence or is about to become the victim of an act of domestic
 250 violence, as defined in s. 741.28, and shall exempt the parent
 251 from this section, including the requirement to post a bond or
 252 other security. A parent who is determined by the court to be
 253 exempt from the requirements of this section must meet the
 254 requirements of s. 787.03(6) if an offense of interference with
 255 the parenting plan or time-sharing schedule is committed.

256 (8)~~(7)~~(a) Upon an order of forfeiture, the proceeds of any
 257 bond or other security posted pursuant to this subsection may
 258 only be used to:

259 1. Reimburse the nonviolating party for actual costs or
 260 damages incurred in upholding the court's parenting plan.

261 2. Locate and return the child to the residence as set
 262 forth in the parenting plan.

263 3. Reimburse reasonable fees and costs as determined by
 264 the court.

265 (b) Any remaining proceeds shall be held as further
 266 security if deemed necessary by the court, and if further
 267 security is not found to be necessary; applied to any child
 268 support arrears owed by the parent against whom the bond was
 269 required, and if no arrears exists; all remaining proceeds will
 270 be allocated by the court in the best interest of the child.

271 (9)~~(8)~~ At any time after the forfeiture of the bond or
 272 other security, the party who posted the bond or other security,
 273 or the court on its own motion may request that the party
 274 provide documentation substantiating that the proceeds received
 275 as a result of the forfeiture have been used solely in
 276 accordance with this subsection. Any party using such proceeds

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277 | for purposes not in accordance with this section may be found in
278 | contempt of court.

279 | (10) A violation may subject the party committing the
280 | violation to civil or criminal penalties or a federal or state
281 | warrant under federal or state laws, including the International
282 | Parental Kidnapping Crime Act, and may subject the violating
283 | parent to apprehension by law enforcement.

284 | Section 3. This act shall take effect 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:

Current Law

Section 316.027, Florida Statutes, requires that the driver of any vehicle involved in a crash that results in death or injury of any person must immediately stop the vehicle and remain at the scene until the driver has complied with section 316.062, Florida Statutes. That statute requires the person to provide his or her, name, address, vehicle registration number, and exhibit his or her driver's license to any person injured in the crash or the person attending the damaged vehicle and give the same information to any police officer investigating the crash.¹ The driver is also required to render reasonable assistance to the injured person.²

A driver who violates section 316.027, Florida Statutes, in a case involving injury commits a third degree felony.³ A third degree felony is punishable by up to five years in prison and a fine up to \$5,000.⁴ The violation does not include a minimum mandatory prison sentence.

A driver who violates section 316.027, Florida Statutes, in a case involving death commits a first degree felony.⁵ A first degree felony is punishable by up to 30 years in prison and a fine up to \$10,000.⁶ This violation includes a minimum mandatory prison sentence of 2 years if the person commits the violation while driving under the influence in violation of section 316.193, Florida Statutes.⁷

All violations of section 316.027, Florida Statutes, require that the driver violating the statute make restitution to the victim unless the court finds clear and compelling reasons not to order restitution. Restitution is required to be made a condition of probation.⁸

Current law requires revocation of a driver license if a person violates section 316.027, Florida Statutes.⁹

¹ See s. 316.062, F.S.

² See s. 316.062, F.S.

³ See s. 316.027(1)(a), F.S.

⁴ See ss. 775.082, 775.083, F.S.

⁵ See s. 316.027(1)(b), F.S.

⁶ See ss. 775.082, 775.083, F.S.

⁷ See s. 316.027(1)(b), F.S.

⁸ See s. 316.027(1)(c), F.S.

Proposed Changes

The bill amends section 316.027, Florida Statutes, to create three levels of the offense, each with different punishments. The first level involves violations in cases where there is a violation in a case involving injury. The bill requires that anyone violating s. 316.027, Florida Statutes, in a case involving injury be sentenced to a minimum mandatory sentence of 3 years. Current law has no minimum mandatory sentence.

The bill creates a second level of the offense where there is serious bodily injury. "Serious bodily injury" is not defined by the bill. The bill requires that anyone violating s. 316.027, Florida Statutes, in a case involving serious bodily injury be sentenced to a minimum mandatory sentence of 7 years. The bill provides that a violation of section 316.027, Florida Statutes, in a case involving serious bodily injury is a level 6 offense on the offense severity ranking chart of the Criminal Punishment Code.

The bill amends the third level of the offense: cases involving death. The bill requires that anyone violating s. 316.027, Florida Statutes, in a case involving death be sentenced to a minimum mandatory sentence of 10 years. Current law has no minimum mandatory sentence. The bill requires that violators who are also driving under the influence receive a minimum mandatory sentence of 12 years instead of the 2 year minimum mandatory under current law.

The bill requires anyone who violates section 316.027, Florida Statutes, be subject to a 3 year mandatory driver license revocation and be required to attend a victim impact panel if one is available in the judicial circuit. A victim impact panel is a meeting where offenders meet with victims to learn the impact of the offenses related to driving. There are victim impact panels in at least 33 counties.¹⁰

The bill provides an effective date of July 1, 2010.

B. SECTION DIRECTORY:

Section 1. Amends s. 316.027, F.S., relating to crash involving death or personal injuries.

Section 2. Reenacts s. 316.062, F.S., relating to the duty to give information and render aid.

Section 3. Amends s. 322.28, F.S., relating to period of suspension or revocation.

Section 4. Reenacts s. 322.34, F.S., relating to driving while license suspended, revoked, canceled, or disqualified.

Section 5. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 6. 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."

⁹ See s. 316.027(2), F.S.

¹⁰ See http://www.madd.org/chapter/1200_12281, accessed March 17, 2010.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There is no direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference met on February 23, 2010, and estimated the following net impact on the inmate population over the next five years on the provision of the bill that imposes a 3-year minimum mandatory on the current third degree felony:

Fiscal Year	Add'l Prison Beds	Operating Costs	Fixed Capital Outlay	Total Annual Funds
2010-11	87	\$847,250	\$28,203,713	\$29,050,963
2011-12	416	\$5,866,370	\$35,761,250	\$41,627,620
2012-13	625	\$16,524,477	\$28,099,100	\$44,623,577
2013-14	475	\$28,223,520	\$9,510,490	\$37,734,010
2014-15	155	\$35,428,301	\$0	\$35,428,301
Total	1,758	\$86,889,917	\$101,574,553	\$188,464,470

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:

"Serious bodily injury" is not defined by the bill. A driving under the influence statute defines it as "an injury to any person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the

function of any bodily member or organ.”¹¹ The reckless driving statute uses the same definition but does not apply it to injuries to the driver.¹² If the bill does not contain a definition, there is a possibility of litigation over the meaning of “serious bodily injury” and whether the statute applies to serious bodily injuries incurred by the person who violates the statute.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

¹¹ See s. 316.1933(1)(b), Florida Statutes.

¹² See s. 316.192, Florida Statutes

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A bill to be entitled

An act relating to motor vehicle crashes; amending s. 316.027, F.S.; requiring the driver of a vehicle involved in a crash that results in serious bodily injury to stop and remain at the scene until he or she has fulfilled specified requirements; providing penalties; directing the court to order restitution; revising the mandatory minimum term of imprisonment for a person driving under the influence who fails to stop and fulfill such requirements at the scene of a crash that results in the death of any person; providing certain mandatory penalties for failing to stop and fulfill such requirements at the scene of a crash that results in the injury, serious bodily injury, or death of any person; providing that a person who commits such violation may be required to participate in a victim impact panel session; removing a provision directing the department to revoke the driver's license of a person convicted of such violation; reenacting s. 316.062, F.S., relating to duty to give information and render aid, to incorporate changes made by the act in a reference thereto; amending s. 322.28, F.S.; providing for the period of revocation of a driver's license to be ordered by the court for a violation of the requirements to stop and remain at the scene of a crash that results in the injury, serious bodily injury, or death of any person; directing the Department of Highway Safety and Motor Vehicles to revoke the driver's license for a specified period of time if the court does not specify the period of

29 revocation; reenacting s. 322.34(6)(b), F.S., relating to
 30 driving while a license is suspended, revoked, canceled,
 31 or disqualified, to incorporate changes made by the act in
 32 a reference thereto; amending s. 921.0022, F.S.; revising
 33 the offense severity ranking chart of the Criminal
 34 Punishment Code to provide for the offense of failing to
 35 stop and fulfill specified requirements at the scene of a
 36 crash that results in serious bodily injury; conforming a
 37 cross-reference; providing an effective date.

38

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

40

41 Section 1. Section 316.027, Florida Statutes, is amended
 42 to read:

43 316.027 Crash involving death or personal injuries.—

44 (1) (a) The driver of any vehicle involved in a crash
 45 occurring on public or private property that results in injury
 46 of any person must immediately stop the vehicle at the scene of
 47 the crash, or as close thereto as possible, and must remain at
 48 the scene of the crash until he or she has fulfilled the
 49 requirements of s. 316.062. Any person who willfully violates
 50 this paragraph commits a felony of the third degree, punishable
 51 as provided in s. 775.082, s. 775.083, or s. 775.084, with a
 52 mandatory minimum term of imprisonment of 3 years.

53 (b) The driver of any vehicle involved in a crash
 54 occurring on public or private property that results in serious
 55 bodily injury of any person must immediately stop the vehicle at
 56 the scene of the crash, or as close thereto as possible, and

57 | must remain at the scene of the crash until he or she has
 58 | fulfilled the requirements of s. 316.062. Any person who
 59 | willfully violates this paragraph commits a felony of the second
 60 | degree, punishable as provided in s. 775.082, s. 775.083, or s.
 61 | 775.084, with a mandatory minimum term of imprisonment of 7
 62 | years.

63 | (c) ~~(b)~~ The driver of any vehicle involved in a crash
 64 | occurring on public or private property that results in the
 65 | death of any person must immediately stop the vehicle at the
 66 | scene of the crash, or as close thereto as possible, and must
 67 | remain at the scene of the crash until he or she has fulfilled
 68 | the requirements of s. 316.062. Any person who willfully
 69 | violates this paragraph commits a felony of the first degree,
 70 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 71 | with a mandatory minimum term of imprisonment of 10 years. Any
 72 | person who willfully violates this paragraph while driving under
 73 | the influence as set forth in s. 316.193(1) shall be sentenced
 74 | to a mandatory minimum term of imprisonment of 12 ~~2~~ years.

75 | (d) ~~(e)~~ Notwithstanding s. 775.089(1)(a), if the driver of
 76 | a vehicle violates paragraph (a), ~~or~~ paragraph (b), or paragraph
 77 | (c), the court shall order the driver to make restitution to the
 78 | victim for any damage or loss unless the court finds clear and
 79 | compelling reasons not to order the restitution. Restitution may
 80 | be monetary or nonmonetary restitution. The court shall make the
 81 | payment of restitution a condition of probation in accordance
 82 | with s. 948.03. An order requiring the defendant to make
 83 | restitution to a victim does not remove or diminish the
 84 | requirement that the court order payment to the Crimes

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85 Compensation Trust Fund under chapter 960. Payment of an award
 86 by the Crimes Compensation Trust Fund creates an order of
 87 restitution to the Crimes Compensation Trust Fund unless
 88 specifically waived in accordance with s. 775.089(1)(b).

89 (2) In addition to any other penalty provided for by law,
 90 a driver who violates paragraph (1)(a), paragraph (1)(b), or
 91 paragraph (1)(c) is subject to mandatory license revocation for
 92 a period of not less than 3 years in accordance with s.
 93 322.28(4)(b) and participation in a victim impact panel session
 94 in those judicial circuits where one exists. ~~The department~~
 95 ~~shall revoke the driver's license of the person so convicted.~~

96 (3) Every stop must be made without obstructing traffic
 97 more than is necessary, and, if a damaged vehicle is obstructing
 98 traffic, the driver of the vehicle must make every reasonable
 99 effort to move the vehicle or have it moved so as not to
 100 obstruct the regular flow of traffic. Any person who fails to
 101 comply with this subsection shall be cited for a nonmoving
 102 violation, punishable as provided in chapter 318.

103 (4) A person whose commission of a noncriminal traffic
 104 infraction or any violation of this chapter or s. 1006.66 causes
 105 or results in the death of another person may, in addition to
 106 any other civil, criminal, or administrative penalty imposed, be
 107 required by the court to serve 120 community service hours in a
 108 trauma center or hospital that regularly receives victims of
 109 vehicle accidents, under the supervision of a registered nurse,
 110 an emergency room physician, or an emergency medical technician
 111 pursuant to a voluntary community service program operated by
 112 the trauma center or hospital.

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113 (5) This section does not apply to crashes occurring
 114 during a motorsports event, as defined in s. 549.10(1), or at a
 115 closed-course motorsport facility, as defined in s. 549.09(1).

116 Section 2. For the purpose of incorporating the amendment
 117 made by this act to section 316.027, Florida Statutes, in a
 118 reference thereto, section 316.062, Florida Statutes, is
 119 reenacted to read:

120 316.062 Duty to give information and render aid.-

121 (1) The driver of any vehicle involved in a crash
 122 resulting in injury to or death of any person or damage to any
 123 vehicle or other property which is driven or attended by any
 124 person shall give his or her name, address, and the registration
 125 number of the vehicle he or she is driving, and shall upon
 126 request and if available exhibit his or her license or permit to
 127 drive, to any person injured in such crash or to the driver or
 128 occupant of or person attending any vehicle or other property
 129 damaged in the crash and shall give such information and, upon
 130 request, exhibit such license or permit to any police officer at
 131 the scene of the crash or who is investigating the crash and
 132 shall render to any person injured in the crash reasonable
 133 assistance, including the carrying, or the making of
 134 arrangements for the carrying, of such person to a physician,
 135 surgeon, or hospital for medical or surgical treatment if it is
 136 apparent that treatment is necessary, or if such carrying is
 137 requested by the injured person.

138 (2) In the event none of the persons specified are in
 139 condition to receive the information to which they otherwise
 140 would be entitled under subsection (1), and no police officer is

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141 present, the driver of any vehicle involved in such crash, after
 142 fulfilling all other requirements of s. 316.027 and subsection
 143 (1), insofar as possible on his or her part to be performed,
 144 shall forthwith report the crash to the nearest office of a duly
 145 authorized police authority and submit thereto the information
 146 specified in subsection (1).

147 (3) The statutory duty of a person to make a report or
 148 give information to a law enforcement officer making a written
 149 report relating to a crash shall not be construed as extending
 150 to information which would violate the privilege of such person
 151 against self-incrimination.

152 (4) A violation of this section is a noncriminal traffic
 153 infraction, punishable as a nonmoving violation as provided in
 154 chapter 318.

155 Section 3. Subsection (4) of section 322.28, Florida
 156 Statutes, is amended to read:

157 322.28 Period of suspension or revocation.—

158 (4) (a) Upon a conviction for a violation of s.
 159 316.193(3)(c)2., involving serious bodily injury, a conviction
 160 of manslaughter resulting from the operation of a motor vehicle,
 161 or a conviction of vehicular homicide, the court shall revoke
 162 the driver's license of the person convicted for a minimum
 163 period of 3 years. If a conviction under s. 316.193(3)(c)2.,
 164 involving serious bodily injury, is also a subsequent conviction
 165 as described under paragraph (2)(a), the court shall revoke the
 166 driver's license or driving privilege of the person convicted
 167 for the period applicable as provided in paragraph (2)(a) or
 168 paragraph (2)(e).

169 (b) Upon a conviction for a violation of s. 316.027(1)(a),
 170 (b), or (c) involving a crash that results in injury, serious
 171 bodily injury, or death, the court shall revoke the driver's
 172 license of the person convicted for a minimum of 3 years.

173 ~~(c)(b)~~ If the period of revocation was not specified by
 174 the court at the time of imposing sentence or within 30 days
 175 thereafter, the department shall revoke the driver's license for
 176 the minimum period applicable under paragraph (a) or paragraph
 177 (b) or, for a subsequent conviction, for the minimum period
 178 applicable under paragraph (2)(a) or paragraph (2)(e).

179 Section 4. For the purpose of incorporating the amendment
 180 made by this act to section 322.28, Florida Statutes, in a
 181 reference thereto, paragraph (b) of subsection (6) of section
 182 322.34, Florida Statutes, is reenacted to read:

183 322.34 Driving while license suspended, revoked, canceled,
 184 or disqualified.—

185 (6) Any person who operates a motor vehicle:

186 (b) While his or her driver's license or driving privilege
 187 is canceled, suspended, or revoked pursuant to s. 316.655, s.
 188 322.26(8), s. 322.27(2), or s. 322.28(2) or (4),

189
 190 and who by careless or negligent operation of the motor vehicle
 191 causes the death of or serious bodily injury to another human
 192 being is guilty of a felony of the third degree, punishable as
 193 provided in s. 775.082 or s. 775.083.

194 Section 5. Paragraphs (f) and (g) of subsection (3) of
 195 section 921.0022, Florida Statutes, are amended to read:

196 921.0022 Criminal Punishment Code; offense severity

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197	ranking chart.—		
198	(3) OFFENSE SEVERITY RANKING CHART		
199	(f) LEVEL 6		
200			
	Florida	Felony	
	Statute	Degree	Description
201			
	<u>316.027(1)(b)</u>	<u>2nd</u>	<u>Accident involving serious</u> <u>bodily injury, failure to stop;</u> <u>leaving scene.</u>
202			
	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
203			
	499.0051(3)	2nd	Knowing forgery of pedigree papers.
204			
	499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
205			
	499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
206			
	775.0875(1)	3rd	Taking firearm from law

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			enforcement officer.
207	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
208	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
209	784.041	3rd	Felony battery; domestic battery by strangulation.
210	784.048(3)	3rd	Aggravated stalking; credible threat.
211	784.048(5)	3rd	Aggravated stalking of person under 16.
212	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
213	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
214	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
215			

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216	784.081(2)	2nd	Aggravated assault on specified official or employee.
217	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
218	784.083(2)	2nd	Aggravated assault on code inspector.
219	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
220	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
221	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
222	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.

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223	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
224	794.011(8) (a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
225	794.05(1)	2nd	Unlawful sexual activity with specified minor.
226	800.04(5) (d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
227	800.04(6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
228	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
229	810.02(3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.

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230	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
231	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
232	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
233	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
234	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
235	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
236	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
	825.102(1)	3rd	Abuse of an elderly person or

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237			disabled adult.
	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
238			
	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
239			
	825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
240			
	827.03(1)	3rd	Abuse of a child.
241			
	827.03(3)(c)	3rd	Neglect of a child.
242			
	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
243			
	836.05	2nd	Threats; extortion.
244			
	836.10	2nd	Written threats to kill or do bodily injury.
245			
	843.12	3rd	Aids or assists person to

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escape.

246

847.011 3rd Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.

247

847.012 3rd Knowingly using a minor in the production of materials harmful to minors.

248

847.0135(2) 3rd Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.

249

914.23 2nd Retaliation against a witness, victim, or informant, with bodily injury.

250

944.35(3)(a)2. 3rd Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.

251

944.40 2nd Escapes.

252

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253	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
254	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
255	951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
256	(g) LEVEL 7		
257	Florida Statute	Felony Degree	Description
258	316.027(1) <u>(c)</u> (b)	1st	Accident involving death, failure to stop; leaving scene.
259	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
260	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to

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elude law enforcement officer
 who is in a patrol vehicle with
 siren and lights activated.

261

327.35(3)(c)2. 3rd Vessel BUI resulting in serious
 bodily injury.

262

402.319(2) 2nd Misrepresentation and
 negligence or intentional act
 resulting in great bodily harm,
 permanent disfiguration,
 permanent disability, or death.

263

409.920(2)(b)1.a. 3rd Medicaid provider fraud;
 \$10,000 or less.

264

409.920(2)(b)1.b. 2nd Medicaid provider fraud; more
 than \$10,000, but less than
 \$50,000.

265

456.065(2) 3rd Practicing a health care
 profession without a license.

266

456.065(2) 2nd Practicing a health care
 profession without a license
 which results in serious bodily
 injury.

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268	458.327(1)	3rd	Practicing medicine without a license.
269	459.013(1)	3rd	Practicing osteopathic medicine without a license.
270	460.411(1)	3rd	Practicing chiropractic medicine without a license.
271	461.012(1)	3rd	Practicing podiatric medicine without a license.
272	462.17	3rd	Practicing naturopathy without a license.
273	463.015(1)	3rd	Practicing optometry without a license.
274	464.016(1)	3rd	Practicing nursing without a license.
275	465.015(2)	3rd	Practicing pharmacy without a license.
276	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.

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277	467.201	3rd	Practicing midwifery without a license.
278	468.366	3rd	Delivering respiratory care services without a license.
279	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
280	483.901(9)	3rd	Practicing medical physics without a license.
281	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
282	484.053	3rd	Dispensing hearing aids without a license.
283	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
	560.123(8)(b)1.	3rd	Failure to report currency or

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			payment instruments exceeding \$300 but less than \$20,000 by a money services business.
284	560.125(5) (a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
285	655.50(10) (b) 1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
286	775.21(10) (a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
287	775.21(10) (b)	3rd	Sexual predator working where children regularly congregate.
288	775.21(10) (g)	3rd	Failure to report or providing false information about a sexual predator; harbor or

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conceal a sexual predator.

289

782.051(3)

2nd

Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.

290

782.07(1)

2nd

Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).

291

782.071

2nd

Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).

292

782.072

2nd

Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).

293

784.045(1)(a)1.

2nd

Aggravated battery; intentionally causing great bodily harm or disfigurement.

294

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295	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
296	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
297	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
298	784.048(7)	3rd	Aggravated stalking; violation of court order.
299	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
300	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
301	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
302	784.081(1)	1st	Aggravated battery on specified official or employee.
	784.082(1)	1st	Aggravated battery by detained person on visitor or other

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detainee.

303

784.083(1) 1st Aggravated battery on code
inspector.

304

790.07(4) 1st Specified weapons violation
subsequent to previous
conviction of s. 790.07(1) or
(2).

305

790.16(1) 1st Discharge of a machine gun
under specified circumstances.

306

790.165(2) 2nd Manufacture, sell, possess, or
deliver hoax bomb.

307

790.165(3) 2nd Possessing, displaying, or
threatening to use any hoax
bomb while committing or
attempting to commit a felony.

308

790.166(3) 2nd Possessing, selling, using, or
attempting to use a hoax weapon
of mass destruction.

309

790.166(4) 2nd Possessing, displaying, or
threatening to use a hoax

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310	790.23	1st, PBL	weapon of mass destruction while committing or attempting to commit a felony.
311	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
312	796.03	2nd	Procuring any person under 16 years for prostitution.
313	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
314	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
315			

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316	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
317	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
318	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
319	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
320	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
321	812.014(2)(a)1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand

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			theft in 2nd degree.
322	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
323	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
324	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
325	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
326	812.131(2)(a)	2nd	Robbery by sudden snatching.
327	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
328	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
329			

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330	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
331	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
332	817.2341(2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
333	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
334	825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
	827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability,

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			or disfigurement.
335	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
336	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
337	838.015	2nd	Bribery.
338	838.016	2nd	Unlawful compensation or reward for official behavior.
339	838.021(3)(a)	2nd	Unlawful harm to a public servant.
340	838.22	2nd	Bid tampering.
341	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
342	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
343			

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344	872.06	2nd	Abuse of a dead human body.
345	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
346	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
347	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.

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348	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
349	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
350	893.135(1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
351	893.135(1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
352	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
353	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than

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28 grams.

354

893.135(1)(g)1.a. 1st Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.

355

893.135(1)(h)1.a. 1st Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.

356

893.135(1)(j)1.a. 1st Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.

357

893.135(1)(k)2.a. 1st Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.

358

893.1351(2) 2nd Possession of place for trafficking in or manufacturing of controlled substance.

359

896.101(5)(a) 3rd Money laundering, financial transactions exceeding \$300 but less than \$20,000.

360

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361	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
362	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
363	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
364	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
365	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure

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to respond to address
verification.

366

944.607(9) 3rd Sexual offender; failure to
comply with reporting
requirements.

367

944.607(10)(a) 3rd Sexual offender; failure to
submit to the taking of a
digitized photograph.

368

944.607(12) 3rd Failure to report or providing
false information about a
sexual offender; harbor or
conceal a sexual offender.

369

944.607(13) 3rd Sexual offender; failure to
report and reregister; failure
to respond to address
verification.

370

985.4815(10) 3rd Sexual offender; failure to
submit to the taking of a
digitized photograph.

371

985.4815(12) 3rd Failure to report or providing
false information about a

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372

sexual offender; harbor or
conceal a sexual offender.

985.4815(13)

3rd

Sexual offender; failure to
report and reregister; failure
to respond to address
verification.

373

374

Section 6. This act shall take effect 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:

Background

In 2007, the Florida Supreme Court published a report entitled *Mental Health, Transforming Florida's Mental Health System*. According to the report, on any given day in Florida, there are approximately 17,000 prison inmates, 15,000 local jail detainees, and 40,000 individuals under correctional supervision in the community who experience serious mental illnesses. Annually, as many as 125,000 adults with mental illnesses and/or substance use disorders requiring immediate treatment are arrested and booked into Florida jails. Of the 150,000 children and adolescents who are referred to Florida's Department of Juvenile Justice every year, more than 70 percent have at least one mental health disorder. The report provided a list of various recommendations to improve Florida's mental health and substance abuse system, reduce recidivism, increase public safety, and increase spending efficiency. This bill seeks to enact some of the recommendations.

In Florida, the cost for forensic mental health services in state treatment facilities is approximately \$200 million annually to fund 1,677 secure and non-secure forensic beds. These beds provide treatment to approximately 3,000 people each year. The demand for forensic beds in Florida reached crisis proportions in 2006, when 300 individuals were on a waitlist for nearly 3 months to be admitted to a forensic bed. To address the backlog, the Legislature appropriated funds to open another 413 beds in treatment facilities and the community.¹

Effect of Proposed Changes

Community Mental Health and Substance Abuse Treatment and Crime Reduction Act

This bill creates the Community Mental Health and Substance Abuse Crime Reduction Act in section 394.4656, Florida Statutes. The Act includes legislative intent and seven specific goals for the new program. Goals include the following:

- Ensure public safety;

¹ Department of Children and Families Bill Analysis for HB 1189 on file with the Committee.

- Ensure that forensic competency restoration services are provided in the least restrictive, least costly, and most effective environment;
- Provide competency restoration services in the community when appropriate, based on consideration of public safety, needs of the individual and available resources;
- Reduce admissions for competency restoration to state forensic mental health treatment facilities;
- Reduce rates of arrest, incarceration, and re-incarceration for persons in the program;
- Increase outreach and services to individuals at risk of involvement in the criminal justice system, juvenile justice system and forensic mental health system; and
- Support collaboration among state and local stakeholders

The bill adds the following substantive definitions:

- *Best practices*: “treatment services that incorporate the most effective and acceptable interventions available in the care and treatment of individuals who are diagnosed as having mental illnesses or co-occurring mental illnesses and substance abuse disorders;”
- *Community forensic system*: “the community mental health and substance abuse forensic treatment system, including the comprehensive set of services and supports provided to individuals involved in or at risk of becoming involved in the criminal justice system;”
- *Community residential facility*: “a community-based residential treatment setting licensed by the agency under s. 394.875 or s. 429.075 or by the department under s. 397.401;”
- *Evidence-based practices*: “interventions and strategies that, based on the best available empirical research, demonstrate effective and efficient outcomes in the care and treatment of individuals who are diagnosed as having mental illnesses or co-occurring mental illnesses and substance use disorders;”
- *Forensic intensive care management*: “activities addressing the comprehensive psychiatric, social, and support needs of individuals who are diagnosed as having serious and persistent mental illnesses, co-occurring disorders, or severe emotional disturbances, and who are involved in the criminal justice system and receiving services under this section. Activities include, but are not limited to, service planning, service coordination, monitoring, and assistance with accessing federal, state, and local benefits necessary to sustain a person in the community;” and
- *Geographic area*: “a county, circuit, regional, or multiregional area in this state.”

The Community Forensic Treatment System

The bill directs the Department of Children and Families (DCF) in consultation with the Agency for Health Care Administration (AHCA), to develop and implement a community mental health and substance abuse forensic treatment system. The community forensic system must build on local community diversion and reentry initiatives and strategies that are consistent with the Substance Abuse and Mental Health Reinvestment Grant Program,² or geographic areas that have piloted community diversion programs.

The bill specifies that the community forensic system initiatives may include, but are not limited to:

² Section 394.658(1), F.S.

- Mental health courts;
- Diversion programs;
- Alternative prosecution and sentencing techniques;
- Crisis intervention teams;
- Specialized training for criminal justice, juvenile justice, and treatment service professionals;
- Specialized probation officer at the state and county levels to serve individuals under correctional control in the community;
- Collateral services such as supported, transitional, and permanent housing, and supported employment; and
- Reentry services and supports for affected individuals.

Further, this bill dictates that the community forensic treatment system must include a comprehensive continuum of care and services that use evidence-based and best practices to address co-occurring mental health and substance abuse disorders. The system must include, at a minimum, the following services and elements:

- Competency-restoration and treatment services provided in a variety of settings from least restrictive to progressively more restrictive settings;
- Secure residential placement for initial service and stabilization;
- Forensic intensive care management;
- Supported housing;
- Supported employment;
- Medication management;
- Trauma-specific services;
- Residential services;
- Treatment for co-occurring mental health and substance abuse disorders;
- Outreach and education;
- Involuntary outpatient placement and conditional release for individuals meeting the criteria for these services; and
- Other services or supports as identified.

Eligibility

The bill specifies that initial eligibility for the program shall be limited to adults who are adjudicated incompetent to proceed or not guilty by reason of insanity,³ whose current most serious charge is a

³ Under ch. 916.

felony of the third degree⁴ or a felony of the second degree⁵ if the felony did not involve violence, and who meet public safety criteria established by the court and treatability criteria established by the department for placement in a community setting and who otherwise would be admitted to a state mental health treatment facility.

Contingent on legislative approval the bill provides authority for DCF to serve the following additional groups:

- Adults who experience serious and persistent mental illnesses re-entering the community from state prisons;
- Adults who have been committed to a state forensic mental health treatment facility after being adjudicated incompetent to proceed or not guilty by reason of insanity, and are released or are pending release to the community by the court after completing competency restoration services or being found to no longer meet the criteria for continued commitment placement;
- Adults who experience serious and persistent mental illnesses, who have a history of involvement in the criminal justice system, or who are at risk of entering or are already involved with the criminal justice system; and
- Children deemed incompetent to proceed under s. 985.19, F.S.

DCF Responsibilities

The bill directs DCF to develop a continuum of services to implement the Act. The bill specifies that DCF may:

- Define requirements for all providers in the community forensic system;
- Implement demonstration sites for participation,
- Enter into memorandums of agreement with county planning councils or committees;
- Identify providers to implement the continuum of services;
- Establish performance measures and reporting requirements for providers, including, at a minimum:
 - The number of individuals diverted from state forensic mental health treatment facilities;
 - The number of individuals diverted from the criminal justice system;
 - The rates of arrest, incarceration, and re-incarceration for new criminal offenses;
 - The rates of employment; and
 - The annual number of days in a crisis stabilization unit, detoxification facility, short-term residential treatment program, state civil mental health treatment facility, or state forensic mental health treatment facility; and
- Monitor contracts and assess contract performance, and;
- Provide an annual report by October 1 on implementation status.

⁴ Sections 775.082 and 775.083, F.S, provide that a third degree felony is punishable by a term of imprisonment not to exceed 5 years and a fine not to exceed \$5,000.

⁵ Sections 775.082 and 775.083, F.S, provide that a second degree felony is punishable by a term of imprisonment not to exceed 15 years and a fine not to exceed \$10,000.

Implementation of Pilot Sites

The bill provides that DCF shall implement the act within available resources. The bill also provides that DCF in consultation with AHCA may identify geographic areas for up to 3 pilot sites for implementation of the program. Subsection (6)(b) of this section of the bill further defines that implementation sites must demonstrate active and sustained community collaborations. The effect of this section is to require that funding for implementation must come from existing appropriations.

The bill provides that future expansion will be subject to legislative approval and based on community readiness and the potential for affecting the greatest number of individuals entering the mental health and criminal justice systems. Also included among the criteria for selecting a pilot area are: community readiness, a high bed-utilization rate, successful application for implementation grant funding under the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program, and other elements.

Criminal Justice, Mental Health, and Substance Abuse Policy Council

The Criminal Justice, Mental Health, and Substance Abuse Policy Council is currently established within the Substance Abuse and Mental Health Corporation under section 394.655(11), F.S. The council's purpose is to align policy initiatives in the criminal justice, juvenile justice, and mental health systems to ensure the most effective use of resources and to coordinate the development of legislation relating to various mental health needs.

This bill requires the council to align policy initiatives in the substance abuse systems. The bill also includes as a purpose of the council to provide consultation in the development of comprehensive and cost-effective community-based mental health and substance abuse treatment services.

Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program

The 2007 Legislature created the Reinvestment Grant Program to provide funding to counties to expand initiatives to increase public safety and the effectiveness of treatment to individuals with substance abuse, mental health or co-occurring disorders who encounter the criminal justice system.⁶ This bill specifies that, in implementing the Community Mental Health and Substance Abuse Treatment and Crime Reduction Act, DCF and ACHA will work in coordination with counties that received grants under the Reinvestment Grant Program or who have piloted community-based diversion programs.

County Planning Councils or Committees

Each board of county commissioners is required to designate a county public safety coordinating council or another criminal or juvenile justice mental health and substance abuse council or committee, under section 394.657, F.S. This bill amends the duties of that council to include consulting with local governing bodies when planning or implementing the Act.

Optional Medicaid Services

This bill provides that AHCA shall make plans and develop recommendations to obtain federal financial participation for individuals served under the Act. AHCA is to report these recommendations to the Legislature by July 1, 2011.

Forensic definitions

New definitions are added to s. 916.106 to include:

- *Aquittee*: "a defendant who has been adjudicated not guilty by reason of insanity;" and
- *Conditional release*: "a person placed on conditional release pursuant to s. 916.17, F.S."

⁶ Section 394.656, F.S.

Rights of Forensic Clients

Chapter 916, Part 1, Florida Statutes is known as the Forensic Client Services Act. Within the Act, s. 916.107, F.S., provides for rights to forensic clients including rights to individual dignity, rights to treatment, and rights to express and informed consent. This applies to forensic clients who have been adjudicated incompetent, not guilty by reason of insanity or persons found incompetent to proceed due to retardation or autism.⁷ The definition of forensic client used in the section does not appear to apply to individuals who have been granted conditional release status by the court in lieu of involuntary commitment. A person on conditional release who becomes a danger to self or others and refuses treatment or violates the terms of conditional release can sometimes receive services in a short term residential treatment facility⁸ or crisis stabilization unit⁹ in the community as an alternative to a state mental health treatment facility.¹⁰

The bill provides rights to persons on conditional release status to express and informed consent for treatment. Further, the bill provides that if a conditional releasee refuses treatment such as taking medications, then treatment may still be provided under certain circumstances including when the individual is a danger to self or others. This treatment is for individuals in a crisis stabilization unit or short-term residential treatment facility and treatment authorization must be made by a physician for not more than 48 hours. After 48 hours, a petition must be made to the court seeking authorization of further treatment. The effect of this change may allow an individual to remain in the community and receive treatment without having to be admitted to a forensic state mental health treatment facility.

Psychotherapeutic Medication Treatment

Currently, the law does not provide for continued treatment of medications (without petitioning the court) for an individual who refuses treatment after being transferred from jail to a state mental health treatment facility. This bill provides for uninterrupted treatment for individuals who have been receiving psychotherapeutic medication at a jail at the time of transfer to a state forensic mental health treatment facility. This applies to individuals who lack the capacity to make an informed decision regarding mental health treatment. The admitting physician may order a continuation of psychotherapeutic medication if, in the physician's judgment, abrupt cessation of the medication could cause a risk to the health and safety of the client during the time a court order to medicate is pursued.¹¹

Training of Mental Health Experts and Appointment of Experts

The evaluation of defendants to determine competency to proceed or sanity, subsequent to a felony offense must be conducted by mental health experts who apply uniform criteria based on the Florida Rules of Criminal Procedure. Chapter 916.111, F.S., provides the authority and guidance for the development of training for mental health experts to complete the forensic evaluations.

The court appoints the experts who conduct the forensic evaluations. Since the late 1980s, DCF has maintained a list of evaluators for the court to choose from who have completed forensic evaluator training. This list is required to be given to the courts annually. Current statute specifies "to the extent possible" the appointed experts shall have completed the forensic evaluator training.¹² Therefore, statute does not mandate that experts performing evaluations must complete the training. In addition, the law does not specify how long an expert may remain on the list of evaluators before they are required to retake the training.

⁷ Section 916.106(9), F.S.

⁸ Section 394.67(3), F.S.

⁹ Section 394.67(4), F.S.

¹⁰ Section 394.461(2), F.S.

¹¹ Under s. 916.107, F.S., which would be amended by this bill, an administrator or designee of a mental health facility is required to petition for a court order authorizing necessary and essential treatment for a client, if a client refuses treatment.

¹² Section. 916.115(1)(a), F.S.

The bill requires the forensic evaluator training course to be provided at least annually. In addition, beginning July 1, 2011, mental health experts who wish to be on the forensic evaluator list must take the training at least once every five years. Those who have not completed the training within this time frame will be removed from the registry. The bill also clarifies that all experts appointed by the court must have completed the forensic evaluator training in the previous five years, maintain documentation of the completion, and provide current contact information to the department.

The bill removes physician from the list of appointed experts who are responsible for determining the mental condition of a defendant in a criminal case, including competency to proceed, insanity, involuntary placement, and treatment.

Hearings for Forensic Residents

Current statute does not require a timeframe for transporting an individual back to jail or scheduling and holding the court hearing for individuals whose competency has been restored or no longer meet criteria for commitment. However, the Florida Rules of Criminal Procedure¹³ require the court to hold a hearing to determine if the defendant remains incompetent within 30 days of the receipt of a report from the department. When delays occur in the transporting of defendants and the scheduling of competency hearings, the department is unable to make these forensic beds available to new defendants who have been committed by the court and are waiting on placement. Further, the longer a person must wait in jail to have their competency or commitment hearing, the more likely they will decompensate and require a return admission to the state mental health treatment facility for re-stabilization.¹⁴

The bill amends sections 916.13 and 916.15, F.S., to require a court hearing to be scheduled and occur within 30 days of the court receiving notification that the person is competent to proceed or no longer meets commitment criteria. The purpose of these requirements is to improve timely movement of defendants out of treatment facilities and back to the court system.

Conditional Release¹⁵

Current law allows the committing court to order a conditional release of a person in lieu of an involuntary commitment to a state facility under s. 916.13, F.S. or s.916.15, F.S. The conditional release is based on an approved plan for outpatient care and treatment.

The bill requires the court to place individuals who meet the criteria for involuntary commitment under section 916.13, F.S., in a community residential facility¹⁶ for competency restoration if their current most serious charge is a third degree or second degree non-violent felony. This placement is limited to the pilot areas designated for the Act. The court will not place individuals in the community for competency restoration if bed space or funding is not available or if the court makes a finding that the individual cannot be safely placed in the community. The bill provides criteria for the court to use in making the findings related to safe placement of the individual.¹⁷ The effect of this change is to increase use of community services instead of state treatment facilities for competency restoration and treatment when appropriate.

¹³ Fla. R. Crim. Pro. 3.212(c)(6).

¹⁴ Department of Children and Families Staff Analysis of HB 1189, on file with the Committee.

¹⁵ Section 916.17, F.S.

¹⁶ Community residential facility is defined in this bill as a community based treatment setting licensed under ss. 394.875, 429.075, or 397.401, F.S.

¹⁷ Including consideration of all of the following: the nature and seriousness of the crime allegedly committed, the individual's criminal history, the individual's psychiatric history, the individual's history of violent behavior or threats of violent behavior and risk of harm to self or others, the likelihood that the individual will comply with and benefit from the mental health treatment and services being recommended, the availability of appropriate community-based services and treatment settings, and other information considered relevant by the court.

Incompetency in Juvenile Delinquency Cases

At any time prior to, or during a juvenile delinquency case the court believes a child named in the petition may be incompetent, the court must order an evaluation of the child's mental condition.¹⁸ Current law provides that the evaluation of a child's mental condition must be made by two or three experts appointed by the court. The law does not specify training requirements or credentials for these experts. The basis for determinations of juvenile competency must be specifically stated in an evaluation of the child's mental condition. If the child is found not competent to proceed the court will notify DCF for placement in an appropriate facility for treatment and training.¹⁹

This bill requires that the competency evaluation be conducted in such a way as to ensure uniform application of the criteria enumerated in Rule 8.095, Florida Rules of Juvenile Procedure. This procedure is for when a child is believed to be incompetent or insane. The bill requires DCF to develop the following:

- A plan for training professionals to perform forensic evaluations and standardized criteria;
- Clinical protocols and procedures;
- Training for professionals in clinical protocols and procedures;
- Procedures for evaluating success of the program.

Further, the bill would require experts appointed by the court to determine juvenile competency to have completed forensic evaluator training approved by the DCF within five years prior to conducting evaluations for the court, and each expert must be a psychiatrist or licensed psychologist. Beginning July 1, 2011, the bill provides for the removal of an expert from the DCF's registry if the he or she does not comply with the training requirements. The experts that are removed are not allowed to perform competency evaluations for the courts.

B. SECTION DIRECTORY:

Section 1. Creates s. 394.4656, F.S., relating to the Community Mental Health and Substance Abuse Treatment and Crime Reduction Act.

Section 2. Amends s. 394.655, F.S., relating to the Substance Abuse and Mental Health Corporation; powers and duties; composition; evaluation and reporting requirements.

Section 3. Amends s. 394.656, F.S., relating to the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program.

Section 4. Amends s. 394.657, F.S., relating to county planning councils or committees.

Section 5. Amends s. 409.906, F.S., relating to optional Medicaid services.

Section 6. Amends s. 916.106, F.S., relating to definitions.

Section 7. Amends s. 916.107, F.S., relating to rights of forensic clients.

Section 8. Amends s. 916.111, F.S., relating to training of mental health experts.

Section 9. Amends s. 916.115, F.S., relating to appointment of experts.

Section 10. Amends s. 916.13, F.S., relating to involuntary commitment of defendant adjudicated incompetent.

Section 11. Amends s. 916.15, F.S., relating to involuntary commitment of defendant adjudicated not guilty by reason of insanity.

¹⁸ Section 985.19(1), F.S.

¹⁹ Section 958.19(1) and (2), F.S.

Section 12. Amends s. 916.17, F.S., relating to conditional release.

Section 13. Amends s. 985.19, F.S., relating to incompetency in juvenile delinquency cases.

Section 14. Provides for 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:

The Department of Children and Families (department) anticipates lower demand for costly services in jails, emergency rooms and other crisis settings, less crime, enhanced public safety, fewer injuries to law enforcement officers, and decreased rates of chronic homelessness.²⁰

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals who are required to take the department-approved Forensic Evaluator Training course in order to be placed on the forensic evaluator registry must pay a fee for the training, estimated to be approximately \$445 per person. The fee for state employees and non-profit companies is \$395 per person. This fee is not new as the training has been in existence for 23 years.²¹

D. FISCAL COMMENTS:

As this legislation is implemented and an increasing number of individuals are served in the community, the (department) anticipates a decreased demand for forensic state mental health treatment facility beds. The department will continue to monitor the utilization of forensic beds as demonstration sites are identified and community forensic programs are implemented and expanded. This will be done with some degree of caution based on the continued need to meet the statutory requirement to move individuals from the jail system to a forensic bed once they are deemed incompetent to proceed.

In 2009, the department successfully contracted with a private provider to operate a short-term residential treatment facility serving forensic clients in Miami-Dade County. Due to available forensic capacity, the department was able to transfer funding from the facilities budget to the community for this purpose. *As more individuals are able to be served in the community and diverted from forensic treatment facility placement, the department expects to have additional funding to support this legislation.*²²

²⁰ Department of Children and Families Analysis of HB 1189, on file with Committee.

²¹ *Id.*

²² *Id.*

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

On March 16, 2010, The Health Care Services Policy Committee adopted 6 amendments to the bill as follows:

Amendment 1: Changes the words "may" to "shall" regarding DCF responsibilities.

Amendment 2: Directs DCF in consultation with AHCA to select 3 pilot sites for the Crime Reduction Act demonstration. Also, adds a requirement for Legislative approval before expanding the pilot program.

Amendment 3: Removes a directive to AHCA to apply for a 1915i Medicaid state plan amendment for Medicaid coverage of a new client group. Instead the amendment requires AHCA to plan, make recommendations and report to the Legislature for obtaining federal financial participation for the demonstration project.

Amendment 4: Removes language exempting participants in the Crime Reduction Act program from Medicaid managed care and MediPass programs.

Amendment 5: Removes a reference to the pilot program in the bill for persons on conditional release status. This change means that laws relating to expressed and informed consent to treatment will apply to all persons on conditional release who are in a crisis stabilization unit or short term residential treatment facility.

Amendment 6: This clarifies that the directive to the courts to place people on conditional release in community residential facilities only applies to persons in the selected pilot areas for the program.

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1 A bill to be entitled
2 An act relating to mental health and substance abuse
3 treatment; creating s. 394.4656, F.S.; creating the
4 Community Mental Health and Substance Abuse Treatment and
5 Crime Reduction Act; providing legislative findings and
6 intent; providing goals for the community mental health
7 and substance abuse forensic treatment system; defining
8 terms; authorizing the Department of Children and Family
9 Services, in consultation with the Agency for Health Care
10 Administration, to develop and implement a community
11 mental health and substance abuse forensic treatment
12 system; providing initiatives and strategies for the
13 community forensic system; detailing the services required
14 in the community forensic system; setting forth the
15 eligibility criteria for treatment in the system;
16 requiring the department to develop a continuum of
17 services to implement the Community Mental Health and
18 Substance Abuse Treatment and Crime Reduction Act;
19 specifying the services and functions the department may
20 undertake; providing for implementation of the community
21 mental health and substance abuse forensic treatment
22 system; amending s. 394.655, F.S.; providing additional
23 functions of the Criminal Justice, Mental Health, and
24 Substance Abuse Policy Council; amending s. 394.656, F.S.;
25 requiring the department and the agency to cooperate with
26 counties that receive grants funding under the Criminal
27 Justice, Mental Health, and Substance Abuse Reinvestment
28 Grant Program; amending s. 394.657, F.S.; requiring county

29 | councils to consult with local governing bodies when
 30 | planning or implementing the Community Mental Health and
 31 | Substance Abuse Treatment and Crime Reduction Act;
 32 | amending s. 409.906, F.S.; requiring recommendations and a
 33 | report on adding home and community-based mental health
 34 | services to the optional Medicaid services offered by the
 35 | state Medicaid program; amending s. 916.106, F.S.;
 36 | providing definitions; amending s. 916.107, F.S.;
 37 | including certain conditional releasees within certain
 38 | provisions relating to procedures for persons admitted to
 39 | state forensic mental health treatment facilities who lack
 40 | capacity to make informed decisions regarding mental
 41 | health treatment; specifying treatment procedures for a
 42 | client admitted to a state forensic mental health
 43 | treatment facility who lacks the capacity to make an
 44 | informed decision regarding mental health treatment at the
 45 | time of admission; amending s. 916.111, F.S.; providing
 46 | for forensic evaluator training for mental health experts;
 47 | amending s. 916.115, F.S.; requiring court-appointed
 48 | experts to have completed forensic evaluator training;
 49 | requiring the court-appointed expert to be a psychiatrist
 50 | or a licensed psychologist; requiring the Department of
 51 | Children and Family Services to maintain and annually
 52 | provide the courts with a forensic evaluator registry;
 53 | amending s. 916.13, F.S.; providing a timeframe for the
 54 | holding of a competency hearing; amending s. 916.15, F.S.;
 55 | providing a timeframe for the holding of a commitment
 56 | hearing; amending s. 916.17, F.S.; requiring that certain

57 | defendants be placed in a community residential facility
 58 | for competency restoration in demonstration areas
 59 | established under the Community Mental Health and
 60 | Substance Abuse Treatment and Crime Reduction Act;
 61 | providing exceptions; providing requirements for a report
 62 | concerning a child who is found incompetent to proceed;
 63 | amending s. 985.19, F.S.; requiring that the basis for the
 64 | determination of incompetency of juveniles be conducted so
 65 | as to ensure uniform application of specified criteria;
 66 | requiring development of plans and requirements relating
 67 | to forensic evaluations; requiring that appointed experts
 68 | complete the forensic evaluator training program by
 69 | specified dates; providing an effective date.

70 |
 71 | Be It Enacted by the Legislature of the State of Florida:

72 |
 73 | Section 1. Section 394.4656, Florida Statutes, is created
 74 | to read:

75 | 394.4656 Community Mental Health and Substance Abuse
 76 | Treatment and Crime Reduction Act.—

77 | (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
 78 | that many jail inmates who have serious mental illnesses and who
 79 | are committed to state forensic mental health treatment
 80 | facilities for competency restoration could be served more
 81 | effectively and at less cost in community-based alternative
 82 | programs. The Legislature further finds that many people who
 83 | have serious mental illnesses and who have been discharged from
 84 | state forensic mental health treatment facilities could avoid

85 recidivism to the criminal justice and forensic mental health
 86 systems if they received specialized treatment in the community.
 87 Therefore, it is the intent of the Legislature to create the
 88 Community Mental Health and Substance Abuse Treatment and Crime
 89 Reduction Act to serve individuals who have mental illnesses or
 90 co-occurring mental illnesses and substance abuse disorders and
 91 who are involved in or at risk of entering state forensic mental
 92 health treatment facilities, prisons, jails, juvenile justice
 93 centers, or state civil mental health treatment facilities.

94 (2) GOALS.—The goals of the community mental health and
 95 substance abuse forensic treatment system are to:

96 (a) Ensure public safety.

97 (b) Ensure that services to restore forensic competency
 98 are provided in the least restrictive, least costly, and most
 99 effective environment.

100 (c) Provide competency-restoration services in the
 101 community if appropriate, based on consideration of public
 102 safety, needs of the individual, and available resources.

103 (d) Reduce admissions for competency restoration to state
 104 forensic mental health treatment facilities.

105 (e) Reduce rates of arrest, incarceration, and
 106 reincarceration.

107 (f) Increase outreach and services to individuals at risk
 108 for involvement in the criminal justice, juvenile justice, or
 109 forensic mental health systems.

110 (g) Support collaboration among state and local
 111 stakeholders, including law enforcement agencies, courts, state
 112 agencies, jails, county government, service providers,

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113 individuals with mental illnesses or co-occurring mental
114 illnesses and substance abuse disorders, family members,
115 advocates, and other community members.

116 (3) DEFINITIONS.—As used in this section, the term:

117 (a) "Agency" means the Agency for Health Care
118 Administration.

119 (b) "Best practices" means treatment services that
120 incorporate the most effective and acceptable interventions
121 available in the care and treatment of individuals who are
122 diagnosed as having mental illnesses or co-occurring mental
123 illnesses and substance abuse disorders.

124 (c) "Community forensic system" means the community mental
125 health and substance abuse forensic treatment system, including
126 the comprehensive set of services and supports provided to
127 individuals involved in or at risk of becoming involved in the
128 criminal justice system.

129 (d) "Community residential facility" means a community-
130 based residential treatment setting licensed by the agency under
131 s. 394.875 or s. 429.075 or by the department under s. 397.401.

132 (e) "Evidence-based practices" means interventions and
133 strategies that, based on the best available empirical research,
134 demonstrate effective and efficient outcomes in the care and
135 treatment of individuals who are diagnosed as having mental
136 illnesses or co-occurring mental illnesses and substance use
137 disorders.

138 (f) "Forensic intensive care management" means activities
139 addressing the comprehensive psychiatric, social, and support
140 needs of individuals who are diagnosed as having serious and

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141 persistent mental illnesses, co-occurring disorders, or severe
142 emotional disturbances, and who are involved in the criminal
143 justice system and receiving services under this section.
144 Activities include, but are not limited to, service planning,
145 service coordination, monitoring, and assistance with accessing
146 federal, state, and local benefits necessary to sustain a person
147 in the community.

148 (g) "Geographic area" means a county, circuit, regional,
149 or multiregional area in this state.

150 (4) SERVICE SYSTEM.—The department, in consultation with
151 the agency, may develop and implement a community mental health
152 and substance abuse forensic treatment system. The system must
153 build on local community diversion and reentry initiatives and
154 strategies that are consistent with those identified and
155 supported under s. 394.658(1) or with geographic areas that have
156 piloted a community-based diversion program.

157 (a) The community forensic system initiatives and
158 strategies may include, but are not limited to:

159 1. Mental health courts.

160 2. Diversion programs.

161 3. Alternative prosecution and sentencing techniques.

162 4. Crisis intervention teams.

163 5. Specialized training for criminal justice, juvenile
164 justice, and treatment services professionals.

165 6. Specialized probation officers at the state and county
166 levels to serve individuals under correctional control in the
167 community.

168 7. Collateral services such as supported, transitional,
 169 and permanent housing, and supported employment.

170 8. Reentry services to create or expand mental health and
 171 co-occurring treatment and support for affected individuals.

172 (b) The community forensic system must include a
 173 comprehensive continuum of care and services that use evidence-
 174 based and best practices to address co-occurring mental health
 175 and substance abuse disorders, including the following minimum
 176 services and elements:

177 1. Competency-restoration and treatment services provided
 178 in a variety of settings from least restrictive to progressively
 179 more restrictive settings.

180 2. Secure residential placement for initial service
 181 delivery and stabilization.

182 3. Forensic intensive care management.

183 4. Supported housing.

184 5. Supported employment.

185 6. Medication management.

186 7. Trauma-specific services for treatment of the effects
 187 of sexual, physical, and emotional abuse or trauma experienced
 188 by individuals who have mental illnesses and are involved in the
 189 criminal justice system.

190 8. Residential services to address crisis episodes and
 191 short-term residential treatment.

192 9. Treatment for co-occurring mental health and substance
 193 use disorders.

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194 10. Outreach and education for individuals and their
 195 families who are at risk of further involvement with the
 196 criminal justice system.

197 11. The use of involuntary outpatient placement for
 198 individuals meeting the criteria provided under s. 394.4655 and
 199 conditional release for individuals adjudicated incompetent to
 200 proceed due to mental illness or not guilty by reason of
 201 insanity as provided under s. 916.17.

202 12. Other services or supports as identified.

203 (5) ELIGIBILITY.—Initial implementation shall be limited
 204 to adults who are adjudicated incompetent to proceed or not
 205 guilty by reason of insanity under chapter 916, whose current
 206 most serious charge is a felony of the third degree or a felony
 207 of the second degree that did not involve violence, who meet
 208 public safety criteria established by the court and treatment
 209 criteria established by the department for placement in a
 210 community setting, and who otherwise would be admitted to a
 211 state mental health treatment facility. Contingent upon
 212 legislative approval, the department may serve individuals who
 213 meet the following criteria:

214 (a) Adults who experience serious and persistent mental
 215 illnesses reentering the community from state prisons.

216 (b) Adults who have been committed to a state forensic
 217 mental health treatment facility after being adjudicated
 218 incompetent to proceed or not guilty by reason of insanity, and
 219 who are released or who are pending release to the community by
 220 the court after completing competency restoration services or

221 being found to no longer meet the criteria for continued
 222 commitment placement.

223 (c) Adults who experience serious and persistent mental
 224 illnesses, who have a history of involvement in the criminal
 225 justice system, or who are at risk of entering or who are
 226 already involved with the criminal justice system.

227 (d) Children deemed incompetent to proceed under s.
 228 985.19.

229 (6) DEPARTMENT RESPONSIBILITIES.—The department shall
 230 develop a continuum of services to implement this section in
 231 accordance with subsection (4). The department may:

232 (a) Define requirements for all providers in the community
 233 forensic system.

234 (b) Implement demonstration sites for participation, based
 235 on criteria in subsection (7), which demonstrate active and
 236 sustained participation in community collaborations.

237 (c) Enter into memoranda of agreement with county planning
 238 councils or committees identified in s. 394.657 that
 239 participated in the Criminal Justice, Mental Health, and
 240 Substance Abuse Reinvestment Grant Program pursuant to s.
 241 394.656 or that have piloted a community-based diversion
 242 program.

243 (d) Identify providers to implement the continuum of
 244 services. The department shall consult with county planning
 245 councils or committees in the selection process.

246 (e) Establish performance measures and reporting
 247 requirements for providers participating in the community
 248 forensic system. The measures shall include, at a minimum:

- 249 1. The number of individuals diverted from state forensic
 250 mental health treatment facilities.
- 251 2. The number of individuals diverted from the criminal
 252 justice system.
- 253 3. The rates of arrest, incarceration, and reincarceration
 254 for new criminal offenses.
- 255 4. The rates of employment.
- 256 5. The annual number of days in a crisis stabilization
 257 unit, detoxification facility, short-term residential treatment
 258 program, state civil mental health treatment facility, or state
 259 forensic mental health treatment facility.
- 260 (f) Monitor contracts for compliance with terms and assess
 261 performance under contracts and provide an annual report by
 262 October 1 to the Governor, the President of the Senate, the
 263 Speaker of the House of Representatives, the Chief Justice of
 264 the Florida Supreme Court, and the State Courts Administrator on
 265 the implementation status of the Community Mental Health and
 266 Substance Abuse Treatment and Crime Reduction Act.
- 267 (7) IMPLEMENTATION.—The department shall implement this
 268 section within available resources. In expectation of statewide
 269 implementation of this section, the department, in consultation
 270 with the agency, may identify geographic areas of the state for
 271 initial implementation of up to three pilot program sites.
 272 Future expansion must have legislative approval and shall be
 273 based on findings of community readiness and the potential for
 274 affecting the greatest number of individuals entering the
 275 forensic mental health and criminal justice systems. Criteria

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276 for selection of the pilot program sites and future expansion
 277 may include:

278 (a) Community readiness to deliver the services outlined
 279 in subsection (4), demonstrated by well-established community
 280 collaboration plans and local partnerships as evidenced by
 281 memoranda of agreement that are submitted to and approved by the
 282 department.

283 (b) A high bed-utilization rate at state forensic mental
 284 health treatment facilities.

285 (c) Successful application for implementation grant
 286 funding under the Criminal Justice, Mental Health, and Substance
 287 Abuse Reinvestment Grant Program.

288 (d) Other elements determined by the department in
 289 consultation with the agency.

290 Section 2. Paragraph (b) of subsection (11) of section
 291 394.655, Florida Statutes, is amended to read:

292 394.655 The Substance Abuse and Mental Health Corporation;
 293 powers and duties; composition; evaluation and reporting
 294 requirements.-

295 (11)

296 (b) The purposes ~~purpose~~ of the council are ~~shall be~~ to:

297 1. Align policy initiatives in the criminal justice,
 298 juvenile justice, and mental health, and substance abuse systems
 299 to ensure the most effective use of resources and to coordinate
 300 the development of legislative proposals and budget requests
 301 relating to the shared needs of adults and juveniles who have a
 302 mental illness, substance abuse disorders ~~disorder~~, or co-

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303 occurring mental health and substance abuse disorders who are
 304 in, or at risk of entering, the criminal justice system.

305 2. Provide consultation in the development of
 306 comprehensive and cost-effective community-based mental health
 307 and substance abuse treatment services for individuals who have
 308 mental illnesses and who are receiving services in state
 309 forensic mental health treatment facilities, juvenile secure
 310 residential treatment centers specializing in competency
 311 training, prisons, jails, and juvenile justice centers.

312 Section 3. Subsection (1) of section 394.656, Florida
 313 Statutes, is amended to read:

314 394.656 Criminal Justice, Mental Health, and Substance
 315 Abuse Reinvestment Grant Program.—

316 (1) There is created within the Department of Children and
 317 Family Services the Criminal Justice, Mental Health, and
 318 Substance Abuse Reinvestment Grant Program. The purpose of the
 319 program is to provide funding to counties to ~~with which they can~~
 320 plan, implement, or expand initiatives that increase public
 321 safety, avert increased spending on criminal justice, and
 322 improve the accessibility and effectiveness of treatment
 323 services for adults and juveniles who have a mental illness,
 324 substance abuse disorder, or co-occurring mental health and
 325 substance abuse disorders and who are in, or at risk of
 326 entering, the criminal or juvenile justice systems. In
 327 implementing the Community Mental Health and Substance Abuse
 328 Treatment and Crime Reduction Act, the department and agency
 329 shall work in coordination with counties that received grants

330 under the program or have piloted a community-based diversion
 331 program.

332 Section 4. Subsection (1) of section 394.657, Florida
 333 Statutes, is amended to read:

334 394.657 County planning councils or committees.—

335 (1) Each board of county commissioners shall designate the
 336 county public safety coordinating council established under s.
 337 951.26, or designate another criminal or juvenile justice mental
 338 health and substance abuse council or committee, as the planning
 339 council or committee. The public safety coordinating council or
 340 other designated criminal or juvenile justice mental health and
 341 substance abuse council or committee shall:

342 (a) Coordinate ~~in coordination~~ with the county offices of
 343 planning and budget ~~to, shall~~ make a formal recommendation to
 344 the board of county commissioners regarding how the Criminal
 345 Justice, Mental Health, and Substance Abuse Reinvestment Grant
 346 Program may best be implemented within a community. The board of
 347 county commissioners may assign any entity to prepare the
 348 application on behalf of the county administration for
 349 submission to the corporation for review. A county may join with
 350 one or more counties to form a consortium and use a regional
 351 public safety coordinating council or another county-designated
 352 regional criminal or juvenile justice mental health and
 353 substance abuse planning council or committee for the geographic
 354 area represented by the member counties.

355 (b) Consult with local governing bodies when planning or
 356 implementing the Community Mental Health and Substance Abuse
 357 Treatment and Crime Reduction Act.

358 Section 5. Subsection (28) is added to section 409.906,
 359 Florida Statutes, to read:

360 409.906 Optional Medicaid services.—Subject to specific
 361 appropriations, the agency may make payments for services which
 362 are optional to the state under Title XIX of the Social Security
 363 Act and are furnished by Medicaid providers to recipients who
 364 are determined to be eligible on the dates on which the services
 365 were provided. Any optional service that is provided shall be
 366 provided only when medically necessary and in accordance with
 367 state and federal law. Optional services rendered by providers
 368 in mobile units to Medicaid recipients may be restricted or
 369 prohibited by the agency. Nothing in this section shall be
 370 construed to prevent or limit the agency from adjusting fees,
 371 reimbursement rates, lengths of stay, number of visits, or
 372 number of services, or making any other adjustments necessary to
 373 comply with the availability of moneys and any limitations or
 374 directions provided for in the General Appropriations Act or
 375 chapter 216. If necessary to safeguard the state's systems of
 376 providing services to elderly and disabled persons and subject
 377 to the notice and review provisions of s. 216.177, the Governor
 378 may direct the Agency for Health Care Administration to amend
 379 the Medicaid state plan to delete the optional Medicaid service
 380 known as "Intermediate Care Facilities for the Developmentally
 381 Disabled." Optional services may include:

382 (28) HOME AND COMMUNITY-BASED SERVICES.—The agency shall
 383 make plans and develop recommendations to obtain federal
 384 financial participation for individuals receiving services under
 385 the Community Mental Health and Substance Abuse Treatment and

386 Crime Reduction Act pursuant to s. 394.4656. The plans may be
 387 limited to services for a select number of eligible individuals
 388 who have incomes up to 150 percent of the federal poverty level.
 389 The agency shall coordinate with the department to select and
 390 define the services that will be included in the
 391 recommendations. The agency shall report the recommendations to
 392 the Speaker of the House of Representative and the President of
 393 the Senate by July 1, 2011.

394 Section 6. Subsections (1) through (4) of section 916.106,
 395 Florida Statutes, are renumbered as subsections (2) through (5),
 396 respectively, current subsections (5) through (17) of that
 397 section are renumbered as subsections (7) through (19),
 398 respectively, and new subsections (1) and (6) are added to that
 399 section, to read:

400 916.106 Definitions.—For the purposes of this chapter, the
 401 term:

402 (1) "Acquittee" means a defendant who has been adjudicated
 403 not guilty by reason of insanity.

404 (6) "Conditional releasee" means a person placed on
 405 conditional release pursuant to s. 916.17.

406 Section 7. Paragraph (a) of subsection (3) of section
 407 916.107, Florida Statutes, is amended to read:

408 916.107 Rights of forensic clients.—

409 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

410 (a) A forensic client or a person placed on conditional
 411 release in a crisis stabilization unit or a short-term
 412 residential treatment facility shall be asked to give express
 413 and informed written consent for treatment. If a client or such

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414 a conditional releasee refuses such treatment as is deemed
415 necessary and essential by his or her ~~the client's~~
416 multidisciplinary treatment team for his or her ~~the~~ appropriate
417 care ~~of the client~~, such treatment may be provided under the
418 following circumstances:

419 1. In an emergency situation in which there is immediate
420 danger to the safety of the client or conditional releasee or
421 others, such treatment may be provided upon the written order of
422 a physician for a period not to exceed 48 hours, excluding
423 weekends and legal holidays. If, after the 48-hour period, the
424 client or conditional releasee has not given express and
425 informed consent to the treatment initially refused, the
426 administrator or designee of the civil or forensic facility,
427 crisis stabilization unit, or short-term residential treatment
428 facility serving individuals placed on conditional release
429 shall, within 48 hours, excluding weekends and legal holidays,
430 petition the committing court or the circuit court serving the
431 county in which the facility is located, at the option of the
432 facility administrator or designee, for an order authorizing the
433 continued treatment of the client or conditional releasee. In
434 the interim, the need for treatment shall be reviewed every 48
435 hours and may be continued without the consent of the client or
436 conditional releasee upon the continued written order of a
437 physician who has determined that the emergency situation
438 continues to present a danger to the safety of the client, the
439 conditional releasee, or others.

440 2. In a situation other than an emergency situation, the
441 administrator or designee of the civil or forensic facility,

442 crisis stabilization unit, or short-term residential treatment
443 facility shall petition the court for an order authorizing
444 necessary and essential treatment for the client or conditional
445 releasee.

446 a. If the client has been receiving psychotherapeutic
447 medication at the jail at the time of transfer to the state
448 forensic mental health treatment facility and lacks the capacity
449 to make an informed decision regarding mental health treatment
450 at the time of admission, the admitting physician may order a
451 continuation of the psychotherapeutic medication if, in the
452 clinical judgment of the physician, abrupt cessation of the
453 psychotherapeutic medication could cause a risk to the health
454 and safety of the client during the time a court order to
455 medicate is pursued. The jail physician shall provide a current
456 psychotherapeutic medication order at the time of transfer to
457 the state mental health treatment facility.

458 b. The court order shall allow such treatment for up to a
459 period not to exceed 90 days after following the date of the
460 entry of the order. Unless the court is notified in writing that
461 the client or conditional releasee has provided express and
462 informed consent in writing or that he or she ~~the client~~ has
463 been discharged by the committing court, the administrator or
464 designee shall, before ~~prior to~~ the expiration of the initial
465 90-day order, petition the court for an order authorizing the
466 continuation of treatment for another 90 days ~~90 day period~~.
467 This procedure shall be repeated until the client or conditional
468 releasee provides consent or is discharged by the committing
469 court.

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470 3. At the hearing on the issue of whether the court should
471 enter an order authorizing treatment for which a client or
472 conditional releasee was unable to or refused to give express
473 and informed consent, the court shall determine by clear and
474 convincing evidence that the client or conditional releasee has
475 mental illness, retardation, or autism, that the treatment not
476 consented to is essential to his or her ~~the care of the client~~,
477 and that the treatment not consented to is not experimental and
478 does not present an unreasonable risk of serious, hazardous, or
479 irreversible side effects. In arriving at the substitute
480 judgment decision, the court must consider at least the
481 following factors:

- 482 a. The individual's ~~client's~~ expressed preference
483 regarding treatment;
- 484 b. The probability of adverse side effects;
- 485 c. The prognosis without treatment; and
- 486 d. The prognosis with treatment.

487

488 The hearing shall be as convenient to the client or conditional
489 releasee as may be consistent with orderly procedure and shall
490 be conducted in physical settings not likely to be injurious to
491 his or her ~~the client's~~ condition. The court may appoint a
492 general or special magistrate to preside at the hearing. The
493 client or conditional releasee or his or her ~~the client's~~
494 guardian, and the representative, shall be provided with a copy
495 of the petition and the date, time, and location of the hearing.
496 The client or conditional releasee has the right to have an
497 attorney represent him or her at the hearing, and, if the client

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498 or conditional releasee is indigent, the court shall appoint the
499 office of the public defender to represent him or her ~~the client~~
500 at the hearing. The client or conditional releasee may testify
501 or not, as he or she chooses, and has the right to cross-examine
502 witnesses and may present his or her own witnesses.

503 Section 8. Section 916.111, Florida Statutes, is amended
504 to read:

505 916.111 Training of mental health experts.—The evaluation
506 of defendants for competency to proceed or for sanity at the
507 time of the commission of the offense shall be conducted ~~in such~~
508 ~~a way~~ as to ensure uniform application of the criteria
509 enumerated in Rules 3.210 and 3.216, Florida Rules of Criminal
510 Procedure.

511 (1) Appointed experts shall have completed forensic
512 evaluator training as specified in this section.

513 (2) A forensic evaluator training course approved by the
514 department must be provided at least annually to ensure that
515 mental health professionals have the opportunity to be placed on
516 the department's forensic evaluator registry.

517 (a) Beginning July 1, 2011, experts shall remain on the
518 registry if they have completed or retaken the required training
519 course within the previous 5 years. Those who have not completed
520 the training course must be removed from the registry and shall
521 not conduct evaluations for the courts.

522 (b) A mental health professional who has completed the
523 training course within the previous 5 years must maintain
524 documentation of completion of the required training course and
525 provide current contact information to the department.

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526 (3) The department shall develop, and may contract with
527 accredited institutions:

528 ~~(a)(1)~~ To provide:

529 1.(a) A plan for training mental health professionals to
530 perform forensic evaluations and to standardize the criteria and
531 procedures to be used in these evaluations;

532 ~~2.(b)~~ Clinical protocols and procedures based upon the
533 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal
534 Procedure; and

535 ~~3.(e)~~ Training for mental health professionals in the
536 application of these protocols and procedures in performing
537 forensic evaluations and providing reports to the courts; and

538 ~~(b)(2)~~ To compile and maintain the necessary information
539 for evaluating the success of this program, including the number
540 of persons trained, the cost of operating the program, and the
541 effect on the quality of forensic evaluations as measured by
542 appropriateness of admissions to state forensic facilities and
543 to community-based care programs.

544 Section 9. Subsection (1) of section 916.115, Florida
545 Statutes, is amended to read:

546 916.115 Appointment of experts.-

547 (1) The court shall appoint no more than three experts to
548 determine the mental condition of a defendant in a criminal
549 case, including competency to proceed, insanity, involuntary
550 placement, and treatment. The experts may evaluate the defendant
551 in jail or in another appropriate local facility or in a
552 facility of the Department of Corrections.

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553 (a) To the extent possible, the appointed experts ~~shall~~
554 ~~have completed forensic evaluator training approved by the~~
555 ~~department, and each shall be psychiatrists or a psychiatrist,~~
556 licensed psychologists ~~psychologist, or physician.~~

557 (b) The department shall maintain and annually provide the
558 courts with a forensic evaluator registry ~~list~~ of available
559 mental health professionals who have completed the approved
560 training as experts.

561 Section 10. Subsection (2) of section 916.13, Florida
562 Statutes, is amended to read:

563 916.13 Involuntary commitment of defendant adjudicated
564 incompetent.—

565 (2) A defendant who has been charged with a felony and who
566 has been adjudicated incompetent to proceed due to mental
567 illness, and who meets the criteria for involuntary commitment
568 ~~to the department under the provisions of this chapter,~~ may be
569 committed to the department, and the department shall retain and
570 treat the defendant.

571 (a) Within ~~No later than~~ 6 months after the date of
572 admission and at the end of any period of extended commitment,
573 or at any time the administrator or designee has ~~shall have~~
574 determined that the defendant has regained competency to proceed
575 or no longer meets the criteria for continued commitment, the
576 administrator or designee shall file a report with the court
577 pursuant to the applicable Florida Rules of Criminal Procedure.

578 (b) A competency hearing must be held within 30 days after
579 a court receives notification that the defendant is competent to
580 proceed or no longer meets criteria for continued commitment.

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581 Section 11. Section 916.15, Florida Statutes, is amended
 582 to read:

583 916.15 Involuntary commitment of defendant adjudicated not
 584 guilty by reason of insanity.—

585 (1) The determination of whether a defendant is not guilty
 586 by reason of insanity shall be determined in accordance with
 587 Rule 3.217, Florida Rules of Criminal Procedure.

588 (2) An acquittee ~~A defendant who is acquitted of criminal~~
 589 ~~charges because of a finding of not guilty by reason of insanity~~
 590 may be involuntarily committed pursuant to such finding if the
 591 defendant has a mental illness and, because of the illness, is
 592 manifestly dangerous to himself or herself or others.

593 (3) Every acquittee ~~defendant acquitted of criminal~~
 594 ~~charges by reason of insanity~~ and found to meet the criteria for
 595 involuntary commitment may be committed and treated in
 596 accordance with the provisions of this section and the
 597 applicable Florida Rules of Criminal Procedure. The department
 598 shall admit an acquittee ~~a defendant so adjudicated~~ to an
 599 appropriate facility or program for treatment and shall retain
 600 and treat such acquittee ~~defendant~~. No later than 6 months after
 601 the date of admission, prior to the end of any period of
 602 extended commitment, or at any time the administrator or
 603 designee shall have determined that the acquittee ~~defendant~~ no
 604 longer meets the criteria for continued commitment placement,
 605 the administrator or designee shall file a report with the court
 606 pursuant to the applicable Florida Rules of Criminal Procedure.

607 (4) The commitment hearing must be held within 30 days
 608 after the court receives notification that the acquittee no
 609 longer meets the criteria for continued commitment placement.

610 (5)~~(4)~~ In all proceedings under this section, both the
 611 acquittee ~~defendant~~ and the state shall have the right to a
 612 hearing before the committing court. Evidence at such hearing
 613 may be presented by the hospital administrator or the
 614 administrator's designee as well as by the state and the
 615 acquittee ~~defendant~~. The acquittee ~~has~~ ~~defendant~~ ~~shall~~ have the
 616 right to counsel at any such hearing. In the event that an
 617 acquittee ~~a defendant~~ is determined to be indigent pursuant to
 618 s. 27.52, the public defender shall represent the acquittee
 619 ~~defendant~~. The parties shall have access to the acquittee's
 620 ~~defendant's~~ records at the treating facilities and may interview
 621 or depose personnel who have had contact with the acquittee
 622 ~~defendant~~ at the treating facilities.

623 Section 12. Section 916.17, Florida Statutes, is amended
 624 to read:

625 916.17 Conditional release.—

626 (1) Except for an inmate currently serving a prison
 627 sentence, the committing court may order a conditional release
 628 of any defendant or acquittee in lieu of an involuntary
 629 commitment to a facility pursuant to s. 916.13 or s. 916.15
 630 based upon an approved plan for providing appropriate outpatient
 631 care and treatment. Upon a recommendation that outpatient
 632 treatment of the defendant or acquittee is appropriate, a
 633 written plan for outpatient treatment, including recommendations
 634 from qualified professionals, must be filed with the court, with

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635 copies to all parties. Such a plan may also be submitted by the
636 defendant or acquittee and filed with the court with copies to
637 all parties. The plan shall include:

638 (a) Special provisions for residential care or adequate
639 supervision of the defendant or acquittee.

640 (b) Provisions for outpatient mental health services.

641 (c) If appropriate, recommendations for auxiliary services
642 such as vocational training, educational services, or special
643 medical care.

644
645 In its order of conditional release, the court shall specify the
646 conditions of release based upon the release plan and shall
647 direct the appropriate agencies or persons to submit periodic
648 reports to the court regarding the defendant's or acquittee's
649 compliance with the conditions of the release and progress in
650 treatment, with copies to all parties.

651 (2) A defendant who otherwise meets the criteria for
652 involuntary commitment under s. 916.13, but whose current most
653 serious charge is a felony of the third degree or a felony of
654 the second degree when the felony did not involve violence, must
655 be placed in a community residential facility in a pilot program
656 site referenced in s. 394.4656(7), for competency restoration
657 unless bed space or funding is unavailable for the community
658 placement or the trial court makes an explicit finding that the
659 defendant cannot be safely managed in such a placement. In
660 making such finding, the court shall consider all of the
661 following:

662 (a) The nature and seriousness of the crime allegedly
 663 committed.

664 (b) The individual's criminal history.

665 (c) The individual's psychiatric history.

666 (d) The individual's history of violent behavior or
 667 threats of violent behavior and risk of harm to self or others.

668 (e) The likelihood that the individual will comply with
 669 and benefit from the mental health treatment and services being
 670 recommended.

671 (f) The availability of appropriate community-based
 672 services and treatment settings.

673 (g) Other information considered relevant by the court.

674 (3)~~(2)~~ Upon the filing of an affidavit or statement under
 675 oath by any person that the defendant or acquittee has failed to
 676 comply with the conditions of release, that the defendant's or
 677 acquittee's condition has deteriorated to the point that
 678 inpatient care is required, or that the release conditions
 679 should be modified, the court shall hold a hearing within 7 days
 680 after receipt of the affidavit or statement under oath. After
 681 the hearing, the court may modify the release conditions. The
 682 court may also order that the defendant or acquittee be returned
 683 to the department if it is found, after the appointment and
 684 report of experts, that the person meets the criteria for
 685 involuntary commitment under s. 916.13 or s. 916.15.

686 (4)~~(3)~~ If at any time it is determined after a hearing
 687 that the defendant who has been conditionally released under
 688 subsection (1) no longer requires court-supervised followup
 689 care, the court shall terminate its jurisdiction in the cause

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690 and discharge the defendant or acquittee.

691 Section 13. Subsection (1) of section 985.19, Florida
692 Statutes, is amended to read:

693 985.19 Incompetency in juvenile delinquency cases.—

694 (1) If, at any time prior to or during a delinquency case,
695 the court has reason to believe that the child named in the
696 petition may be incompetent to proceed with the hearing, the
697 court on its own motion may, or on the motion of the child's
698 attorney or state attorney must, stay all proceedings and order
699 an evaluation of the child's mental condition.

700 (a) Any motion questioning the child's competency to
701 proceed must be served upon the child's attorney, the state
702 attorney, the attorneys representing the department ~~of Juvenile~~
703 ~~Justice~~, and the attorneys representing the Department of
704 Children and Family Services. Thereafter, any motion, notice of
705 hearing, order, or other legal pleading relating to the child's
706 competency to proceed with the hearing must be served upon the
707 child's attorney, the state attorney, the attorneys representing
708 the department ~~of Juvenile Justice~~, and the attorneys
709 representing the Department of Children and Family Services.

710 (b) All determinations of competency must ~~shall~~ be made at
711 a hearing, with findings of fact based on an evaluation of the
712 child's mental condition made by at least ~~not less than~~ two but
713 not ~~nor~~ more than three experts appointed by the court. The
714 basis for the determination of incompetency must be specifically
715 stated in the evaluation and must be conducted so as to ensure
716 uniform application of the criteria enumerated in Rule 8.095,
717 Florida Rules of Juvenile Procedure. ~~In addition, A~~

718 recommendation as to whether residential or nonresidential
 719 treatment or training is required must be included in the
 720 evaluation. Experts appointed by the court to determine the
 721 mental condition of a child shall be allowed reasonable fees for
 722 services rendered. State employees may be paid expenses pursuant
 723 to s. 112.061. The fees shall be taxed as costs in the case.

724 (c) All court orders determining incompetency must include
 725 specific written findings by the court as to the nature of the
 726 incompetency and whether the child requires a secure or
 727 nonsecure treatment or training ~~environment~~ environments.

728 (d) The evaluation of juveniles for competency to proceed
 729 shall be conducted in a manner that ensures the uniform
 730 application of the criteria in Rule 8.095, Florida Rules of
 731 Juvenile Procedure. The Department of Children and Family
 732 Services shall develop the following:

733 1. A plan for training mental health professionals to
 734 perform forensic evaluations and for standardizing the criteria
 735 and procedures to be used in such evaluations.

736 2. Clinical protocols and procedures based on the criteria
 737 in Rule 8.095, Florida Rules of Juvenile Procedure.

738 3. Training for mental health professionals in the
 739 application of these protocols and procedures for performing
 740 forensic evaluations and providing reports to the courts.

741 4. Procedures for evaluating the success of the program,
 742 including the number of persons trained, the cost of operating
 743 the program, and the effect on the quality of forensic
 744 evaluations as measured by the appropriateness of admissions to

745 the Department of Children and Family Services' juvenile
 746 competent-to-proceed programs.

747 (e)(d) For competency ~~incompetency~~ evaluations related to
 748 mental illness, the Department of Children and Family Services
 749 shall maintain and annually provide the courts with a forensic
 750 evaluator registry list of available mental health professionals
 751 who have completed the approved a training as experts pursuant
 752 to this section program approved by the Department of Children
 753 and Family Services to perform the evaluations. To the extent
 754 possible, the appointed expert shall be a psychiatrist or
 755 licensed psychologist.

756 (f) Appointed experts shall have completed forensic
 757 evaluator training as follows:

758 1. A forensic evaluator training course approved by the
 759 Department of Children and Family Services must be provided at
 760 least annually to ensure that mental health professionals have
 761 an opportunity to be placed on the registry.

762 2. Beginning July 1, 2011, experts shall remain on the
 763 registry if they have completed or retaken the required training
 764 within the previous 5 years. Those who have not completed the
 765 required training within the previous 5 years must be removed
 766 from the registry and shall not conduct evaluations for the
 767 courts.

768 3. A mental health professional who has completed the
 769 training course within the previous 5 years must maintain
 770 documentation of having completed the required training and
 771 provide current contact information to the Department of
 772 Children and Family Services.

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773 (g)~~(e)~~ For competency ~~incompetency~~ evaluations related to
774 mental retardation or autism, the court shall order the Agency
775 for Persons with Disabilities to examine the child to determine
776 if the child meets the definition of "retardation" or "autism"
777 in s. 393.063 and, if so, whether the child is competent to
778 proceed with delinquency proceedings.

779 (h)~~(f)~~ A child is competent to proceed if the child has
780 sufficient present ability to consult with counsel with a
781 reasonable degree of rational understanding and the child has a
782 rational and factual understanding of the present proceedings.
783 The report must address the child's capacity to:

- 784 1. Appreciate the charges or allegations against the
785 child.
- 786 2. Appreciate the range and nature of possible penalties
787 that may be imposed in the proceedings against the child, if
788 applicable.
- 789 3. Understand the adversarial nature of the legal process.
- 790 4. Disclose to counsel facts pertinent to the proceedings
791 at issue.
- 792 5. Display appropriate courtroom behavior.
- 793 6. Testify relevantly.

794 (i)~~(g)~~ Immediately upon the filing of the court order
795 finding a child incompetent to proceed, the clerk of the court
796 shall notify the Department of Children and Family Services and
797 the Agency for Persons with Disabilities and fax or hand deliver
798 to the department and to the agency a referral packet that
799 includes, at a minimum, the court order, the charging documents,
800 the petition, and the court-appointed evaluator's reports.

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801 (j)~~(h)~~ After placement of the child in the appropriate
802 setting, the Department of Children and Family Services in
803 consultation with the Agency for Persons with Disabilities, as
804 appropriate, must, within 30 days after placement of the child,
805 prepare and submit to the court a treatment or training plan for
806 the child's restoration of competency. A copy of the plan must
807 be served upon the child's attorney, the state attorney, and the
808 attorneys representing the Department of Juvenile Justice.

809 Section 14. This act shall take effect July 1, 2010.

HB 1301

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1301

Violations of County Ordinances

SPONSOR(S): Rader

TIED BILLS:

IDEN./SIM. BILLS: SB 1980

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	13 Y, 0 N	Fudge	Hoagland
2)	Public Safety & Domestic Security Policy Committee		Cunningham <i>SA</i>	Cunningham <i>SA</i>
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Part III of Chapter 112, F.S., contains various statutes that set forth standards of conduct for state and local government employees. These statutes also contain various disclosure requirements for state and local government employees.

Section 112.326, F.S., authorizes the governing body of any political subdivision to impose upon its own officers and employees, by ordinance, additional or more stringent standards of conduct and disclosure requirements than those specified in Part III of ch. 112, F.S., provided that those standards of conduct and disclosure requirements do not otherwise conflict with the provisions of Part III of ch. 112, F.S. Generally, violations of county ordinances are prosecuted in the same manner as misdemeanors and are punishable by a fine not to exceed \$500 and/or by imprisonment in the county jail not to exceed 60 days.

The bill authorizes counties to specify, by ordinance, that a violation of any provision of an ordinance imposing standards of conduct and disclosure requirements pursuant to s. 112.326, F.S., is punishable by a fine not to exceed \$1,000 or a term of imprisonment in the county jail not to exceed one year.

The bill does not appear to have a fiscal impact and is effective 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:

Current Situation

The Florida Constitution recognizes two types of county government: counties that are not operating under a county charter and counties that are operating under a county charter. The main difference between charter and non-charter county power is that a charter county has the power of self-government not inconsistent with general or special law,¹ while a non-charter county only has "such power of self-government as is provided by general or special law."²

Standards of Conduct

Part III of Chapter 112, F.S., contains various statutes that set forth standards of conduct for state and local government employees. For example, s. 112.313, F.S., sets forth standards of conduct for public officers, employees of agencies, and local government employees; and s. 112.3136, F.S., sets forth standards of conduct for officers and employees of entities serving as chief administrative officer of political subdivisions. Part III of Chapter 112, F.S., also contains various disclosure requirements for state and local government employees.

Currently, a person who violates any of the standards of conduct or disclosure requirement provisions in Part III of Chapter 112, F.S., is subject to various penalties set forth in s. 112.317, F.S. These penalties currently include impeachment, removal from office, suspension from office, demotion, dismissal, reduction in salary level, public censure and reprimand, forfeiture of salary, restitution, and civil penalties.

County Ordinances

Section 112.326, F.S., authorizes the governing body of any political subdivision to impose upon its own officers and employees, by ordinance, additional or more stringent standards of conduct and disclosure requirements than those specified in Part III of ch. 112, F.S., provided that those standards of conduct and disclosure requirements do not otherwise conflict with the provisions of Part III of ch. 112, F.S.

County ordinances must be filed with the Secretary of State³ and persons violating such ordinances are prosecuted and punished as provided by law.⁴ Section 125.69(1), F.S., provides that violations of

¹ Art. VIII, § 1(g), Fla. Const.

² Art. VIII, § 1(f), Fla. Const.

³ Art. VIII, § 1(i), Fla. Const.

county ordinances are prosecuted in the same manner as misdemeanors in the name of the state in a court having jurisdiction of misdemeanors and are punishable by a fine not to exceed \$500 and/or by imprisonment in the county jail not to exceed 60 days.⁵

Effect of Proposed Changes

The bill authorizes counties to specify, by ordinance, that a violation of any provision of an ordinance imposing standards of conduct and disclosure requirements pursuant to s. 112.326, F.S., is punishable by a fine not to exceed \$1,000 or a term of imprisonment in the county jail not to exceed one year.

B. SECTION DIRECTORY:

Section 1: Amends s. 125.69, F.S., relating to penalties; enforcement by code inspectors.

Section 2: This bill takes effect 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:

Counties enacting ordinances authorized by the bill may generate revenues through the additional fines.

2. Expenditures:

Counties may experience increased expenditures from imprisoning violators in county jails.

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 cities or counties 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.

⁴ Art. VIII, § 1(j), Fla. Const.

⁵ A county may also specify, by ordinance, a violation of which is punishable by a fine between \$500 and \$2,000 per day, if such enforcement authority is necessary to carry out a federally mandated program. Section 125.69(1), F.S.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

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1 A bill to be entitled
 2 An act relating to violations of county ordinances;
 3 amending s. 125.69, F.S.; authorizing a county to specify
 4 by ordinance penalties for a violation of certain county
 5 ordinances; providing an effective date.

6
 7 Be It Enacted by the Legislature of the State of Florida:

8
 9 Section 1. Subsection (1) of section 125.69, Florida
 10 Statutes, is amended to read:

11 125.69 Penalties; enforcement by code inspectors.-

12 (1) Violations of county ordinances shall be prosecuted in
 13 the same manner as misdemeanors are prosecuted. Such violations
 14 shall be prosecuted in the name of the state in a court having
 15 jurisdiction of misdemeanors by the prosecuting attorney thereof
 16 and upon conviction shall be punished by a fine not to exceed
 17 \$500 or by imprisonment in the county jail not to exceed 60 days
 18 or by both such fine and imprisonment. However, a county may
 19 specify, by ordinance, a violation of a county ordinance which
 20 is punishable by a fine in an amount exceeding \$500, but not
 21 exceeding \$2,000 a day, if the county must have authority to
 22 punish a violation of that ordinance by a fine in an amount
 23 greater than \$500 in order for the county to carry out a
 24 federally mandated program. A county may also specify, by
 25 ordinance, that a violation of any provision of a county
 26 ordinance imposing standards of conduct and disclosure
 27 requirements as provided in s. 112.326 is punishable by a fine
 28 not to exceed \$1,000 or a term of imprisonment in the county

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2010

29 | jail not to exceed 1 year.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1335

Offense of Sexting

SPONSOR(S): Abruzzo

TIED BILLS:

IDEN./SIM. BILLS: SB 2560

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Safety & Domestic Security Policy Committee</u>	_____	Cunningham <i>DK</i>	Cunningham <i>SK</i>
2) <u>Criminal & Civil Justice Appropriations Committee</u>	_____	_____	_____
3) <u>Criminal & Civil Justice Policy Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The act of electronically sending sexually explicit messages or photos is generally referred to as "sexting." There are no statutes that specifically address "sexting." Under current law, a person who "sexts" another could be charged with one of the various statutes that prohibit the creation, possession, and transmission of child pornography.

In 2007, 18-year old Phillip Alpert was charged with a violation of s. 847.0137(2), F.S., (transmitting child pornography) after he sent a nude photograph of his then 16-year old girlfriend to his girlfriends' friends and family. The girlfriend had taken the photograph and sent it to Alpert. Alpert was sentenced to more than four years probation and was required to register as a sexual offender.

The bill creates the offense of "sexting." It specifies that a minor commits "sexting" if he or she knowingly:

- (a) Uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another person any photograph or video of himself or herself which depicts nudity and is harmful to minors; or
- (b) Possesses a photograph or video that was transmitted or distributed by another minor as described in paragraph (a).

The bill provides the following penalties:

- A first violation is a non-criminal violation punishable by 8 hours of community service and a \$25 fine. Additionally, the court may order the minor to participate in suitable training or instruction in lieu of community service.
- A second violation is a 2nd degree misdemeanor punishable by up to 60 days in jail and a \$500 fine.
- A third violation is a 1st degree misdemeanor punishable by up to one year in jail and a \$1,000 fine.
- A fourth or subsequent violation is a 3rd degree felony punishable by up to five years imprisonment and a \$5,000 fine.

The bill specifies that the "sexting" provisions do not prohibit the prosecution of a minor for conduct relating to material that includes the depiction of sexual conduct or sexual excitement, and does not prohibit the prosecution of a minor for stalking.

The bill creates new misdemeanor offenses which could impact local jails. The bill also creates a 3rd degree felony. The Criminal Justice Impact Conference has not met to determine the prison bed impact of this bill.

The bill takes effect October 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:

Florida's Child Pornography Laws

Florida law currently contains various statutes that prohibit the creation, possession, and transmission of child pornography. A summary of these laws follows:

Sexual Performance by a Child

Section 827.071(5), F.S., makes it a 3rd degree felony¹ for any person to knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, he or she knows to include any sexual conduct² by a child. The statute specifies that each photograph, motion picture, exhibition, show, representation, or presentation is a separate offense.

Prohibition of Acts Relating to Obscene and Lewd Materials

Section 847.011(1)(a), F.S., makes it a 1st degree misdemeanor³ for a person to knowingly sell, lend, give away, distribute, transmit, show, or transmute; or have in his or her possession, custody, control with intent to sell, lend, give away, distribute, transmit, show, or transmute; specified obscene items, including pictures, photographs, and images. It is a 3rd degree felony if the obscene item used depicts a minor engaged in any act or conduct that is harmful to minors.⁴

¹ A 3rd degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and s. 775.084, F.S.

² The term "sexual conduct" is defined as actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute sexual conduct. See s. 827.071(1), F.S.

³ A 1st degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a \$1,000 fine. ss. 775.082 and 775.083.

⁴ S. 847.011(1)(c), F.S. The term "harmful to minors" is defined by s. 847.001, F.S., as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

- Predominantly appeals to a prurient, shameful, or morbid interest;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
- Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

A mother's breastfeeding of her baby is not under any circumstance "harmful to minors."

Section 847.011(2), F.S., makes it a 2nd degree misdemeanor⁵ for a person to have in his or her possession, custody, control specified obscene items, including pictures, photographs, and images, without the intent to sell such items.

The statute specifies that every prohibited act or transaction constitutes a separate offense.⁶

Protection of Minors

Section 847.0133, F.S., makes it a 3rd degree felony for a person to knowingly sell, rent, loan, give away, distribute, transmit, or show any obscene⁷ material to a minor.⁸ The term material includes pictures, photographs, and images.

Computer Pornography

Section 847.0135, F.S., makes it a 3rd degree felony for a person to:

- Knowingly compile, enter into, or transmit the visual depiction of sexual conduct with a minor by use of computer;
- Make, print, publish, or reproduce by other computerized means the visual depiction of sexual conduct with a minor;
- Knowingly cause or allow to be entered into or transmitted by use of computer the visual depiction of sexual conduct with a minor; or
- Buy, sell, receive, exchange, or disseminate the visual depiction of sexual conduct with a minor.

Transmission of Pornography

Section 847.0137(2), F.S., specifies that any person who knew or reasonably should have known that he or she was transmitting child pornography⁹ to another person commits a 3rd degree felony.

Transmission of Material Harmful to Minors

Section 847.0138, F.S., specifies that any person who knew or believed that he or she was transmitting an image, information, or data that is harmful to minors to a specific individual known by the defendant to be a minor commits a 3rd degree felony.

Both minors and adults can be charged with any of the above-described offenses. None of the above-described offenses specifically require that the offense be committed by a minor, and with the exception of s. 847.0138, F.S., none of the above-described offenses require that a prohibited image, photograph, etc., be sent or possessed by a minor.

“Sexting”

The act of electronically sending sexually explicit messages or photos is generally referred to as “sexting.” In a 2008 survey of 1,280 teenagers and young adults of both sexes, 20% of teens (ages 13-19) and 33% of young adults (ages 20-26) had sent nude or semi-nude photographs of themselves electronically.¹⁰ Additionally, 39% of teens and 59% of young adults had sent sexually explicit text messages.¹¹

⁵ A 2nd degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a \$500 fine. ss. 775.082 and 775.083.

⁶ s. 847.011(5), F.S.

⁷ Section 847.001, F.S., defines the term “obscene” as the status of material which:

- The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
- Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and
- Taken as a whole, lacks serious literary, artistic, political, or scientific value.

A mother's breastfeeding of her baby is not under any circumstance "obscene."

⁸ Section 847.011, F.S., defines the term “minor” as any person under the age of 18 years.

⁹ Section 847.001, F.S., defines the term “child pornography” as any image depicting a minor engaged in sexual conduct. The statute also defines the term “sexual conduct.” See footnote 2.

¹⁰ “Sex and Tech: Results from a survey of teens and young adults.” The National Campaign to Prevent Teen and Unplanned Pregnancy. December 10, 2008.

¹¹ *Id.*

There are no statutes that specifically address "sexting." Under current law, a person who "sexts" another could be charged with one of the above-described offenses, regardless of the age of the person sending the image. Additionally, a person who receives and possesses an image that is the result of "sexting" could be charged with one of the above-described offenses.

In 2007, 18-year old Phillip Alpert was charged with a violation of s. 847.0137(2), F.S., (transmitting child pornography) after he sent a nude photograph of his then 16-year old girlfriend to his girlfriends' friends and family. The girlfriend had taken the photograph and sent it to Alpert. Alpert was sentenced to more than four years probation and was required to register as a sexual offender.

Effect of the Bill

The bill creates the offense of "sexting." It specifies that a minor commits "sexting" if he or she knowingly:

- (c) Uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another person any photograph or video of himself or herself which depicts nudity and is harmful to minors; or
- (d) Possesses a photograph or video that was transmitted or distributed by another minor as described in paragraph (a).

The bill provides the following penalties:

- A first violation is a non-criminal violation punishable by 8 hours of community service and a \$25 fine. Additionally, the court may order the minor to participate in suitable training or instruction in lieu of community service.
- A second violation is a 2nd degree misdemeanor punishable by up to 60 days in jail and a maximum \$500 fine.¹²
- A third violation is a 1st degree misdemeanor punishable by up to one year in jail and a maximum \$1,000 fine.¹³
- A fourth or subsequent violation is a 3rd degree felony punishable by up to five years imprisonment and a maximum \$5,000 fine.¹⁴

The bill specifies that the "sexting" provisions do not prohibit the prosecution of a minor for conduct relating to material that includes the depiction of sexual conduct or sexual excitement, and does not prohibit the prosecution of a minor for stalking under s. 784.048, F.S.

B. SECTION DIRECTORY:

Section 1. Creates the offense of sexting and provides non-criminal and criminal penalties.

Section 2. This bill takes effect October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

¹² See ss. 775.082 and 775.083, F.S.

¹³ *Id.*

¹⁴ See ss. 775.082, 775.083, and s. 775.084, F.S.

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 creates new misdemeanor offenses which could impact local jails. The bill also creates a 3rd degree felony. The Criminal Justice Impact Conference has not met to determine the prison bed impact of this bill.

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:

The bill creates the offense of "sexting" but does not specify where in statute the language should be placed. It is recommended that it be placed in ch. 847, F.S.

The bill uses the terms "minor" and "harmful to minors" but does not define the terms. Section 847.001, F.S., contains definitions of these terms that apply to the entire chapter. Should the "sexting" language be placed in ch. 847, F.S., there would be no need to define these terms.

It is unclear whether a person who transmits multiple photographs of himself or herself at one time could be charged with multiple counts of "sexting" (and thus be subject to the enhanced penalties) or whether it was intended that such activity be charged as a single "sexting" offense.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the offense of sexting; providing that a minor commits the offense of sexting if he or she knowingly uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another person any photograph or video of himself or herself which depicts nudity and is harmful to minors, or knowingly possesses such a photograph or video that was transmitted or distributed to the minor from another minor; providing noncriminal and criminal penalties; providing that the act does not prohibit prosecution of a minor for conduct relating to material that includes the depiction of sexual conduct or sexual excitement or for stalking; providing an effective date.

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

Section 1. Sexting; prohibited acts; penalties.-

(1) A minor commits the offense of sexting if he or she knowingly:

(a) Uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another person any photograph or video of himself or herself which depicts nudity and is harmful to minors; or

(b) Possesses a photograph or video that was transmitted or distributed by another minor as described in paragraph (a).

(2) A minor who violates subsection (1):

(a) Commits a noncriminal violation for a first offense,

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29 punishable by 8 hours of community service and a \$25 fine. The
 30 court may order the minor to participate in suitable training or
 31 instruction in lieu of community service.

32 (b) Commits a misdemeanor of the second degree for a
 33 second offense, punishable as provided in s. 775.082 or s.
 34 775.083, Florida Statutes.

35 (c) Commits a misdemeanor of the first degree for a third
 36 offense, punishable as provided in s. 775.082 or s. 775.083,
 37 Florida Statutes.

38 (d) Commits a felony of the third degree for a fourth or
 39 subsequent offense, punishable as provided in s. 775.082, s.
 40 775.083, or s. 775.084, Florida Statutes.

41 (3) This section does not prohibit the prosecution of a
 42 minor for conduct relating to material that includes the
 43 depiction of sexual conduct or sexual excitement, and does not
 44 prohibit the prosecution of a minor for stalking under s.
 45 784.048, Florida Statutes.

46 Section 2. This act shall take effect October 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1359

Detention by Licensed Security Officers

SPONSOR(S): Murzin

TIED BILLS:

IDEN./SIM. BILLS: SB 2412

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Public Safety & Domestic Security Policy Committee		Cunningham <i>SK</i>	Cunningham <i>SK</i>
2) Agriculture & Natural Resources Policy Committee			
3) Criminal & Civil Justice Policy Council			
4)			
5)			

SUMMARY ANALYSIS

The bill authorizes licensed security officers and security agency managers who possess a valid Class G license, who are on duty and in uniform, and who are on the premises of their client, to temporarily detain a person who has committed or is committing a crime against a client or patron. The detention must be for the purpose of ascertaining the person's identity and the circumstances of the crime and may not extend beyond the place where it was first affected or the immediate vicinity thereof.

The bill requires the security officer to notify the appropriate law enforcement agency as soon as reasonably possible. Additionally, the bill specifies that the security officer may only detain the person in a reasonable manner and only until a law enforcement officer arrives on the premises and is in the presence of the detainee.

The bill also authorizes security officers who have probable cause to believe that a person being detained is armed with a weapon to conduct a search of the person and his or her belongings, only to the extent necessary for the purpose of disclosing the presence of a weapon.

The bill does not appear to have a fiscal impact and takes effect 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

The Power to Detain

Section 812.015(3)(a), F.S., currently authorizes law enforcement officers¹, merchants², farmers³, and transit agency⁴ employees or agents who have probable cause to believe that a retail theft,⁵ farm theft,⁶ or trespass,⁷ has been committed to take the offender into custody and detain the offender in a reasonable manner for a reasonable length of time for the purpose of attempting to effect recovery or for prosecution.⁸ The statute further specifies that in the event the merchant, merchant's employee, farmer, or a transit agency's employee or agent takes the person into custody, a law enforcement officer shall be immediately called to the scene.

Innkeepers and food service establishment operators have the similar statutory authority to "take a person into custody and detain a person" if there is probable cause to believe the person is engaging in

¹ Section 943.10, F.S., defines the term "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

² Section 812.015, F.S., defines the term "merchant" as an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise.

³ Section 812.015, F.S., defines the term "farmer" as a person who is engaging in the growing or producing of farm produce, milk products, eggs, or meat, either part time or full time, for personal consumption or for sale and who is the owner or lessee of the land or a person designated in writing by the owner or lessee to act as her or his agent.

⁴ Section 812.015, F.S., defines the term "transit agency" as any state agency, political subdivision of the state, or municipality which operates mass transit vehicles.

⁵ "Retail theft" means the taking possession of or carrying away of merchandise, property, money, or negotiable documents; altering or removing a label, universal product code, or price tag; transferring merchandise from one container to another; or removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value. *See s. 812.015, F.S.*

⁶ "Farm theft" means the unlawful taking possession of any items that are grown or produced on land owned, rented, or leased by another person. *See s. 812.015, F.S.*

⁷ Section 812.015, F.S., defines the term "trespass" in accordance with s. 810.08, F.S.

⁸ In the case of retail or farm theft, the law enforcement officer, merchant, farmer, or transit agency employee must also have probable cause to believe that the property can be recovered by taking the offender into custody before detaining the offender.

disorderly conduct⁹ that threatens the safety of the person or others.¹⁰ In these situations, it is also required that law enforcement be called immediately.

Private, State-Licensed Security Officers

There are several classes of licenses issued by the Division of Licensing within the Department of Agriculture (Department). Section 493.6301, F.S., requires any person who performs the services of a security officer to have a Class "D" license. The requirements for a Class "D" security officer license are as follows:

- (a) An applicant for a Class "D" license must complete a minimum of 40 hours of professional training at a school or training facility licensed by the department. The department shall by rule establish the general content and number of hours of each subject area to be taught.
- (b) An applicant may fulfill the training requirement prescribed in paragraph (a) by submitting proof of:
 - Successful completion of the total number of required hours of training before initial application for a Class "D" license; or
 - Successful completion of 24 hours of training before initial application for a Class "D" license and successful completion of the remaining 16 hours of training within 180 days after the date that the application is submitted. If documentation of completion of the required training is not submitted within the specified timeframe, the individual's license is automatically suspended until such time as proof of the required training is provided to the department.¹¹

Class "MB" security officers may manage a security agency. Class "MB" and "D" security officers are permitted to carry a firearm, but must obtain a Class "G" license in order to do so.¹²

Seaport security officers must have a Class "D" license and complete a specialized seaport security officer training curriculum.¹³

Private, State-Licensed Security Officers – Ability to Detain

Section 311.124, F.S., specifies that any Class "D" or Class "G" seaport security officer certified under the Maritime Transportation Security Act guidelines and s. 311.121, F.S., who has probable cause to believe that a person is trespassing in a designated restricted area pursuant to s. 311.111, F.S., is authorized to detain such person in a reasonable manner for a reasonable period of time pending the arrival of a law enforcement officer. Upon detaining a person for trespass, the seaport security officer shall immediately call a certified law enforcement officer to the scene.

Effect of the Bill

The bill authorizes licensed security officers and security agency managers who possess a valid Class "G" license, who are on duty and in uniform, and who are on the premises of their client, to temporarily detain a person who has committed or is committing a crime against a client or patron. The detention must be for the purpose of ascertaining the person's identity and the circumstances of the crime. The bill specifies that temporary detention by a security officer may not extend beyond the place where it was first affected or the immediate vicinity thereof.

⁹ Disorderly conduct is described in s. 877.03, F.S.

¹⁰ s. 509.143, F.S.

¹¹ s. 493.6303(4), F.S.

¹² Class "G" officers have special firearm training requirements and are authorized to carry their firearms on duty. s. 493.6301, F.S.

¹³ The specialized seaport security officer training curriculum includes no less than 218 hours of initial certification training that conforms to or exceeds model courses approved by the Federal Maritime Act under Section 109 of the Federal Maritime Transportation Security Act of 2002 for facility personnel with specific security duties. *See* s. 311.121, F.S.

The bill requires the security officer to notify the appropriate law enforcement agency as soon as reasonably possible. Additionally, the bill specifies that the security officer may only detain the person in a reasonable manner and only until a law enforcement officer arrives on the premises and is in the presence of the detainee. The bill specifies that a person may not be further detained upon the arrival of the law enforcement officer except under the authority of the responding law enforcement officer. Custody of the person being temporarily detained must be immediately transferred to the responding law enforcement officer for determination of appropriate disposition.

If the security officer has probable cause to believe the person being detained (or the person who is about to be detained) is armed with a firearm, concealed weapon, or destructive device that poses a threat to the safety of the officer or others, the security officer may conduct a search of the person and his or her belongings, only to the extent necessary for the purpose of disclosing the presence of a weapon. If the search reveals a weapon, the bill authorizes the seizure of the weapon and requires the security officer to give the weapon to the responding law enforcement officer. The bill specifies that in this context, the term "probable cause" means the observation of the security officer or an admission of the detainee that the detainee has a weapon in his or her possession.

The bill amends s. 493.6118, F.S., to specify that the Department take disciplinary actions against a security officer if the security officer commits an act of violence or use of force on any person except:

- In the lawful protection of one's self or another from physical harm; or
- In the process of a lawful detention of a suspect while awaiting the arrival of a law enforcement officer.

The bill conforms a cross-reference in s. 493.6115, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 493.6305, F.S., relating to uniforms, required wear; authority limitations.

Section 2. Amends s. 493.6118, F.S., relating to grounds for disciplinary action.

Section 3. Amends s. 493.6115, F.S., relating to weapons and firearms.

Section 4. This bill takes effect 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:

It is possible that a person who is detained under this bill could raise Fourth Amendment search and seizure issues. The bill statutorily authorizes one citizen, arguably "under color of law," to detain and search another citizen virtually *on behalf of* law enforcement. For that reason, security officers who undertake a detention and subsequent search under the parameters authorized in the bill should be aware that any evidence they seize may be later used as evidence in a criminal case and it should be handled accordingly.

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 detention by licensed security officers; amending s. 493.6305, F.S.; authorizing certain licensed security officers to detain certain individuals until the arrival of a law enforcement officer; providing limits on such detention; requiring that such security officers notify the appropriate law enforcement agency as quickly as possible; requiring the transfer of an alleged offender to the custody of the officer; authorizing limited searches of certain persons when a licensed security officer has probable cause to believe that the person is armed with a dangerous weapon; requiring that seized weapons be provided to a responding law enforcement officer; defining the term "probable cause" for the purpose of temporarily detaining a person suspected of having committed a crime; amending s. 493.6118, F.S.; conforming provisions to changes made by the act; amending s. 493.6115, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Section 493.6305, Florida Statutes, is amended to read:

493.6305 Uniforms, required wear; authority limitations exceptions.-

(1) Class "D" and Class "MB" licensees shall perform duties regulated under this chapter in a uniform that ~~which~~

29 bears at least one patch or emblem visible at all times clearly
 30 identifying the employing agency. A licensed security officer
 31 who also possesses a valid Class "G" license, or a licensed
 32 security agency manager who also possesses a valid Class "G"
 33 license, who is on duty, in uniform, and on the premises of a
 34 client, and who has probable cause to believe that a person has
 35 committed or is committing a crime against the client or patrons
 36 thereof, may temporarily detain the person for the purpose of
 37 ascertaining his or her identity and the circumstances of the
 38 activity that is the basis for the temporary detention. The
 39 detaining officer may detain the person in a reasonable manner
 40 until the responding law enforcement officer arrives at the
 41 premises of the client and is in the presence of the detainee.
 42 ~~Upon resignation or termination of employment, a Class "D"~~
 43 ~~licensee shall immediately return to the employer any uniform~~
 44 ~~and any other equipment issued to her or him by the employer.~~

45 (2) When temporarily detaining any person, the licensed
 46 security officer or security agency manager shall notify the
 47 appropriate law enforcement agency as soon as reasonably
 48 possible. Temporary detention of a person by a licensed security
 49 officer or security agency manager must be done solely for the
 50 purpose of detaining the person before the arrival of a law
 51 enforcement officer, and custody of any person being temporarily
 52 detained shall be immediately transferred to the responding law
 53 enforcement officer for determination of appropriate
 54 disposition.

55 (3) A person may not be further detained under this
 56 section upon the arrival of a law enforcement officer except

57 under the authority of the responding law enforcement officer.
 58 The temporary detention by a licensed security officer or
 59 security agency manager may not extend beyond the place where it
 60 was first affected or the immediate vicinity thereof.

61 (4) A person may not be temporarily detained under
 62 subsection (2) longer than is reasonably necessary to effect the
 63 purposes of this section.

64 (5) (a) If a licensed security officer or security agency
 65 manager who is authorized to temporarily detain a person under
 66 subsection (1) has probable cause to believe that the person
 67 whom the security officer has temporarily detained, or is about
 68 to temporarily detain, is armed with a firearm, concealed
 69 weapon, or any destructive device that poses a threat to the
 70 safety of the security officer or any person for whom the
 71 security officer is responsible for providing protection, the
 72 security officer or security agency manager may conduct a search
 73 of the person and his or her belongings only to the extent
 74 necessary for the purpose of disclosing the presence of a
 75 weapon. If the search reveals such a weapon, the weapon may be
 76 seized and shall be provided to the responding law enforcement
 77 officer.

78 (b) For the purpose of this subsection, the term "probable
 79 cause" is limited to the observation of the security officer or
 80 security agency manager or the admission of the detainee that
 81 the detainee has a weapon in his or her possession.

82 (6)(2) Class "D" licensees may perform duties regulated
 83 under this chapter in nonuniform status on a limited special
 84 assignment basis, and only when duty circumstances or special

85 requirements of the client necessitate such dress.

86 ~~(7)(3)~~ Class "D" licensees who are also Class "G"
 87 licensees and who are performing limited, special assignment
 88 duties may carry their authorized firearm concealed in the
 89 conduct of such duties.

90 (8) Upon resignation or termination of employment, a Class
 91 "D" licensee shall immediately return to the employer any
 92 uniform and any other equipment issued to him or her by the
 93 employer.

94 Section 2. Paragraph (j) of subsection (1) of section
 95 493.6118, Florida Statutes, is amended to read:

96 493.6118 Grounds for disciplinary action.—

97 (1) The following constitute grounds for which
 98 disciplinary action specified in subsection (2) may be taken by
 99 the department against any licensee, agency, or applicant
 100 regulated by this chapter, or any unlicensed person engaged in
 101 activities regulated under this chapter.

102 (j) Commission of an act of violence or the use of force
 103 on any person except in the lawful protection of one's self or
 104 another from physical harm or in the process of a lawful
 105 detention of a suspect while awaiting the arrival of a law
 106 enforcement officer.

107 Section 3. Subsection (4) of section 493.6115, Florida
 108 Statutes, is amended to read:

109 493.6115 Weapons and firearms.—

110 (4) A Class "C" or Class "CC" licensee 21 years of age or
 111 older who has also been issued a Class "G" license may carry, in
 112 the performance of her or his duties, a concealed firearm. A

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113 Class "D" licensee 21 years of age or older who has also been
114 issued a Class "G" license may carry a concealed firearm in the
115 performance of her or his duties under the conditions specified
116 in s. 493.6305(6) ~~s. 493.6305(2)~~. The Class "G" license shall
117 clearly indicate such authority. The authority of any such
118 licensee to carry a concealed firearm shall be valid throughout
119 the state, in any location, while performing services within the
120 scope of the license.

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

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1359 (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 _____

ADOPTED

1 Council/Committee hearing bill: Public Safety & Domestic
 2 Security Policy Committee
 3 Representative Holder offered the following:

Amendment (with title amendment)

Remove lines 23-93 and insert:

Section 1. Section 493.6305, Florida Statutes, is amended to read:

493.6305 Uniforms, required wear; authority limitations exceptions.-

(1) Class "D" and Class "MB" licensees shall perform duties regulated under this chapter in a uniform that ~~which~~ bears at least one patch or emblem visible at all times clearly identifying the employing agency. A licensed security officer who also possesses a valid Class "G" license, or a licensed security agency manager who also possesses a valid Class "G" license, who is on duty, in uniform, and is providing security services on the premises of a critical infrastructure facility, and who has probable cause to believe that a person has

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1359 (2010)

Amendment No. 1

20 committed or is committing a crime against the client or patrons
21 thereof, may temporarily detain the person for the purpose of
22 ascertaining his or her identity and the circumstances of the
23 activity that is the basis for the temporary detention. The
24 detaining security officer may detain the person in a reasonable
25 manner until the responding law enforcement officer arrives at
26 the premises of the client and is in the presence of the
27 detainee. ~~Upon resignation or termination of employment, a Class~~
28 ~~"D" licensee shall immediately return to the employer any~~
29 ~~uniform and any other equipment issued to her or him by the~~
30 ~~employer.~~

31 (2) When temporarily detaining any person, the licensed
32 security officer or security agency manager shall notify the
33 appropriate law enforcement agency as soon as reasonably
34 possible. Temporary detention of a person by a licensed security
35 officer or security agency manager must be done solely for the
36 purpose of detaining the person before the arrival of a law
37 enforcement officer, and custody of any person being temporarily
38 detained shall be immediately transferred to the responding law
39 enforcement officer for determination of appropriate
40 disposition.

41 (3) A person may not be further detained under this
42 section upon the arrival of a law enforcement officer except
43 under the authority of the responding law enforcement officer.
44 The temporary detention by a licensed security officer or
45 security agency manager may not extend beyond the place where it
46 was first affected or the immediate vicinity thereof.

Amendment No. 1

47 (4) A person may not be temporarily detained under
48 subsection (2) longer than is reasonably necessary to effect the
49 purposes of this section.

50 (5)+2) Class "D" licensees may perform duties regulated
51 under this chapter in nonuniform status on a limited special
52 assignment basis, and only when duty circumstances or special
53 requirements of the client necessitate such dress.

54 (6)+3) Class "D" licensees who are also Class "G"
55 licensees and who are performing limited, special assignment
56 duties may carry their authorized firearm concealed in the
57 conduct of such duties.

58 (7) Upon resignation or termination of employment, a Class
59 "D" licensee shall immediately return to the employer any
60 uniform and any other equipment issued to him or her by the
61 employer.

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

66

Remove lines 9-16 and insert:

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offender to the custody of the officer; amending s. 493.6118,

68

F.S.;

69

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1455
SPONSOR(S): Sachs and others
TIED BILLS:

Misrepresentation of Military Status

IDEN./SIM. BILLS: CS/SB 1824

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Public Safety & Domestic Security Policy Committee		Billmeier	LMB Cunningham
2) Criminal & Civil Justice Appropriations Committee			
3) Criminal & Civil Justice Policy Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1455 creates a new third degree felony to prohibit a person from wearing the uniform of or any medal or insignia authorized for use by members or veterans of the United States Armed Forces or the organized militia (1) for commercial purposes and (2) with the intent to misrepresent himself or herself as a member of the United States Armed Forces or the organized militia. The bill provides that the new crime does not apply to members of veterans' organizations that are congressionally chartered under title 36 U.S.C. while the members are engaged in planning, conducting, or executing a solicitation or charitable or sponsor sales promotion.

The bill amends Florida's "Solicitations of Contributions Act" to prohibit a person from falsely stating that he or she is a member of the United States Armed Forces or the organized militia in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion.

On March 17, 2010, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

The bill provides an effective date of October 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:

Current Law

Florida's "Solicitations of Contributions Act"¹ is intended "recognize the right of persons or organizations to conduct solicitation activities. The Act provides that it is "the intent of the Legislature to protect the public by requiring full public disclosure of the identity of persons who solicit contributions from the public, and of the purposes for which such contributions are solicited and the manner in which the contributions are actually used. It is further the intent of the Legislature to prohibit deception, fraud, and misrepresentation in the solicitation and reporting of contributions."²

Section 496.415, Florida Statutes, provides that it is unlawful for any person in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion³ to falsely state that the person is a member of or a representative of a charitable organization or sponsor, or falsely state or represent that the person is a member of or represents a law enforcement or emergency service organization.

Effect of the Bill

The bill amends Florida's "Solicitations of Contributions Act" to prohibit a person from falsely stating that he or she is a member of the United States Armed Forces⁴ or the organized militia⁵ in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion.

HB 1455 creates a new crime to prohibit a person from wearing the uniform of or any medal or insignia authorized for use by members or veterans of the United States Armed Forces or the organized militia (1) for commercial purposes and (2) with the intent to misrepresent himself or herself as a member of the United States Armed Forces or the organized militia. The bill provides that a person that commits the new crime is guilty of a third degree felony.⁶ The bill provides that the new crime does not apply to

¹ Sections 496.401-496.424, Florida Statutes.

² Section 496.402, Florida Statutes.

³ See s. 496.404(23), Florida Statutes ("Sponsor sales promotion" means "an advertising or sales campaign conducted by a commercial co-venturer who represents that the purchase or use of goods or services offered by the commercial co-venturer will be used for a sponsor purpose or donated to a sponsor. The provision of advertising services to a sponsor does not, in itself, constitute a sponsor sales promotion").

⁴ "United States Armed Forces" is not defined by the bill. See Drafting Issues or Other Comments" in this analysis.

⁵ "Organized militia" is not defined by the bill. See Drafting Issues or Other Comments in this analysis.

⁶ A third degree felony is punishable by up to 5 years in prison and a fine up to \$5,000. See ss. 775.082, 775.083, F.S.

members of veterans' organizations that are congressionally chartered under title 36 U.S.C.⁷ while the members are engaged in planning, conducting, or executing a solicitation or charitable or sponsor sales promotion.

The fiscal impact of the bill is not known. The Criminal Justice Impact Conference reported the expected prison bed impact as "insignificant."

The bill provides an effective date of October 1, 2010.

B. SECTION DIRECTORY:

Section 1. Amends s. 496.415, F.S., relating to prohibited acts

Section 2. Creates an unnumbered section of law relating to misrepresenting one's self as a member of the United States Armed Forces.

Section 3. Creates an unnumbered section of law exempting members of veterans' organizations from the new law.

Section 4. 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:

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:

This bill creates a new third degree felony. The Criminal Justice Impact Conference considered the bill on March 17, 2010, and reported the expected prison bed impact as "insignificant."

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

⁷ Title 36 United States Code Chapters 201-2401 creates over 90 federally chartered corporations. It is not clear how many of these organizations are veteran's organizations.

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:

Chapter 496, Florida Statutes, has generally been upheld against constitutional challenges.⁸ This bill has two provisions that might be subject to constitutional challenge. The bill makes it a crime to falsely represent one's self as representative of the United States Armed Forces or organized militia in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion. The bill also makes it a crime to misrepresent one's self as a member of the United States Armed Forces for commercial purposes and wear the uniform or insignia authorized for use by members or veterans of the United States Armed Forces or organized militia. It could be argued that these provisions violate the First Amendment prohibition on laws restricting the freedom of speech.

In State v. Montas,⁹ the court held that a statute that prohibited the wearing of military uniforms by non-military personnel was overbroad because it criminalized potentially innocent conduct. This bill could be subject to First Amendment challenges under Montas. This bill attempts to avoid the infirmity of Montas by holding that one cannot falsely claim to be a member of the United States Armed Forces.

Section 2 of the bill could be subject to challenge because it imposes criminal penalties for potential innocent conduct, such as the wearing of a military uniform during a theater production.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill uses the phrase "United States Armed Forces" but does not define the phrase. The phrase "United States Armed Forces" is generally thought to mean the Air Force, Army, Coast Guard¹⁰, Navy, and Marines.¹¹ The phrase "United States Armed Forces" is used a number of times within the Florida Statutes but is never defined. Section 92.51(1), Florida Statutes, appears to include the Army, Air Force, Marines, Navy, and Coast Guard within the meaning of the term while section 379.354(4)(j), Florida Statutes, appears to exclude the Coast Guard from the phrase. This bill uses the phrase within a criminal statute so there is a potential for litigation over the meaning of the phrase.

The bill uses the phrase "organized militia" but does not define the phrase. Section 250.02(2), Florida Statutes, states, "the organized militia is composed of the National Guard and any other organized military forces that are authorized by law." A court could, but is not required to, apply this definition to "organized militia" in this new section of law.

The bill provides that members of veteran's organizations chartered by Congress under 36 United States Code may falsely represent that they are members of the United States Armed Forces.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

⁸ See Wickman v. Firestone, 500 So. 2d 740 (Fla. 4th DCA 1987).

⁹ 993 So. 2d 1127 (Fla. 5th DCA 2008).

¹⁰ See <http://www.uscg.mil/top/about/> ("The legal basis for the Coast Guard is Title 14 of the United States Code, which states: "The Coast Guard as established January 28, 1915, shall be a military service and a branch of the armed forces of the United States at all times." Upon the declaration of war or when the President directs, the Coast Guard operates under the authority of the Department of the Navy"). Accessed March 17, 2010.

¹¹ See http://www.navy.org/which_branch/ ("The US Armed Forces consist of several services. These are the US Army, US Navy, US Air Force, US Marine Corps and US Coast Guard"). Accessed March 17, 2010.

A bill to be entitled

An act relating to misrepresentation of military status; amending s. 496.415, F.S.; prohibiting a person from falsely representing himself or herself as a member of, or as a person who represents, the United States Armed Forces or organized militia for the purpose of solicitation of charitable contributions or participation in a charitable or sponsor sales promotion; prohibiting a person from wearing the uniform of, or any medal or insignia authorized for use by members or veterans of, the United States Armed Forces or the organized militia with the intent to misrepresent himself or herself as a member or veteran of the United States Armed Forces or organized militia and for commercial purposes; providing criminal penalties; providing nonapplicability of the act to members of certain congressionally chartered veterans' organizations while engaged in planning, conducting, or executing a solicitation or charitable or sponsor sales promotion; providing an effective date.

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

Section 1. Subsection (6) of section 496.415, Florida Statutes, is amended to read:

496.415 Prohibited acts.—It is unlawful for any person in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion to:

(6) Falsely state that he or she ~~the person~~ is a member of

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29 or a representative of a charitable organization or sponsor, or
 30 falsely state or represent that he or she ~~the person~~ is a member
 31 of or represents the United States Armed Forces, the organized
 32 militia, or a law enforcement or emergency service organization.

33 Section 2. (1) A person may not, with the intent to
 34 misrepresent himself or herself as a member or veteran of the
 35 United States Armed Forces or organized militia and for
 36 commercial purposes, wear the uniform of or any medal or
 37 insignia authorized for use by members or veterans of the United
 38 States Armed Forces or the organized militia.

39 (2) A person who violates subsection (1) commits a felony
 40 of the third degree, punishable as provided in s. 775.082, s.
 41 775.083, or s. 775.084, Florida Statutes.

42 Section 3. This act does not apply to members of veterans'
 43 organizations that are congressionally chartered under Title 36
 44 U.S.C. while the members are engaged in planning, conducting, or
 45 executing a solicitation or charitable or sponsor sales
 46 promotion.

47 Section 4. This act shall take effect October 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1493

Career Offenders

SPONSOR(S): Cruz

TIED BILLS:

IDEN./SIM. BILLS: HB 365

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Public Safety & Domestic Security Policy Committee		Cunningham <i>SC</i>	Cunningham <i>SC</i>
2) Criminal & Civil Justice Appropriations Committee			
3) Criminal & Civil Justice Policy Council			
4)			
5)			

SUMMARY ANALYSIS

Section 775.261, F.S. creates the Florida Career Offender Registration Act. The act requires offenders who have been sentenced as a habitual violent felony offender, a violent career criminal, a three-time violent felony offender or as a prison releasee reoffender to register with law enforcement as a "career offender". The Florida Department of Law Enforcement (FDLE) maintains a statewide database containing information regarding career offenders.

The bill makes it a third degree felony for any person who has reason to believe that a career offender is not complying, or has not complied, with the requirements of section 775.261, F.S., to, with the intent to assist the career offender in eluding a law enforcement agency that is seeking to find the career offender to question the career offender about, or to arrest the career offender for, his or her noncompliance with the requirements of the section:

- Withhold information from, or fail to notify, the law enforcement agency about the career offender's noncompliance with the requirements of the section, and, if known, the whereabouts of the career offender;
- Harbor, or attempt to harbor, or assist another person in harboring or attempting to harbor, the career offender;
- Conceal or attempt to conceal, or assist another person in concealing or attempting to conceal, the career offender; or
- Provide information to the law enforcement agency regarding the career offender that the person knows to be false information.

On March 17, 2010, the Criminal Justice Impact Conference determined that the bill would have an insignificant prison bed impact on the Department of Corrections.

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 775.261, F.S. creates the Florida Career Offender Registration Act. The act requires offenders who have been sentenced under specified sentencing statutes to register as a "career offender". Specifically, the act defines the term "career offender" as a person who is designated as a habitual violent felony offender,¹ a violent career criminal,² a three-time violent felony offender³ or as a prison releasee reoffender⁴. These sentencing statutes have different criteria but, in general, are used to sentence offenders who have been convicted on multiple occasions of certain felony offenses to enhanced sentences.

A career offender released from a sanction⁵ imposed in this state on or after July 1, 2002 is required to register with the sheriff's office in the county in which the career offender establishes or maintains a permanent or temporary residence within 2 working days of establishing the residence.⁶ The career offender is required to provide identifying information to the sheriff such as the offender's name, social security number, age, race, date of birth, address.⁷ The sheriff provides the information obtained to FDLE, which maintains a statewide database and a searchable public website with this information.⁸ The career offender is required to update his or her residence information within 2 working days after any change.⁹ Failure to comply with the requirements of the section is a third degree felony.¹⁰

According to FDLE, as of March 9, 2009, there are 10,758 career offenders in the registry database. Of that number, 8,593 of the career offenders are incarcerated and 2,165 are living in the community.

¹ s. 775.084(1)(b), F.S.

² s. 775.084(1)(d), F.S.

³ s. 775.084(1)(c), F.S.

⁴ s. 775.082(9), F.S.

⁵ For the purposes of this section, the term "sanction" includes but is not limited to, a fine, probation, community control, parole, conditional release, control release or incarceration in a state prison, private correctional facility or local detention facility.

⁶ s. 775.261(4)(a), F.S.

⁷ *Id.*

⁸ <http://www.fdle.state.fl.us/coflyer/home.asp>

⁹ s. 775.261(4)(d), F.S.

¹⁰ s. 775.261(8)(a), F.S.

Effect of the Bill

The bill makes it a third degree felony¹¹ for any person who has reason to believe that a career offender is not complying, or has not complied, with the requirements of the section and who, with the intent to assist the career offender in eluding a law enforcement agency that is seeking to find the career offender to question the career offender about, or to arrest the career offender for, his or her noncompliance with the requirements of the section:

- (a) Withholds information from, or does not notify, the law enforcement agency about the career offender's noncompliance with the requirements of the section, and, if known, the whereabouts of the career offender;
- (b) Harbors, or attempts to harbor, or assists another person in harboring or attempting to harbor, the career offender;
- (c) Conceals or attempts to conceal, or assists another person in concealing or attempting to conceal, the career offender; or
- (d) Provides information to the law enforcement agency regarding the career offender that the person knows to be false information.

The bill provides that this does not apply if the career offender is incarcerated in or is in the custody of a state correctional facility, a private correctional facility, a local jail or a federal correctional facility. Identical language relating to sexual predators and sexual offenders is currently contained in sections 775.21(10)(g), 943.0435(13), and 944.607(12), F.S.

B. SECTION DIRECTORY:

Section 1. Amending s. 775.261, F.S.; relating to the Florida Career Offender Registration Act.

Section 2. Providing effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

On March 17, 2010, the Criminal Justice Impact Conference determined that the bill would have an insignificant prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

¹¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. See ss. 775.082 and 775.083, F.S.

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

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A bill to be entitled
 An act relating to career offenders; amending s. 775.261,
 F.S.; prohibiting specified acts done with intent to
 assist a career offender in eluding a law enforcement
 agency that is seeking to find the career offender to
 question the career offender about, or to arrest the
 career offender for, his or her noncompliance; providing
 penalties; providing that such provisions are inapplicable
 to career offenders incarcerated in or in the custody of
 specified facilities; providing an effective date.

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

Section 1. Subsection (10) is added to section 775.261,
 Florida Statutes, to read:

775.261 The Florida Career Offender Registration Act.—
(10) ASSISTING IN NONCOMPLIANCE.—Any person who has reason
to believe that a career offender is not complying, or has not
complied, with the requirements of this section and who, with
the intent to assist the career offender in eluding a law
enforcement agency that is seeking to find the career offender
to question the career offender about, or to arrest the career
offender for, his or her noncompliance with the requirements of
this section:
(a) Withholds information from, or does not notify, the
law enforcement agency about the career offender's noncompliance
with the requirements of this section, and, if known, the
whereabouts of the career offender;

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29 (b) Harbors or attempts to harbor, or assists another
 30 person in harboring or attempting to harbor, the career
 31 offender;

32 (c) Conceals or attempts to conceal, or assists another
 33 person in concealing or attempting to conceal, the career
 34 offender; or

35 (d) Provides information to the law enforcement agency
 36 regarding the career offender that the person knows to be false
 37 information,

38
 39 commits a felony of the third degree, punishable as provided in
 40 s. 775.082, s. 775.083, or s. 775.084. This subsection does not
 41 apply if the career offender is incarcerated in or is in the
 42 custody of a state correctional facility, a private correctional
 43 facility, a local jail, or a federal correctional facility.

44 Section 2. This act shall take effect October 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1587 Inmate Reentry

SPONSOR(S): Bogdanoff and others

TIED BILLS: IDEN./SIM. BILLS: SB 2714

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Public Safety & Domestic Security Policy Committee		Krol TK	Cunningham <i>guc</i>
2) Criminal & Civil Justice Appropriations Committee			
3) Criminal & Civil Justice Policy Council			
4)			
5)			

SUMMARY ANALYSIS

House Bill 1587 requires the Department of Corrections (department) to develop and implement a reentry program that includes substance abuse or mental health treatment in the form of a 90 day in-prison treatment program, as well as a 12 month treatment program to be completed by the inmate as they are on substance abuse or mental health probation in the community during the last year of his or her prison sentence.

In order for an inmate to be eligible to participate in the reentry program, a sentencing judge must sentence an offender to the program and order conditions of supervision to be completed by the offender. The bill provides criteria that the department can consider before placing otherwise eligible inmates in the prison portion of the program.

The bill provides that 12 months spent on probation under this section as part of the reentry program will be considered as in-custody time in calculating the 85% requirement.

The fiscal impact of this bill is indeterminate. The Criminal Justice Estimating Conference has not determined the fiscal impact of this bill. See "Fiscal Comments."

The bill provides an effective date of 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

Chapter 397, Florida Statutes, provides for the provision of substance abuse services by state government. Part VIII provides for substance abuse programs for state inmates.

In-Prison Substance Abuse Programs

The Department of Corrections (department) screens all inmates to determine substance abuse treatment needs when they are admitted to the correctional system. Each inmate is assigned a priority for treatment based upon the severity of addiction, previous treatment, criminal history, sentencing authority's treatment recommendations, and forecasted release date. The inmate is required to participate in substance abuse treatment if a treatment slot becomes available. Unfortunately, relatively few of the inmates who need substance abuse treatment receive it.

Approximately two-thirds of inmates are identified as needing substance abuse treatment. Only 20 percent of the 25,901 inmates who were released during FY 2006-2007 with an identified need for substance abuse treatment received the needed services. As with educational programs, funding for substance abuse treatment programs has decreased radically since FY 2000-2001. In FY 2000-2001, 39,870 inmates were identified as needing treatment, with 10,547 of them receiving treatment in one of the 4,569 slots at 86 facilities. In FY 2005-2006, 56,392 inmates were identified as needing treatment, with 8,865 receiving it in one of 2,235 treatment slots at 27 facilities. Furthermore, a higher percentage of the treatment slots are in shorter-term outpatient programs, which were found to be less effective in reducing recidivism.¹

Mental Health Transition Services

The department has a memorandum of agreement with the Department of Children and Family Services to ensure that inmates with severe and persistent mental illnesses have access to mental health services after release. Those inmates who are not going to be hospitalized under the Baker Act are scheduled for an appointment with a community mental health provider within 30 days of their release. The two departments have also worked together to develop a web-based database system to serve as the referral and tracking mechanism for the aftercare program.

¹ Office of Program Policy Analysis and Government Accountability. *Corrections Rehabilitative Programs Effective, But Serve Only a Portion of the Eligible Population*, Report No. 07-14, (February 2007).

At least 45 days prior to release, a Mental Health Aftercare Specialist completes SSI/SSDI applications for inmates who may qualify for benefits due to diagnosis with a psychotic disorder, bipolar disorder, or major depressive disorder. In addition, all inmates who are receiving medication for a mental or physical illness receive a 30-day supply upon release. During the period from January to September 2008, 1556 inmates were referred for aftercare services and 450 SSI/SSDI applications were completed and forwarded to the Social Security Administration on behalf of inmates.²

Drug Offender Probation

The department is required to develop and administer a drug offender probation program which emphasizes a combination of treatment and intensive community supervision approaches and which includes provision for supervision of offenders in accordance with a specific treatment plan.³ This program generally uses graduated sanctions when offenders violate program requirements by actions such as testing positive on drug tests, missing treatment sessions, or failing to report to court.⁴ These sanctions can include mandatory community service, extended probation, or jail stays. Probationers in this program are subject to probation revocation if they violate any conditions of their probation. This can result in an imposition of any sentence that may have originally been imposed before the offender was placed on probation.⁵ In FY 2008-09, 10,501 offenders were on drug offender probation.⁶

Drug Courts

The drug court concept was developed in Dade County as a response to a federal mandate to reduce the inmate population or lose federal funding. The Florida Supreme Court reported that a majority of the offenders being incarcerated due to drug-related crimes were “revolving back through the criminal justice system because of underlying problems of drug addiction.”⁷ The Court felt that the delivery of treatment services needed to be coupled with the criminal justice system, strong judicial leadership, and partnerships to bring treatment and the criminal justice system together.⁸ As of September 2008, more than half of all the counties and all of the judicial circuits had some form of drug court.^{9,10}

Mental Health Courts

Similar to drug courts, mental health court judges play a significant role in determining how individual cases involving defendants with mental illnesses should proceed and whether alternatives to prosecution or incarceration should be considered.¹¹ Currently mental health courts are not found in every county.

Effect of Proposed Changes

The bill creates a reentry program for state inmates within part VII of chapter 397, Florida Statutes. The Department of Corrections (department) is required to implement the program. The program is for

² Senate Criminal Justice Committee, Interim Project 2009-313, *Breaking the Cycle of Crime: The Department of Corrections and Re-entry Programming*. (October 2008).

³ Section 948.20(2), F.S.

⁴ Section 948.20(1), F.S.

⁵ Section 948.06 (2)(e), F.S.

⁶ Department of Corrections, Community Supervision Admissions, 2008-2009 Agency Statistics, http://www.dc.state.fl.us/pub/annual/0809/stats/csa_prior.html. (Last accessed on March 18, 2010).

⁷ *The Florida Drug Court System*, Publication by the Florida Supreme Court, revised January 2004, p.1.

⁸ *Ibid.*

⁹ Office of Program Policy Analysis and Government Accountability, *State's Drug Courts Could Expand to Target Prison-Bound Adult Offenders*, Report No. 09-13, (March 2009).

¹⁰ *Op. Cit.*, OPPAGA Report No. 09-13 – During calendar year 2007, pre-trial diversion drug courts operated in 31 counties in 18 judicial circuits. Pre-trial diversion drug court programs admitted approximately 6,573 offenders. During calendar year 2007, post-adjudicatory drug courts operated in 26 counties in 11 judicial circuits. Post-adjudicatory drug court programs admitted 1,694 offenders.

¹¹ Transforming Florida's Mental Health System, Constructing a Comprehensive and Competent Criminal Justice/Mental Health/Substance Abuse Treatment System: Strategies for Planning, Leadership, Financing, and Service Development. (March 2007).

eligible, nonviolent, low-risk inmates who pose a minimal foreseeable risk to the public, and who have been sentenced to the program.

The reentry program will consist of a prison-based treatment program for substance abuse or mental health or co-occurring disorders for a minimum of 90 days and a community-based aftercare treatment program. The in-prison component may be operated in secure areas in or adjacent to an adult institution, a community residential facility, or a work release center.

The sentencing court must include an order for the reentry program at sentencing to alert the department of the inmate's preliminary eligibility for admission to the reentry program. When the department considers the inmate for the program, it will consider:

- The inmate's criminal history;
- The inmate's need for substance abuse or mental health treatment;
- General rehabilitative interests;
- Potential risk to the public;
- Departmental operational needs; and
- Victim's comments.

An inmate is ineligible for admission to the program if:

- The inmate was sentenced to a term of 10 years or more;
- The inmate was convicted of or pled guilty or no contest to the following offenses during their current or a previous prison sentence:
 - Any capital, life, or first degree felony;
 - Any second or third degree felony listed in s. 775.084(1)(c)1.;¹²
 - Any offense listed in s. 784.07,¹³ s. 784.021,¹⁴ s. 827.03,¹⁵ or s. 843.01¹⁶ or any offense that makes a person subject to sex offender registration under 943.0435;¹⁷
 - Any offense for which the sentence was enhanced under s. 775.087;¹⁸ or
 - Any offense in another jurisdiction that would be considered a crime described in any of the statutes listed above, or would have been enhanced under s. 775.087, if it was committed in Florida.

If the inmate meets the criteria for the program, the department approves the inmate's entry into the program, and space is available, the department will provide written notification to the sentencing court, state attorney, counsel for the inmate, and any victim of the inmate's admission into the program. The bill states that admission into the program is not a right, but a matter of grace. The department may refuse to place the inmate in the reentry program.

The department can start the in-prison treatment component of the program if the reentry program is ordered by the sentencing court. Before the inmate completes the in-prison portion of the program, the department will evaluate the inmate's needs and create a postrelease treatment plan that includes substance abuse or mental health aftercare services.

¹² Section 775.084(1)(c)1., F.S., lists the following offenses: arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; aggravated stalking; home invasion/robbery; carjacking; or an offense which is in violation of a law of any other jurisdiction if the elements of the offense are substantially similar to the elements of any felony offense enumerated in sub-subparagraphs a.-q., or an attempt to commit any such felony offense.

¹³ Section 784.07, F.S., provides an enhanced penalty if an assault or battery is committed against law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers.

¹⁴ Section 784.021, F.S., defines aggravated assault.

¹⁵ Section 827.03, F.S., defines the offenses of child abuse, aggravated child abuse, and neglect of a child.

¹⁶ Section 843.01, F.S., defines resisting an officer with violence.

¹⁷ Section 943.0435, F.S., provides definitions for offenders who would be required to register as a sexual offender.

¹⁸ Section 775.087, F.S., reclassifies offenses based on the use or possession of a weapon during the commission of a crime.

If the inmate is unable to participate in the reentry program due to medical or other reasons, the department may determine to have the inmate examined by a qualified medical personnel or qualified nonmedical personnel appropriate for the inmate's situation. The qualified personnel shall consult with the director of the reentry program and the director will determine if the inmate can continue with treatment or be discharged from the program.

An inmate in the reentry program is subject to the rules of conduct established by the department and can have sanctions imposed, such as:

- Loss of privileges;
- Restrictions;
- Disciplinary confinement;
- Forfeiture of gain-time or the right to earn gain-time in the future;
- Alteration of release plans;
- Termination from the reentry program; or
- Other program modifications in keeping with the nature and the gravity of the program.

The department may place an inmate in the program in an administrative or protective confinement as necessary.

Following the completion of the in-prison treatment component, the inmate will be transitioned into the community on "drug offender-mental health probation" for the last 12 months of his or her sentence.

While in the community, the inmate will be subject to:

- All standards of drug offender probation; and
- Any special conditions of supervision ordered by the sentencing court, including:
 - Participation in an aftercare substance abuse or mental health program,
 - Residence in a postrelease transitional residential halfway house, or
 - Any other appropriate form of supervision or treatment.

The bill allows for the inmate's case to be transferred to the drug court for supervision for the last 12 months of his or her sentence if the county where the inmate was sentenced has a drug court and they are willing to accept the case. The drug court judge then becomes the sentencing judge for purposes of ensuring compliance with the program. The department is responsible for collecting the cost of supervision from the inmate.

The bill provides that while on probation:

- The inmate will comply with all conditions of supervision imposed and all orders of the drug court or other supervising court. Violations of any condition or order may result in revocation of supervision by the court and could result in a new sentence.
- The inmate will pay appropriate costs of supervision to the department. If financially able, the inmate will pay the costs of the substance abuse or mental health treatment. The court may impose additional conditions such as payment of restitution, court costs, and fines; community service; and compliance with other special conditions.

The bill states that time spent on probation under this section as part of the reentry program will be considered in-custody time in calculating the 85% requirement.¹⁹

The bill provides that the department will implement the reentry program to the fullest extent feasible within this section and available resources. The department is required to provide a special training to staff that is selected to serve in the reentry program.

The department may enter into performance-based contracts with qualified individuals, agencies, or corporations to supply any or all services provided in the reentry program. A contract must offer the department substantial savings. The department may establish a system of incentives within the reentry

¹⁹ Section 944.275, F.S.

program to promote participation in rehabilitative programs and the orderly operation of institutions and facilities.

The bill prevents any inmate from having a cause of action against the department, a court, the state attorney, or a victim related to the reentry program.

The bill requires the department to develop a computerized system to track recidivism and recommitment of inmates who have participated in the reentry program. Starting October 1, 2011, the department will submit an annual report regarding the program to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill allows the department to adopt rules to implement its duties under this section and to administer the reentry program.

The bill also requires the Office of Program Policy Analysis and Government Accountability to review the reentry program and report their findings to the President of the Senate and the Speaker of the House of Representatives before the commencement of the 2011 legislative session.

B. SECTION DIRECTORY:

Section 1. Creates 397.755, creating a reentry program.

Section 2. Requires a review and report by the Office of Program Policy Analysis and Government Accountability.

Section 3. 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:

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:

Qualified individuals, agencies, or corporations may contract with the department to supply any or all services provided in the reentry program. This could result in an increase in business for those entities that provide substance abuse and mental health treatment.

D. FISCAL COMMENTS:

The Office of the States Court Administrator (OSCA) stated there will be some impact on the court workload, but it should not be substantial. The uniform orders of supervision will need to be modified to include recommended admission into the reentry program. Both the state and the defense will be in a

position to know if an offender qualifies for reentry, and the court is not required to make any separate findings of fact. The end result of the sentencing process actually creates a type of split sentence for the offender, since the post incarceration portion of the program requires that the offender be placed in a drug treatment or mental health program for a period of one year upon release from prison. This one year period is actually part of the original incarcerative sentence imposed by the trial court. Any violation of the terms and conditions subjects the offender to a revocation and the imposition of any sentence up to the statutory maximum for the offense for which he or she was originally sentenced. OSCA stated the bill will increase the number of violations of supervision hearings if offenders are unable to successfully complete the program.

At the time of the publishing of this analysis, the Department of Corrections and the Department of Children and Families did not provide an analysis for or any fiscal determination for HB 1587.

Because the bill allows for the sentencing court judge to make a determination on which offenders can be admitted to the program, it is difficult to determine how many judges may order this type of sentence. In addition, the bill also grants discretion to the Department of Corrections (department) in who they allow to be in the program based on a number of possible criteria. Further the bill appears to allow the department to refuse every inmate who requests admission. For these reasons it is unclear how many inmates would be participating in this reentry program. Program costs would be incurred by the department. While the bill requires that no contract should be undertaken without providing the department with substantial savings, it would be difficult to determine any programming costs.

However, the bill provides that inmates in the reentry program will be able to serve the final 12 months of their sentence in the community. According to their website, the department states that in FY 2008-09, it cost \$52.00 (\$18,980 per year) a day to keep an inmate in prison and \$5.09 a day (\$1,857.85 per year) to keep an offender on probation. For one inmate to serve in the reentry program, the one year he or she would be out of prison serving his or her sentence in the community would save the department a total \$17,122.15.

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:

The bill allows the department to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement its duties under the newly created section and to administer the reentry program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 81 appears to be missing the word "treatment."

The terms "qualified medical personnel" and "qualified nonmedical personnel" are not defined by the bill or in statute.

Lines 129-130 refer to "drug offender-mental health probation." It appears that an "or" should be substituted for the "-."

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to inmate reentry; creating s. 397.755, F.S.; directing the Department of Corrections to create a reentry program; providing eligibility criteria for the program; requiring a recommendation for reentry at the time of sentencing; directing the department to prepare a postrelease treatment plan; requiring the department to notify the judge and other specified parties upon admission of an inmate into the program; providing requirements before transitioning the inmate into the community; requiring the inmate to abide by the order of supervision and the rules of the department; directing the department to provide special training to employees working in the program; authorizing the department to develop performance-based contracts to supply services to the program; permitting the department to establish a system of incentives in the program to promote participation in rehabilitative programs; providing that the section does not confer any right to placement in the reentry program; directing the department to track recidivism and recommitment of inmates who have participated in the program; requiring an annual report to the Governor and Legislature; authorizing rulemaking; requiring a review and report by the Office of Program Policy Analysis and Government Accountability; providing an effective date.

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

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Section 1. Section 397.755, Florida Statutes, is created to read:

397.755 Reentry program.—

(1) PROGRAM DEVELOPMENT.—The department shall develop and implement a reentry program for inmates. The program shall provide a mechanism by which an eligible, nonviolent, low-risk inmate who poses a minimal foreseeable risk to the public and for whom the reentry program has been ordered as part of his or her sentence may be transitioned into the community during the last year of the sentence. The reentry program shall consist of a prison-based treatment program for substance abuse or mental health or co-occurring disorders for a minimum of 90 days and a community-based aftercare treatment program. The reentry program must be specifically designed to be intensive and may have a work-release component as part of the program. The in-prison component may be operated in secure areas in or adjacent to an adult institution, a community residential facility, or a work release center.

(2) ELIGIBILITY.—The sentencing court must include an order for the reentry program at sentencing to alert the department as to this inmate's preliminary eligibility when it screens incoming inmates to determine their preliminary eligibility for the reentry program. The department shall then consider the inmate for admission to the reentry program. When considering the inmate's admission to the reentry program, the department may consider an inmate's criminal history, need for substance abuse or mental health treatment, general

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57 rehabilitative interests, and potential risk to the public. The
 58 department may also consider its operational needs and the
 59 victim's comments.

60 (a) An inmate is ineligible for consideration for
 61 admission to the program if:

62 1. The inmate was sentenced to a term of 10 years or more;

63 2. Whether related to the current term of incarceration,
 64 or a previous term of incarceration, the inmate was convicted of
 65 or pled guilty or no contest to:

66 a. Any capital, life, or first degree felony;

67 b. Any second or third degree felony offense listed in s.
 68 775.084(1)(c)1.;

69 c. Any offense listed in s. 784.07, s. 784.021, s. 827.03,
 70 or s. 843.01 or any offense that makes a person subject to sex
 71 offender registration under s. 943.0435;

72 d. Any offense for which the sentence was enhanced under
 73 s. 775.087; or

74 e. Any offense in another jurisdiction that would be an
 75 offense described in sub-subparagraphs a.-c., or that would have
 76 been enhanced under s. 775.087, if that offense had been
 77 committed in this state.

78 (b) An inmate is eligible for consideration for admission
 79 to the program if:

80 1. The inmate is not ineligible under paragraph (a).

81 2. The inmate is in need of substance abuse or mental
 82 health.

83 3. The reentry program is ordered as part of the inmate's
 84 sentence.

85 4. The department has placed the inmate in minimum or
 86 community custody status.

87 5. The inmate otherwise meets the criteria for placement
 88 as determined by the department. The criteria shall include, but
 89 is not limited to, consideration of the inmate's criminal
 90 history, need for substance abuse or mental health treatment,
 91 general rehabilitative interests, and potential risk to the
 92 public and the operational needs of the department.

93 (3) ADMISSION INTO PROGRAM.—If an inmate meets the
 94 criteria for program admission under subsection (2), the
 95 department approves the inmate for entry into the program, and
 96 space is available, the department shall give written
 97 notification to the sentencing court, state attorney, counsel
 98 for the inmate, and any victim of the inmate's admission into
 99 the program. Admission into the program is not a right, it is a
 100 matter of grace; accordingly, the department may refuse to place
 101 the inmate in the reentry program.

102 (4) PROCEDURE UPON ADMISSION TO PROGRAM; IN-PRISON
 103 TREATMENT.—If the reentry program is ordered by the sentencing
 104 court, the department shall commence an in-prison treatment
 105 component. Before the inmate completes the in-prison treatment
 106 component, the department shall evaluate the inmate's needs and
 107 develop a postrelease treatment plan that includes substance
 108 abuse or mental health aftercare services. If, after placement
 109 in the reentry program, the inmate appears unable to participate
 110 due to medical or other reasons, he or she must be examined by
 111 qualified medical personnel or qualified nonmedical personnel
 112 appropriate for the inmate's situation, as determined by the

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113 department. The qualified personnel shall consult with the
114 director of the reentry program, and the director shall
115 determine if the inmate may continue with treatment or if the
116 inmate must be discharged from the program. An inmate in the
117 reentry program is subject to the rules of conduct established
118 by the department and may have sanctions imposed, including loss
119 of privileges, restrictions, disciplinary confinement,
120 forfeiture of gain-time or the right to earn gain-time in the
121 future, alteration of release plans, termination from the
122 reentry program, or other program modifications in keeping with
123 the nature and gravity of the program violation. The department
124 may place an inmate in the reentry program in an administrative
125 or protective confinement, as necessary.

126 (5) PROCEDURE UPON COMPLETION OF IN-PRISON TREATMENT.-
127 Following completion of the in-prison treatment component, the
128 inmate shall be transitioned into the community on drug
129 offender-mental health probation for the last 12 months of his
130 or her sentence.

131 (a) While in the community, the inmate shall be subject to
132 all standard terms of drug offender probation, any special
133 conditions of supervision ordered by the sentencing court,
134 including participation in an aftercare substance abuse or
135 mental health program, residence in a postrelease transitional
136 residential halfway house, or any other appropriate form of
137 supervision or treatment.

138 (b) If the county in which sentencing occurred has a drug
139 court and it is willing to accept the case, the inmate's case
140 shall be transferred to the drug court for supervision for the

141 last 12 months of his or her sentence. The drug court judge
 142 shall be deemed the sentencing judge for purposes of ensuring
 143 compliance with this section, and the department shall be
 144 responsible for collecting the cost of supervision, as
 145 appropriate, from the inmate.

146 (c) An inmate on probation under this section must comply
 147 with all conditions of supervision imposed and must comply with
 148 all orders of the drug court or other supervising court.
 149 Violation of any condition or order may result in revocation of
 150 supervision by the court and imposition of any sentence
 151 authorized under the law, subject to time served in prison.

152 (d) While on probation under this section, the inmate
 153 shall pay all appropriate costs of supervision to the
 154 department. An inmate who is financially able to shall also pay
 155 all costs of substance abuse or mental health treatment. The
 156 court may impose on the inmate additional conditions requiring
 157 payment of restitution, court costs, and fines; community
 158 service; and compliance with other special conditions.

159 (e) Time spent on probation under this section as part of
 160 the reentry program shall be considered in-custody time in
 161 calculating the 85 percent requirement of s. 944.275.

162 (6) DEPARTMENT DUTIES.—The department shall implement the
 163 reentry program to the fullest extent feasible within this
 164 section and available resources. The department shall provide a
 165 special training program for staff members selected to serve in
 166 the reentry program.

167 (7) CONTRACTORS.—The department may develop and enter into
 168 performance-based contracts with qualified individuals,

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169 agencies, or corporations to supply any or all services provided
 170 in the reentry program. However, a contract may not be entered
 171 into or renewed unless the contract offers a substantial savings
 172 to the department. The department may establish a system of
 173 incentives within the reentry program to promote participation
 174 in rehabilitative programs and the orderly operation of
 175 institutions and facilities.

176 (8) NO RIGHTS CONFERRED UPON INMATES.—This section does
 177 not create or confer any right to any inmate to placement in the
 178 reentry program or any right to placement or early release under
 179 supervision of any type. No inmate shall have a cause of action
 180 against the department, a court, the state attorney, or a victim
 181 related to the reentry program.

182 (9) REPORTING.—The department shall develop a computerized
 183 system to track recidivism and recommitment of inmates who have
 184 participated in the reentry program. On October 1, 2011, and on
 185 each October 1 thereafter, the department shall submit an annual
 186 report of the results of the collected data to the Governor, the
 187 President of the Senate, and the Speaker of the House of
 188 Representatives.

189 (10) RULEMAKING.—The department may adopt rules pursuant
 190 to ss. 120.536(1) and 120.54 to implement its duties under this
 191 section and to administer the reentry program.

192 Section 2. The Office of Program Policy Analysis and
 193 Government Accountability shall review the reentry program under
 194 s. 397.755, Florida Statutes, as created by this act, and report
 195 its findings to the President of the Senate and the Speaker of

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196 | the House of Representatives before the commencement of the 2011
197 | legislative session.

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