PUBLIC SAFETY
&
DOMESTIC SECURITY
POLICY COMMITTEE

TUESDAY, MARCH 09, 2010
8:00 A.M. – 10:45 A.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: Tuesday, March 09, 2010 08:00 am

End Date and Time: Tuesday, March 09, 2010 10:45 am

Location: 404 HOB
Duration: 2.75 hrs

Consideration of the following bill(s):

CS/HB 91 Adult Protective Services by Elder & Family Services Policy Committee, Wood
CS/HB 233 Vessel Safety by Agriculture & Natural Resources Policy Committee, Kiar
HB 309 Violations of Injunctions for Protection by Long
HB 445 Pretrial Detention and Release by Dorworth
HB 627 Transitional Services for Youth by Porth
HB 811 Faith- and Character-Based Correctional Institution Programs by Rouson
HB 813 Juvenile Justice Facilities and Programs by Garcia
HB 819 Sexual Misconduct with Students by Authority Figures by Stargel
HB 833 Reports and Functions of the Department of Juvenile Justice by Thurston
HB 951 Public Safety by Snyder
HB 1005 Criminal Justice by Holder
HB 1055 Brevard County by Tobia
HB 1101 Misdemeanor Pretrial Substance Abuse Programs by Waldman
HB 1115 Injunctions for Protection against Domestic Violence, Repeat Violence, Sexual Violence, or Dating Violence by Jones

NOTICE FINALIZED on 03/05/2010 16:19 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

Tuesday, March 09, 2010
8:00 A.M. – 10:45 AM
(404 HOB)

I. Opening remarks by Chair Ambler

II. Roll call by CAA

III. Consideration of the following bill(s):

- CS/HB 91 Adult Protective Services by Elder & Family Services Policy Committee, Wood
- CS/HB 233 Vessel Safety by Agriculture & Natural Resources Policy Committee, Kiar
- HB 309 Violations of Injunctions for Protection by Long
- HB 445 Pretrial Detention and Release by Dorworth
- HB 627 Transitional Services for Youth by Porth
- HB 811 Faith- and Character-Based Correctional Institution Programs by Rouson
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- HB 833 Reports and Functions of the Department of Juvenile Justice by Thurston

- **HB 951 Public Safety by Snyder**
- **HB 1005 Criminal Justice by Holder**
- **HB 1055 Brevard County by Tobia**
- **HB 1101 Misdemeanor Pretrial Substance Abuse Programs by Waldman**
- **HB 1115 Injunctions for Protection against Domestic Violence, Repeat Violence, Sexual Violence, or Dating Violence by Jones**

IV. Closing Remarks

V. Meeting Adjourned

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 91 Adult Protective Services
SPONSOR(S): Wood
TIED BILLS: **IDEN./SIM. BILLS:** SB 336

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Family Services Policy Committee	12 Y, 0 N, As CS	Guy	Shaw
2) Public Safety & Domestic Security Policy Committee		Krol TK	Cunningham
3) Health Care Appropriations Committee			
4) Health & Family Services Policy Council			
5)			

SUMMARY ANALYSIS

Committee Substitute for House Bill 91 amends several provisions in Chapter 415, Florida Statutes, relating to adult protective services. The bill deletes terms "disabled adults" and "elderly persons" and replaces with the term "vulnerable adult." The bill also amends the definition of "vulnerable adult" by including the term "sensory."

The bill creates a definition for "activities of daily living" that conforms the phrase to the definition of "activities of daily living," relating to adult family-care homes.

The bill provides that the central abuse hotline must transfer to the appropriate county sheriff's office reports of known or suspected abuse of a vulnerable adult involving a person other than a relative, caregiver, or household member.

The bill clarifies that the Department of Children and Family ("the DCF" or "department") may file a petition to determine incapacity in adult protective proceedings. Upon filing the petition, the department is prohibited from being appointed guardian or providing legal counsel to the guardian.

The bill provides the department with access to records of the Department of Highway Safety and Motor Vehicles for use in conducting protective investigations.

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

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:

Current Situation

Background

Section 415.101, Florida Statutes, relating to the Adult Protective Services Act, provides legislative intent for comprehensive protective services for Florida's elderly and abused adults. The Department of Children and Families ("the DCF" or "the department") has identified several methods to improve these services.

Adult Protective Services Program[1]
The Adult Protective Services Program, authorized by ch. 415, F.S., and managed by the DCF, is a system of social services that protects disabled or elderly persons from occurrences of abuse, neglect or exploitation. Upon report of alleged abuse, neglect, or exploitation, an assessment of an individual's need for protective services is initiated.

The program consists of four components:
- The on-site investigation;
- Emergency services if determined necessary;
- Referral to the local law enforcement, if appropriate; and
- Referral to local social service agencies for any identified needs.

Central Abuse Hotline
When the Florida Abuse Hotline began in the early 1970s, abuse reports were received in 181 state offices throughout Florida.[2] In 1988, the Legislature created the Adult Protective Services Act and centralized the abuse hotline at the DCF, where it currently operates and receives abuse, neglect, or exploitation reports—in writing or through a statewide toll-free telephone number.[3] [4] Reports received by the hotline alleging child abuse, abandonment, or neglect by a person who is not a family member,

[1] Department of Children and Families, CF Operating Procedure 140-2, see http://www.dcf.state.fl.us/publications/policies.shtml#adult (last visited March 4, 2010).
[2] Department of Children and Families, see http://www.dcf.state.fl.us/dcflash/apr07/hotline.shtml (last visited March 4, 2010).
[3] *Id.*
[4] Section 415.103(1), F.S.

household member, or caregiver[5] must be immediately transferred to the appropriate county Sheriff's office[6] --there is no such requirement for reports of adult abuse, neglect, or exploitation.

The hotline has 160 staff members, including 3 managers, 17 supervisors and 140 counselors.[7] From 2007-2008, Florida's Abuse Hotline received approximately 367,000 calls, which resulted in approximately 230,000 filed reports. Specifically relating to adult abuse, the hotline received 77,641 calls, which resulted in 42,919 filed reports.[8] The hotline also maintains a secure web-based reporting system that allows individuals to report suspicions of adult/child abuse, neglect and abandonment, or neglect and exploitation of vulnerable adults.

The Florida Abuse Hotline accepts reports related to vulnerable adults who are residents of Florida or currently located in Florida, and are:[9]

- Believed to have been neglected or abused by a caregiver in Florida;
- Suffering from the ill effects of neglect and in need of services; or
- Being exploited by any person who stands in a position of trust or confidence, or any person who knows or should know that a vulnerable adult lacks capacity to consent and who obtains or uses, or endeavors to obtain or use their funds, assets or property.

When a report is determined by a hotline counselor to require an immediate onsite protective investigation, the hotline counselor must immediately notify the DCF's designated district staff responsible for protective investigations. A non-emergency report that is received by the hotline counselor is forwarded to the appropriate district staff in sufficient time so that an investigation occurs within 24 hours.[10]

Protective Service Interventions

When a report is called into the Florida Abuse hotline it is then referred to the Protective Investigations Unit closest to the victim's location. A protective investigation is initiated which includes observation, interviews with the victim and witnesses, evidence gathering and collateral contacts.[11] Sometimes during an investigation, abused, neglected, or exploited adults are identified, but lack the capacity to consent to protective services. Therefore, the DCF, under reasonable cause, is directed to petition the court for an order authorizing the provision of protective services.[12]

There are also instances when vulnerable adults are identified and lack capacity to consent to emergency protective services. Emergency protective services are warranted when a vulnerable adult is suffering from abuse or neglect that presents a risk of death or serious physical injury. The DCF, under reasonable cause, may petition the court for an emergency protective services order.[13]

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[5] Section 415.102(4), F.S., defines "caregiver" as "a person who has been entrusted with or has assumed the responsibility for frequent and regular care of or services to a vulnerable adult on a temporary or permanent basis and who has a commitment, agreement, or understanding with that person or that person's guardian that a caregiver role exists. 'Caregiver' includes, but is not limited to, relatives, household members, guardians, neighbors, and employees and volunteers of facilities as defined in subsection (8). For the purpose of departmental investigative jurisdiction, the term 'caregiver' does not include law enforcement officers or employees of municipal or county detention facilities or the Department of Corrections while acting in any official capacity."

[6] Section 39.201(2)(b), F.S.

[7] Department of Children and Families, see http://www.dcf.state.fl.us/dcflash/apr07/hotline.shtml (last visited March 4, 2010).

[8] Department of Children and Families, *Florida Abuse Hotline – Call Report Activity Fiscal Year 2008-2009* (on file with the Committee).

[9] Department of Children and Families, *Reporting Abuse of Children and Vulnerable Adults*, see www.dcf.state.fl.us/abuse/publications/mandatedreporters.pdf (2007) (last visited March 4, 2010).

[10] Section 415.103(2), F.S.

[11] Department of Children and Families, *Adult Abuse, Neglect, and Exploitation*, see http://www.dcf.state.fl.us/as/ (last visited March 4, 2010).

[12] Section 415.1051(1), F.S.

[13] Section 415.1051(2), F.S.

Emergency and non-emergency protective service orders are restricted to 60 days. At the conclusion of 60 days, the department must petition the court to determine whether:[14]

- Protective services will be continued with the consent of the vulnerable adult;
- Protective services will be continued for the vulnerable adult who lacks capacity;
- Protective services will be discontinued; or
- A petition for guardianship should be filed pursuant to ch. 744, F.S., regarding Florida guardianship.

Access to Driver's License Images and Signatures
The DCF reports that during some adult services investigations, the subject of the investigation denies his or her identity, eluding the investigators. Section 322.142(4), F.S., authorizes the Department of Highway Safety and Motor Vehicles, pursuant to interagency agreements, to share its database information, including digital images and signatures, in response to:

- Law enforcement agency requests;
- The Department of State to determine voter registration eligibility;
- The Department of Revenue to establish paternity and establish, modify, or enforce support obligations;
- The Department of Financial Services relating to unclaimed property; and
- The Department of Children and Families relating to protective investigations regarding children.[15]

Current law does not allow the DCF to access the database system relating to protective investigations regarding vulnerable adults.

Effects of Bill

CS/HB 91 amends several provisions in ch. 415, F.S., relating to adult protective services. The bill changes several definitions used in this chapter. Specifically, the bill deletes terms "disabled adults" and "elderly persons" provided in s. 415.101(2), F.S., and replaces with the term "vulnerable adult." The bill amends the definition of "vulnerable adult" by adding the term "sensory," and creates a definition for "activities of daily living" that conforms the phrase to the definition of "activities of daily living," relating to adult family-care homes.[16] The effect of these changes provides more consistent use of commonly used terms.

The bill amends s. 415.103(2), F.S., and requires the central abuse hotline to transfer reports of known or suspected abuse of a vulnerable adult, where the alleged responsible party is someone other than the caregiver, household member, or family member, to the appropriate county sheriff's office. This provision aligns abuse of vulnerable adult reporting requirements with those for abuse of children and should ensure increased law enforcement notification.

The bill amends s. 415.1051, F.S., and authorizes the DCF, upon a good faith belief that a vulnerable adult lacks capacity, to file a petition to determine capacity in emergency and nonemergency adult protective proceedings, under s. 744.3201, F.S. A copy of a petition for appointment of guardian or emergency temporary guardian can be filed along with a petition to determine capacity. The bill prohibits the DCF from serving as a guardian or providing legal counsel to the guardian once such petition has been filed. The effect of these changes will allow the DCF to initiate guardianship petitions to protect vulnerable adults and should allow for ongoing protection once the department's involvement has ended. Additionally, the effect of prohibiting the DCF from being named as guardian to the vulnerable adult will avoid conflicts of interest for the department.

The bill provides the department with access to records of the Department of Highway Safety and Motor Vehicles for use in conducting protective investigations. Access to this system should assist

[14] *Id.*
[15] Section 322.142(4), F.S.
[16] Section 429.65(1), F.S.

investigators in the positive identification of victims and responsible persons who are subjects in investigations of abuse, neglect, or exploitation and provide quick access to the location of such persons, including vulnerable adults.

Three sections of statute are amended to conform cross-references to section changes made by the bill.

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

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

B. SECTION DIRECTORY:

Section 1. Amends s. 415.101, F.S., relating to the Adult Protective Services Acts; legislative intent.

Section 2. Amends s. 415.102, F.S., relating to definitions.

Section 3. Amends s. 415.103, F.S., relating to the central abuse hotline.

Section 4. Amends s. 415.1051, F.S., relating to protective services interventions when capacity to consent is lacking; nonemergencies; emergencies; orders; limitations.

Section 5. Amends s. 322.142, F.S., relating to color photographic or digital imaged licenses.

Section 6: Amends s. 435.04, F.S., relating to level 2 screening standards.

Section 7. Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 8. Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.

Section 9. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Department of Children and Families, section 4 of the bill, which authorizes the department to file a petition for guardianship, will have no fiscal impact on the department since the petition filing fees will be waived per s. 28.345, F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On January 21, 2009, the Elder and Family Services Policy Committee adopted two amendments to House Bill 91. The first amendment provides of a definition of "activities of daily living" that conforms the phrase to the same definition provided in Chapter 429, Florida Statutes, for adult family-care homes. The second amendment is technical and corrects a cross-reference in the bill.

The bill was reported favorably as a Committee Substitute. This analysis reflects the committee substitute.

A bill to be entitled

An act relating to adult protective services; amending s. 415.101, F.S.; revising legislative intent with respect to adult protective services; providing for care and protection of all vulnerable adults; amending s. 415.102, F.S.; defining the term "activities of daily living"; revising the definition of the term "vulnerable adult"; conforming a cross-reference; amending s. 415.103, F.S.; providing for certain suspected abuse cases to be transferred to the local county sheriff's office; amending s. 415.1051, F.S.; providing for the Department of Children and Family Services to file a petition to determine incapacity and guardianship under certain circumstances; amending s. 322.142, F.S.; authorizing the Department of Highway Safety and Motor Vehicles to provide copies of drivers' license files to the Department of Children and Family Services to conduct protective investigations; amending ss. 435.04, 943.0585, and 943.059, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsection (2) of section 415.101, Florida Statutes, is amended to read:

415.101 Adult Protective Services Act; legislative intent.—

(2) The Legislature recognizes that there are many persons in this state who, because of age or disability, are in need of protective services. Such services should allow such an individual the same rights as other citizens and, at the same time, protect the individual from abuse, neglect, and exploitation. It is the intent of the Legislature to provide for the detection and correction of abuse, neglect, and exploitation through social services and criminal investigations and to establish a program of protective services for all vulnerable ~~disabled~~ adults ~~or elderly persons~~ in need of them. It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear in an effort to prevent further abuse, neglect, and exploitation of vulnerable ~~disabled~~ adults ~~or elderly persons~~. In taking this action, the Legislature intends to place the fewest possible restrictions on personal liberty and the exercise of constitutional rights, consistent with due process and protection from abuse, neglect, and exploitation. Further, the Legislature intends to encourage the constructive involvement of families in the care and protection of vulnerable ~~disabled~~ adults ~~or elderly persons~~.

Section 2. Subsections (2) through (27) of section 415.102, Florida Statutes, are renumbered as subsections (3) through (28), respectively, current subsections (4) and (26) are amended, and a new subsection (2) is added to that section, to read:

415.102 Definitions of terms used in ss. 415.101-415.113.—As used in ss. 415.101-415.113, the term:

(2) "Activities of daily living" means functions and tasks for self-care, including ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.

(5) ~~(4)~~ "Caregiver" means a person who has been entrusted with or has assumed the responsibility for frequent and regular care of or services to a vulnerable adult on a temporary or permanent basis and who has a commitment, agreement, or understanding with that person or that person's guardian that a caregiver role exists. "Caregiver" includes, but is not limited to, relatives, household members, guardians, neighbors, and employees and volunteers of facilities as defined in subsection (9) ~~(8)~~. For the purpose of departmental investigative jurisdiction, the term "caregiver" does not include law enforcement officers or employees of municipal or county detention facilities or the Department of Corrections while acting in an official capacity.

(27) ~~(26)~~ "Vulnerable adult" means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction ~~dysfunctioning~~, or brain damage, or the infirmities of aging.

Section 3. Subsection (2) of section 415.103, Florida Statutes, is amended to read:

415.103 Central abuse hotline.—

(2) Upon receiving an oral or written report of known or suspected abuse, neglect, or exploitation of a vulnerable adult, the central abuse hotline must determine if the report requires

an immediate onsite protective investigation. For reports requiring an immediate onsite protective investigation, the central abuse hotline must immediately notify the department's designated protective investigative district staff responsible for protective investigations to ensure prompt initiation of an onsite investigation. For reports not requiring an immediate onsite protective investigation, the central abuse hotline must notify the department's designated protective investigative district staff responsible for protective investigations in sufficient time to allow for an investigation to be commenced within 24 hours. At the time of notification of district staff with respect to the report, the central abuse hotline must also provide any known information on any previous report concerning a subject of the present report or any pertinent information relative to the present report or any noted earlier reports. <u>If the report is of known or suspected abuse of a vulnerable adult by someone other than a relative, caregiver, or household member, the report shall be immediately transferred to the appropriate county sheriff's office.</u>

Section 4. Paragraph (e) of subsection (1) and paragraph (g) of subsection (2) of section 415.1051, Florida Statutes, are amended to read:

415.1051 Protective services interventions when capacity to consent is lacking; nonemergencies; emergencies; orders; limitations.—

(1) NONEMERGENCY PROTECTIVE SERVICES INTERVENTIONS.—If the department has reasonable cause to believe that a vulnerable adult or a vulnerable adult in need of services is being abused,

neglected, or exploited and is in need of protective services but lacks the capacity to consent to protective services, the department shall petition the court for an order authorizing the provision of protective services.

(e) Continued protective services.—

1. No more than 60 days after the date of the order authorizing the provision of protective services, the department shall petition the court to determine whether:

a. Protective services will be continued with the consent of the vulnerable adult pursuant to this subsection;

b. Protective services will be continued for the vulnerable adult who lacks capacity;

c. Protective services will be discontinued; or

d. A petition for guardianship should be filed pursuant to chapter 744.

2. If the court determines that a petition for guardianship should be filed pursuant to chapter 744, the court, for good cause shown, may order continued protective services until it makes a determination regarding capacity.

3. If the department has a good faith belief that the vulnerable adult lacks the capacity to consent to protective services, the petition to determine incapacity under s. 744.3201 may be filed by the department. Once the petition is filed, the department may not be appointed guardian and may not provide legal counsel for the guardian.

(2) EMERGENCY PROTECTIVE SERVICES INTERVENTION.—If the department has reasonable cause to believe that a vulnerable adult is suffering from abuse or neglect that presents a risk of

death or serious physical injury to the vulnerable adult and that the vulnerable adult lacks the capacity to consent to emergency protective services, the department may take action under this subsection. If the vulnerable adult has the capacity to consent and refuses consent to emergency protective services, emergency protective services may not be provided.

(g) Continued emergency protective services.—

1. Not more than 60 days after the date of the order authorizing the provision of emergency protective services, the department shall petition the court to determine whether:

a. Emergency protective services will be continued with the consent of the vulnerable adult;

b. Emergency protective services will be continued for the vulnerable adult who lacks capacity;

c. Emergency protective services will be discontinued; or

d. A petition should be filed under chapter 744.

2. If it is decided to file a petition under chapter 744, for good cause shown, the court may order continued emergency protective services until a determination is made by the court.

3. If the department has a good faith belief that the vulnerable adult lacks the capacity to consent to protective services, the petition to determine incapacity under s. 744.3201 may be filed by the department. Once the petition is filed, the department may not be appointed guardian and may not provide legal counsel for the guardian.

Section 5. Subsection (4) of section 322.142, Florida Statutes, is amended to read:

322.142 Color photographic or digital imaged licenses.—

(4) The department may maintain a film negative or print file. The department shall maintain a record of the digital image and signature of the licensees, together with other data required by the department for identification and retrieval. Reproductions from the file or digital record are exempt from the provisions of s. 119.07(1) and shall be made and issued only for departmental administrative purposes; for the issuance of duplicate licenses; in response to law enforcement agency requests; to the Department of State pursuant to an interagency agreement to facilitate determinations of eligibility of voter registration applicants and registered voters in accordance with ss. 98.045 and 98.075; to the Department of Revenue pursuant to an interagency agreement for use in establishing paternity and establishing, modifying, or enforcing support obligations in Title IV-D cases; to the Department of Children and Family Services pursuant to an interagency agreement to conduct protective investigations under part III of chapter 39 and chapter 415; or to the Department of Financial Services pursuant to an interagency agreement to facilitate the location of owners of unclaimed property, the validation of unclaimed property claims, and the identification of fraudulent or false claims.

Section 6. Paragraph (a) of subsection (4) of section 435.04, Florida Statutes, is amended to read:

435.04 Level 2 screening standards.—

(4) Standards must also ensure that the person:

(a) For employees or employers licensed or registered pursuant to chapter 400 or chapter 429, does not have a confirmed report of abuse, neglect, or exploitation as defined

in s. 415.102~~(6)~~, which has been uncontested or upheld under s. 415.103.

Section 7. Paragraph (a) of subsection (4) of section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of

or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any criminal history record of a minor or an adult which is ordered

expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section or s. 943.059;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services, the Agency for Health Care Administration, the Agency for Persons with Disabilities, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive

position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5) ~~(4)~~, chapter 916, s. 985.644, chapter 400, or chapter 429;

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or

7. Is seeking authorization from a seaport listed in s. 311.09 for employment within or access to one or more of such seaports pursuant to s. 311.12.

Section 8. Paragraph (a) of subsection (4) of section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.—The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a

certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or

one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, which include conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law, to judges in the state courts system for the purpose of assisting them in their case-related decisionmaking responsibilities, as set forth in s. 943.053(5), or to those entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for their respective licensing, access authorization, and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section or s. 943.0585;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services, the Agency for Health Care Administration, the Agency for Persons with Disabilities, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5) ~~(4)~~, s. 415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities;

7. Is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law; or

8. Is seeking authorization from a Florida seaport identified in s. 311.09 for employment within or access to one or more of such seaports pursuant to s. 311.12.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 233 Vessel Safety
SPONSOR(S): Agriculture & Natural Resources Committee, Kiar
TIED BILLS: **IDEN./SIM. BILLS:** SB 100

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Agriculture & Natural Resources Policy Committee	12 Y, 0 N, As CS	Deslatte	Reese
2)	Public Safety & Domestic Security Policy Committee		Krol TK	Cunningham SC
3)	General Government Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The bill states that no person under the age of 16 can operate watercraft except under adult supervision. The bill makes it unlawful for the owner of, or any person having charge or control over a personal watercraft, to authorize or knowingly permit the watercraft to be operated by a person under 16 years of age or by a person who does not hold a boating safety identification card in compliance with current law.

The bill makes it unlawful for the owner of, or any person having charge or control over any leased, hired, or rented personal watercraft to authorize or knowingly permit the watercraft to be operated by anyone who has not received instruction in the safe handling of personal watercraft in compliance with current law, and rules established by the Fish and Wildlife Conservation Commission (FWCC).

The bill requires anyone receiving instruction in the safe handling of personal watercraft pursuant to a program established by rule of the FWCC to provide the owner of, or person having charge or control over, a leased, hired or rented personal watercraft, or a livery with a written statement attesting to the same. The requirement provides for the instruction to be pursuant to rules of the FWCC or any other program established by rule of the FWCC.

The bill requires that any agent or employee delivering information on safe operation of personal watercraft must enroll in, attend, and successfully complete, at his or her own expense, a boating safety course approved by the National Association of State Boating Law Administrators (NASBLA) and the FWCC.

The bill does not have a fiscal impact on state or local governments. There may be a fiscal impact on the private sector, although it is not anticipated to be significant. Livery personnel who have not attended a boating safety course would be required to do so before providing pre-rental or pre-ride instruction. Courses that meet this requirement cost an average of $22 per student.

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:

Current Situation

According to the latest data from the FWCC, from 2004 through 2008, a total of 38 operators of personal watercraft who were 14 to less than 16 years of age were involved in reportable boating accidents, eight (8) of which were rented personal watercraft.

Currently, s. 327.395, F.S., states that any person born on or after January 1, 1988 may not operate a vessel[1] powered by a motor of 10 horsepower or greater unless such person has in his or her possession aboard the vessel photographic identification and a boater safety identification card issued by the FWCC.[2] Operators born on or after January 1, 1988 are exempt from the boating education requirement if they are:

- Licensed by the United States Coast Guard (USCG) to serve as master on a vessel;
- Operating a vessel on a private lake or pond;
- Accompanied in the vessel by a person who is exempt or who holds an identification card in compliance with this section, is 18 years of age or older, and is attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs during the operation;
- A nonresident who has in his or her possession proof that he or she has completed a boater education course or equivalency examination in another state which meets or exceeds the requirements;
- Operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a bill of sale meeting the requirements of s. 328.46(1), F.S.; or
- Exempted by rule of the commission.

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[1] Section 327.02(39) F.S., defines "vessel" as "synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water description."

[2] As of January 1, 2010, the age requirement changed to a person born on or after January 1, 1988, as passed by the Legislature in the 2009 session. Each year the age range will grow by one year. For example, any person 22 years old and younger is required to have a boater safety identification card in 2010 and in 2011 the age requirement will change to any person 23 and younger.

The FWCC's rule 68D-36.104, F.A.C., specifies that boating safety courses offered by the FWCC pursuant to s. 327.395, F.S., must maintain current approval by the National Association of State Boating Law Administrators (NASBLA). The NASBLA[3] is a professional association representing the recreational boating authorities of all 50 states and the U.S. territories. The NASBLA's objectives are to foster partnerships among and between the states, the USCG and others, to craft model boating laws, to maintain national education and training standards, and to advocate the needs of the state boating programs before the U.S. Congress and federal agencies.

According to the FWCC, its participation with the NASBLA is aimed at maintaining national consistency and reciprocity agreements with regard to boating education, and the FWCC uses NASBLA rules as guidelines for developing rules. The Executive Director can adopt NASBLA rules by reference, but the FWCC is the final decider regarding approval of boating course content.

Florida law currently allows individuals 14 years of age or older to operate a personal watercraft on waters of the state provided they meet the boating safety education requirements specified in s. 327.395, F.S. Section 327.39, F.S., makes it a misdemeanor of the second degree[4] for any person having charge or control over a personal watercraft to knowingly let a person younger than fourteen years operate that personal watercraft.

Currently, s. 327.54, F.S., provides for regulation of livery vessels. A livery vessel is defined by s. 327.02(18), F.S., to mean any vessel leased, rented, or chartered to another for consideration. A livery may not knowingly lease, hire, or rent a vessel to any person whenever:

- The number of persons intending to use the vessel exceeds the number considered to constitute a maximum safety load for the vessel;
- The horsepower of the motor exceeds the capacity of the vessel;
- The vessel does not contain the required safety equipment;
- The vessel is not seaworthy;
- The vessel is equipped with a motor of 10 horsepower or greater, unless the livery provides pre-rental or pre-ride instruction that includes, but is not limited to, the operational characteristics of the vessel to be rented, safe vessel operation and vessel right-of-way rules, the responsibility of the vessel operator for the safe and proper operation of the vessel, and the local characteristics of the waterway where the vessel will be operated.

Any person delivering this information on behalf of the livery must have successfully completed a boater safety course approved by the NASBLA and the state. The FWCC is the state's primary agent for this course approval; however, the FWCC may appoint liveries, marinas or other persons to administer the boating safety course.[5]

Section 327.54, F.S., provides that a livery may not knowingly lease, hire, or rent a personal watercraft to any person who has not received instruction in safe handling of personal watercraft pursuant to the FWCC's rules. The person obtaining a personal watercraft from a livery must provide the livery with a written statement attesting to his or her compliance with FWCC's rules. A livery may not lease, hire, or rent a personal watercraft to any person who is less than 18 years of age.

Rule 68D-36.107 of the Florida Administrative Code (F.A.C.) provides additional requirements for liveries renting or leasing personal watercraft. The rule establishes minimum instructional requirements that persons renting or leasing personal watercraft must provide to all individuals intending to operate the personal watercraft. These requirements include:

- Operator responsibility and ethics;
- Navigation rules;
- Navigation aids, buoys and waterway markers;

[3] NASBLA website, http://www.nasbla.org

[4] As punishable in ss. 775.082 or 775.083, F.S., as a term of imprisonment not exceeding 60 days and a fine of up to $500.

[5] Section 327.395(4), F.S.

- Awareness to changes in weather and water conditions;
- Water skiing and other activities specific to personal watercraft;
- Boating accident causes, prevention, and legal requirements of the operator;
- Propulsion, steering and stopping characteristics of personal watercraft; and
- Awareness of other vessels and dangers of reckless operations, manatees, and environmental concerns.

Finally, the rule specifies that a livery may not lease or rent a personal watercraft to any person unless, prior to rental, a safe operation instructional tape is shown to the potential renter, or safe operation literature is provided and reviewed with each prospective operator. That livery must also provide an on-the-water demonstration and observe each person who will operate the personal watercraft to verify the prospective operators' ability to safely handle the personal watercraft. Any person delivering this information on behalf of the livery must have successfully completed a boater safety course approved by the NASBLA and the state.

Effect of Proposed Changes

The bill states that no person under the age of 16 can operate watercraft without adult supervision. The bill also makes it unlawful for the owner of any personal watercraft, or any person having charge over or control of a personal watercraft, to authorize or knowingly permit the watercraft to be operated by a person under 16 years of age or by a person born on or after January 1, 1988 who does not hold a boating safety identification card to operate a personal watercraft in compliance with s. 327.395, F.S.

The bill amends current law making it unlawful for the owner of, or any person having charge or control over any leased, hired, or rented personal watercraft to authorize or knowingly permit the watercraft to be operated by anyone who has not received instruction in the safe handling of personal watercraft in compliance with rules of the FWCC. The instruction must be in compliance with s. 327.54, F.S.

The bill requires anyone receiving instruction in the safe handling of personal watercraft pursuant to a program established by rule of the FWCC to provide the owner of, or person having charge or control over, a leased, hired or rented personal watercraft, or a livery with a written statement attesting to the same. The requirement provides for the instruction to be pursuant to rule 68D-36.107, F.A.C. or any other program established by rule of the FWCC.

The bill provides that a livery may not knowingly lease, hire, or rent a personal watercraft to any person who has not received instruction in the safe handling of personal watercraft pursuant to rule 68D-36.107, F.A.C. or any other rule established by the commission pursuant to chapter 120.

The bill requires that any agent or employee delivering the required instruction in the safe handling of personal watercraft enroll in, attend, and successfully complete a boating safety course that meets the minimum standards established by the FWCC and the National Association of State Boating Law Administrators (NASBLA).

B. SECTION DIRECTORY:

Section 1. Amends s. 327.39, F.S., revising certain requirements for operating personal watercraft.

Section 2. Amends s. 327.54, F.S., revising the requirements relating to the boating safety course required for leasing or renting a personal watercraft from a livery.

Section 3. Provides an effective date.

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:

According to the FWCC analysis, fiscal impacts to the private sector are not anticipated to be significant. Livery personnel who have not successfully completed a boating safety course would be required to do so before providing pre-rental or pre-ride instruction. Courses that meet this requirement cost an average of $22 per student

D. FISCAL COMMENTS:

None

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 February 3, 2010, the Agriculture & Natural Resources Policy Committee amended and passed HB 233 as a Committee Substitute.

The first amendment changes the word 'persons' delivering information in a livery to 'agents or employees' who work at the livery.

The second amendment deletes the increase from 14 to 16 years of age to operate a personal watercraft and states that no person under the age of 16 can operate watercraft except under adult supervision.

A bill to be entitled

An act relating to vessel safety; amending s. 327.39, F.S.; revising certain requirements for operating personal watercraft; prohibiting operation of such watercraft by certain persons except under adult supervision; amending s. 327.54, F.S.; revising the requirements relating to the boating safety course required for leasing or renting a personal watercraft from a livery; providing an effective date.

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

Section 1. Subsections (5) and (6) of section 327.39, Florida Statutes, are amended to read:

327.39 Personal watercraft regulated.—

(5) No person under the age of 14 shall operate any personal watercraft on the waters of this state, and no person under the age of 16 shall operate such watercraft without adult supervision.

(6)(a) It is unlawful for the owner of any personal watercraft or any person having charge over or control of a personal watercraft to authorize or knowingly permit the same to be operated by a person under 16 ~~14~~ years of age in violation of this section or by a person who does not hold a boating safety identification card in compliance with s. 327.395(1).

(b)1. It is unlawful for the owner of any leased, hired, or rented personal watercraft, or any person having charge over or control of a leased, hired, or rented personal watercraft, to

authorize or knowingly permit the watercraft to be operated by any person who has not received instruction in the safe handling of personal watercraft, in compliance with s. 327.54 and rules established by the commission.

2. Any person receiving instruction in the safe handling of personal watercraft pursuant to s. 327.54 and any ~~a~~ program established by rule of the commission must provide the owner of, or person having charge of or control over, a leased, hired, or rented personal watercraft with a written statement attesting to the same.

3. The commission shall have the authority to establish rules pursuant to chapter 120 prescribing the instruction to be given, which shall take into account the nature and operational characteristics of personal watercraft and general principles and regulations pertaining to boating safety.

(c) Any person who violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Subsection (4) of section 327.54, Florida Statutes, is amended to read:

327.54 Liveries; safety regulations; penalty.—

(4)(a) A livery may not knowingly lease, hire, or rent a personal watercraft to any person who is under 18 years of age.

(b) A livery may not knowingly lease, hire, or rent a personal watercraft to any person who has not received instruction in the safe handling of personal watercraft pursuant to rule 68D-36.107, Florida Administrative Code, or any other rule, ~~in compliance with rules~~ established by the commission

pursuant to chapter 120.

(c) Any person receiving instruction in the safe handling of personal watercraft pursuant to rule 68D-36.107, Florida Administrative Code, or any other ~~a~~ program established by rule of the commission, must provide the livery with a written statement attesting to the same.

Any agent or employee delivering the information specified in this subsection must enroll in, attend, and successfully complete, at his or her own expense, a boating safety course approved by the National Association of State Boating Law Administrators and the commission.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee		Cunningham	Cunningham
2)	Criminal & Civil Justice Appropriations Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

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

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

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

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

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

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

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

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

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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

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

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

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

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

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

[5] s. 784.046, F.S.

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

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

Effect of the Bill

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

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

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

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

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

B. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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

[7] Section 784.047, F.S.

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

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

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

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

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

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

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

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

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

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

violence to the petitioner; ~~or~~

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

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

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee		Cunningham	Cunningham
2)	Criminal & Civil Justice Appropriations Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges. The primary consideration in deciding whether to grant a defendant pretrial release is whether the person presents a threat to the community, whether the person is a flight risk, or whether the person threatens the integrity of the judicial process. Generally, pretrial release can be granted in one of three ways – released on one's own recognizance, by posting a bond, or through a pretrial release program.

Pretrial release programs, which are primarily funded by the county, actively supervise approved defendants through phone contacts, visits, and/or electronic monitoring until the defendant's case is disposed or until the defendant's supervision is revoked. There are no pretrial release program eligibility criteria in the Florida Statutes – each county develops its own criteria for determining who is eligible.

The bill creates s. 907.041(5), F.S., to establish pretrial release program eligibility criteria that will apply to all pretrial release programs. The bill specifies that a defendant is only eligible to participate in a pretrial release program if the defendant is charged with a misdemeanor or with a felony that is not a dangerous crime and:

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

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

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

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

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

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Pretrial Release

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

Types of Pretrial Release

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

Release on Own Recognizance

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

Bond

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

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

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

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

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

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

Pretrial Release Programs

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

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

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

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

Presumption in Favor of Non-Monetary Release

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

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

Effectiveness of the Three Types of Pretrial Release

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

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

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

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

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

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

Effect of the Bill

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

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

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

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

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

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

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

B. SECTION DIRECTORY:

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

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

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[10] Report No. 10-08.

[11] *Id.*

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

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

D. FISCAL COMMENTS:

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

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

Osceola County
Pretrial Release Program Budget = $584,245

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

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

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

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

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

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

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

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

- the Osceola County Jail is currently operating 23% over capacity (has a capacity of 873 beds and currently houses 1,072 inmates)
- Osceola County Corrections Department reports that a new correctional facility will need to be constructed in order to increase the operational capacity of the jail

Monroe County

Almost 50% of pre-trial clients (432) would be ineligible based on the bill's requirements

- These clients would remain in jail until disposition or would remain in jail until bonded out

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

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

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

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

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

Palm Beach County

Pretrial Release Program Budget = $1,500,676

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

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

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

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

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

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

St. Lucie County

Pretrial Release Program Budget = $1,146,978

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Fiscal Analysis – Indigent Defendants

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:
   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

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

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

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

907.041 Pretrial detention and release.—

(5) PRETRIAL RELEASE PROGRAMS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 627 Transitional Services for Youth
SPONSOR(S): Porth
TIED BILLS: **IDEN./SIM. BILLS:** SB 1356

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Services Policy Committee	12 Y, 0 N	Schoonover	Schoolfield
2)	Public Safety & Domestic Security Policy Committee		Cunningham	Cunningham
3)	Full Appropriations Council on Education & Economic Development			
4)	Criminal & Civil Justice Policy Council			
5)				

SUMMARY ANALYSIS

The bill permits the Department of Juvenile Justice (DJJ) to provide transition to adulthood services to youth in DJJ's custody or supervision. Such services are designed to increase a youth's ability to live independently and become a self-sufficient adult.

The bill permits DJJ to:

- Assess a youth's skills and abilities to live independently and become self sufficient.
- Develop a list of age-appropriate activities and responsibilities to be incorporated into the youth's written case plan for any youth 17 years of age or older.
- Provide information related to social security insurance benefits and public assistance.
- Request parental or guardian permission for the youth to participate in the transition to adulthood services and to incorporate into the youth's written case plan age-appropriate activities.
- Contract for transition to adulthood services, which include residential services and assistance, that allow for the child to live independently of the daily care and supervision of an adult. The bill provides for program eligibility to include youth at least 17 but not yet 19 years of age and who are not a danger to the public and have a demonstrated aptitude for the program.

The bill requires that transition to adulthood services for a child must be part of an overall plan leading to the total independence of the child from DJJ's supervision. The bill requires that certain items be included in the overall plan, such as a description of the skills of the child and a plan for learning additional identified skills, a plan for future educational, vocational, and training skills, and a plan for maintaining or developing relationships with family, other adults, friends, and the community.

The bill also provides that youth who are adjudicated delinquent and who are in legal custody of the Department of Children and Families (DCF) are eligible to receive DCF's independent living transition services pursuant to s. 409.1451, F.S. Adjudication of delinquency may not be considered, by itself, as disqualifying criteria for eligibility in DCF's Independent Living Program. This is consistent with current DCF policy.

The bill also permits the court to retain jurisdiction for a year beyond the child's 19th birthday if they are participating in the transition to adulthood program.

The bill does not appear to have a fiscal impact and takes effect on July 1, 2010.

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

DCF - Independent Living Transition Services

The Department of Children and Families (DCF) administers a system of independent living transition services to assist older children in foster care and 18 year olds exiting foster care to transition into self-sufficient adults.[1] This program was created in 2002, utilizing both state and federal funds to provide a continuum of services and financial assistance to prepare current and former foster youth to live independently.[2] The DCF program provides services to assist young adults in obtaining life skills and education for independent living and employment.[3] Private and county government-based child welfare organizations deliver these services through the community-based care system.[4]

The DCF program serves:

- Children who have reached 13 years of age but are not 18 years of age and are in foster care.[5]
- Young adults who have turned 18 years old but are not 23 years old and were in foster care when they turned 18 years old or, after turning 16 years old, were adopted from foster care or placed with a court approved dependency guardian and spent at least 6 months in foster care within the 12 months preceding placement or adoption.[6]

Although not specifically required by statute, DCF also allows youth who meet the above criteria and who have been adjudicated delinquent to participate in the program.[7]

Department of Juvenile Justice – Conditional Release Services

DJJ is tasked with providing conditional release services to youth exiting juvenile justice residential programs. Conditional release is the care, treatment, help, and supervision provided to juveniles released from residential commitment programs to promote rehabilitation and prevent recidivism.[8] The program is intended to help prepare youth for a successful transition from DJJ commitment back to the community. Each youth committed to a DJJ residential program is to be assessed to determine the

[1] s. 409.1451, F.S.
[2] Id.
[3] s. 409.1451(1)(b), F.S.
[4] s. 409.1671, F.S.
[5] s. 409.1451(2)(a), F.S.
[6] s. 409.1451(2)(b), F.S.
[7] Foster youth who have been adjudicated delinquent and enter a juvenile justice placement are the shared responsibility of DCF and DJJ. Staff Analysis, HB 627 (2009), Department of Children and Families, 2009. (On file with committee staff).
[8] s. 985.46(1)(a), F.S.

need for conditional release services upon release from the program.[9] DJJ may also supervise the juvenile when released into the community from a residential program and provide such counseling and other services as may be necessary for families and assisting families' preparations for the return of the child.[10]

Court Jurisdiction
Section 985.0301, F.S., provides that the circuit court has exclusive jurisdiction of proceedings in which a child is alleged to have committed a delinquent act or violation of law. Subsection (5) of the statute specifies that the court shall retain such jurisdiction, unless relinquished by its order, until the child reaches 19 years of age, with the same power over the child that the court had prior to the child becoming an adult.

Effect of the Bill

The bill creates a definition for "transition to adulthood" to mean services for youth who are in the custody of or under the supervision of DJJ, with the objective of acquisition of knowledge, skills, and aptitudes that are essential to pre-social, self-supporting adult life. The bill specifies that transition to adulthood services may include, but are not limited to:

- Assessment of the youth's ability and readiness for adult life;
- A plan for the youth to acquire knowledge, information, and counseling sufficient to make a successful transition to adulthood; and
- Services that have been proven effective towards achieving the objective of transition to adulthood.

The bill provides Legislative intent that DJJ may provide older youth in its custody or under its supervision opportunities to participate in transition to adulthood services while in DJJ's commitment programs or in probation or conditional release programs in the community. This appears to be a similar authority to what currently exists in the conditional release program operated by DJJ for youth transitioning back to the community.[11] The bill specifies that these services should be reasonable and appropriate for the youths' respective ages or for any special needs the youth may have.

The bill also provides that youth who enter a DJJ placement from a foster care placement, and who are in legal custody of DCF are eligible to receive DCF's independent living transition services pursuant to s. 409.1451, F.S. The bill also provides that court-ordered commitment or probation are not barriers to eligibility for youth to receive the array of services available if they were in foster care. This is consistent with current DCF policy.

The bill provides that adjudication of delinquency may not be considered, by itself, as disqualifying criteria for eligibility in DCF's Independent Living Program. The bill specifies that if, upon exiting a DJJ residential program, the youth's family abandons or deserts the youth or otherwise refuses to assume parental duties, the adjudication of delinquency is not an impediment to a subsequent adjudication of dependency and eligibility for the foster care system.

The bill permits DJJ to:

- Assess a youth's skills and abilities to live independently and become self sufficient.

- Develop a list of age-appropriate activities and responsibilities to be incorporated into the youth's written case plan for any youth 17 years of age or older. The activities may include, but are not limited to life skills training, banking and budgeting skills, interviewing and career

[9] *Id.*
[10] *Id.*
[11] s. 985.46, F.S.

planning skills, parenting skills, personal health management, time management or organizational skills, educational support, employment training, and counseling.

- Provide information related to social security insurance benefits and public assistance.

- Request parental or guardian permission for the youth to participate in the transition to adulthood services. Upon such consent, the age-appropriate activities must be incorporated into the youth's written case plan. The case plan may include specific goals and objectives and must be reviewed and updated quarterly. The plan must not interfere with parents or guardians rights to train the child.

- Contract for transition to adulthood services, which include residential services and assistance, that allow for the child to live independently of the daily care and supervision of an adult in a setting that is not required to be licensed under s. 409.175, F.S. The bill provides for program eligibility to include youth at least 17 but not yet 19 years of age and who are not a danger to the public and have a demonstrated aptitude for the program.

The bill requires that services focused in the transition to adulthood for a child must be part of an overall plan leading to the total independence of the child from DJJ's supervision. The plan must include:

- A description of the skills of the child and a plan for learning additional identified skills.
- The behavior that the child has exhibited which indicates an ability to be responsible and a plan for developing additional responsibilities.
- A plan for future educational, vocational, and training skills.
- Present financial and budgeting capabilities and a plan for improving resources and abilities.
- A description of the proposed residence.
- Documentation that the child understands the specific consequences of his or her conduct in such a program.
- Documentation of proposed services to be provided by DJJ and other agencies, including the type of services and the nature and frequency of contact.
- A plan for maintaining or developing relationships with family, other adults, friends, and the community.

These changes will permit DJJ to provide services to youth in their custody or supervision which may increase a youth's ability to live independently and become a self-sufficient adult.

The bill also amends s. 985.0301(5)(a), F.S., to allow the court to retain jurisdiction for an additional 365 days beyond a youth's 19th birthday if the youth is participating in a DJJ transition to adulthood program. This is similar to the provision for continued court jurisdiction of up to one year for children from the foster care system who are participating in the Independent Living program administered under DCF.[12]

B. SECTION DIRECTORY:

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

Section 2. Creates s. 985.461, F.S., relating to transition to adulthood.

Section 3. Amends s. 985.0301, F.S., relating to jurisdiction.

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

[12] s. 39.013(2), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
   None.

2. Expenditures:
   DJJ reports that this bill does not have a fiscal impact on the Department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
   None.

2. Expenditures:
   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
None.

D. FISCAL COMMENTS:
None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill 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:

Line 68: "array of sources" probably intended to mean "array of services"

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to transitional services for youth; amending s. 985.03, F.S.; defining the term "transition to adulthood"; creating s. 985.461, F.S.; providing legislative intent concerning transition to adulthood services for youth in the custody of the Department of Juvenile Justice; providing for eligibility for services from both departments for youth served by the department who are legally in the custody of the Department of Children and Family Services; providing that an adjudication of delinquency does not, by itself, disqualify a youth in foster care from certain services from the Department of Children and Family Services; providing powers and duties of the Department of Juvenile Justice for transition services; providing for assessments; providing for a plan for a youth leading to independence; amending s. 985.0301, F.S.; providing for retention of court jurisdiction over a child for a specified period beyond the child's 19th birthday if the child is participating in a transition to adulthood program; providing an effective date.

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

Section 1. Subsections (56) and (57) of section 985.03, Florida Statutes, are renumbered as subsections (57) and (58), respectively, and a new subsection (56) is added to that section to read:

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

(56) "Transition to adulthood" means services for youth in the custody of the department or under the supervision of the department with the objective of acquisition of knowledge, skills, and aptitudes that are essential to pro-social, self-supporting adult life. The services available under this definition may include, but are not limited to:

(a) Assessment of the youth's ability and readiness for adult life.

(b) A plan for the youth to acquire knowledge, information, and counseling sufficient to make a successful transition to adulthood.

(c) Services that have proven effective towards achieving the objective of transition to adulthood.

Section 2. Section 985.461, Florida Statutes, is created to read:

985.461 Transition to adulthood.—

(1) The Legislature finds that older youths are faced with the need to learn how to support themselves. Additional tasks for these youths are to support themselves with legal means and to overcome the stigma of being delinquent. The source in most, but not all, cases for expediting this transition process is parents.

(2) It is the intent of the Legislature that the department may provide to older youths in its custody or under its supervision opportunities to participate in transition to adulthood services while in the department's commitment programs or in probation or conditional release programs in the

community. These activities should be reasonable and appropriate for the youths' respective ages or for any special needs they may have and shall provide them with services to build life skills and increase their ability to live independently and become self-sufficient.

(3) Youth served by the department who are legally in the custody of the Department of Children and Family Services, and who entered a juvenile justice placement from a foster care placement, remain eligible to receive services pursuant to s. 409.1451. Court-ordered commitment or probation with the department is not a barrier to eligibility for the array of sources available to a youth if he or she were in dependency foster care alone.

(4) For dependent children in the foster care system, adjudication for delinquency may not be considered, by itself, as disqualifying criteria for eligibility in the Independent Living Program of the Department of Children and Family Services. If upon exiting a departmental residential program the youth's family abandons or deserts him or her or otherwise refuses to resume their parental duties, the adjudication of delinquency is not an impediment to a subsequent adjudication of dependency and eligibility for the foster care system operated by the Department of Children and Family Services.

(5) To support the provision of opportunities for participation in transition to adulthood services and within appropriated resources, the department may:

(a) Assess the child's skills and abilities to live independently and become self-sufficient. The specific services

to be provided to a child shall be determined using an assessment of his or her readiness for adult life.

(b) Develop a list of age-appropriate activities and responsibilities to be incorporated in the child's written case plan for any youth 17 years of age or older who is under the custody or supervision of the department. Activities may include, but are not limited to, life skills training, including training to develop banking and budgeting skills, interviewing and career planning skills, parenting skills, personal health management, and time management or organizational skills; educational support; employment training; and counseling.

(c) Provide information related to social security insurance benefits and public assistance.

(d) Request parental or guardian permission for the youth to participate in the transition to adulthood services. Upon such consent, the age-appropriate activities shall be incorporated into the youth's written case plan. This plan may include specific goals and objectives and be reviewed and updated at least quarterly. If the parent or guardian is cooperative, the plan must not interfere with the parent's or guardian's rights to nurture and train his or her child in ways that are otherwise in compliance with the law and any court order.

(e) Contract for transition to adulthood programs, which include residential services and assistance, that allow for the child to live independently of the daily care and supervision of an adult in a setting that is not required to be licensed under s. 409.175. A child under the care or supervision of the

department who has reached 17 years of age but is not yet 19 years of age is eligible for such services if he or she is not a danger to the public and is able to demonstrate at least minimally sufficient skill and aptitude for living with decreased adult supervision, as determined by the department, using established procedures and assessments.

(6) For a child who is 17 years of age or older, under the department's care or supervision, and without benefit of parents or legal guardians capable of assisting the child in the transition to adult life, the department may provide an assessment to determine the child's skills and abilities to live independently and become self-sufficient. Based on the results of the assessment, and within existing resources, services and training may be provided to the child to develop the necessary skills and abilities prior to the child's 18th birthday.

(7) Services focused on the transition to adulthood for a child must be part of an overall plan leading to the total independence of the child from the department's supervision. The plan must include, but need not be limited to, a description of the skills of the child and a plan for learning additional identified skills; the behavior that the child has exhibited which indicates an ability to be responsible and a plan for developing additional responsibilities, as appropriate; a plan for future educational, vocational, and training skills; present financial and budgeting capabilities and a plan for improving resources and abilities; a description of the proposed residence; documentation that the child understands the specific consequences of his or her conduct in such a program;

documentation of proposed services to be provided by the department and other agencies, including the type of service and the nature and frequency of contact; and a plan for maintaining or developing relationships with family, other adults, friends, and the community, as appropriate.

Section 3. Paragraph (a) of subsection (5) of section 985.0301, Florida Statutes, is amended to read:

985.0301 Jurisdiction.—

(5)(a) Notwithstanding ss. 743.07, 985.43, 985.433, 985.435, 985.439, and 985.441, and except as provided in ss. 985.461, 985.465, and 985.47 and paragraph (f), when the jurisdiction of any child who is alleged to have committed a delinquent act or violation of law is obtained, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 19 years of age, with the same power over the child that the court had prior to the child becoming an adult. For purposes of s. 985.461, the court may retain jurisdiction for an additional 365 days beyond the child's 19th birthday if the child is participating in a transition to adulthood program.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee		Krol TC	Cunningham SWC
2)	Criminal & Civil Justice Appropriations Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

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

This bill removes:

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

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Faith and Character Based Initiative

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

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

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

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

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

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

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

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

Inmates can be removed from the FCB program for:

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

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

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

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

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

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

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

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

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

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

B. SECTION DIRECTORY:

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee		Cunningham	Cunningham
2)	Health Care Services Policy Committee			
3)	Criminal & Civil Justice Appropriations Committee			
4)	Criminal & Civil Justice Policy Council			
5)				

SUMMARY ANALYSIS

Section 985.039(1)(b), F.S., provides that when a child is placed in detention or on committed status, the Department of Juvenile Justice (DJJ) has temporary legal custody of such child and must provide ordinary medical, dental, psychiatric, and psychological care. There is currently no definition of the term "ordinary medical care" in ch. 985, F.S.

Section 985.601(9)(b)7., F.S., also requires DJJ to adopt rules governing medical attention, health, and comfort items in detention facilities; however, there is no such requirement in the rules for providing medical attention in other areas of the continuum of care.

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

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

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

This bill does not appear to have a fiscal impact 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:

Present Situation

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

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

Effect of the Bill

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

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

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

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

coordinate its rulemaking effort with the Department of Children and Families and the Agency for Persons with Disabilities to ensure there is no encroachment on either agency's substantive jurisdiction.

B. SECTION DIRECTORY:

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

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

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

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

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

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

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

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

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

985.64 Rulemaking.—

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

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

(a) Ordinary medical care.

(b) Mental health services.

(c) Substance abuse treatment services.

(d) Services to youth with developmental disabilities.

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

Section 3. Section 985.721, Florida Statutes, is amended

to read:

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

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

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 819 Sexual Misconduct with Students by Authority Figures
SPONSOR(S): Stargel
TIED BILLS: **IDEN./SIM. BILLS:** SB 1334

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Public Safety & Domestic Security Policy Committee		Cunningham	Cunningham
2) Criminal & Civil Justice Appropriations Committee			
3) Criminal & Civil Justice Policy Council			
4)			
5)			

SUMMARY ANALYSIS

The bill creates s. 775.0862, F.S., which requires the reclassification of the felony degree of a sexual offense listed in the sexual predator or sexual offender statutes if the offense is committed by an authority figure of any educational institution against a student of any educational institution. The term "authority figure" is defined to mean "a school officer, teacher or other instructional person, an administrator or other school administrative person, school volunteer, an educational support employee, or an education service provider, who is employed by, under contract with, working at, or providing volunteer services to an educational institution."

The bill requires the reclassification to occur as follows:

- In the case of a felony of the third degree, the offense is reclassified to a felony of the second degree.
- In the case of a felony of the second degree, the offense is reclassified to a felony of the first degree.
- In the case of a felony of the first degree, the offense is reclassified to a life felony.

Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of misdemeanor or felony. The maximum sentence for a third degree felony is five years imprisonment; for a second degree felony is fifteen years of imprisonment; for a first degree felony is thirty years imprisonment, and for a life felony is life in prison.

The bill does not change the elements of any criminal offense or change the age of consent for sexual activity where the victim is a student.

On February 23, 2010, the Criminal Justice Impact Conference reported that bill would have an indeterminate 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

Currently, it is a crime for a person to engage in sexual activity with a person under the age of 16. A person under the age of 16 cannot legally consent to sexual activity in any circumstance. The offense that the person can be charged with in either the sexual battery or lewd or lascivious statutes depends on the specific act that occurred and the age of the offender and victim as discussed further below.[1]

Section 794.011, F.S., makes it a crime to commit "sexual battery" on any person under the age of 12. The term "sexual battery" is defined as "oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object."[2] Sexual activity committed with a child age 12 or over and under the age of 16 is punishable as the offense of lewd or lascivious battery under s. 800.04(4), F.S. The definition of the term "sexual activity" is identical to the definition of the term "sexual battery". Also prohibited in s. 800.04, F.S., are other sexual offenses against children under the age of 16 including lewd or lascivious molestation, lewd or lascivious conduct and lewd or lascivious molestation. Consent is not a defense to any offense described above.

Section 794.05, F.S., prohibits an offender who is age of 24 or older from engaging in sexual activity with a victim under the age of 18. Consent is not a defense to this offense. Also, s. 794.011(8), F.S., provides that without regard to the willingness or consent of the victim, which is not a defense to prosecution under this provision, a person who is in a "position of familial or custodial authority" to a person less than 18 year of age and commits sexual battery, commits a first degree felony.

The term "position of familial or custodial authority" is not defined in statute. Case law on the topic indicates that a school teacher is not necessarily a person in a position of custodial authority to a student. In *Hallberg v. State*, 649 So.2d 1355 (Fla. 1994), the Florida Supreme Court considered a case in which a junior high school teacher was convicted of sexual battery by a person in a position of familial or custodial authority.[3] The summer after the school year in which the teacher had the victim in his class, the teacher engaged in sexual activity with the victim at the victim's house on several occasions. The offender argued that he did not stand in a position of familial or custodial authority to the victim. The court ruled that the offender should not have been convicted under the section of statute he was charged with and stated that "teachers are not, by reason of their chosen profession, custodians of their students at all times, particularly when school is recessed for the summer."

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[1] *See* ss. 794.011 and 800.04, F.S.

[2] s. 794.011(1)(h), F.S.

[3] The court was interpreting section 794.041, F.S. The provisions of this section have been repealed and transferred to section 794.011(8), F.S. *Clements v. State*, 979 So.2d 256, 258 (Fla. 2nd DCA,2007)(noting that effective October 1, 1993, section 794.041 was repealed and reenacted as subsection (8) of section 794.011.) *See* ch. 93-156, §§ 3, 4, at 911, § 27 at 933, Laws of Fla.

In sum, a person under the age of 16 cannot legally consent to sexual activity under any circumstances. Further, a person under the age of 18 cannot legally consent to sexual activity with a person in a position of familial or custodial authority or to a person age 24 or older. Because a teacher may not necessarily be considered a person in a position of custodial authority, in the situation in which a teacher is under the age of 24 and a student is age 16 or older (and the teacher therefore could not be charged with a violation of s. 794.05, F.S.,) if the student consents to the activity, it may not be punishable as a sexual offense.

Effect of bill

The bill creates s. 775.0862, F.S., which requires the reclassification of the felony degree of a sexual offense listed in the sexual predator or sexual offender statutes[4] if the offense is committed by an authority figure of any educational institution against a student of any educational institution.

The bill creates the following definitions:

- "Authority figure" is defined to mean "a school officer, teacher or other instructional person, an administrator or other school administrative person, school volunteer, an educational support employee, or an education service provider, who is employed by, under contract with, working at, or providing volunteer services to an educational institution."

- "Educational institution" is defined to mean "an entity providing instructional programs of study by means of regular classes, activities, or courses, including virtual courses, to students in early learning programs or in prekindergarten through grade 12."

- "Student" is defined to mean "any early learning or prekindergarten through grade 12 child who is enrolled in an educational institution." This would include students who are dually enrolled in high school and at a community college, state college or state university.

The bill requires the reclassification to occur as follows:

- In the case of a 3rd degree felony, the offense is reclassified to a 2nd degree felony.
- In the case of a 2nd degree felony, the offense is reclassified to a 1st degree felony.
- In the case of a 1st degree felony, the offense is reclassified to a life felony.

Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of misdemeanor or felony. The maximum sentence for a third degree felony is five years imprisonment; for a second degree felony is fifteen years of imprisonment; for a first degree felony is thirty years imprisonment, and for a life felony is life in prison.[5]

The bill does not change the elements of any criminal offense and does not make any activities illegal which are currently legal.

B. SECTION DIRECTORY:

Section 1. Creates s. 775.0862, F.S., relating to sexual battery offenses against students by authority figures; reclassification.

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[4] The offenses listed in s. 943.0435, F.S., the sexual offender statute include sections 787.01 (kidnapping); s. 787.02 (false imprisonment); s. 787.025 (luring or enticing a child); s. 794.011 (sexual battery); s. 794.05 (unlawful sexual activity with certain minors); s. 796.03 (procuring a person under the age of 18 for prostitution); s. 796.035, (selling or buying of a minor into sex trafficking or prostitution); 800.04 (lewd or lascivious offenses); 825.1025(2)(b) (lewd or lascivious battery on an elderly person); s. 827.071 (promoting sexual performance by a child); s. 847.0133 (selling or showing obscenity to a minor); 847.0135 (traveling to meet a minor for the purpose of engaging in illegal sexual activity); s. 847.0137; (transmitting child pornography); s. 847.0138 (transmitting material harmful to minors); s. 847.0145 (selling or buying of a minor); or s. 985.701 (sexual misconduct by a Department of Juvenile Justice employee).

[5] s. 775.082, F.S.

Section 2. Amends s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.

Section 3. This bill takes effect October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   On February 23, 2010, the Criminal Justice Impact Conference reported that bill would have an indeterminate prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to sexual misconduct with students by authority figures; creating s. 775.0862, F.S.; providing definitions; providing for reclassification of specified sexual offenses committed against students by authority figures; providing for severity ranking of offenses; amending s. 921.0022, F.S.; providing for application of the severity ranking chart of the Criminal Punishment Code; providing an effective date.

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

Section 1. Section 775.0862, Florida Statutes, is created to read:

775.0862 Sexual battery offenses against students by authority figures; reclassification.—

(1) For purposes of this section, the term:

(a) "Authority figure" means a school officer, a teacher or other instructional person, an administrator or other school administrative person, a school volunteer, an educational support employee, or an education service provider who is employed by, under contract with, working at, or providing volunteer services to an educational institution.

(b) "Educational institution" means an entity providing instructional programs of study by means of regular classes, activities, or courses, including virtual courses, to students in early learning programs or in prekindergarten through grade 12.

(c) "Student" means any early learning or prekindergarten through grade 12 child who is enrolled in an educational institution.

(2) The felony degree of any violation of:

(a) Any offense listed in s. 775.21(4)(a)1.; or

(b) Any offense listed in s. 943.0435(1)(a)1.a.

shall be, unless the offense falls within s. 794.011(4)(g), reclassified as provided in this section if the offense is committed by an authority figure of any educational institution against a student of any educational institution.

(3)(a) In the case of a felony of the third degree, the offense is reclassified to a felony of the second degree.

(b) In the case of a felony of the second degree, the offense is reclassified to a felony of the first degree.

(c) In the case of a felony of the first degree, the offense is reclassified to a life felony.

For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony offense that is reclassified under this subsection is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 2. Subsection (2) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(2) The offense severity ranking chart has 10 offense levels, ranked from least severe, which are level 1 offenses, to most severe, which are level 10 offenses, and each felony offense is assigned to a level according to the severity of the offense. For purposes of determining which felony offenses are specifically listed in the offense severity ranking chart and which severity level has been assigned to each of these offenses, the numerical statutory references in the left column of the chart and the felony degree designations in the middle column of the chart are controlling; the language in the right column of the chart is provided solely for descriptive purposes. Reclassification of the degree of the felony through the application of s. 775.0845, s. 775.0861, s. 775.0862, s. 775.087, s. 775.0875, s. 794.023, or any other law that provides an enhanced penalty for a felony offense, to any offense listed in the offense severity ranking chart in this section shall not cause the offense to become unlisted and is not subject to the provisions of s. 921.0023.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 833 Reports and Functions of the Department of Juvenile Justice
SPONSOR(S): Thurston
TIED BILLS: **IDEN./SIM. BILLS:** SB 1006

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee		Cunningham	Cunningham
2)	Criminal & Civil Justice Policy Council			
3)				
4)				
5)				

SUMMARY ANALYSIS

Currently, the Department of Juvenile Justice (DJJ) is required to submit annual reports on:

- The performance of assessment and treatment services for serious or habitual juvenile offenders.
- The performance of assessment and treatment services for offenders less than 13 years of age receiving intensive residential treatment.
- The implementation and progress of literacy programs within residential commitment programs.

DJJ states that the above reports are duplicative in that the information in these reports is also contained in the annual report required by s. 985.632, F.S., and the annual report required by s. 1003.52, F.S.

Section 985.636, F.S., authorizes the Secretary of DJJ to designate as law enforcement officers within the Office of the Inspector General, persons holding a law enforcement certification. According to DJJ, this statute is obsolete because the department does not employ sworn law enforcement officers.

The bill removes the requirements that DJJ submit the above-described reports and repeals s. 985.636, F.S., relating to the Office of the Inspector General.

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:

Annual Reports

Section 985.47(8)(a)4., F.S., requires the Department of Juvenile Justice (DJJ) to submit an annual report on the performance of assessment and treatment services for serious or habitual juvenile offenders. Similarly, s. 985.483, F.S., requires DJJ to submit an annual report on the performance of assessment and treatment services for offenders less than 13 years of age receiving intensive residential treatment. Both reports are required to be submitted annually to the Governor, the Attorney General, the President of the Senate, the Speaker of the House of Representatives, and the Auditor General (the report relating to offenders less than 13 years of age must also be submitted to the Office of Program Policy Analysis and Government Accountability). DJJ reports that the information in these reports is also contained in the annual report required by s. 985.632, F.S., which DJJ refers to as the Comprehensive Accountability Report.

Section 985.625(5), F.S., requires DJJ, in consultation with the Department of Education, to submit an annual report to the President of the Senate and the Speaker of the House of Representatives on the implementation and progress of literacy programs within residential commitment programs. DJJ reports that the information in this report is also contained in the annual report required by s. 1003.52, F.S., which DJJ refers to as the Quality Assurance Report and is produced by the Juvenile Justice Education Enhancement Program[1] (JJEEP).

The bill removes the requirements that DJJ submit the above-described reports.

Office of the Inspector General

Section 985.636, F.S., authorizes the Secretary of DJJ to designate as law enforcement officers within the Office of the Inspector General, persons holding a law enforcement certification. This designation is for the purpose of enforcing any criminal law and conducting any investigation involving a state-operated program that falls under DJJ's jurisdiction. However, according to DJJ, this statute is obsolete because the department does not employ sworn law enforcement officers.

The bill repeals this section of statute.

[1] JJEEP is a discretionary project funded by the Department of Education (DOE) and managed by the School of Criminology at Florida State University. Major functions are to assist DOE in ensuring high-quality education for youth in juvenile justice education programs. http://www.fldoe.org/ese/dr-jjeep.asp

B. SECTION DIRECTORY:

Section 1. Amends s. 985.47, F.S., relating to serious or habitual juvenile offender.

Section 2. Amends s. 985.483, F.S., relating to intensive residential treatment program for offenders less than 13 years of age.

Section 3. Repeals s. 985.625(5), F.S., relating to literacy programs for juvenile offenders.

Section 4. Repeals s. 985.636, F.S., relating to inspector general; inspectors.

Section 5. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to reports and functions of the Department of Juvenile Justice; amending s. 985.47, F.S.; deleting a provision that requires the Department of Juvenile Justice to develop an annual report on the performance of assessment and treatment services for serious or habitual juvenile offenders for delivery to the Governor and other designated persons by a specified date; amending s. 985.483, F.S.; deleting a provision that requires the department to develop an annual report on the performance of assessment and treatment services of the intensive residential treatment program for offenders less than 13 years of age for delivery to the Governor and other designated persons by a specified date; repealing s. 985.625(5), F.S., relating to the requirement that the department and the Department of Education develop and implement an evaluation of the literacy programs for juvenile offenders and prepare an annual report on the progress of the literacy programs; repealing s. 985.636, F.S., relating to the authority of the Secretary of Juvenile Justice to designate certain persons within the Office of Inspector General to enforce any criminal law and conduct any criminal investigation that relates to state-operated programs or state-operated facilities over which the department has jurisdiction; providing an effective date.

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

Section 1. Paragraph (a) of subsection (8) of section 985.47, Florida Statutes, is amended to read:

985.47 Serious or habitual juvenile offender.—

(8) ASSESSMENT AND TREATMENT SERVICES.—Pursuant to this chapter and the establishment of appropriate program guidelines and standards, contractual instruments, which shall include safeguards of all constitutional rights, shall be developed as follows:

(a) The department shall provide for:

1. The oversight of implementation of assessment and treatment approaches.

2. The identification and prequalification of appropriate individuals or not-for-profit organizations, including minority individuals or organizations when possible, to provide assessment and treatment services to serious or habitual delinquent children.

3. The monitoring and evaluation of assessment and treatment services for compliance with this chapter and all applicable rules and guidelines pursuant thereto.

~~4. The development of an annual report on the performance of assessment and treatment to be presented to the Governor, the Attorney General, the President of the Senate, the Speaker of the House of Representatives, and the Auditor General no later than January 1 of each year.~~

Section 2. Paragraph (a) of subsection (8) of section 985.483, Florida Statutes, is amended to read:

985.483 Intensive residential treatment program for

offenders less than 13 years of age.—

(8) ASSESSMENT AND TREATMENT SERVICES.—Pursuant to this chapter and the establishment of appropriate program guidelines and standards, contractual instruments, which shall include safeguards of all constitutional rights, shall be developed for intensive residential treatment programs for offenders less than 13 years of age as follows:

(a) The department shall provide for:

1. The oversight of implementation of assessment and treatment approaches.

2. The identification and prequalification of appropriate individuals or not-for-profit organizations, including minority individuals or organizations when possible, to provide assessment and treatment services to intensive offenders less than 13 years of age.

3. The monitoring and evaluation of assessment and treatment services for compliance with this chapter and all applicable rules and guidelines pursuant thereto.

~~4. The development of an annual report on the performance of assessment and treatment to be presented to the Governor, the Attorney General, the President of the Senate, the Speaker of the House of Representatives, the Auditor General, and the Office of Program Policy Analysis and Government Accountability no later than January 1 of each year.~~

Section 3. Subsection (5) of section 985.625, Florida Statutes, is repealed.

Section 4. Section 985.636, Florida Statutes, is repealed.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee		Cunningham	Cunningham
2)	Criminal & Civil Justice Appropriations Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

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

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

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

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

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

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

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

This bill 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:

Background – Firearm Background Checks

FDLE's Firearm Purchase Program

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

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

Prohibitions on Selling Firearms to the Mentally Ill

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

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

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

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

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

[4] s. 790.065, F.S.

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

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

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

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

FDLE's Mental Competency Database

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

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

Removing Mental Health Records from the MECOM Database

Current Process for Removing Mental Health Records from the MECOM Database

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

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

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

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

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

The NICS Improvement Act

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

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

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

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

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

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

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

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

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

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

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

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[13] Pub.L. 110-180.

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

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

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

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

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

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

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

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

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

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

Effect of the Bill

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Fingerprint Retention

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

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

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

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

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

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

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

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

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

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

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

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

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

[25] *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

- Have completed a comparable basic recruit training program for the applicable criminal justice discipline in another state or for the Federal Government; and
- Have served as a full-time sworn officer in another state or for the Federal Government for at least 1 year provided there is no more than an 8-year break in employment, as measured from the separation date of the most recent qualifying employment to the time a complete application is submitted for an exemption under this section.

Additionally, s. 943.1395(3), F.S., provides that a certified officer who has separated from employment and who is not reemployed within 4 years after the date of separation must meet the requirements of s. 943.13, F.S., but does not have to complete a Basic Recruit Training Program. Officers who are not reemployed within 8 years after separation must meet the requirements of s. 943.13, F.S., *and* complete a Basic Recruit Training Program.

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

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

- Verify that a person:
  - Has completed a comparable basic recruit training program for the applicable criminal justice discipline in another state or for the Federal Government *or a previous Florida basic recruit training program*; and
  - Has served as a full-time sworn officer in another state or for the Federal Government for at least 1 year provided there is no more than an 8-year break in employment, *or was a previously certified Florida officer provided there is no more than an 8-year break in employment.*[34]

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

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

The bill also amends s. 943.1395(3), F.S., to provide that a certified officer who has separated from employment and who is not reemployed within 4 years after the date of separation must meet the requirements of s. 943.131(2), F.S., (i.e., demonstrate proficiency in high-liability areas and pass the state officer certification exam within one year after receiving an exemption). Such officers who do not meet the requirements of s. 943.131(2), F.S., must complete a Basic Recruit Training Program.

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

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

Unlike law enforcement officers and correctional officers, correctional probation officers are required by the Department of Corrections to possess a bachelor's degree from an accredited college or university in order to be certified. Attaining a 4-year degree is more demanding than passing the basic skills exam required by s. 943.17(1)(g), F.S. FDLE reports that the skill level required to obtain a bachelor's degree is much higher than the skill level tested by the basic skills exam.[35] Thus, the requirement for a correctional probation officer to pass a basic skills exam is redundant.

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

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

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

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

FDLE reports that prior to July 1, 1995, tuition fees for criminal justice executive training were deposited in (and expenditures made from) the Florida Law Enforcement Academy Trust Fund. This trust fund was terminated in 1994,[36] and fund balances were moved to the Operating Trust Fund. Since 1995, criminal justice executive training tuition fees for certain courses have been deposited in the Operating Trust Fund while tuition fees for other courses have been deposited in the Criminal Justice Standards and Training Trust Fund.[37]

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

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

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

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

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

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

B. SECTION DIRECTORY:

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

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

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

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

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

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

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

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

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

[38] *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

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

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

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

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

790.065 Sale and delivery of firearms.—

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

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

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

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

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

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

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

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

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

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

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

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

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

commitment to a mental institution from which relief is granted.

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

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

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

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

(2) The program shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The commission shall:

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

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

943.1755 Florida Criminal Justice Executive Institute.—

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

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

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

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

for state matching funds; and

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

House bill 1005 changes several statutes related to the Department of Corrections (department):

- Removes references to "criminal quarantine community control," a type of community supervision that has never been used since it was created in 1993;
- Creates a new 3rd degree felony offense for lewd or lascivious exhibition by an inmate in the presence of a correctional employee;
- Authorizes the department to retain physical custody of inmates who are serving a sentence after having been found to be incompetent to proceed or who have been acquitted by reason of insanity;
- Updates statutory language regarding the department's current practice of electronically sending the Florida Parole Commission the names of inmates and offenders who are eligible for the restoration of civil rights;
- Adds private correctional facility employees to those who can be charged with sexual misconduct against an inmate;
- Authorizes the department to electronically send specific information to sheriffs and chiefs of police if the department is releasing inmates convicted of certain offenses into their counties or municipalities;
- Revises the Correctional Mental Health Act regarding custody and treatment of mentally ill inmates, and specifically authorizing the department to transport mentally ill inmates to placement hearings while incarcerated and to a receiving facility upon release;
- Updates the elderly offender statutes to reflect that the department has more than one geriatric facility;
- Authorizes inmates who meet certain criteria to work on public work squads and to enter onto private property to collect donations and to assist federal, state, local, and private agencies before, during, and after emergencies and disasters;
- Requires offenders on community supervision to live without violating any law and to submit to a digital photograph;
- Authorizes Public Safety Coordinating Councils to develop a 5-year comprehensive local reentry plan that is designed to assist offenders released from incarceration in successfully reentering the community; and
- Adds to the list of reasons why the department can remove a youthful offender from a youthful offender facility, specifies that youthful offenders may be disciplined in accordance with department rule, and creates a provision that delineates when the department may terminate a youthful offender from the basic training program.

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

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Criminal Quarantine Community Control (Sections 1, 2, 3, 8, 21, 24, 25)
Section 948.001, F.S., defines "criminal quarantine community control" as "intensive supervision, by officers with restricted caseloads, with a condition of 24-hour-per-day electronic monitoring, and a condition of confinement to a designated residence during designated hours." This type of supervision was established[1] in 1993 as a sentencing disposition for offenders sentenced for criminal transmission of HIV.[2] Section 775.0877, F.S., establishes the crime of criminal transmission of HIV, which is currently a third degree felony punishable by a term of criminal quarantine community control.

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

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

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

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

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

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

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

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

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

Inmates as Forensic Clients (Sections 5, 6 and 7)
The Department of Children and Family (DCF) is required to establish, locate, and maintain separate and secure forensic facilities and programs for the treatment or training of defendants who have been charged with a felony and who have been found to be incompetent to proceed due to their mental illness or who have been acquitted of a felony by reason of insanity.[9] Defendants in such facilities are entitled to certain rights,[10] such as forensic treatment and training. DCF is the entity responsible for providing forensic treatment and training programs to defendants in forensic facilities.[11]

Inmates who are already incarcerated in a department facility can also be involved in continuing or new criminal proceedings. In these instances, s. 907.04, F.S., specifies that such inmates shall be housed with the department pending disposition of the charge. The statutes do not specify where such inmates should be housed if the inmate is found to be incompetent to proceed due to mental illness or is acquitted by reason of insanity. Florida Rules of Criminal Procedure state that if a court finds a criminal defendant incompetent to proceed and the defendant is incarcerated, the court may order forensic treatment to be administered at the custodial facility, or may order the defendant transferred to another facility for treatment, or may commit the defendant for treatment with DCF.[12]

Effect of the Bill
This bill authorizes the department to retain physical custody of inmates who are serving a sentence after having been found to be incompetent to proceed or who have been acquitted by reason of insanity. The bill specifies that such inmates will have the same duties, rights, and responsibilities as other inmates in the custody of the department and will be subject to department rules.

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[6] Department of Corrections 2010 Analysis of HB 1005. The department's analysis also notes that the $1.6 million in judgments does not include any attorney fees awarded by the court.
[7] Section 944.02(8), F.S., defines "state correctional institution" as any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the department.
[8] Section 944.710 (3), F.S., defines "private correctional facility" as any facility, which is not operated by the department, for the incarceration of adults or juveniles who have been sentenced by a court and committed to the custody of the department.
[9] Section 916.105, F.S.
[10] Section 916.107, F.S.
[11] Sections 916.105(2) and 916.106, F.S.
[12] Rule 3.212, Florida Rules of Criminal Procedure.

The bill also specifies that DCF will continue to be responsible for providing forensic treatment and training to such inmates. The bill provides the treating psychiatrist from DCF may order the department to provide and administer any necessary medication to the inmate.

The bill requires DCF to file a report with the court within 6 months after the administration of forensic training or treatment and every 12 months thereafter, or at any time DCF determines the forensic client has regained competency to proceed. Within 20 days of such notification by DCF, the forensic client must be transported to the county jail for purposes of holding a competency hearing. This hearing must be held within 30 days after the court receives notification that the forensic client if competent to proceed.

The bill also specifies that if DCF receives a forensic client from a county jail or from the department who was receiving psychotherapeutic medication for a mental disorder and who lacks that capacity to make an informed decision regarding mental health treatment, DCF may order a continuation of such medication if abrupt cessation of the medication would risk the client's health.

Civil Rights Restoration Process (Sections 9 and 11)

Currently, s. 940.061, F.S., requires the department to do the following:

- Inform and educate inmates and offenders on community supervision about restoration of civil rights; and
- Assist inmates in completing the restoration of civil rights application.[13]

The department is also required, prior to the discharge of an offender from supervision, to obtain from the Governor the application and other necessary forms for restoring civil rights, to assist the offender in completing the forms, and to ensure that the application and other forms are forwarded to the Governor.[14] This statute was enacted in 1974 and has not been revised since 1979.

In years past, the restoration of civil rights process required persons to fill out and submit paper applications to the Florida Parole Commission, an agent of the Clemency Board. However, the restoration of civil rights process has undergone changes and is now fully automated. In 2001, the Clemency Board eliminated the requirement for inmates to file an application and instead a computer-generated list of felons eligible for restoration is sent directly to the commission by the department. The Clemency Board also revised the rules in 2001 to make more offenders eligible for restoration without a hearing.[15]

Since 2001, the department reports that it has electronically submitted the names of inmates released from incarceration and offenders who have completed supervision to the Clemency Administration Office in the Florida Parole Commission. These lists are submitted on a monthly basis and serve as electronic restoration of civil rights applications.[16]

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

Effect of the Bill

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

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[13] Section 940.061, F.S., was enacted in 1996.

[14] Section 944.293, F.S., was enacted in 1974 and has not been revised since 1979.

[15] Senate Criminal Justice Committee Interim Report 2008-114.

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

Sexual Misconduct in Private Prisons (Section 12)
Presently any employee of the department who engages in sexual misconduct[17] with an inmate or an offender supervised by the department in the community, without committing the crime of sexual battery, commits a felony of the third degree.[18]

Because ch. 944, F.S., defines "department" as the "Department of Corrections," the section relating to sexual misconduct only applies to employees of the Department of Corrections. The statute does not appear to apply to employees of a private correctional facility.[19] As such, it is not a crime for a private correctional facility employee to engage in sexual misconduct with an inmate housed at a private correctional facility.

There are currently six private correctional facilities in Florida. The department's Office of Inspector General has investigated instances of sexual misconduct that have occurred at private correctional facilities. However, state attorney's offices have advised that the current law is not sufficient to prosecute employees of private correctional facilities because the statute is limited to department employees.[20]

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

Electronic Release Notification (Section 13)
Currently, s. 944.605(3), F.S., provides that the department shall release specific information to the sheriff or the chief of police in the county or municipality which the inmate plans to reside if the inmate is to be released after having served one or more sentences for a conviction of:

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

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

- Robbery,
- Sexual battery,
- Home-invasion robbery, or
- Carjacking, or
- A similar offense, in this state or in another jurisdiction, and if such prior conviction information is contained in department records.

The information regarding the inmate, must include, but not be limited to:

- Name;
- Social security number;
- Date of birth;
- Race;
- Sex;
- Height;
- Weight;

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

- Hair and eye color;
- Tattoos or other identifying marks;
- Fingerprints; and
- A digitized photograph.

The department shall release the information within 6 months prior to the discharge of the inmate from the custody of the department.

Section 944.605, F.S., does not currently authorize the department to provide the above-listed information in an electronic format.

Effect of the Bill
The bill authorizes the department to electronically submit the above-listed information to the sheriff or chief of police.

Corrections Mental Health Act (Sections 16, 17, 18, and 19)
Chapter 394, Part I, F.S., is the Florida Mental Health Act also known as "The Baker Act," which sets forth the procedures to be followed when a person is involuntarily civilly committed due to mental health reasons. Similarly, ss. 945.40 through 945.49, F.S., known as the Corrections Mental Health Act, establishes procedures that must be followed when an inmate is involuntarily placed into a hospital setting for the purpose of mental health treatment.

Inmates who require intensive psychiatric inpatient care and treatment are housed at correctional mental health institutes (CMHI) at specified prisons. In order to admit an inmate into a CMHI, the correctional institution's warden must file a petition in the circuit court for the county where the inmate is imprisoned. The court holds a placement hearing to determine whether the inmate meets the statutory criteria for involuntary placement in the hospital setting. If so, the inmate is ordered to be housed in one of the correctional institutions designated as a CMHI for 6 months.[21] If an inmate's condition improves, he or she is released from the CMHI. If after 6 months the inmate still requires CMHI level care, the department may file a petition for continuing admission with the Division of Administrative Hearings.

Section 945.41(4), F.S., provides that a youthful offender cannot be placed at Florida State Prison or Union Correctional Institution for mental health treatment.

Sections 945.42(5) and (6), F.S., are the definitions of "in immediate need of care and treatment" and "in need of care and treatment" for purposes of admission or emergency placement of an inmate in a mental health treatment facility. The definitions include basically the same criteria, with the difference being the degree of urgency. The criteria include:

- The inmate refuses to care for himself or herself and is likely to continue to do so, posing a threat of substantial harm to his or her well-being, or there is a threat that the inmate will inflict serious bodily harm on himself or herself or another person;
- The inmate has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement, or is unable to determine for himself or herself whether placement is necessary; and
- All available less restrictive treatment alternatives that would offer an opportunity for improvement of the inmate's condition have been clinically determined to be inappropriate.

Section 945.46, F.S., provides for involuntary placement proceedings under the Baker Act for a mentally ill inmate who is in need of continued treatment after release from the department's custody. Currently, the Baker Act requires counties to designate a law enforcement agency within the county to transport individuals to the nearest receiving facility for involuntary examination.[22] There is no statutory authority for the department to transport an inmate who has been involuntarily civilly committed and who is being released to a receiving facility.

[21] Section 945.43(2)(e), F.S.
[22] Section 394.462(1)(a), F.S.

Effect of the Bill
The bill removes provisions that would prohibit the department from placing youthful offenders at the Florida State Prison or the Union Correctional Institution for mental health treatment.

The bill amends the definitions of "in immediate need of care and treatment" and "in need of care and treatment" in s. 945.42, F.S. The definitions currently require that an inmate who meets the criteria for involuntary placement must refuse voluntary placement after being given "sufficient and conscientious explanation and disclosure of the purpose of placement" or that the inmate is unable to determine for himself or herself whether placement is necessary. The amendment removes the refusal of voluntary placement requirement in both definitions.

The bill amends s. 945.43, F.S., to require that a petition for placement in a mental health treatment facility be filed in the county in which the inmate is located. The bill specifies that the attorney who is representing the inmate shall have reasonable access to the inmate and records that are relevant to the representation of the inmate. The bill also allows for the department to transport the inmate to the hearing if the hearing is not held at the facility and the inmate is unable to participate through electronic means.

The bill amends s. 945.46, F.S., to authorize the department to transport inmates who are being released from the department's custody to a receiving or treatment facility for involuntary exam or placement. The bill specifies that transport will be made to a facility specified by DCF. If DCF does not specify a facility, the transport must be made to the nearest receiving facility.

Elderly Facilities (Sections 14 and 15)
Florida considers an inmate who is 50 years old or older to be "aging or elderly."[23] The age when an inmate is considered to be elderly is far lower than in the general population because of generally poorer health. This may be due to life experiences before and during incarceration that contribute to lower life expectancy.[24]

Section 944.804, F.S., the Elderly Offenders' Correctional Facilities Program of 2000, reflected the Legislature's concern that the population of elderly inmates was increasing then and would continue to increase. Because on average it costs approximately three times more to incarcerate an elderly offender as it does to incarcerate a younger inmate, the statute required exploration of alternatives to the current approaches to housing, programming, and treating the medical needs of elderly offenders.[25] In 2000 there were no specific geriatric facilities when the law was passed, but the new statute specifically required the department to establish River Junction Correctional Institution (RJCI) as a geriatric facility and to establish rules for which offenders are eligible to be housed there.

The elderly population has continued to increase since RJCI was opened as a geriatric facility. The department reports that from fiscal year 00-01 through fiscal year 07-08, the elderly inmate population rose from 5,872 to 14,143 inmates.[26]

Due to the continuing increase since s. 944.804, F.S., was enacted, the department has designated other institutions and dorms within institutions to house elderly and aging inmates. River Junction Work Camp, the successor to RJCI, still has the largest concentration of elderly inmates with 292 of its 340 inmates (86% of the population) classified as elderly. However, in three other institutions more than half of the inmate population is elderly.[27]

Section 944.8041, F.S, requires the department and the Correctional Medical Authority to each submit an annual report on the status and treatment of elderly offenders in the state-administered and private state correctional systems, as well as specific information on RJCI. The report must also include an

[23] Chapter 33-601.217, Florida Administrative Code.
[24] State of Florida Correctional Medical Authority 2008-2009 Annual Report, p. 51
[25] Section 944.804(1), F.S.
[26] Department of Corrections 2010 Analysis of HB 1005.
[27] State of Florida Correctional Medical Authority 2008-2009 Annual Report, p. 56.

examination of promising geriatric policies, practices, and programs currently implemented in other correctional systems within the United States.

Effect of the Bill
The bill amends ss. 944.804 and 944.8041, F.S., to remove specific references to RJCI, and to instead require the department to establish and operate geriatric facilities or geriatric dorms.

Inmate Work Squads (Section 20)
Section 946.40, F.S., authorizes the department to enter into agreements with state agencies, political subdivisions, and non-profit corporations to provide the services of inmates. The department must determine that the work is not detrimental to the welfare of the inmates or in the state's interest in the inmate's rehabilitation.[28] A person who has been convicted of sexual battery under s. 794.011, F.S., is not eligible for a work program under this section.

Effect of the Bill
The bill creates s. 946.42, F.S., to allow inmates who meet the criteria to work on public work squads to enter onto private property to:

- Accept and collect donations for the use and benefit of the department.
- Assist federal, state, local, and private agencies before, during, and after emergencies and disasters.

The bill provides the following definitions:

- "Disaster" is defined as "any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of state of emergency by a county, the Governor, or the President of the United States."
- "Donations" is defined as "gifts of tangible personal property" and includes "equipment, fixtures, construction materials, food items, and other tangible personal property of both a consumable and nonconsumable nature."
- "Emergency" is defined as "any occurrence or threat of an occurrence, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property."

Terms and Conditions of Probation (Section 22 and 23)
Offenders on probation and community control must comply with the statutory terms and conditions set forth in s. 948.03, F.S. These terms and conditions require probationers and community controlees to:

- Report to the probation and parole supervisors as directed.
- Permit such supervisors to visit him or her at his or her home or elsewhere.
- Work faithfully at suitable employment insofar as may be possible.
- Remain within a specified place.
- Make reparation or restitution.
- Make payment of the debt due and owing to a county or municipal detention facility for medical care, treatment, hospitalization, or transportation received by the felony probationer while in that detention facility.
- Support his or her legal dependents to the best of his or her ability.
- Pay any monies owed to the crime victim's compensation trust fund.
- Pay the application fee and costs of the public defender.
- Not associate with persons engaged in criminal activities.
- Submit to random testing as directed by the correctional probation officer or the professional staff of the treatment center where he or she is receiving treatment to determine the presence or use of alcohol or controlled substances.
- Not possess, carry, or own any firearm unless authorized by the court and consented to by the probation officer.
- Not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician.

[28] Section 946.40(1), F.S.

- Not knowingly visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.
- Submit to the drawing of blood or other biological specimens, and reimburse the appropriate agency for the costs of drawing and transmitting the blood or other biological specimens to the Department of Law Enforcement.

The "Order of Probation" form in Florida Rules of Criminal Procedure[29] specifically provides many of the provisions found in s. 948.03, F.S. It also adds the condition that an offender should "live without violating any law."

Currently, only sex offenders are required by law to submit to photographs as a condition of probation.[30] The department currently takes such photographs and places them on the public website. Because the requirement to submit to a photograph is not specifically authorized by statute, the department reports that it cannot mandate that an offender do so.[31]

Effect of the Bill
The bill amends the condition of supervision relating to firearms to prohibit offenders from possessing, carrying, or owning any firearm. The bill also prohibits the offender from possessing, carrying, or owning any weapon other than a firearm without first procuring the consent of the correctional probation officer. This change mirrors the Florida Rules of Criminal Procedure.[32]

The bill also adds the following conditions of supervision to s. 948.03, F.S.:
- "Live without violating any law. A conviction in a court of law shall not be necessary for such a violation of law to constitute a violation of probation, community control, or any other form of court-ordered supervision."
- "Submit to the taking of a digitized photograph by the department as part of the offender's records. This photograph may be displayed on the department's public website while the offender is on a form of court-ordered supervision, with the exception of offenders on pretrial intervention supervision, or who would otherwise be exempt from public records due to provisions in s. 119.07."

Public Safety Coordinating Councils (Section 26)
Section 951.26, F.S., requires each county to establish a public safety coordinating council (PSCC).[33] The purpose of the PSCC is to assess the population status of all detention or correctional facilities owned or contracted by the county and to formulate recommendations to ensure that the capacities of such facilities are not exceeded. The recommendations must include assessment of the availability of pretrial intervention, probation, work release, and substance abuse programs; gain-time and bail bond schedules; and the confinement status of inmates. PSCCs are also authorized to develop a local public safety plan for future construction needs that covers at least 5 years. If the county or consortium of counties receives community corrections funds under s. 948.51, F.S., the PSCC must develop a public safety plan that meets that section's requirements.

Effect of the Bill
The bill authorizes the PSCC to develop a 5-year comprehensive local reentry plan designed to assist offenders released from incarceration in successfully reentering the community. The bill requires the PSCC to develop the plan in coordination with public safety officials and local community organizations who can provide offenders with reentry services, such as assistance with housing, healthcare, education, substance abuse treatment, and employment.

Youthful Offenders (Sections 10, 27, 28, 29, 30, 31, and 32)

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[29] See Rule 3.986(e), Florida Rules of Criminal Procedure.
[30] Sections 775.21(6) and 943.0435(2)(b)2., F.S.
[31] Department of Corrections 2010 Analysis of HB 1005.
[32] Rule 3.986, Florida Rules of Criminal Procedure.
[33] Section 951.26, F.S., also authorizes a board of county commissioners to join with a consortium of one or more other counties to establish a PSCC for the member counties.

The Florida Youthful Offender Act (ss. 958.011 – 958.15, F.S.) was passed in 1978 with the purpose of improving the chances of corrections and successful reentry to the community of youthful offenders sentenced to prison. The Act intended to accomplish this by providing youthful offenders enhanced programs and services, opportunities for further service, and preventing them from associating with older and more experienced criminals. It was also intended to provide a sentencing alternative for courts in dealing with an offender who could no longer be safely treated as a juvenile.[34]

A court may sentence a defendant as a youthful offender if the defendant:

- Is at least 18 years of age or was prosecuted as an adult pursuant to ch. 985, F.S., but is under 21 years old at the time of sentencing;
- Has been found guilty of or has pled nolo contendere or guilty to a felony that is not punishable by death or imprisonment for life; and
- Has not previously been classified as a youthful offender.[35]

The department must assign an inmate who is less than 18 years old to a youthful offender facility even if he or she was not sentenced as a youthful offender.[36] The department is also required to screen for and may classify as a youthful offender any inmate who is under 25 years old and does not have a sentence in excess of 10 years if he or she has not previously been classified as a youthful offender and has not committed a capital or life felony. The department may classify any inmate 19 years of age or younger, except a capital or life felon, as a youthful offender if it determines that the inmate's mental or physical vulnerability would substantially or materially jeopardize his or her safety in a non-youthful offender facility.[37]

Effect of the Bill

The bill makes various technical changes to correct inaccurate terms, incorrect references, and outdated language.

It appears that the definition's statutory reference is incorrect in that s. 958.04, F.S., authorizes the court to sentence a person as a youthful offender, while s. 958.11(4), F.S., authorizes the department to designate an inmate as a youthful offender. The bill corrects the statutory citation. Additionally, the bill defines the term "youthful offender facility" as "any facility in the state correctional system that the department designates for the care, custody, control, and supervision of youthful offenders."

The bill amends s. 958.11, F.S., to add the following to the list of reasons the department can remove a youthful offender from a youthful offender facility:

- If the youthful offender becomes such a serious management or disciplinary problem resulting from repeated violations of the rules of the department that his or her original assignment would be detrimental to the interests of the program and to other inmates committed thereto.
- If the youthful offender as reached the age of 25.
- If the department cannot adequately ensure the safety of a youthful offender within a youthful offender facility.
- If the youthful offender has a documented history of benefiting, promoting, or furthering the interests of a criminal gang, as defined in s. 874.03, while housed in a youthful offender facility.
- If the department has classified an inmate as a youthful offender and the department determines such assignment is necessary for population management purposes.

Additionally, if the department removes a youthful offender from a youthful offender facility, the bill authorizes the department to manage the offender in a manner consistent with inmates in the adult population.

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[34] Section 958.021, F.S.
[35] Section 958.04(1), F.S.
[36] Section 944.1905(5)(a), F.S.
[37] Section 958.11(6), F.S.

The bill removes the provisions of s. 958.09, F.S., entirely; to allow the same statutes and rules that authorize inmates to participate in work release, furloughs, etc. to apply to youthful offenders. This will enable the department to provide uniform work release standards throughout its inmate population.

Youthful Offenders and the Basic Training Program

Section 958.045, F.S., requires the department to create a basic training program for youthful offenders for both those adjudicated as such by the court and those classified as such by the department. The basic training program must last at least 120 days and include marching drills, calisthenics, a rigid dress code, manual labor assignments, physical training, personal development training, general education and adult basic education courses, and drug counseling and other rehabilitation programs. The department must screen all youthful offenders for the basic training program.[38]

In order to be eligible for the basic training program, a youthful offender must have no physical limitations that preclude strenuous activity, must not be impaired, and must not have previously been incarcerated in a federal or state correctional facility.[39] Additionally, the department must consider the offender's criminal history and potential rehabilitative benefits of "shock" incarceration.[40] However, there is a discrepancy in eligibility requirements between youthful offenders sentenced as such by the court and department-designated youthful offenders. Youthful offenders designated by the department must also be eligible for control release[41] in order to be eligible for the basic training program. This requirement dates back to when s. 958.045, F.S., was enacted and may not be relevant to whether a youthful offender is eligible for the basic training program as it refers to the release of an offender.

If a youthful offender participating in the basic training program becomes unmanageable, the department may revoke the offender's gain time and place the offender in disciplinary confinement for no more than 30 days. Upon completion of the disciplinary process, the offender must be readmitted to the basic training program, unless the offender committed or threatened to commit a violent act.[42]

The statute further provides that if the offender is terminated from the program, the department may place the offender in the general population to complete the remainder of his or her sentenced. Although s. 958.045, F.S., implies that offenders who commit or threaten to commit a violent act may not be readmitted to the basic training program, the statute does not currently specify when the department may terminate a youthful offender from the basic training program.[43]

Effect of the Bill

The bill removes language that is outdated that requires that department to construct a basic training program facility and provide special training for staff selected to work for the program.

The bill eliminates the requirement that department-designated youthful offenders be eligible for control release in order to be eligible for the basic training program. As a result, the eligibility criteria for the basic training program will be the same for both department-designated youthful offenders and youthful offenders sentenced as such by the court.

The bill specifies that youthful offenders may be disciplined in accordance with department rule, and creates a provision that delineates when the department may terminate a youthful offender from the basic training program. Under the bill, the department may terminate an offender from the basic training program if:

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[38] Section s. 958.045(2), F.S.

[39] *Id.*

[40] *Id.*

[41] Control release is an administrative function solely used to manage the state prison population within total capacity. The Control Release Authority, comprised of members of the Parole Commission, has sole responsibility for determining control release eligibility, establishing a control release date, and effectuating the release of a sufficient number of inmates to maintain the inmate population between 99 percent and 100 percent of total capacity. Only certain inmates are eligible for control release. See s. 947.146, F.S.

[42] Section 958.045, F.S.

[43] Rule 33-601.242, F.A.C., specifies when the department can remove a youthful offender from the Basic Training Program.

- The offender has committed or threatened to commit a violent act;
- The department determines that the offender is unable to participate in the basic training activities due to medical reasons;
- The offender's sentence is modified or expires;
- The department reassigns the offender's classification status; or
- The department determines that removing the offender from the program is in the best interests of the inmate or the security of the institution.

The bill specifies that if a youthful offender is terminated from the basic training program, the department may place the offender in a youthful offender institution or in a non-youthful offender institution in accordance with s. 958.11(3), F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 384.34, F.S., relating to penalties.

Section 2. Amends s. 775.0877, F.S., relating to criminal transmission of HIV; procedures; penalties.

Section 3. Amends s. 796.08, F.S., relating to screening for HIV and sexually transmissible diseases; providing penalties.

Section 4. Creates s. 800.09, F.S., relating to lewd or lascivious exhibition in the presence of a facility employee.

Section 5. Amends s. 916.107, F.S., relating to rights of forensic clients.

Section 6. Amends s. 916.13, F.S., relating to involuntary commitment of defendant adjudicated incompetent.

Section 7. Amends s. 916.15, F.S., relating to involuntary commitment of defendant adjudicated not guilty by reason of insanity.

Section 8. Amends s. 921.187, F.S., relating to disposition and sentencing; alternatives; restitution.

Section 9. Amends s. 940.061, F.S., relating to informing persons about executive clemency and restoration of civil rights.

Section 10. Amends s. 944.1905, F.S., relating to initial inmate classification; inmate reclassification.

Section 11. Repeals s. 944.293, F.S., relating to initiation of restoration of civil rights.

Section 12. Amends s. 944.35, F.S., relating to authorized use of force; malicious battery and sexual misconduct prohibited; reporting required; penalties.

Section 13. Amends s. 944.605, F.S., relating to inmate release; notification.

Section 14. Amends s. 944.804, F.S., relating to elderly offenders correctional facilities program of 2000.

Section 15. Amends s. 944.8041, F.S., relating to elderly offenders; annual review.

Section 16. Amends s. 945.41, F.S., relating to legislative intent of ss. 945.40-945.49.

Section 17. Amends s. 945.42, F.S., relating to definitions; ss. 945.40-945.49.

Section 18. Amends s. 945.43, F.S., relating to admission of inmate to mental health treatment facility.

Section 19. Amends s. 945.46, F.S., relating to initiation of involuntary placement proceedings with respect to a mentally ill inmate scheduled for release.

Section 20. Creates s. 946.42, F.S., relating to use of inmates on private property.

Section 21. Amends s. 948.001, F.S., relating to definitions.

Section 22. Amends s. 948.03, F.S., relating to terms and conditions of probation.

Section 23. Amends s. 948.09, F.S., relating to payment for cost of supervision and rehabilitation.

Section 24. Amends s. 948.101, F.S., relating to terms and conditions of community control and criminal quarantine community control.

Section 25. Amends s. 948.11, F.S., relating to electronic monitoring devices.

Section 26. Amends s. 951.26, F.S., relating to public safety coordinating councils.

Section 27. Amends s. 958.03, F.S., relating to definitions.

Section 28. Repealing subsections (4) and (5) of s. 958.04, F.S., relating to judicial disposition of youthful offenders.

Section 29. Amends s. 958.045, F.S., relating to youthful offender basic training program.

Section 30. Amends s. 958.09, F.S., relating to extension of limits of confinement.

Section 31. Amends s. 958.11, F.S., relating to designation of institutions and programs for youthful offenders; assignment from youthful offender institutions and programs.

Section 32. Amends s. 951.231, F.S., relating to county residential probation program.

Section 33. This bill takes effect July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See "Fiscal Comments."

2. Expenditures:

   See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See "Fiscal Comments."

2. Expenditures:

   See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

   See "Fiscal Comments."

D. FISCAL COMMENTS:

   In general, the provisions of the bill are either revenue neutral or may have a positive fiscal impact.

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

   Section 19 authorizes the department to transport a mentally ill inmate who is being released to a receiving facility under the Baker Act. This could be more expensive than the current practice, but the department does not indicate whether or not it would have a fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to criminal justice; amending s. 384.34, F.S.; conforming provisions to changes made by the act; amending s. 775.0877, F.S.; deleting provisions relating to criminal quarantine community control for offenders convicted of criminal transmission of HIV; revising penalties; amending s. 796.08, F.S.; conforming provisions to changes made by the act; creating s. 800.09, F.S.; providing definitions; prohibiting a lewd or lascivious exhibition in the presence of a correctional facility employee; providing penalties; amending s. 916.107, F.S.; revising provisions relating to physical custody and treatment of forensic clients adjudicated incompetent to proceed or not guilty by reason of insanity; clarifying rights, responsibilities, and duties of forensic clients housed with the Department of Corrections; revising provisions relating to informed consent to treatment by forensic clients; clarifying application of certain provisions; providing that forensic clients housed with the department are subject to its rules; amending s. 916.13, F.S.; providing for retention of certain defendants who have been adjudicated incompetent to proceed due to mental illness in the physical custody of the department; providing time limits relating to competency hearings; amending s. 916.15, F.S.; providing time limits relating to commitment hearings; providing for retention of certain defendants who have been adjudicated not guilty by reason of insanity in the physical custody

of the department for the remainder of their sentences; requiring a report; amending s. 921.187, F.S.; deleting provisions relating to criminal quarantine community control; amending s. 940.061, F.S.; providing for electronic submission of certain information to the Parole Commission; amending s. 944.1905, F.S.; eliminating provisions relating to removal and reassignment of certain youthful offenders to the general inmate population in certain circumstances; repealing s. 944.293, F.S., relating to initiation of restoration of civil rights; amending s. 944.35, F.S.; applying prohibitions on sexual misconduct with inmates or offenders to employees of private correctional facilities; providing penalties; amending s. 944.605, F.S.; providing for electronic submission of certain information concerning released inmates to sheriffs or municipal police chiefs; amending s. 944.804, F.S.; providing for additional geriatric correctional facilities or dorms within correctional facilities; deleting obsolete provisions; amending s. 944.8041, F.S.; conforming provisions to changes made by the act; amending s. 945.41, F.S.; deleting a prohibition on the placement of youthful offenders at specified facilities for mental health treatment; permitting the designation of multiple mental health treatment facilities for certain offenders; amending s. 945.42, F.S.; removing refusal of voluntary placement in certain circumstances as a basis for determining that an inmate is in need of care and treatment; amending s. 945.43, F.S.; revising

terminology concerning inmates in treatment facilities; requiring a petition for placement to be filed in the county in which an inmate is located; requiring reasonable access to an inmate and his or her records by an attorney representing the inmate in a placement proceeding; authorizing the department to transport an inmate to hearings in certain circumstances; amending s. 945.46, F.S.; authorizing the transport of a person being released from custody to a receiving or treatment facility for involuntary examination or placement in certain circumstances; creating s. 946.42, F.S.; providing definitions; authorizing the department to allow inmates who meet certain criteria to perform public works to enter onto private property for specified purposes; amending s. 948.001, F.S.; deleting the definition of the term "criminal quarantine community control"; amending s. 948.03, F.S.; providing as a condition of probation, community control, or any other form of court-ordered supervision that an offender live without violating any law; providing that a conviction in a court of law is not necessary for a violation of law to constitute a violation of such a condition; prohibiting an offender from possessing, carrying, or owning a firearm; prohibiting the possession, carrying, or ownership of any other weapon without first procuring the consent of a correctional probation officer; requiring that an offender on probation or community control submit to the taking of a digitized photograph; providing for display of such photographs on

the department's public website while the offender is under supervision; providing exceptions; amending s. 948.09, F.S.; conforming a cross-reference; amending s. 948.101, F.S.; providing that an additional set of standard conditions of probation may be included for offenders placed on community control; conforming provisions to changes made by the act; amending s. 948.11, F.S.; conforming provisions to changes made by the act; amending s. 951.26, F.S.; authorizing public safety coordinating councils to develop comprehensive local reentry plans to assist offenders released from incarceration in successfully reentering the community; providing requirements; amending s. 958.03, F.S.; revising the definition of the term "youthful offender"; defining the term "youthful offender facility"; amending s. 958.04, F.S.; deleting provisions relating to a basic training program; amending s. 958.045, F.S.; revising provisions relating to revocation of gain-time for an offender in a basic training program; providing for termination of an offender from a basic training program under certain circumstances; deleting provisions relating to transfer of an offender to a community residential program upon completion of a basic training program; deleting a requirement for continuous screening for eligible youthful offenders; deleting provisions relating to completion of basic training programs by youthful offenders; amending s. 958.09, F.S.; providing that a specified provision and rules developed thereunder govern the extension of limits

of confinement of and restitution by youthful offenders; amending s. 958.11, F.S.; revising provisions relating to assignment of youthful offenders to non-youthful-offender facilities and management of such offenders; amending s. 958.12, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (5) of section 384.34, Florida Statutes, is amended to read:

384.34 Penalties.—

(5) Any person who violates the provisions of s. 384.24(2) commits a felony of the third degree, punishable as provided in s. ~~ss.~~ 775.082, s. 775.083, or s. 775.084~~, and 775.0877(7)~~. Any person who commits multiple violations of the provisions of s. 384.24(2) commits a felony of the first degree, punishable as provided in s. ~~ss.~~ 775.082, s. 775.083, or s. 775.084~~, and 775.0877(7)~~.

Section 2. Subsections (3) and (7) of section 775.0877, Florida Statutes, are amended to read:

775.0877 Criminal transmission of HIV; procedures; penalties.—

(3) An offender who has undergone HIV testing pursuant to subsection (1), and to whom positive test results have been disclosed pursuant to subsection (2), who commits a second or subsequent offense enumerated in paragraphs (1)(a)-(n)~~,~~ commits criminal transmission of HIV, a felony of the third degree,

punishable as provided in s. 775.082, s. 775.083, or s. 775.084 ~~subsection (7)~~. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime enumerated in paragraphs (1)(a)-(n).

~~(7) In addition to any other penalty provided by law for an offense enumerated in paragraphs (1)(a)-(n), the court may require an offender convicted of criminal transmission of HIV to serve a term of criminal quarantine community control, as described in s. 948.001.~~

Section 3. Subsection (5) of section 796.08, Florida Statutes, is amended to read:

796.08 Screening for HIV and sexually transmissible diseases; providing penalties.—

(5) A person who:

(a) Commits or offers to commit prostitution; or

(b) Procures another for prostitution by engaging in sexual activity in a manner likely to transmit the human immunodeficiency virus,

and who, prior to the commission of such crime, had tested positive for human immunodeficiency virus and knew or had been informed that he or she had tested positive for human immunodeficiency virus and could possibly communicate such disease to another person through sexual activity commits criminal transmission of HIV, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084~~, or s. 775.0877(7)~~. A person may be convicted and sentenced separately for a violation of this subsection and for the

underlying crime of prostitution or procurement of prostitution.

Section 4. Section 800.09, Florida Statutes, is created to read:

800.09 Lewd or lascivious exhibition in the presence of a facility employee.—

(1) As used in this section, the term:

(a) "Employee" means any person employed by or performing contractual services for a public or private entity operating a facility or any person employed by or performing contractual services for the corporation operating the prison industry enhancement programs or the correctional work programs under part II of chapter 946. The term also includes any person who is a parole examiner with the Florida Parole Commission.

(b) "Facility" means a state correctional institution defined in s. 944.02 or a private correctional facility as defined in s. 944.710.

(2)(a) It is unlawful for any person, while being detained in a facility and with intent to harass, annoy, threaten, or alarm a person who he or she knows or reasonably should know is an employee of such facility, to intentionally masturbate, intentionally expose his or her genitals in a lewd or lascivious manner, or intentionally commit any other sexual act, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity, in the presence of such employee.

(b) A person who violates paragraph (a) commits lewd or lascivious exhibition in the presence of a facility employee, a

felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 5. Subsection (1), paragraph (d) of subsection (2), paragraph (a) of subsection (3), paragraph (b) of subsection (4), subsections (5), (6), and (8), and paragraph (a) of subsection (9) of section 916.107, Florida Statutes, are amended to read:

916.107 Rights of forensic clients.—

(1) RIGHT TO INDIVIDUAL DIGNITY.—

(a) The policy of the state is that the individual dignity of the client shall be respected at all times and upon all occasions, including any occasion when the forensic client is detained, transported, or treated. Clients with mental illness, retardation, or autism and who are charged with committing felonies shall receive appropriate treatment or training. In a criminal case involving a client who has been adjudicated incompetent to proceed or not guilty by reason of insanity, a jail may be used as an emergency facility for up to 15 days following the date the department or agency receives a completed copy of the court commitment order containing all documentation required by the applicable Florida Rules of Criminal Procedure. For a forensic client who is held in a jail awaiting admission to a facility of the department or agency, evaluation and treatment or training may be provided in the jail by the local community mental health provider for mental health services, by the developmental disabilities program for persons with retardation or autism, the client's physician or psychologist, or any other appropriate program until the client is transferred

to a civil or forensic facility. In a criminal case involving a forensic client who is serving a sentence in the custody of the Department of Corrections and who has been adjudicated incompetent to proceed or not guilty by reason of insanity, the Department of Corrections may continue to retain physical custody of the forensic client. However, the department shall remain responsible for all necessary and appropriate competency evaluation, treatment, and training for the client. If ordered by the department's treating psychiatrist, the Department of Corrections shall provide and administer any necessary medications for the client.

(b) Forensic clients who are initially placed in, or subsequently transferred to, a civil facility as described in part I of chapter 394 or to a residential facility as described in chapter 393 shall have the same rights as other persons committed to these facilities for as long as they remain there. Notwithstanding the rights described in this section, forensic clients who are housed with the Department of Corrections shall have the same duties, rights, and responsibilities as other inmates committed to the custody of the Department of Corrections and shall be subject to the rules adopted by the Department of Corrections to implement its statutory authority.

(2) RIGHT TO TREATMENT.—

(d) Not more than 30 days after admission to a civil or forensic facility, each client shall have and receive, in writing, an individualized treatment or training plan which the client has had an opportunity to assist in preparing.

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

(a) A forensic client shall be asked to give express and informed written consent for treatment. If a client refuses such treatment as is deemed necessary and essential by the client's multidisciplinary treatment team for the appropriate care of the client, such treatment may be provided under the following circumstances:

1. In an emergency situation in which there is immediate danger to the safety of the client or others, such treatment may be provided upon the written order of a physician for a period not to exceed 48 hours, excluding weekends and legal holidays. If, after the 48-hour period, the client has not given express and informed consent to the treatment initially refused, the administrator or designee of the civil or forensic facility shall, within 48 hours, excluding weekends and legal holidays, petition the committing court or the circuit court serving the county in which the facility is located, <u>or in which the forensic client is located, if in the Department of Corrections' custody,</u> at the option of the facility administrator or designee, for an order authorizing the continued treatment of the client. In the interim, the need for treatment shall be reviewed every 48 hours and may be continued without the consent of the client upon the continued written order of a physician who has determined that the emergency situation continues to present a danger to the safety of the client or others.

2. In a situation other than an emergency situation, the administrator or designee of the facility shall petition the court for an order authorizing necessary and essential treatment for the client.

a. If the client has been receiving psychotherapeutic medication for a diagnosed mental disorder at a county jail at the time of transfer to the state forensic mental health treatment facility and lacks the capacity to make an informed decision regarding mental health treatment at the time of admission, the admitting physician may order a continuation of the psychotherapeutic medication if, in the clinical judgment of the physician, abrupt cessation of the psychotherapeutic medication could pose a risk to the health and safety of the client during the time a court order to medicate is pursued. The county jail physician shall provide a current psychotherapeutic medication order at the time of transfer to the admitting facility.

b. If a forensic client has been receiving psychotherapeutic medication for a diagnosed mental disorder at the Department of Corrections and lacks the capacity to make an informed decision regarding mental health treatment, the department's treating physician shall coordinate continuation of the psychotherapeutic medication if, in the clinical judgment of the Department of Corrections' physician, abrupt cessation of the psychotherapeutic medication could pose a risk to the health and safety of the forensic client during the time a court order to medicate is pursued. The Department of Corrections' physician shall provide a current psychotherapeutic medication order to any department physician providing treatment to a forensic client housed with the Department of Corrections.

c. The court order shall allow such treatment for a period not to exceed 90 days following the date of the entry of the

order. Unless the court is notified in writing that the client has provided express and informed consent in writing or that the client has been discharged by the committing court, the administrator or designee shall, prior to the expiration of the initial 90-day order, petition the court for an order authorizing the continuation of treatment for another 90-day period. This procedure shall be repeated until the client provides consent or is discharged by the committing court.

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

a. The client's expressed preference regarding treatment;

b. The probability of adverse side effects;

c. The prognosis without treatment; and

d. The prognosis with treatment.

The hearing shall be as convenient to the client as may be consistent with orderly procedure and shall be conducted in physical settings not likely to be injurious to the client's condition. The court may appoint a general or special magistrate

to preside at the hearing. The client or the client's guardian, and the representative, shall be provided with a copy of the petition and the date, time, and location of the hearing. The client has the right to have an attorney represent him or her at the hearing, and, if the client is indigent, the court shall appoint the office of the public defender to represent the client at the hearing. The client may testify or not, as he or she chooses, and has the right to cross-examine witnesses and may present his or her own witnesses.

(4) QUALITY OF TREATMENT.—

(b) Forensic clients <u>housed in a civil or forensic facility</u> shall be free from the unnecessary use of restraint or seclusion. Restraints shall be employed only in emergencies or to protect the client or others from imminent injury. Restraints may not be employed as punishment or for the convenience of staff.

(5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—Each forensic client <u>housed in a civil or forensic facility</u> has the right to communicate freely and privately with persons outside the facility unless it is determined that such communication is likely to be harmful to the client or others. Clients shall have the right to contact and to receive communication from their attorneys at any reasonable time.

(a) Each forensic client <u>housed in a civil or forensic facility</u> shall be allowed to receive, send, and mail sealed, unopened correspondence; and no client's incoming or outgoing correspondence shall be opened, delayed, held, or censored by the facility unless there is reason to believe that it contains

items or substances that may be harmful to the client or others, in which case the administrator or designee may direct reasonable examination of such mail and may regulate the disposition of such items or substances. For purposes of this paragraph, the term "correspondence" does not include parcels or packages. Forensic facilities may promulgate reasonable institutional policies to provide for the inspection of parcels or packages and for the removal of contraband items for health or security reasons prior to the contents being given to a client.

(b) If a client's right to communicate is restricted by the administrator, written notice of such restriction and the duration of the restriction shall be served on the client or his or her legal guardian or representatives, and such restriction shall be recorded on the client's clinical record with the reasons therefor. The restriction of a client's right to communicate shall be reviewed at least every 7 days.

(c) Each forensic facility shall establish reasonable institutional policies governing visitors, visiting hours, and the use of telephones by clients in the least restrictive manner possible.

(d) Each forensic client <u>housed in a civil or forensic facility</u> shall have ready access to a telephone in order to report an alleged abuse. The facility or program staff shall orally and in writing inform each client of the procedure for reporting abuse and shall present the information in a language the client understands. A written copy of that procedure, including the telephone number of the central abuse hotline and

reporting forms, shall be posted in plain view.

(e) The department's or agency's forensic facilities shall develop policies providing a procedure for reporting abuse. Facility staff shall be required, as a condition of employment, to become familiar with the procedures for the reporting of abuse.

(6) CARE AND CUSTODY OF PERSONAL EFFECTS OF CLIENTS.—A forensic client's right to possession of clothing and personal effects shall be respected. The department or agency by rule, or the administrator of any forensic facility by written institutional policy, may declare certain items to be hazardous to the health or welfare of clients or others or to the operation of the facility. Such items may be restricted from introduction into the facility or may be restricted from being in a client's possession. The administrator or designee may take temporary custody of such effects when required for medical and safety reasons. Custody of such personal effects shall be recorded in the client's clinical record. Forensic clients who are housed with the Department of Corrections shall be subject to the rules adopted by the Department of Corrections to implement its statutory authority.

(8) CLINICAL RECORD; CONFIDENTIALITY.—A clinical record for each forensic client, including forensic clients housed with the Department of Corrections, shall be maintained. The record shall include data pertaining to admission and such other information as may be required under rules of the department or the agency. Unless waived by express and informed consent of the client or the client's legal guardian or, if the client is

deceased, by the client's personal representative or by that family member who stands next in line of intestate succession or except as otherwise provided in this subsection, the clinical record is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(a) Such clinical record may be released:

1. To such persons and agencies as are designated by the client or the client's legal guardian.

2. To persons authorized by order of court and to the client's counsel when the records are needed by the counsel for adequate representation.

3. To a qualified researcher, as defined by rule; a staff member of the facility; or an employee of the department or agency when the administrator of the facility, or secretary or director of the department or agency, deems it necessary for treatment of the client, maintenance of adequate records, compilation of treatment data, or evaluation of programs.

4. For statistical and research purposes if the information is abstracted in such a way as to protect the identity of individuals.

5. If a client receiving services has declared an intention to harm other persons, the administrator shall authorize the release of sufficient information to provide adequate warning to the person threatened with harm by the client, and to the committing court, the state attorney, and the attorney representing the client.

6. To the parent or next of kin of a client who is committed to, or is being served by, a facility or program when

such information is limited to that person's service plan and current physical and mental condition. Release of such information shall be in accordance with the code of ethics of the profession involved and must comply with all state and federal laws and regulations pertaining to the release of personal health information.

7. To the Department of Corrections for forensic clients who are housed with the Department of Corrections.

(b) Notwithstanding other provisions of this subsection, the department or agency may request or receive from or provide to any of the following entities client information, including client medical, mental health, and substance abuse treatment information, to facilitate treatment, habilitation, rehabilitation, and continuity of care of any forensic client:

1. The Social Security Administration and the United States Department of Veterans Affairs.~~;~~

2. Law enforcement agencies, state attorneys, defense attorneys, and judges in regard to the client's status.~~;~~

3. Jail personnel in the jail in which a client may be housed.~~; and~~

4. Community agencies and others expected to provide followup care to the client upon the client's return to the community.

5. The Department of Corrections for forensic clients who are housed with the Department of Corrections.

(c) For forensic clients housed in a civil or forensic facility, the department or agency may provide notice to any client's next of kin or first representative regarding any

serious medical illness or the death of the client.

(d)1. Any law enforcement agency, facility, or other governmental agency that receives information pursuant to this subsection shall maintain the confidentiality of such information except as otherwise provided herein.

2. Any agency or private practitioner who acts in good faith in releasing information pursuant to this subsection is not subject to civil or criminal liability for such release.

(9) HABEAS CORPUS.—

(a) At any time, and without notice, a forensic client detained by a civil or forensic facility, or a relative, friend, guardian, representative, or attorney on behalf of such client, may petition for a writ of habeas corpus to question the cause and legality of such detention and request that the committing court issue a writ for release. Each client shall receive a written notice of the right to petition for a writ of habeas corpus.

Section 6. Section 916.13, Florida Statutes, is amended to read:

916.13 Involuntary commitment of defendant adjudicated incompetent.—

(1) Every defendant who is charged with a felony and who is adjudicated incompetent to proceed may be involuntarily committed or ordered to receive ~~for~~ treatment upon a finding by the court of clear and convincing evidence that:

(a) The defendant has a mental illness and because of the mental illness:

1. The defendant is manifestly incapable of surviving

alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, the defendant is likely to suffer from neglect or refuse to care for herself or himself and such neglect or refusal poses a real and present threat of substantial harm to the defendant's well-being; or

2. There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on herself or himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm;

(b) All available, less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient or outpatient settings, which would offer an opportunity for improvement of the defendant's condition have been judged to be inappropriate; and

(c) There is a substantial probability that the mental illness causing the defendant's incompetence will respond to treatment and the defendant will regain competency to proceed in the reasonably foreseeable future.

(2)(a) A defendant who has been charged with a felony and who has been adjudicated incompetent to proceed due to mental illness, and who meets the criteria for involuntary commitment for treatment ~~to the department~~ under ~~the provisions of~~ this chapter, may be committed to the department, and the department shall retain and treat the defendant. No later than 6 months after the date of admission and at the end of any period of extended commitment, or at any time the administrator or designee determines ~~shall have determined~~ that the defendant has

regained competency to proceed or no longer meets the criteria for continued commitment, the administrator or designee shall file a report with the court pursuant to the applicable Florida Rules of Criminal Procedure.

(b) The court, based on input from the department and the Department of Corrections, may order that a defendant serving a sentence in the custody of the Department of Corrections who is charged with a new felony or is entitled to proceed with a direct appeal from his or her conviction, or is entitled to proceed under Rule 3.850 or Rule 3.851, Florida Rules of Criminal Procedure, and who has been adjudicated incompetent to proceed due to mental illness, be retained in the physical custody of the Department of Corrections. If the court orders a defendant who has been adjudicated incompetent to proceed due to mental illness be retained in the physical custody of the Department of Corrections, the department shall provide appropriate training, treatment, and evaluation for competency restoration, in accordance with this chapter. If the inmate is in the physical custody of the Department of Corrections and the department's treating psychiatrist orders medication, the Department of Corrections shall provide and administer any necessary medication. Within 6 months after the administration of any competency training or treatment and every 12 months thereafter, or at any time the department determines that the defendant has regained competency to proceed, the department shall file a report with the court pursuant to the applicable Florida Rules of Criminal Procedure.

(c) Within 20 days after the court receives notification

that a defendant is competent to proceed or no longer meets the criteria for continued commitment, the defendant shall be transported back to jail pursuant to s. 916.107(10) for the purpose of holding a competency hearing.

(d) A competency hearing shall be held within 30 days after the court receives notification that the defendant is competent to proceed or no longer meets criteria for continued commitment.

Section 7. Section 916.15, Florida Statutes, is amended to read:

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

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

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

(3) Every defendant acquitted of criminal charges by reason of insanity and found to meet the criteria for involuntary commitment may be committed and treated in accordance with the provisions of this section and the applicable Florida Rules of Criminal Procedure. The department shall admit a defendant so adjudicated to an appropriate facility or program for treatment and shall retain and treat such defendant. No later than 6 months after the date of

admission, prior to the end of any period of extended commitment, or at any time the administrator or designee determines ~~shall have determined~~ that the defendant no longer meets the criteria for continued commitment ~~placement~~, the administrator or designee shall file a report with the court pursuant to the applicable Florida Rules of Criminal Procedure.

(4)(a) Within 20 days after the court is notified that a defendant no longer meets the criteria for involuntary commitment, the defendant shall be transported back to jail for the purpose of holding a commitment hearing.

(b) The commitment hearing must be held within 30 days after the court receives notification that the defendant no longer meets the criteria for continued commitment.

(5) A defendant who is serving a sentence in the custody of the Department of Corrections, who has been charged with a new felony, and who has been adjudicated not guilty by reason of insanity shall be retained in the physical custody of the Department of Corrections for the remainder of his or her sentence. Within 30 days before the defendant's release date, the department shall evaluate the defendant and file a report with the court requesting that the defendant be returned to the court's jurisdiction to determine whether the defendant continues to meet the criteria for involuntary commitment.

(6) ~~(4)~~ In all proceedings under this section, both the defendant and the state shall have the right to a hearing before the committing court. Evidence at such hearing may be presented by the hospital administrator or the administrator's designee as well as by the state and the defendant. The defendant shall have

the right to counsel at any such hearing. In the event that a defendant is determined to be indigent pursuant to s. 27.52, the public defender shall represent the defendant. The parties shall have access to the defendant's records at the treating facilities and may interview or depose personnel who have had contact with the defendant at the treating facilities.

Section 8. Subsection (3) of section 921.187, Florida Statutes, is redesignated as subsection (2), and present subsection (2) of that section is amended to read:

921.187 Disposition and sentencing; alternatives; restitution.—

~~(2) In addition to any other penalty provided by law for an offense enumerated in s. 775.0877(1)(a)-(n), if the offender is convicted of criminal transmission of HIV pursuant to s. 775.0877, the court may sentence the offender to criminal quarantine community control as described in s. 948.001.~~

Section 9. Section 940.061, Florida Statutes, is amended to read:

940.061 Informing persons about executive clemency and restoration of civil rights.—The Department of Corrections shall inform and educate inmates and offenders on community supervision about the restoration of civil rights. The department shall send the Parole Commission a monthly electronic list of the names of ~~and assist eligible~~ inmates released from incarceration and offenders who have been terminated from ~~on community~~ supervision and who may be eligible ~~with the completion of the application~~ for the restoration of civil rights.

Section 10. Subsection (5) of section 944.1905, Florida Statutes, is amended to read:

944.1905 Initial inmate classification; inmate reclassification.—The Department of Corrections shall classify inmates pursuant to an objective classification scheme. The initial inmate classification questionnaire and the inmate reclassification questionnaire must cover both aggravating and mitigating factors.

(5)(a) Notwithstanding any other provision of this section or chapter 958, the department shall assign to facilities housing youthful offenders all inmates who are less than 18 years of age and who have not been assigned to a facility for youthful offenders under the provisions of chapter 958. Such an inmate shall be assigned to a facility for youthful offenders until the inmate is 18 years of age; however, the department may assign the inmate to a facility for youthful offenders until the inmate reaches an age not to exceed 21 years if the department determines that the continued assignment is in the best interests of the inmate and the assignment does not pose an unreasonable risk to other inmates in the facility.

(b) Any inmate who is assigned to a facility under paragraph (a) is subject to the provisions of s. 958.11 regarding facility assignments~~, and shall be removed and reassigned to the general inmate population if his or her behavior threatens the safety of other inmates or correctional staff~~.

Section 11. Section 944.293, Florida Statutes, is repealed.

Section 12. Paragraph (b) of subsection (3) of section 944.35, Florida Statutes, is amended to read:

944.35 Authorized use of force; malicious battery and sexual misconduct prohibited; reporting required; penalties.—

(3)

(b)1. As used in this paragraph, the term "sexual misconduct" means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object, but does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of the employee's duty.

2. Any employee of the department or any employee of a private correctional facility as defined in s. 944.710 who engages in sexual misconduct with an inmate or an offender supervised by the department in the community, without committing the crime of sexual battery, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. The consent of the inmate or offender supervised by the department in the community to any act of sexual misconduct may not be raised as a defense to a prosecution under this paragraph.

4. This paragraph does not apply to any employee of the department or any employee of a private correctional facility as defined in s. 944.710 who is legally married to an inmate or an offender supervised by the department in the community, nor does it apply to any employee who has no knowledge, and would have no

reason to believe, that the person with whom the employee has engaged in sexual misconduct is an inmate or an offender under community supervision of the department.

Section 13. Subsection (3) of section 944.605, Florida Statutes, is amended to read:

944.605 Inmate release; notification.—

(3)(a) If an inmate is to be released after having served one or more sentences for a conviction of robbery, sexual battery, home-invasion robbery, or carjacking, or an inmate to be released has a prior conviction for robbery, sexual battery, home-invasion robbery, or carjacking or similar offense, in this state or in another jurisdiction, and if such prior conviction information is contained in department records, the department shall release to the sheriff of the county in which the inmate plans to reside, and, if the inmate plans to reside within a municipality, to the chief of police of that municipality, ~~the following~~ information including, ~~which must include,~~ but ~~need~~ not ~~be~~ limited to:

1.~~(a)~~ Name.~~,~~

2.~~(b)~~ Social security number.~~,~~

3.~~(c)~~ Date of birth.~~,~~

4.~~(d)~~ Race.~~,~~

5.~~(e)~~ Sex.~~,~~

6.~~(f)~~ Height.~~,~~

7.~~(g)~~ Weight.~~,~~

8.~~(h)~~ Hair and eye color.~~,~~

9.~~(i)~~ Tattoos or other identifying marks.~~,~~

10.~~(j)~~ Fingerprints.~~; and~~

11.~~(k)~~ A digitized photograph as provided in subsection (2).

The department shall release the information specified in this paragraph ~~subsection~~ within 6 months prior to the discharge of the inmate from the custody of the department.

(b) The department may electronically submit the information listed in paragraph (a) to the sheriff of the county in which the inmate plans to reside, and, if the inmate plans to reside within a municipality, to the chief of police of that municipality.

Section 14. Section 944.804, Florida Statutes, is amended to read:

944.804 Elderly offenders in correctional facilities ~~program of 2000~~.~~—~~

(1) The Legislature finds that the number and percentage of elderly offenders in the Florida prison system are ~~is~~ increasing and will continue to increase for the foreseeable future. The current cost to incarcerate elderly offenders is approximately three times the cost of incarceration of younger inmates. Alternatives to the current approaches to housing, programming, and treating the medical needs of elderly offenders, which may reduce the overall costs associated with this segment of the prison population, must be explored and implemented.

(2) The department shall establish and operate ~~a~~ geriatric correctional facilities or geriatric dorms within a facility ~~at the site known as River Junction Correctional Institution, which~~

~~shall be an institution specifically~~ for generally healthy elderly offenders who can perform general work appropriate for their physical and mental condition. ~~Prior to reopening the facility, the department shall make modifications to the facility which will ensure its compliance with the Americans with Disabilities Act and decrease the likelihood of falls, accidental injury, and other conditions known to be particularly hazardous to the elderly.~~

(a) In order to decrease long-term medical costs to the state, a preventive fitness/wellness program and diet specifically designed to maintain the mental and physical health of elderly offenders shall be developed and implemented. In developing the program, the department shall give consideration to preventive medical care for the elderly which shall include, but not be limited to, maintenance of bone density, all aspects of cardiovascular health, lung capacity, mental alertness, and orientation. Existing policies and procedures shall be reexamined and altered to encourage offenders to adopt a more healthy lifestyle and maximize their level of functioning. The program components shall be modified as data and experience are received which measure the relative success of the program components previously implemented.

(b) Consideration must be given to redirecting resources as a method of offsetting increased medical costs. Elderly offenders are not likely to reenter society as a part of the workforce, and programming resources would be better spent in activities to keep the elderly offenders healthy, alert, and oriented. Limited or restricted programming or activities for

elderly offenders will increase the daily cost of institutional and health care, and programming opportunities adequate to reduce the cost of care will be provided. Programming shall include, but not be limited to, recreation, education, and counseling which is needs-specific to elderly offenders. Institutional staff shall be specifically trained to effectively supervise elderly offenders and to detect physical or mental changes which warrant medical attention before more serious problems develop.

(3) The department shall adopt rules that specify which elderly offenders shall be eligible to be housed at the geriatric correctional facilities or dorms ~~River Junction Correctional Institution~~.

~~(4) While developing the criteria for eligibility, the department shall use the information in existing offender databases to determine the number of offenders who would be eligible. The Legislature directs the department to consider a broad range of elderly offenders for River Junction Correctional Institution who have good disciplinary records and a medical grade that will permit them to perform meaningful work activities, including participation in an appropriate correctional work program (PRIDE) facility, if available.~~

~~(5) The department shall also submit a study based on existing offenders which projects the number of existing offenders who will qualify under the rules. An appendix to the study shall identify the specific offenders who qualify.~~

Section 15. Section 944.8041, Florida Statutes, is amended to read:

944.8041 Elderly offenders; annual review.—For the purpose of providing information to the Legislature on elderly offenders within the correctional system, the department and the Correctional Medical Authority shall each submit annually a report on the status and treatment of elderly offenders in the state-administered and private state correctional systems, as well as such information on the department's geriatric correctional facilities and dorms ~~River Junction Correctional Institution~~. In order to adequately prepare the reports, the department and the Department of Management Services shall grant access to the Correctional Medical Authority which includes access to the facilities, offenders, and any information the agencies require to complete their reports. The review shall also include an examination of promising geriatric policies, practices, and programs currently implemented in other correctional systems within the United States. The reports, with specific findings and recommendations for implementation, shall be submitted to the President of the Senate and the Speaker of the House of Representatives on or before December 31 of each year.

Section 16. Subsections (4) and (5) of section 945.41, Florida Statutes, are amended to read:

945.41 Legislative intent of ss. 945.40-945.49.—It is the intent of the Legislature that mentally ill inmates in the custody of the Department of Corrections receive evaluation and appropriate treatment for their mental illness through a continuum of services. It is further the intent of the Legislature that:

(4) Any inmate sentenced as a youthful offender, or designated as a youthful offender by the department pursuant to chapter 958, who is transferred pursuant to this act to a mental health treatment facility be separated from other inmates, if necessary, as determined by the warden of the treatment facility. ~~In no case shall any youthful offender be placed at the Florida State Prison or the Union Correctional Institution for mental health treatment.~~

(5) The department may designate ~~a~~ mental health treatment facilities ~~facility~~ for adult, youthful, and female offenders or may contract with other appropriate entities, persons, or agencies for such services.

Section 17. Paragraph (b) of subsection (5) and paragraph (b) of subsection (6) of section 945.42, Florida Statutes, are amended to read:

945.42 Definitions; ss. 945.40-945.49.—As used in ss. 945.40-945.49, the following terms shall have the meanings ascribed to them, unless the context shall clearly indicate otherwise:

(5) "In immediate need of care and treatment" means that an inmate is apparently mentally ill and is not able to be appropriately cared for in the institution where he or she is confined and that, but for being isolated in a more restrictive and secure housing environment, because of the apparent mental illness:

(b) ~~1. The inmate has refused voluntary placement for treatment at a mental health treatment facility after sufficient and conscientious explanation and disclosure of the purpose of~~

~~placement; or~~

~~2.~~ The inmate is unable to determine for himself or herself whether placement is necessary; and

(6) "In need of care and treatment" means that an inmate has a mental illness for which inpatient services in a mental health treatment facility are necessary and that, but for being isolated in a more restrictive and secure housing environment, because of the mental illness:

(b) ~~1. The inmate has refused voluntary placement for treatment at a mental health treatment facility after sufficient and conscientious explanation and disclosure of the purpose of placement; or~~

~~2.~~ The inmate is unable to determine for himself or herself whether placement is necessary; and

Section 18. Section 945.43, Florida Statutes, is amended to read:

945.43 Placement ~~Admission~~ of inmate in ~~to~~ mental health treatment facility.—

(1) CRITERIA.—An inmate may be placed in ~~admitted to~~ a mental health treatment facility if he or she is mentally ill and is in need of care and treatment, as defined in s. 945.42.

(2) PROCEDURE FOR PLACEMENT IN A MENTAL HEALTH TREATMENT FACILITY.—

(a) An inmate may be placed in ~~admitted to~~ a mental health treatment facility after notice and hearing, upon the recommendation of the warden of the facility where the inmate is confined. The recommendation shall be entered on a petition and must be supported by the expert opinion of a psychiatrist and

the second opinion of a psychiatrist or psychological professional. The petition shall be filed with the court in the county where the inmate is located.

(b) A copy of the petition shall be served on the inmate, accompanied by a written notice that the inmate may apply immediately to the court to have an attorney appointed if the inmate cannot afford one.

(c) The petition for placement shall ~~may~~ be filed in the county in which the inmate is located. The hearing shall be held in the same county, and one of the inmate's physicians at the facility where the inmate is located shall appear as a witness at the hearing.

(d) An attorney representing the inmate shall have reasonable access to the inmate and any records, including medical or mental health records, which are relevant to the representation of the inmate.

(e) If the court finds that the inmate is mentally ill and in need of care and treatment, as defined in s. 945.42, the court shall order that he or she be placed in a mental health treatment facility or, if the inmate is at a mental health treatment facility, that he or she be retained there. The court shall authorize the mental health treatment facility to retain the inmate for up to 6 months. If, at the end of that time, continued placement is necessary, the warden shall apply to the Division of Administrative Hearings in accordance with s. 945.45 for an order authorizing continued placement.

(3) PROCEDURE FOR HEARING ON PLACEMENT OF AN INMATE IN A MENTAL HEALTH TREATMENT FACILITY.—

(a) The court shall serve notice on the warden of the facility where the inmate is confined and the allegedly mentally ill inmate. The notice must specify the date, time, and place of the hearing; the basis for the allegation of mental illness; and the names of the examining experts. The hearing shall be held within 5 days, and the court may appoint a general or special magistrate to preside. The court may waive the presence of the inmate at the hearing if such waiver is consistent with the best interests of the inmate and the inmate's counsel does not object. The department may transport the inmate to the location of the hearing if the hearing is not held at the facility and the inmate is unable to participate through electronic means. The hearing may be as informal as is consistent with orderly procedure. One of the experts whose opinion supported the petition for placement shall be present at the hearing for information purposes.

(b) If, at the hearing, the court finds that the inmate is mentally ill and in need of care and treatment, as defined in s. 945.42, the court shall order that he or she be placed in a mental health treatment facility. The court shall provide a copy of its order authorizing placement and all supporting documentation relating to the inmate's condition to the warden of the treatment facility. If the court finds that the inmate is not mentally ill, it shall dismiss the petition for placement.

(4) REFUSAL OF PLACEMENT.—The warden of an institution in which a mental health treatment facility is located may refuse to place any inmate in that treatment facility who is not accompanied by adequate court orders and documentation, as

required in ss. 945.40-945.49.

Section 19. Subsection (3) is added to section 945.46, Florida Statutes, to read:

945.46 Initiation of involuntary placement proceedings with respect to a mentally ill inmate scheduled for release.—

(3) The department may transport an individual who is being released from its custody to a receiving or treatment facility for involuntary examination or placement. Such transport shall be made to a facility specified by the Department of Children and Family Services that is able to meet the specific needs of the individual. If the Department of Children and Family Services does not specify a facility, transport may be made to the nearest receiving facility.

Section 20. Section 946.42, Florida Statutes, is created to read:

946.42 Use of inmates on private property.—

(1) As used in this section, the term:

(a) "Disaster" means any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by a county, the Governor, or the President of the United States.

(b) "Donations" means gifts of tangible personal property and includes equipment, fixtures, construction materials, food items, and other tangible personal property, whether consumable or nonconsumable.

(c) "Emergency" means any occurrence or threat of an occurrence, whether natural, technological, or manmade, in war or in peace, that results or may result in substantial injury or

harm to the population or substantial damage to or loss of property.

(2) The department may allow inmates who meet the criteria to perform public works provided in s. 946.40 to enter onto private property for the following purposes:

(a) To accept and collect donations for the department's use and benefit.

(b) To assist federal, state, local, and private agencies before, during, and after emergencies and disasters.

Section 21. Subsections (4) through (10) of section 948.001, Florida Statutes, are renumbered as subsections (3) through (9), respectively, and present subsection (3) of that section is amended to read:

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

~~(3) "Criminal quarantine community control" means intensive supervision, by officers with restricted caseloads, with a condition of 24 hour per day electronic monitoring, and a condition of confinement to a designated residence during designated hours.~~

Section 22. Subsection (1) of section 948.03, Florida Statutes, is amended to read:

948.03 Terms and conditions of probation.—

(1) The court shall determine the terms and conditions of probation. Conditions specified in this section do not require oral pronouncement at the time of sentencing and may be considered standard conditions of probation. These conditions may include among them the following, that the probationer or offender in community control shall:

(a) Report to the probation and parole supervisors as directed.

(b) Permit such supervisors to visit him or her at his or her home or elsewhere.

(c) Work faithfully at suitable employment insofar as may be possible.

(d) Remain within a specified place.

(e) Live without violating any law. A conviction in a court of law is not necessary for such a violation of law to constitute a violation of probation, community control, or any other form of court-ordered supervision.

(f) ~~(e)~~ Make reparation or restitution to the aggrieved party for the damage or loss caused by his or her offense in an amount to be determined by the court. The court shall make such reparation or restitution a condition of probation, unless it determines that clear and compelling reasons exist to the contrary. If the court does not order restitution, or orders restitution of only a portion of the damages, as provided in s. 775.089, it shall state on the record in detail the reasons therefor.

(g) ~~(f)~~ Effective July 1, 1994, and applicable for offenses committed on or after that date, make payment of the debt due and owing to a county or municipal detention facility under s. 951.032 for medical care, treatment, hospitalization, or transportation received by the felony probationer while in that detention facility. The court, in determining whether to order such repayment and the amount of such repayment, shall consider the amount of the debt, whether there was any fault of the

institution for the medical expenses incurred, the financial resources of the felony probationer, the present and potential future financial needs and earning ability of the probationer, and dependents, and other appropriate factors.

(h) ~~(g)~~ Support his or her legal dependents to the best of his or her ability.

(i) ~~(h)~~ Make payment of the debt due and owing to the state under s. 960.17, subject to modification based on change of circumstances.

(j) ~~(i)~~ Pay any application fee assessed under s. 27.52(1)(b) and attorney's fees and costs assessed under s. 938.29, subject to modification based on change of circumstances.

(k) ~~(j)~~ Not associate with persons engaged in criminal activities.

(l) ~~(k)~~1. Submit to random testing as directed by the correctional probation officer or the professional staff of the treatment center where he or she is receiving treatment to determine the presence or use of alcohol or controlled substances.

2. If the offense was a controlled substance violation and the period of probation immediately follows a period of incarceration in the state correction system, the conditions shall include a requirement that the offender submit to random substance abuse testing intermittently throughout the term of supervision, upon the direction of the correctional probation officer as defined in s. 943.10(3).

(m) ~~(l)~~ Be prohibited from possessing, carrying, or owning:

1. Any firearm ~~unless authorized by the court and consented to by the probation officer~~.

2. Any weapon other than a firearm without first procuring the consent of the correctional probation officer.

(n) ~~(m)~~ Be prohibited from using intoxicants to excess or possessing any drugs or narcotics unless prescribed by a physician. The probationer or community controllee shall not knowingly visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.

(o) ~~(n)~~ Submit to the drawing of blood or other biological specimens as prescribed in ss. 943.325 and 948.014~~,~~ and reimburse the appropriate agency for the costs of drawing and transmitting the blood or other biological specimens to the Department of Law Enforcement.

(p) Submit to the taking of a digitized photograph by the department as a part of his or her records. Unless the photograph is exempt from inspection or copying under chapter 119, it may be displayed on the department's public website while he or she is under any form of court-ordered supervision other than pretrial intervention supervision.

Section 23. Subsection (7) of section 948.09, Florida Statutes, is amended to read:

948.09 Payment for cost of supervision and rehabilitation.—

(7) The department shall establish a payment plan for all costs ordered by the courts for collection by the department and a priority order for payments, except that victim restitution payments authorized under s. 948.03(1)(f) ~~(e)~~ take precedence

over all other court-ordered payments. The department is not required to disburse cumulative amounts of less than $10 to individual payees established on this payment plan.

Section 24. Section 948.101, Florida Statutes, is amended to read:

948.101 Terms and conditions of community control ~~and criminal quarantine community control~~.~~—~~

(1) The court shall determine the terms and conditions of community control. Conditions specified in this subsection do not require oral pronouncement at the time of sentencing and may be considered standard conditions of community control.

~~(a)~~ The court shall require intensive supervision and surveillance for an offender placed into community control, which may include, but is not limited to:

(a) ~~1.~~ Specified contact with the parole and probation officer.

(b) ~~2.~~ Confinement to an agreed-upon residence during hours away from employment and public service activities.

(c) ~~3.~~ Mandatory public service.

(d) ~~4.~~ Supervision by the Department of Corrections by means of an electronic monitoring device or system.

(e) ~~5.~~ The standard conditions of probation set forth in s. 948.03 or s. 948.30.

~~(b) For an offender placed on criminal quarantine community control, the court shall require:~~

~~1. Electronic monitoring 24 hours per day.~~

~~2. Confinement to a designated residence during designated hours.~~

(2) The enumeration of specific kinds of terms and conditions does not prevent the court from adding thereto any other terms or conditions that the court considers proper. However, the sentencing court may only impose a condition of supervision allowing an offender convicted of s. 794.011, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145 to reside in another state if the order stipulates that it is contingent upon the approval of the receiving state interstate compact authority. The court may rescind or modify at any time the terms and conditions theretofore imposed by it upon the offender in community control. However, if the court withholds adjudication of guilt or imposes a period of incarceration as a condition of community control, the period may not exceed 364 days, and incarceration shall be restricted to a county facility, a probation and restitution center under the jurisdiction of the Department of Corrections, a probation program drug punishment phase I secure residential treatment institution, or a community residential facility owned or operated by any entity providing such services.

~~(3) The court may place a defendant who is being sentenced for criminal transmission of HIV in violation of s. 775.0877 on criminal quarantine community control. The Department of Corrections shall develop and administer a criminal quarantine community control program emphasizing intensive supervision with 24-hour per day electronic monitoring. Criminal quarantine community control status must include surveillance and may include other measures normally associated with community control, except that specific conditions necessary to monitor~~

~~this population may be ordered.~~

Section 25. Subsection (1) of section 948.11, Florida Statutes, is amended to read:

948.11 Electronic monitoring devices.—

(1) ~~(a)~~ The Department of Corrections may, at its discretion, electronically monitor an offender sentenced to community control.

~~(b) The Department of Corrections shall electronically monitor an offender sentenced to criminal quarantine community control 24 hours per day.~~

Section 26. Subsection (4) of section 951.26, Florida Statutes, is renumbered as subsection (5), and a new subsection (4) is added to that section to read:

951.26 Public safety coordinating councils.—

(4) The council may also develop a comprehensive local reentry plan that is designed to assist offenders released from incarceration in successfully reentering the community. The comprehensive local plan shall cover a period of at least 5 years. In developing the plan, the council shall coordinate with public safety officials and local community organizations that can provide offenders with reentry services, such as assistance with housing, health care, education, substance abuse treatment, and employment.

Section 27. Subsection (5) of section 958.03, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

958.03 Definitions.—As used in this act:

(5) "Youthful offender" means any person who is sentenced

as such by the court pursuant to s. 958.04 or is classified as such by the department pursuant to s. 958.11(4) ~~958.04~~.

(6) "Youthful offender facility" means any facility in the state correctional system that the department designates for the care, custody, control, and supervision of youthful offenders.

Section 28. Subsections (4) and (5) of section 958.04, Florida Statutes, are amended to read:

958.04 Judicial disposition of youthful offenders.—

~~(4) Due to severe prison overcrowding, the Legislature declares the construction of a basic training program facility is necessary to aid in alleviating an emergency situation.~~

~~(5) The department shall provide a special training program for staff selected for the basic training program.~~

Section 29. Section 958.045, Florida Statutes, is amended to read:

958.045 Youthful offender basic training program.—

(1) The department shall develop and implement a basic training program for youthful offenders sentenced or classified by the department as youthful offenders pursuant to this chapter. The period of time to be served at the basic training program shall be no less than 120 days.

(a) The program shall include marching drills, calisthenics, a rigid dress code, manual labor assignments, physical training with obstacle courses, training in decisionmaking and personal development, general education development and adult basic education courses, and drug counseling and other rehabilitation programs.

(b) The department shall adopt rules governing the

administration of the youthful offender basic training program, requiring that basic training participants complete a structured disciplinary program, and allowing for a restriction on general inmate population privileges.

(2) Upon receipt of youthful offenders, the department shall screen offenders for the basic training program. To participate, an offender must have no physical limitations that preclude participation in strenuous activity, must not be impaired, and must not have been previously incarcerated in a state or federal correctional facility. In screening offenders for the basic training program, the department shall consider the offender's criminal history and the possible rehabilitative benefits of "shock" incarceration.

(a) If an offender meets the specified criteria and space is available, the department shall request, in writing from the sentencing court, approval for the offender to participate in the basic training program. If the person is classified by the department as a youthful offender and the department is requesting approval from the sentencing court for placement in the program, the department shall, at the same time, notify the state attorney that the offender is being considered for placement in the basic training program. The notice must explain that the purpose of such placement is diversion from lengthy incarceration when a short "shock" incarceration could produce the same deterrent effect, and that the state attorney may, within 14 days after the mailing of the notice, notify the sentencing court in writing of objections, if any, to the placement of the offender in the basic training program.

(b) The sentencing court shall notify the department in writing of placement approval no later than 21 days after receipt of the department's request for placement of the youthful offender in the basic training program. Failure to notify the department within 21 days shall be considered an approval by the sentencing court for placing the youthful offender in the basic training program. Each state attorney may develop procedures for notifying the victim that the offender is being considered for placement in the basic training program.

(3) The program shall provide a short incarceration period of rigorous training to offenders who require a greater degree of supervision than community control or probation provides. Basic training programs may be operated in secure areas in or adjacent to an adult institution notwithstanding s. 958.11. The program is not intended to divert offenders away from probation or community control but to divert them from long periods of incarceration when a short "shock" incarceration could produce the same deterrent effect.

(4) Upon admittance to the department, an educational and substance abuse assessment shall be performed on each youthful offender. Upon admittance to the basic training program, each offender shall have a full substance abuse assessment to determine the offender's need for substance abuse treatment. The educational assessment shall be accomplished through the aid of the Test of Adult Basic Education or any other testing instrument approved by the Department of Education, as appropriate. Each offender who has not obtained a high school diploma shall be enrolled in an adult education program designed

to aid the offender in improving his or her academic skills and earning a high school diploma. Further assessments of the prior vocational skills and future career education shall be provided to the offender. A periodic evaluation shall be made to assess the progress of each offender~~, and upon completion of the basic training program the assessment and information from the department's record of each offender shall be transferred to the appropriate community residential program~~.

(5)(a) If an offender in the basic training program becomes unmanageable, the department may revoke the offender's gain-time and place the offender in disciplinary confinement in accordance with department rule ~~for up to 30 days~~. Except as provided in paragraph (b) ~~Upon completion of the disciplinary process~~, the offender shall be readmitted to the basic training program upon completion of the disciplinary process. Any period of time in which the offender is unable to participate in the basic training activities may be excluded from the program's specified time requirements.

(b) The department may terminate an offender from the basic training program if:

1. The offender has committed or threatened to commit a violent act;

2. The department determines that the offender is unable to participate in the basic training activities due to medical reasons;

3. The offender's sentence is modified or expires;

4. The department reassigns the offender's classification status; or

5. The department determines that removing the offender from the program is in the best interests of the offender or the security of the institution~~, except for an offender who has committed or threatened to commit a violent act~~.

If the offender is terminated from the program, the department may place the offender in a youthful offender facility or assign a youthful offender to a non-youthful-offender facility in accordance with s. 958.11(3) ~~the general population~~ to complete the remainder of the offender's sentence. ~~Any period of time in which the offender is unable to participate in the basic training activities may be excluded from the specified time requirements in the program.~~

(c) ~~(b)~~ If the offender is unable to participate in the basic training activities due to medical reasons, certified medical personnel shall examine the offender and shall consult with the basic training program director concerning the offender's termination from the program.

(d) ~~(c)~~ The portion of the sentence served before placement in the basic training program may not be counted toward program completion. The department shall submit a report to the court at least 30 days before the youthful offender is scheduled to complete the basic training program. The report must describe the offender's performance in the basic training program. If the youthful offender's performance is satisfactory, the court shall issue an order modifying the sentence imposed and place the offender under supervision ~~on probation~~ subject to the offender successfully completing the remainder of the basic training

program. ~~The term of probation may include placement in a community residential program.~~ If the offender violates the conditions of supervision ~~probation~~, the court may revoke supervision ~~probation~~ and impose any sentence that it might have originally imposed.

~~(6)(a) Upon completing the basic training program, an offender shall be transferred to a community residential program and reside there for a term designated by department rule. If the basic training program director determines that the offender is not suitable for the community residential program but is suitable for an alternative postrelease program or release plan, within 30 days prior to program completion the department shall evaluate the offender's needs and determine an alternative postrelease program or plan. The department's consideration shall include, but not be limited to, the offender's employment, residence, family situation, and probation or postrelease supervision obligations. Upon the approval of the department, the offender shall be released to an alternative postrelease program or plan.~~

~~(b) While in the community residential program, as appropriate, the offender shall engage in gainful employment, and if any, shall pay restitution to the victim. If appropriate, the offender may enroll in substance abuse counseling, and if suitable, shall enroll in a general education development or adult basic education class for the purpose of attaining a high school diploma. Upon release from the community residential program, the offender shall remain on probation, or other postrelease supervision, and abide by the conditions of the~~

~~offender's probation or postrelease supervision. If, upon transfer from the community residential program, the offender has not completed the enrolled educational program, the offender shall continue the educational program until completed. If the offender fails to complete the program, the department may request the court or the control release authority to execute an order returning the offender back to the community residential program until completion of the program.~~

(6) ~~(7)~~ The department shall implement the basic training program to the fullest extent feasible within the provisions of this section.

~~(8)(a) The Assistant Secretary for Youthful Offenders shall continuously screen all institutions, facilities, and programs for any inmate who meets the eligibility requirements for youthful offender designation specified in s. 958.04, whose age does not exceed 24 years. The department may classify and assign as a youthful offender any inmate who meets the criteria of s. 958.04.~~

~~(b) A youthful offender who is designated as such by the department and assigned to the basic training program must be eligible for control release pursuant to s. 947.146.~~

~~(c) The department shall work cooperatively with the Control Release Authority or the Parole Commission to effect the release of an offender who has successfully completed the requirements of the basic training program.~~

~~(d) Upon an offender's completion of the basic training program, the department shall submit a report to the releasing authority that describes the offender's performance. If the~~

~~performance has been satisfactory, the release authority shall establish a release date that is within 30 days following program completion. As a condition of release, the offender shall be placed in a community residential program as provided in this section or on community supervision as provided in chapter 947, and shall be subject to the conditions established therefor.~~

~~(9) Upon commencement of the community residential program, the department shall submit annual reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing the extent of implementation of the basic training program and the community residential program, and outlining future goals and any recommendation the department has for future legislative action.~~

(7) ~~(10)~~ Due to serious and violent crime, the Legislature declares the construction of a basic training facility is necessary to aid in alleviating an emergency situation.

(8) ~~(11)~~ The department shall provide a special training program for staff selected for the basic training program.

(9) ~~(12)~~ The department may develop performance-based contracts with qualified individuals, agencies, or corporations for the provision of any or all of the youthful offender programs.

(10) ~~(13)~~ An offender in the basic training program is subject to rules of conduct established by the department and may have sanctions imposed, including loss of privileges, restrictions, disciplinary confinement, alteration of release plans, or other program modifications in keeping with the nature

and gravity of the program violation. Administrative or protective confinement, as necessary, may be imposed.

(11) ~~(14)~~ The department may establish a system of incentives within the basic training program which the department may use to promote participation in rehabilitative programs and the orderly operation of institutions and facilities.

(12) ~~(15)~~ The department shall develop a system for tracking recidivism, including, but not limited to, rearrests and recommitment of youthful offenders, and shall report on that system in its annual reports of the programs.

Section 30. Section 958.09, Florida Statutes, is amended to read:

958.09 Extension of limits of confinement; restitution.—Section 945.091 and the rules developed by the department to implement that section apply to youthful offenders.

~~(1) The department shall adopt rules permitting the extension of the limits of the place of confinement of a youthful offender when there is reasonable cause to believe that the youthful offender will honor the trust placed in him or her. The department may authorize a youthful offender, under prescribed conditions and following investigation and approval by the department which shall maintain a written record of such action, to leave the place of his or her confinement for a prescribed period of time:~~

~~(a) To visit a designated place or places for the purpose of visiting a dying relative, attending the funeral of a relative, or arranging for employment or for a suitable~~

~~residence for use when released; to otherwise aid in the correction of the youthful offender; or for another compelling reason consistent with the public interest and to return to the same or another institution or facility designated by the department; or~~

~~(b) To work at paid employment, participate in an educational or a training program, or voluntarily serve a public or nonprofit agency or a public service program in the community; provided, that the youthful offender shall be confined except during the hours of his or her employment, education, training, or service and while traveling thereto and therefrom.~~

~~(2) The department shall adopt rules as to the eligibility of youthful offenders for such extension of confinement, the disbursement of any earnings of youthful offenders, or the entering into of agreements between the department and any municipal, county, or federal agency for the housing of youthful offenders in a local place of confinement. However, no youthful offender convicted of sexual battery pursuant to s. 794.011 is eligible for any extension of the limits of confinement under this section.~~

~~(3) The willful failure of a youthful offender to remain within the extended limits of confinement or to return within the time prescribed to the place of confinement designated by the department is an escape from the custody of the department and a felony of the third degree, punishable as provided by s. 775.082.~~

~~(4) The department may contract with other public and~~

~~private agencies for the confinement, treatment, counseling, aftercare, or community supervision of youthful offenders when consistent with the youthful offenders' welfare and the interest of society.~~

~~(5) The department shall document and account for all forms for disciplinary reports for inmates placed on extended limits of confinement, which reports shall include, but not be limited to, all violations of rules of conduct, the rule or rules violated, the nature of punishment administered, the authority ordering such punishment, and the duration of time during which the inmate was subjected to confinement.~~

~~(6)(a) The department is authorized to levy fines only through disciplinary reports and only against inmates placed on extended limits of confinement. Major and minor infractions and their respective punishments for inmates placed on extended limits of confinement shall be defined by the rules of the department, except that any fine shall not exceed $50 for each infraction deemed to be minor and $100 for each infraction deemed to be major. Such fines shall be deposited in the General Revenue Fund, and a receipt shall be given to the inmate.~~

~~(b) When the chief correctional officer determines that a fine would be an appropriate punishment for a violation of the rules of the department, both the determination of guilt and the amount of the fine shall be determined by the disciplinary committee pursuant to the method prescribed in s. 944.28(2)(c).~~

~~(c) The department shall develop rules defining the policies and procedures for the administering of such fines.~~

Section 31. Subsection (3) of section 958.11, Florida Statutes, is amended to read:

958.11 Designation of institutions and programs for youthful offenders; assignment from youthful offender institutions and programs.—

(3) The department may assign a youthful offender to a non-youthful-offender facility and manage the youthful offender in a manner consistent with inmates in the adult population ~~in the state correctional system which is not designated for the care, custody, control, and supervision of youthful offenders or an age group only~~ in the following circumstances:

(a) If the youthful offender is convicted of a new crime which is a felony under the laws of this state.

(b) If the youthful offender becomes such a serious management or disciplinary problem resulting from serious repeated violations of the rules of the department that his or her original assignment would be detrimental to the interests of the program and to other inmates committed thereto.

(c) If the youthful offender needs medical treatment, health services, or other specialized treatment otherwise not available at the youthful offender facility.

(d) If the department determines that the youthful offender should be transferred outside of the state correctional system, as provided by law, for services not provided by the department.

(e) If bed space is not available in a designated community residential facility, the department may assign a youthful offender to a community residential facility, provided

that the youthful offender is separated from other offenders insofar as is practical.

(f) If the youthful offender was originally assigned to a facility designated for 14-year-old to 18-year-old youthful offenders, but subsequently reaches the age of 19 years, the department may retain the youthful offender in the facility if the department determines that it is in the best interest of the youthful offender and the department.

(g) If the department determines that a youthful offender originally assigned to a facility designated for the 19-24 age group is mentally or physically vulnerable by such placement, the department may reassign a youthful offender to a facility designated for the 14-18 age group if the department determines that a reassignment is necessary to protect the safety of the youthful offender or the institution.

(h) If the department determines that a youthful offender originally assigned to a facility designated for the 14-18 age group is disruptive, incorrigible, or uncontrollable, the department may reassign a youthful offender to a facility designated for the 19-24 age group if the department determines that a reassignment would best serve the interests of the youthful offender and the department.

(i) If the youthful offender has reached the age of 25.

(j) If the department cannot adequately ensure the safety of a youthful offender within a youthful offender facility.

(k) If the youthful offender has a documented history of benefiting, promoting, or furthering the interests of a criminal gang, as defined in s. 874.03, while housed in a youthful

offender facility.

(l) If the department has classified an offender as a youthful offender under subsection (4) but determines such assignment is necessary for population management purposes.

Section 32. Subsection (1) of section 958.12, Florida Statutes, is amended to read:

958.12 Participation in certain activities required.—

(1) A youthful offender shall be required to participate in work assignments, and in career, academic, counseling, and other rehabilitative programs in accordance with this section, including, but not limited to:

(a) All youthful offenders may be required, as appropriate, to participate in:

1. Reception and orientation.

2. Evaluation, needs assessment, and classification.

3. Educational programs.

4. Career and job training.

5. Life and socialization skills training, including anger/aggression control.

6. Prerelease orientation and planning.

7. Appropriate transition services.

(b) In addition to the requirements in paragraph (a), the department shall make available:

1. Religious services and counseling.

2. Social services.

3. Substance abuse treatment and counseling.

4. Psychological and psychiatric services.

5. Library services.

6. Medical and dental health care.

7. Athletic, recreational, and leisure time activities.

8. Mail and visiting privileges.

Income derived by a youthful offender from participation in such activities may be used, in part, to defray a portion of the costs of his or her incarceration or supervision; to satisfy preexisting obligations; to pay fines, counseling fees, or other costs lawfully imposed; or to pay restitution to the victim of the crime for which the youthful offender has been convicted in an amount determined by the sentencing court. Any such income not used for such reasons or not used as provided in s. 946.513 ~~or s. 958.09~~ shall be placed in a bank account for use by the youthful offender upon his or her release.

Section 33. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1055 Brevard County
SPONSOR(S): Tobia
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	12 Y, 0 N	Nelson	Hoagland
2)	Public Safety & Domestic Security Policy Committee		Cunningham	Cunningham
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

This bill amends the special law that created the Brevard Police Testing and Certification Center at Brevard Community College. The bill:

- Changes the name of the center to the Brevard Police Testing and Selection Center;
- Provides for changing the composition and membership of the Center's board of directors to allow for certain designees, and additional members from newly established police departments;
- Provides the board authority to recommend the approval of agreements with and acceptance of funds or services from any federal, state or local governmental entity or political subdivision, college or university, or private or civic source;
- Clarifies the Center's primary mission;
- Provides for applicant testing, screening and information services for criminal justice and public safety positions;
- Authorizes reasonable applicant fees to offset a portion of screening costs;
- Revises provisions relating to the establishment of user fees to require the approval of the Brevard Community College Board of Trustees; and
- Provides an effective date of upon becoming law.

The Brevard Police Testing and Certification Center should experience a positive fiscal impact as a result of this bill.

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 87-423, L.O.F., created the Brevard Police Testing and Certification Center at Brevard Community College. This centralized testing center was established to improve the quality and uniformity of law enforcement personnel recruitment by the various law enforcement agencies in Brevard County.

The Center is administered by Brevard Community College through a board of directors comprised of the following 16 members:

- The chiefs of police of the municipalities of Titusville, Cocoa, Rockledge, Cocoa Beach, Satellite Beach, Indian Harbour Beach, Indialantic, Melbourne Beach, Melbourne, West Melbourne, Melbourne Village and Palm Bay;
- The Sheriff of Brevard County;
- The State Attorney for Brevard County or a prosecuting attorney appointed by the State Attorney;
- The President of Brevard Community College or his designee; and
- The director of the Law Enforcement Academy of Brevard Community College.

This board meets at least once during each calendar quarter, at such other times as the board determines, and at any time upon the call of its chairman. The board recommends the adoption of rules for the transaction of its business. The Brevard Community College board of trustees, based upon these recommendations, adopts procedural and substantive rules and regulations for the operation of the Center.

A quorum of the board of directors consists of eight members, and no official action of the board, other than declaring a recess or rescheduling a meeting, can be taken unless a quorum is present. A majority vote of the members present and voting is necessary for the board to act on any matter.

The board is charged with recommending the following to the college trustees for approval:

- Criteria for testing, physical examination, and background investigation of police officers;
- The amounts of any user fees charged by the Center;
- An annual budget for the Center;
- The number and types of employees employed by the Center; and
- Any other criteria or requirements for the proper administration of the Center.

The Center operates in the facilities and under the day-to-day supervision of Brevard Community College. Center employees are selected and employed by the college and have the same rights and privileges as other employees. All budgeting and accounting for the operations of the Center are accomplished in accordance with college standards and procedures.

The Center is charged with developing, establishing and maintaining a centralized information center on prospective candidates for law enforcement officers in Brevard County. It is the primary point-of-contact for applicants wishing to attend the law enforcement academy, receive Equivalency of Training evaluation, or apply for inclusion in the county-wide employment pool. The Center provides standardized screening, testing, physical examination, and background investigation of applicants.

Upon the request of any law enforcement agency in Brevard County, the Center provides a list of qualified applicants for employment and reports all information gathered during the testing, screening and investigation of each applicant. No report or information concerning an applicant may be released to a law enforcement agency or to any other party without the applicant's consent.

In addition to the foregoing, the Center may make recommendations concerning uniform standards for the recruitment and testing of law enforcement officers. Also, the Center may enter into contracts and agreements to carry out its purposes. Any such contracts require approval by the board of directors and Brevard Community College.

The activities of the Center do not generate full-time equivalent (FTE) students for the college as a part of the community college's enrollment. Classes which are part of the regular program of the college to train law enforcement officers are not affected by this prohibition.

The Center provides its services without taxpayer funding, and pays Brevard Community College for office space and the costs of administration. A Brevard Police Testing and Certification account within the auxiliary fund at the college is used exclusively for the Center's operation and administration. Money deposited into this account consists of the following:

- A sum of $3 which is assessed as a court cost by both the circuit court and the county court in Brevard County against every person convicted for violation of a state criminal statute, convicted for violation of a municipal or county ordinance (except those relating to the parking of vehicles), or who pays a fine or civil penalty for any violation of ch. 316, F.S., the "Florida Uniform Traffic Control Law." The Clerk of the Court of Brevard County collects the $3 court costs and remits the same to the Center on a monthly basis.

- Such user fees as are established by the Center's board of directors for use of the Center's services by law enforcement agencies in Brevard County.

- Any donations and grants that the Center may receive.

Brevard Community College is required to prepare an annual budget for the operation and administration of the Center for the period beginning July 1 and ending June 30. The budget for any fiscal year must be submitted to the Center's board of directors for approval no later than June 1 of the previous fiscal year. The total expenditures for any fiscal year may not exceed the funds in the auxiliary fund account, and no program for the Center may be approved by its board unless all funds for such program are available.

Members of the board of directors receive no compensation for their services.
A number of similar such institutes exist throughout Florida. A list of these entities (and the fees charged for testing in 2009) includes:

Brevard Police Testing and Certification Program
Melbourne, Florida
Approximate cost: $200.00 – Out of State
$50.00 – In State

Gulf Coast Criminal Justice Assessment Center
Panama City, Florida
Approximate cost: $250.00 – Out of State as of 7/1/09
$50.00 – In State

Indian River State College
Police Assessment Center
Ft. Pierce, Florida
Approximate cost: $450.00 (includes polygraph, background, psychological, & drug screen)
$10.00 – Physical Abilities Test
$30.00 – Basic Abilities Test

Broward College
Criminal Justice Institute
Davie, Florida
Approximate cost: $250.00 – as of 7/1/09

Palm Beach Community College
Criminal Justice Institute
Lake Worth, Florida
Approximate cost: $450.00 (includes physical, psychological, drug screen & livescan)

Tallahassee Community College
Criminal Justice Selection Center
Havana, Florida
Approximate cost: $250.00 – as of 7/1/09

Police Applicant Screening Service
St. Petersburg, Florida
Approximate cost: $35.00 – test only

Santa Fe Community College
Alachua County Criminal Justice Assessment Center
Gainesville, Florida
Approximate cost: $200.00 – Out of State
$50.00 – In State

Chipola College
Criminal Justice Training Center
Marianna, Florida
Approximate cost: $200.00

Polk Community College
Polk County Criminal Justice Selection Center
Winter Haven, Florida
Approximate cost: $200.00

Lake Technical Center
Lake County Criminal Justice Selection Center
Tavares, Florida
Approximate cost: $175.00 – Out of State
$50.00 – In State

Effect of Proposed Changes
HB 1055 amends ch. 87-423, L.O.F., as amended. It changes the name of the Brevard Police Testing and Certification Center to the Brevard Police Testing and Selection Center. The bill clarifies that the primary mission of the Center is to provide and undertake standardized screening, testing, physical examination, and background investigation of law enforcement applicants.

The Center will continue to be administered by Brevard Community College through a board of directors. The bill changes the composition of the board as follows:

- Previously, the board was comprised of the chiefs of police of the municipalities of Titusville, Cocoa, Rockledge, Cocoa Beach, Satellite Beach, Indian Harbour Beach, Indialantic, Melbourne Beach, Melbourne, West Melbourne, Melbourne Village and Palm Bay. Now, the board will be comprised of the chief of police from each law enforcement agency employing law enforcement officers as defined in ch. 943, F.S.,[1] having its headquarters in Brevard County, or his or her designee. These changes to the law will allow the chiefs of newly established police departments to join the board.[2]

- The board continues to include the State Attorney for Brevard County or a prosecuting attorney appointed by the State Attorney, and the President of Brevard Community College or his or her designee. However, now other current members including the Sheriff of Brevard County and the director of the Law Enforcement Academy of Brevard Community College will be allowed to name a designee. This change will remedy a recurring problem of establishing a meeting quorum by adding a designee provision for all board members.

The bill expands the duties of the board to include the recommendation of agreements to accept and expend funds or services from any federal, state or local governmental entity or political subdivision; colleges or universities (including Brevard Community College); and private or civic sources. Approval of these agreements by the college trustees will facilitate the development of new revenue sources for the Center.

In addition to its present duties with regard to testing, screening and investigation of applicants for employment as law enforcement officers, the bill authorizes the board to provide similar services for the state and its agencies, colleges and universities, Brevard County, and the several municipalities and agencies within the county that provide criminal justice or public safety related services through contract with any of the foregoing, for prospective candidates for law enforcement, law enforcement support, corrections, and other public safety positions, including, but not limited to, law enforcement officer, corrections officer, firefighter, emergency medical technician or paramedic, public safety answering point call taker, dispatcher, communications operator, crime scene technician, or other criminal justice or public safety positions as deemed appropriate by the board. The board may enter into agreements to carry out this work, with the costs of such screening, including a reasonable allowance for overhead, being paid by the agency receiving the service. Such agreements may provide reasonable fees to be paid by applicants to offset a portion of screening costs. These changes will

[1]Section 943.10 (1), F.S., defines "law enforcement officer" to mean 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] Since the passage of the legislation creating the Center, over 20 years ago, two new police agencies have been created in Brevard County: the Melbourne International Airport Police Department and the Canaveral Port Authority Police Department.

allow the Center to enlarge its services for other public safety occupations within Brevard Community College's newly created Institute of Public Safety.

The bill requires that user fees as established from time to time by the Center's board of directors now be approved by the Brevard Community College Board of Trustees.

The act provides an effective date of upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends sections 1, 2, 4, 6 and 7 of ch. 87-423, L.O.F., as amended by ch. 89-520, L.O.F, relating to the Brevard Police Testing and Certification Center.

Section 2: The bill takes effect upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? January 14, 2010

WHERE? *Florida Today*, a daily newspaper published in Brevard County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

According to the Economic Impact Statement, new revenues from performance of background checks for public safety occupations other than law enforcement officers will result in additional revenues of $2,175 in Fiscal Year 2010-2011,[3] and $4,350 in Fiscal Year 2011-2012. The Statement notes that the Brevard Police Testing Center will provide localized, cost-effective screening services for public safety agencies to help them redirect staff to spend more time on direct mission support. There are no foreseeable disadvantages. Services will be provided on a voluntary basis and only upon customer agency request.

The impact upon competition and the open market for employment is anticipated to be minimal. The Center's staff is only equipped to conduct a small volume of agency-requested background checks. A telephone survey of local public safety entities conducted in November 2009 disclosed that Brevard County Fire Rescue, one of the largest agencies in the county, currently performs background checks of new hires using in-house staff. Additionally, it was determined that one out-of-state company was performing background screening for paramedic students enrolled in courses of study at Brevard Community College. The local police agencies currently perform in-house background checks for non-sworn personnel such as 911 dispatchers and crime scene technicians.

[3] Estimates passed on 100 applicants fingerprinted per year @ net revenue of $21.75 per applicant=$2,175 for the first year of implementation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Chapter 97-333, L.O.F., granted similar authority to the Pinellas Police Standards Council with regard to the establishment of reasonable applicant fees and the provision of screening and testing services.

This bill is supported by Brevard Community College and the Brevard Police Testing Center Board of Directors.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to Brevard County; amending chapter 87-423, Laws of Florida, as amended; changing the name of the Brevard Police Testing and Certification Center to the Brevard Police Testing and Selection Center; providing for change in composition and membership of the board of directors; providing the board has authority to recommend approval of agreements with and acceptance of funds or services from any federal, state, or local governmental entity or political subdivision, any college or university, or any private or civic source; clarifying the center's primary mission; providing for applicant testing, screening, and information services for criminal justice and public safety positions; authorizing certain applicant fees; revising provisions relating to establishment, approval, and use of user fees; providing an effective date.

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

Section 1. Sections 1, 2, 4, 6, and 7 of chapter 87-423, as amended by chapter 89-520, Laws of Florida, are amended to read:

Section 1. There is hereby created at Brevard Community College an organization to be known as the "Brevard Police Testing and Selection ~~Certification~~ Center," hereinafter called the "center." The center, under the direction and control of the college, shall provide standardized testing of law enforcement

officers for all units of local government in Brevard County and a pool of qualified candidates for employment of law enforcement officers throughout Brevard County.

Section 2. The center shall be administered by the college through a board of directors comprised of the following ~~16~~ members:

(1) The chief of police from each law enforcement agency employing law enforcement officers as defined in chapter 943, Florida Statutes, having its headquarters in Brevard County, or his or her designee. ~~The chiefs of police of the municipalities of Titusville, Cocoa, Rockledge, Cocoa Beach, Satellite Beach, Indian Harbour Beach, Indialantic, Melbourne Beach, Melbourne, West Melbourne, Melbourne Village, and Palm Bay.~~

(2) The Sheriff of Brevard County or his or her designee.

(3) The State Attorney for Brevard County or a prosecuting attorney appointed by the State Attorney.

(4) The President of Brevard Community College or his or her designee.

(5) The director of the Law Enforcement Academy of Brevard Community College or his or her designee.

Section 4. The board of directors shall recommend to the college board for approval the following:

(1) Criteria for testing, physical examination, and background investigation for police officers.

(2) The amounts of any user fees charged by the center.

(3) The annual budget for the center.

(4) The number and types of employees employed by the center.

(5) Agreements to accept and expend funds or services from any federal, state, or local governmental entity or political subdivision; any colleges or universities, including Brevard Community College; and any private or civic sources.

(6) ~~(5)~~ Any other criteria or requirements for proper administration of the center.

Section 6. (1) The center shall develop, establish, and maintain a centralized information center on prospective candidates for law enforcement officers in Brevard County. The center's primary mission ~~center~~ shall be to provide and undertake standardized screening, testing, physical examination, and background investigation of law enforcement applicants.

(2) Upon the request of any law enforcement agency in Brevard County, the center shall provide a list of qualified applicants for employment as law enforcement officers and report all information gathered during the testing, screening, and investigation of each applicant.

(3) No report or information concerning any applicant shall be released to any law enforcement agency or to any other party without the consent of the applicant.

(4) In addition to the foregoing, the center may make recommendations concerning uniform standards for the recruitment and testing of law enforcement officers.

(5) The center may enter into contracts and agreements to carry out its purposes. Any such contracts shall require approval by the board of directors and Brevard Community College.

(6) The activities of the center shall not generate full-time equivalent (FTE) students for the college as a part of the community college's enrollment. Classes which are part of the regular program of the college to train law enforcement officers are not affected by this prohibition.

(7) The board of directors may elect to provide, in whole or in part, similar applicant testing, screening, and information services, as outlined in this section, for the state and its agencies, colleges, and universities, including Brevard Community College, Brevard County, and the several municipalities and agencies within Brevard County that provide criminal justice or public safety related services through contract with any of the foregoing, for prospective candidates for law enforcement, law enforcement support, corrections, and other public safety positions, including, but not limited to, law enforcement officer, corrections officer, firefighter, emergency medical technician or paramedic, public safety answering point call taker, dispatcher, communications operator, crime scene technician, or other criminal justice or public safety position as deemed appropriate by the board. The board may enter into agreements necessary to carry out this work, with the costs of such screening, including a reasonable allowance for overhead being paid by the agency receiving the service. Such agreements may provide reasonable fees to be paid by applicants to offset a portion of the screening costs.

Section 7. (1) There is hereby created the Brevard Police Testing and Selection ~~Certification~~ account within the auxiliary fund at Brevard Community College, which account within the

auxiliary fund shall be used exclusively for the operation and administration of the center. Moneys deposited into the account within the auxiliary fund shall consist of the following:

(a) A sum of $3 which shall be assessed as a court cost by both the circuit court and the county court in Brevard County against every person who is convicted or who has had adjudication withheld for a violation of a state criminal statute or a municipal or county ordinance or who pays a fine or civil penalty for any violation of chapter 316, Florida Statutes. The said cost of $3 shall be assessed in addition to any fine, civil penalty, or other court cost and shall not be deducted from the proceeds of that portion of any fine or civil penalty which is received by a municipality in Brevard County or by Brevard County in accordance with the provisions of ss. 316.660 and 318.21, Florida Statutes. The $3 cost shall specifically be added to any civil penalty paid for a violation of chapter 316, Florida Statutes, whether such penalty is paid by mail, paid in person without request for a hearing, or paid after hearing and determination by the county court. However, no such $3 assessment shall be made against a person for a violation of any state statute, county ordinance, or municipal ordinance relating to the parking of vehicles. The Clerk of the Court of Brevard County shall collect the respective $3 court costs established in this paragraph and shall remit the same to the center on a monthly basis.

(b) Such user fees as are established from time to time by the center's board of directors <u>and approved by the Brevard Community College Board of Trustees</u> for use of the services of

the center pursuant to section 6(7) ~~by law enforcement agencies in Brevard County~~.

(c) Such donations and grants as the center may receive.

(d) No funds shall be transferred from the general current fund, the restricted current fund, or any other auxiliary fund for the operation of this center.

(2) Brevard Community College shall prepare an annual budget for the operation and administration of the center, which budget shall be for the period beginning July 1 and ending June 30 each year. The budget for any such fiscal year shall be submitted to the board of directors of the center for its consideration and approval no later than June 1 of the previous fiscal year. The total expenditures for any fiscal year shall not exceed the funds available from the account within the auxiliary fund described in subsection (1), and no program for the center shall be approved by the board of directors unless all funds for such program are available from the said account within the auxiliary fund.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1101 Misdemeanor Pretrial Substance Abuse Programs
SPONSOR(S): Waldman
TIED BILLS: **IDEN./SIM. BILLS:** SB 1694

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee		Cunningham	Cunningham
2)	Criminal & Civil Justice Appropriations Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Section 948.16, F.S., specifies that a person who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under chapter 893, and who has not previously been convicted of a felony nor been admitted to a pretrial program, is eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program.

The bill expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program by:

- Allowing persons who have been charged with *any* misdemeanor violation of ch. 893, F.S., and who have not been previously convicted of a felony to participate in such programs.

- Removing the requirement that a person not have previously been admitted into a pretrial program in order to participate in such programs.

This bill takes effect July 1, 2010. See "Fiscal Comments."

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 948.16, F.S., specifies that a person who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S.,[1] and who has not previously been convicted of a felony nor been admitted to a pretrial program, is eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program,[2] for a period based on the program requirements and the treatment plan for the offender. Admission to such a program may be based upon the motion of either party or the court's own motion.[3]

Participants in the program are subject to a coordinated strategy[4] developed by a drug court team under s. 397.334(4), F.S., which may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider[5] or in a jail-based treatment program or serving a period of incarceration within the time limits established for contempt of court.

At the end of the pretrial intervention period, the court must:

- Consider the recommendation of the treatment program;
- Consider the recommendation of the state attorney as to disposition of the pending charges; and
- Determine, by written finding, whether the defendant successfully completed the pretrial intervention program.[6]

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[1] Chapter 893, F.S., is the Florida Comprehensive Drug Abuse Prevention and Control Act

[2] *See* s. 397.334, F.S.,

[3] Except, if the state attorney believes the facts and circumstances of the case suggest the defendant is involved in dealing and selling controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in dealing or selling controlled substances, the court shall deny the defendant's admission into the pretrial intervention program.

[4] The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a pretrial treatment-based drug court program or other pretrial intervention program. s. 948.16(1)(b), F.S.

[5] The term "licensed service provider" is defined in s. 397.311, F.S.,

[6] s. 948.16(2), F.S.

If the court finds that the defendant has not successfully completed the pretrial intervention program, the court may order the person to continue in education and treatment or return the charges to the criminal docket for prosecution. The court must dismiss the charges upon finding that the defendant has successfully completed the pretrial intervention program.[7]

Effect of the Bill

As noted above, only persons who have been charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893,F.S., and who have not previously been convicted of a felony nor been admitted to a pretrial program, are eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program.

The bill expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program by:

- Allowing persons who have been charged with *any* misdemeanor violation of ch. 893, F.S., and who have not been previously convicted of a felony to participate in such programs.

- Removing the requirement that a person not have previously been admitted into a pretrial program in order to participate in such programs.

B. SECTION DIRECTORY:

Section 1. Amends s. 948.16, F.S., relating to misdemeanor pretrial substance abuse education and treatment intervention program.

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:

   See "Fiscal Comments."

2. Expenditures:

   See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

[7] Any person whose charges are dismissed after successful completion of the treatment-based drug court program, if otherwise eligible, may have his or her arrest record and plea of nolo contendere to the dismissed charges expunged under s. 943.0585, F.S. *See* s. 948.16(1)(b), F.S.

D. FISCAL COMMENTS:

The bill expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program. Persons who successfully complete such programs have their criminal charges dismissed. This may have a positive fiscal impact on local governments. Counties may need to expand their pretrial substance abuse education and treatment programs if more people are participate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to misdemeanor pretrial substance abuse programs; amending s. 948.16, F.S.; providing that additional persons who have been charged with misdemeanor offenses may qualify for the program; providing that a person who has previously been admitted to a pretrial program may qualify for the program; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 948.16, Florida Statutes, is amended to read:

948.16 Misdemeanor pretrial substance abuse education and treatment intervention program.—

(1)(a) A person who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia or with any other misdemeanor under chapter 893, and who has not previously been convicted of a felony ~~nor been admitted to a pretrial program~~, is eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program established pursuant to s. 397.334, approved by the chief judge of the circuit, for a period based on the program requirements and the treatment plan for the offender, upon motion of either party or the court's own motion, except, if the state attorney believes the facts and circumstances of the case suggest the defendant is involved in dealing and selling

controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in dealing or selling controlled substances, the court shall deny the defendant's admission into the pretrial intervention program.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1115 Injunctions for Protection against Domestic Violence, Repeat Violence, Sexual Violence, or Dating Violence
SPONSOR(S): Jones
TIED BILLS: **IDEN./SIM. BILLS:** SB 796

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee		Krol JK	Cunningham
2)	Criminal & Civil Justice Appropriations Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

This bill requires a sheriff to notify a petitioner, within 12 hours after the sheriff or other law enforcement officer has made service upon the respondent, that the respondent has been served with a protective injunction against domestic violence, repeat violence, dating violence, or sexual violence, if the petitioner has requested such notification and has registered a telephone number or e-mail address with the sheriff.

The sheriff must also enter information relating to the service of the injunction into the Victim Information and Notification Everyday (VINE) system.

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:

Injunctions

Current law provides the following in relation to the service of injunctions for protection against domestic violence,[1] repeat violence, sexual violence, or dating violence[2]:

- Within 24 hours after service of process of a protective injunction upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the petitioner's residence;
- Within 24 hours after the sheriff receives a certified copy of the protective injunction, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the Florida Department of Law Enforcement (FDLE); and
- Within 24 hours after the sheriff or other law enforcement officer makes service upon the respondent and the sheriff has been so notified, the sheriff must make such information relating to the service available to other law enforcement agencies by electronically transmitting such information to the FDLE.[3]

Victim Notification

Section 960.001, F.S., provides guidelines for the fair treatment of victims and witnesses involved in the criminal and juvenile justice systems, including the right to information about victim notification. Victims have the right to be informed, to be present, and to be heard when relevant, at all crucial stages of a criminal or juvenile proceeding, to the extent that this right does not interfere with constitutional rights of the accused.

Victims[4] of specific offenses[5] must be notified within 4 hours by the chief administrator, or a person designated by the chief administrator, of a county jail, municipal jail, juvenile detention facility, or residential commitment facility concerning:

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[1] The term "domestic violence" is defined in s. 741.30(8), F.S.

[2] The terms "repeat violence," "sexual violence," and "dating violence" are defined in s. 784.046, F.S.

[3] *See* ss. 741.30 and 784.046, F.S.

[4] Section 960.001, F.S., provides that notification can requested by the victim or the appropriate next of kin of a victim or a designated contact of the victim.

[5] In the case of a homicide, pursuant to chapter 782; or a sexual offense, pursuant to chapter 794; or an attempted murder or sexual offense, pursuant to chapter 777; or stalking, pursuant to s. 784.048, F.S.; or domestic violence, pursuant to s. 25.385, F.S.

- The release of an offender from incarceration in a county jail, municipal jail, juvenile detention facility, or residential commitment facility;[6]
- The release of an offender following sentencing, disposition, or furlough;[7]
- Escapes by the offender from a state correctional institution, county jail, juvenile detention facility, or residential commitment facility.[8]

The Department of Corrections (department) is also required by law to notify within 30 days, and upon request, the state attorney, the victim, and the personal representative of the victim when an inmate has been approved for community work release.[9] The department is also required to notify the victim six months before the release of an inmate from the department.[10] If an inmate is a sexual offender[11] the department is required, if requested, to notify the victim of the offense, the victim's parent, legal guardian, or lawful representative if the victim is a minor, or the next of kin if the victim is a homicide victim, within 6 months prior to the anticipated release of a sexual offender, or as soon as possible if the sexual offender is released earlier than anticipated.[12]

The department provides victim notification services using the Victim Information and Notification Everyday (VINE) system.[13] The VINE service is a toll-free automated inmate information and notification service that is available 24 hours a day, seven days a week.[14] Anyone, not only victims, may call the toll-free number[15] and receive an inmate's current location and tentative release date. Automated notification is also sent when an inmate is:

- Released,
- Transferred,
- Out to court,
- Placed in a work release facility,
- Transferred to another jurisdiction, or
- Returned to the department's custody.[16]

VINE will also provide notification if the inmate has escaped or if they have died while in custody. The department has been the contract manager of the VINE service since 1999. In 2001, the Legislature authorized funding to expand this service to all of Florida's county jails.

Florida VINELink is an online resource which can be used to search for information regarding offenders in the custody of the department and in 62 participating county jails. This free, confidential service allows a victim to register and be notified, by phone, e-mail, or TTY, about changes in the custody status of inmates.[17]

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[6] Section 960.001(1)(f), F.S.
[7] *Id.*
[8] Section 960.001(1)(p), F.S.
[9] Section 944.605(6), F.S.
[10] Section 944.605(1), F.S.
[11] Section 944.606, F.S., "sexual offender" is defined as "a person who has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subsection."
[12] Section 944.606(3)(b), F.S.
[13] This service is provided to the citizens of the state of Florida by the Florida Legislature, the Department of Corrections, and through the cooperation of the participating Sheriffs and County Commissions.
[14] Florida VINElink https://www.vinelink.com/vinelink/siteInfoAction.do?siteId=10000 (Last visited on March 4, 2010.)
[15] 1-877-VINE-4-FL (1-877-846-3435)
[16] Department of Corrections, VINE Services, http://www.dc.state.fl.us/oth/victasst/#vine (Last visited on March 4, 2010.)
[17] Florida VINElink https://www.vinelink.com/vinelink/siteInfoAction.do?siteId=10000 (Last visited on March 4, 2010.)

Effect of Proposed Changes

HB 1115 requires a sheriff to notify a petitioner, within 12 hours after the sheriff or other law enforcement officer has made service upon the respondent (and the sheriff has been so notified), that the respondent has been served with a protective injunction against domestic violence, repeat violence, dating violence, or sexual violence, if the petitioner has requested such notification and has registered a telephone number or e-mail address with the sheriff. The notification is required to include the date, time, and location in which the protective injunction was served.

The sheriff must also enter information relating to the service of the injunction into the Victim Information and Notification Everyday (VINE) system. Currently the contract the department has for the VINE system does not allow information on injunctions to be submitted. The department reports that the department's contract would need to be renegotiated in order to allow this type of data to be received by the VINE system.

B. SECTION DIRECTORY:

Section 1. Amends s. 741.30, F.S., relating to domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.

Section 2. Amends s. 784.046, F.S., relating to action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations.

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:

   See "Fiscal Comments."

D. FISCAL COMMENTS:

In 2009, HB 829 was filed, which had identical language regarding the requirement that the sheriff's office notify the petitioner within 12 hours that an injunction was served (HB 829 did not contain any language requiring the sheriff to enter information into the VINE system). According to the Florida Sheriff's Association's analysis, HB 829 would have resulted in an increased workload of sheriffs offices. This bill will also likely result in an increased workload on sheriffs offices.

The department reported that the contract it has with Appriss for the VINE system is for approximately $1 million. Appriss reported that HB 1115 would impact their contract with the department and it would need to be renegotiated at a higher rate. Appriss has not yet determined what the new contract cost would be.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

To the extent that political subdivisions (through the sheriff's department), are obligated to expend funds in order to provide the notification services required by the bill, the bill could constitute a mandate as defined in Article VII, Section 18(a) of the Florida Constitution for which no funding source is provided.

For purposes of legislative application of Article VII, Section 18 of the Florida Constitution, the term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Based on Florida's estimated population on April 1, 2009,[18] a bill that would have a statewide fiscal impact on counties and municipalities in aggregate or in excess of $1.8 million would be characterized as a mandate. It is unknown at this time how much counties and cities would be required to spend to provide the notification services required by the bill. If the fiscal impact is insignificant, an exemption to the mandates provision exists.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear what, if anything, VINE is required to do with the information regarding the service of injunctions by a sheriff or law enforcement officer.

The bill specifies that the sheriff must notify a petitioner that the respondent has been served with an injunction. The bill does not specify how such notification must be made.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

[18] http://edr.state.fl.us/population.htm

A bill to be entitled

An act relating to injunctions for protection against domestic violence, repeat violence, sexual violence, or dating violence; amending ss. 741.30 and 784.046, F.S.; requiring that certain information be entered into the Victim Information and Notification Everyday (VINE) system; requiring the sheriff, after the sheriff or other law enforcement officer has served such an injunction upon a respondent, to notify the petitioner within a specified period that the respondent has been served if the petitioner has requested notification and has registered a telephone number or e-mail address with the sheriff; providing for the content of the notice; providing an effective date.

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

Section 1. Paragraph (c) of subsection (8) of section 741.30, Florida Statutes, is amended to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.—

(8)

(c)1. Within 24 hours after the court issues an injunction for protection against domestic violence or changes, continues, extends, or vacates an injunction for protection against domestic violence, the clerk of the court must forward a

certified copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner. The injunction must be served in accordance with this subsection.

2. Within 24 hours after service of process of an injunction for protection against domestic violence upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against domestic violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department and must enter such information into the Victim Information and Notification Everyday (VINE) system.

5. If the petitioner has requested notification and has registered a telephone number or e-mail address with the sheriff, within 12 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff shall notify the petitioner that the respondent has been served with the injunction for protection against domestic violence. The notification must include the date, time, and location where the

injunction for protection against domestic violence was served.

6.~~5.~~ Within 24 hours after an injunction for protection against domestic violence is vacated, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court and enter such action into the Victim Information and Notification Everyday (VINE) system.

Section 2. Paragraph (c) of subsection (8) of section 784.046, Florida Statutes, is amended to read:

784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations.—

(8)

(c)1. Within 24 hours after the court issues an injunction for protection against repeat violence, sexual violence, or dating violence or changes or vacates an injunction for protection against repeat violence, sexual violence, or dating violence, the clerk of the court must forward a copy of the injunction to the sheriff with jurisdiction over the residence of the petitioner.

2. Within 24 hours after service of process of an injunction for protection against repeat violence, sexual violence, or dating violence upon a respondent, the law enforcement officer must forward the written proof of service of

process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against repeat violence, sexual violence, or dating violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department and must enter such information into the Victim Information and Notification Everyday (VINE) system.

5. If the petitioner has requested notification and has registered a telephone number or e-mail address with the sheriff, within 12 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff shall notify the petitioner that the respondent has been served with the injunction for protection against repeat violence, sexual violence, or dating violence. The notification must include the date, time, and location where the injunction for protection against repeat violence, sexual violence, or dating violence was served.

6.~~5.~~ Within 24 hours after an injunction for protection against repeat violence, sexual violence, or dating violence is

lifted, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff or local law enforcement agency receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court and must enter such information into the Victim Information and Notification Everyday (VINE) system.

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